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DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*

(OFFICIAL REPORT—*Unrevised*)

Thursday, 29 *September* 2005.

SEANAD ÉIREANN

Déardaoin, 29 *Meán Fómhair* 2005.
Thursday, 29 *September* 2005.

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

Paidir.
Prayer.

Business of Seanad.

An Cathaoirleach: I have received notice from Senator Kenneally that, on the motion for the Adjournment of the House today, he proposes to raise the following matter:

> The implications for Kilmeaden, County Waterford, of the decision of Glanbia to close the local cheese factory.

I have also received notice from Senator Browne of the following matter:

> The need for the Minister for Finance to clarify the basis on which mobile phone companies charge VAT at the Irish rate on calls outside the State.

I have also received notice from Senator White of the following matter:

> The need for the Minister for Finance to outline the estimated number of persons working in Ireland who are certified as non-resident for tax purposes, and the estimated loss of potential tax revenue due to current non-residency rules.

I have also received notice from Senator Dooley of the following matter:

> The need for the Minister for Health and Children to outline a timescale for upgrading the ambulance service at Scarriff, County Clare, and the establishment of an ambulance service at Shannon, County Clare, and if the Minister will make a statement on the matter.

I have also received notice from Senator Bannon of the following matter:

> The need for the Minister for Health and Children to make a statement in respect of phase 2B of Mullingar hospital, following her instruction to the Health Service Executive to delay the development of the new facilities at the hospital which is the only acute hospital from Dublin to Sligo; the completion of which is imperative for the provision of an equitable health service for the people of Longford and Westmeath.

I regard the matters raised by Senators Kenneally, Browne, White and Dooley as suitable for discussion on the Adjournment and I have selected those raised by Senators Kenneally, Browne and White which will be taken at the conclusion of business. I regret I have to rule out of order the matter raised by Senator Bannon as it is repetitious. Senator Dooley may give notice on another day of the matter he wishes to raise.

Order of Business.

Ms O'Rourke: The Order of Business today is Nos. 1 and 2. No. 1 is a motion referring a proposal to the Joint Committee on Justice, Equality, Defence and Women's Rights for consideration. It concerns the establishment of a specific programme of civil justice as part of the general programme of fundamental rights and justice. The motion will be taken without debate; No.2, the Employee (Provision of Information and Consultation) Bill 2005 — Order for Second Stage and Second Stage, to be taken on the conclusion of the Order of Business until 1.30 p.m., spokespersons have 15 minutes and other Senators have ten minutes, with the Minister to be called upon to reply not later than five minutes before the conclusion of Second Stage.

Mr. Finucane: Over the summer, the issue that appeared to dominate was rip-off Ireland and the programme presented by Mr. Eddie Hobbs seems to have resonated with the public. By the end of the summer, people were talking about this issue as though this was a banana republic without the bananas. Indeed, the Minister for Social and Family Affairs agreed on television that we have developed into rip-off Ireland.

When Members returned to the Houses, the first thing they received was the Comptroller and Auditor General's report. For anyone who reads the report, it is a shocking indictment of spending excesses in many different Departments. There appears to be a natural assumption that when any Department installs a computer system, it never works out exactly in accordance with the estimate. There appears to be an acceptance that the cost of such projects doubles. Regrettably, in 2000 we entered into an arrangement with the Massachusetts Institute of Technology with regard to MediaLab Europe. That has been written off with a total cost to the Exchequer of €35 million. At the time, it was the Taoiseach's project. It subsequently came under the aegis of the former Department of Public Enterprise and eventually under that of the Department of Communications, Marine and Natural Resources. On reading the report, it appears more like a vanity project than one based in reality.

[Mr. Finucane.]

I want someone to account for the reason for this type of spending. When we decided to automate the production of passports, why did the cost double from €13.5 million to €27 million? There seems to be a natural assumption that this will happen.

There is benchmarking within the Civil Service. I often wonder what actually happens to senior officials who make decisions within the Civil Service pertaining to expenditure on the scale involved in many such projects. What happens subsequently when it goes completely askew? Are they accountable for their stewardship? Are they accountable within their own Departments? Are they asked what went wrong? Does anything happen or do they get promoted?

This report saddens me. I have been in the Oireachtas since 1989 and have seen reports like this every year. I keep telling myself that surely alarm bells will ring in Departments with regard to the Comptroller and Auditor General's role as a public watchdog, so we will reach a situation whereby his report contains little by way of the discovery of spending excesses. We have squandered much of the fruits of the Celtic tiger. I would like the Minister for Enterprise, Trade and Employment, Deputy Martin, to come before the House and account for these excesses. There must be some accountability so we can know what is happening. The Committee of Public Accounts will look at the situation in comparison with the spending of all Departments and I welcome the moves that are emanating from the committee to demand that these projects be looked at differently in the future. Rather than incurring expenditure, proposed expenditure must be examined first to figure out how viable it is.

Mr. O'Toole: I welcome the comments by the Taoiseach yesterday on behalf of the ferry workers. It raises an important point. Over the past seven or eight years, people in this House have discussed Members' involvement — or non-involvement — in the partnership process. This is a good example of why we need a partnership process. It would be useful to invite the Taoiseach or another member of the Cabinet to come in and outline our vision for the community in partnership. What we see happening at the moment with the ferry workers is anti-community, anti-partnership and is an attempt to bring us back to the future of the Spailpín Fánach, where we oppress immigrant and travelling workers and where we depress wages and give workers no rights. This is a community that has worked hard to give reasonable rewards to workers at all levels in the public and private sector over the past 15 to 20 years. It is not to be thrown away in the interests of greedy, grasping, miserable businesses that want to walk on those workers who have created the wealth that we are all sharing.

This company does not reflect the generality of businesses in Ireland. Most businesses are happy to make their profit and to pay their workers and that is as it should be. This is not an anti-business thing, but an anti-person thing. I would welcome an opportunity for Members of this House to state how they would like to see partnership working in this country, how they would like to see adequate reward for workers, the circumstances in place to ensure that we are competitive, how the wealth created in this nation is distributed and how the money is created for investment in public services. In six months time, people will stand up and claim that deals are being done here, there and everywhere and that the House should have an input into them. This is an opportunity for Members to talk to members of the Cabinet and inform them of what they do and do not want. The beauty of the partnership process is that it forces people of different points of view to listen to each other. They are not sitting in their own corner at their trade union meeting, chamber of commerce meeting or voluntary body meeting; they all must listen to each other. We could do with a bit of it in here. We could put arguments forward, see where the compromises must be made and have some input into shaping the future, a future that will be different to what Irish Ferries wants for its workers.

Mr. Ryan: I agree completely with Senator O'Toole. I hope the Taoiseach's comments are translated into legislation because I am certain that there are seven or eight countries in Europe where one could not do what is being done. Let us not hide behind the European Union. I am certain that in Sweden, the Netherlands, Denmark and Norway, Irish Ferries could not do this by law and yet those countries all run efficient ferry services.

Perhaps what Senator O'Toole said is just another manifestation of something that leaps out of the Comptroller and Auditor General's report. In the area of taxation, according to the report, there were six convictions in the year reviewed. In the same year, 36 people went to jail for social welfare fraud, 144 people were fined, 43 received the benefit of the Probation Act, while social welfare fraud totalled €18 million. In the same year, six people were convicted for tax offences but the Comptroller and Auditor General does not have the details of the penalties, so we can assume none of them were too severe. In the same year, €172 million in tax was written off, representing 26,000 different cases. Some of that money was income tax, but some of it was VAT, which is essentially money that someone stole from a customer, pretended that they were paying VAT and then kept if for himself or herself. It was then

written off because the company went bankrupt or whatever. The Revenue Commissioners are often correct to write these things off, but it is inexcusable that someone can fiddle VAT, see his or her company go bankrupt and then pay nothing, yet is not prosecuted for what is clearly a fraudulent transaction between that person and his or her customers.

Why is it that so few people are prosecuted for any tax offence in a year when 36 people went to jail for a maximum of €18 million? This is the difference between the rich and the poor. In the companies that find ways to exploit workers, as Senator O'Toole pointed out, there are directors who are rewarding themselves with increases well above what even the most outrageous trade unionist would ever hope for. These increases can be up in the order of 10% to 15% per annum and are voted to them by other directors who are meant to be independent, but are all part of the cosy circle which looks after Irish business. People who are in each other's companies do the remuneration for one company and receive the remuneration for another. As long as we allow that sort of inequality, manifested in the report of the Comptroller and Auditor General and in the Irish Ferries affair, I am sceptical that genuine partnership exists. Until I see the law applying equally to the rich and to the poor, to the powerful and to the powerless, we do not really have the sort of partnership to which I would aspire.

Labhrás Ó Murchú: We are living in an age when we are all encouraged to be tolerant and to be respectful towards other religions. This is right because the only way good relationships can be ensured in diverse communities is by being respectful towards the faiths of other people. On the other hand, we find that the Christian religion is constantly lampooned and subject to extreme irreverence. One of the most vulgar cases that I have seen recently is the use of the Last Supper to promote gambling. The Last Supper is sacred to the Christian faith and it is very hurtful to people to see it used in this way. I suggest that if we treated the icons of other religions in that way, there would be an outcry and rightly so. I appeal to all people in the media and in advertising to use their talents in a more creative and less offensive way. I know people who have been astounded, hurt and insulted by the manner in which that particular advertising campaign has been conducted. As a Member of the Oireachtas, I am glad that I have a platform to express the outrage felt at the moment.

Mr. Bannon: The neglect over the issue of Sellafield is unbelievable. I was there as part of a delegation from an Oireachtas committee two weeks ago and there is evidence of incompetence and complacency among some members of the staff. It is a disaster waiting to happen and we have an obligation to protect the citizens of this State in a fair manner. I call for the closure of Sellafield in the interests of health and safety. It is important that the Government has an independent observer present on a 24-hour basis in Sellafield. We must pursue this case to the International Court of Justice to ensure that Sellafield is closed once and for all. Last week when we arrived at Sellafield, we were told in the presence of personnel at the facility of an accident that happened and went undetected. There was a gash in a pipe which was transporting radioactive material into the Irish Sea. This scenario is not fair on our citizens or on those in Britain and it will be people power which finally brings about the closure of Sellafield. It is up to the Minister to come to the House to inform us of the action he intends to take against Britain on the matter of Sellafield.

Mr. Morrissey: Over the past few months, the Irish Exporters Association and many others have made the case that Dublin Port will shortly experience capacity issues in bringing imports in and getting our exports off the island. Discussions are ongoing as to how capacity issues can be resolved and whether Dublin Port should increase its size or look elsewhere for development. One of our best kept national secrets is the plan by Drogheda Port to relocate to a place called Bremore, just north of Balbriggan. As Ireland's port capacity problems could be more than adequately solved through the development at Bremore, I call for a debate with the Minister of State, Deputy Gallagher, on the Government's ports policy.

I concur with the sentiments of my colleagues across the floor of the House on the proposed reorganisation of Irish Ferries. I fear that if restructuring goes ahead in the manner proposed, it will set a deadly precedent. If a company can offer very generous redundancy packages 60% of which will ultimately be recouped from the State, it means the State will be complicit in the form of reorganisation proposed.

Mr. Ryan: Hear, hear.

Mr. Morrissey: I would welcome a debate in the House on the issue. While I do not like to hear comments from unions describing a race to the bottom, the process in question is certainly taking that direction.

Dr. Mansergh: On the same subject, after the Order of Business the House will discuss the Employee (Provision of Information and Consultation) Bill. In view of the relatively short time available until next Monday, those of us who hope to contribute may have the opportunity to say something about what I was going to call Irish Ferries, but which should perhaps be renamed

[Dr. Mansergh.]

"Central and Eastern European Ferries". I wonder whether there are any proposals in the company at senior executive not to mention chief executive level for proportionate cuts in pay and benefits and, if those are not accepted, whether there is a proposal to advertise for a new chief executive in, for example, the Moldovan national newspapers. I wonder if the people who run the company have the faintest idea of the negative publicity which has been generated.

Mr. Ryan: Hear, hear.

Dr. Mansergh: Certainly, I have no inclination to book a crossing with Irish Ferries this morning and I dare say many others would react in the same way.

On the subject of the Comptroller and Auditor General's report, I have felt for a long time that if the Revenue Commissioners are overstretched and require more staff, the resources should be provided without question. They more than pay for themselves. We will still be discussing in a hundred years the Comptroller and Auditor General's report as it is an eternal battle to combat waste in public expenditure. While criticism is in most cases well justified, the only way to avoid waste entirely would be for Government not to take any decision at all. As a former Fine Gael leader said to me some years ago regarding one of our projects which had not worked out, it is an inevitable part of Government that one loses some. In defence of public servants, I point out that we have a system of ministerial accountability. Ministers are the people who are responsible for decisions.

Mr. Ryan: No matter what goes wrong, they never resign.

Dr. Mansergh: If all decisions must be successful, one will end up taking no decisions at all. Let us remember the observation of the President of the European Central Bank that this is a magnificently performing economy.

Mr. Finucane: It could be a great deal better.

Dr. Mansergh: That should be the backdrop to all our discussions.

Dr. M. Hayes: An article in one of the morning newspapers referred to a Polish magazine which recounted the difficulties faced by Polish people in Ireland. I have many Polish friends and while the article may have overstated the case, it underlined the need for the House to discuss an immigration policy. The economy will require 50,000 to 60,000 fresh labourers every year for the next ten years and we must find a way to integrate them into Irish society to ensure we not only benefit from their labour but from the entire range of their cultures and avoid piling up the kind of trouble for the future one sees, for example, in Britain.

I am tempted by Senators Mansergh and Finucane to comment on the question of public accounts. While I agree with Senator Finucane that problems must be examined, they are not confined to this jurisdiction. I had the doubtful distinction once of explaining to a public accounts committee why a hospital for which the original estimate was £7 million had finished up costing £74 million. There appears to be a magic factor of ten in these cases. While there were some good reasons and some bad reasons for this state of affairs, political pressure and reluctance to drop a turkey makes things very difficult for public servants. In the private sector one would cut one's losses. I am not launching a political broadside as generally I support Senator Finucane on this issue. It is far from a party political matter. It would be better to conduct case studies on two or three projects to allow us to learn from experience without recrimination or conducting witch hunts but with the idea of improving future administration.

Mr. McHugh: I agree with Senator Maurice Hayes on his point about the exploitation of Polish workers. There must be proper mechanisms to prevent any form of exploitation of any foreign immigrant.

September is a month in which politicians are inundated with phone calls from students and parents on the subject of student grants. Politicians have developed an institutionalised way of thinking in which we expect parents to phone up to ask where to obtain a grant or when it is due. Parents are crippled by the costs of paying rent and upkeep for their student children which is why grants should be fast-tracked by centralising the process. Students do not know whether to approach VECs or local authorities. While it is very easy to be critical of these bodies, it is not good enough given the fact that at issue is the question of resources. Staff should be provided, programmes should be established and mechanisms should be put in place long before September.

I call on the Minister for Education and Science to centralise the process to establish a one-stop-shop for the fast-tracking of student grants. We should get away from the idea of using VECs and local authorities. Let us pump resources into the process. If we must use local authorities, we should employ people to get the job done rather than have us continue to be tortured. It is not politicians as a group for whom we should feel sorry, but students and their parents.

Mr. Lydon: In light of recent developments, I call for a wide-ranging debate on the Middle East, including Iran, Iraq, Israel and Palestine.

I fully support the comments made by Senator Ó Murchú. I found it very sad to hear on "Morning Ireland" this morning the representative of a company say that if Jesus was a Muslim, he would not have dared to put forward the advertisement in which he is shown as a gambler. Jesus Christ is a very important part of my everyday life. I find that advertisement disgusting and blasphemous and I call on this company to withdraw it immediately because it is offensive to all Christians.

Mr. Kitt: I welcome the Comptroller and Auditor General's report, particularly the comments of the Chairman of the Committee of Public Accounts, Deputy Noonan, regarding his committee having an early look at some projects rather than, as he said, looking at projects when the horse has left the stable. Senator Maurice Hayes referred to the fact that it has always been a tradition that the Committee of Public Accounts looks at value-for-money audits. I hope the committee would carry on that tradition but that the audits could be confined to a number of projects.

I wish to return briefly to an issue raised by my colleague, Senator Moylan, last June regarding adequate parking at sporting events, especially to the activities of clampers around Croke Park. It was bad last June and it was disgraceful during the months of August and September. I do not speak from personal experience but on behalf of many Galwegians who had to make the trip to Dublin with some limited success and who had to pay to have their cars unclamped using a credit card because the clampers do not take cash. Perhaps the Minister for Arts, Sport and Tourism should examine the matter and we could have a discussion in the House. It is not clear to people where they can park on Saturdays and Sundays as distinct from the other days of the week. This matter should be dealt with because it is going on for far too long. It is ruining the enjoyment of sport in the city of Dublin.

11 o'clock

Mr. Daly: I ask the Leader to arrange for the Minister for Transport to give us an update on the bilateral negotiations between the EU and the USA on air transport. If the Government is involved in bilateral negotiations with the United States on air transport, it should be aware of the implications of the outcome of such negotiations for Shannon. There is concern in the Shannon region about what is happening in this regard. We need to get up-to-date information as to the current state of negotiations.

Mr. Quinn: One of my heroes and one of the heroes of modern Ireland is Dr. T.K. Whitaker, a man who is a former Member of this House. I would not like the occasion to pass without recognising a big event in his life last month where at the age of 90 he got married again.

An Cathaoirleach: I do not see the relevance of that to the Order of Business.

Mr. Quinn: The relevance relates to the fact that it was a wonderful occasion for a former Member of this House. We recognise deaths and we should also recognise marriages.

An Cathaoirleach: No. There is a time limit.

Ms White: Hear, hear.

Ms Ormonde: I support the call by Senator Maurice Hayes for a discussion on immigration. I, too, listened to the programme this morning about how some Polish immigrants are treated in this country, which ties in with the current Irish Ferries debacle.

If the Minister for Arts, Sport and Tourism comes to the House for a discussion on clamping near Croke Park, perhaps we could also refer to the allocation of tickets for all-Ireland finals?

An Cathaoirleach: That is not a matter for discussion.

Mr. Finucane: That is out of order.

Mr. Glynn: This morning I attended a briefing on cystic fibrosis, which Senator Quinn also attended. It is an area that needs urgent attention. I ask the Leader to provide time for statements on this serious condition at the earliest opportunity.

I raised two other matters in the past, one pertaining to men's health and the other was type 2 diabetes which is ravaging the population, young and old. In view of the time constraints I will leave it at that.

Ms O'Rourke: Senator Finucane, who acted as leader of his party in the Seanad today, raised the matter of rip-off Ireland, Eddie Hobbs and the debate surrounding this issue. I juggled my time and watched the four episodes. It is his presentation that is attractive. He is quirky and funny and the Cork accent helps. I am sorry if I have offended Cork people. I just mean the Cork accent helps.

Mr. Minihan: I never noticed.

Ms O'Rourke: Senator Minihan has a posh accent.

Mr. Coghlan: Montenotte is the upper end.

An Cathaoirleach: It is safer to describe personalities.

Ms White: If one wants to get elected, get a Cork accent.

Ms O'Rourke: Eddie Hobbs did the State some service. People were riveted by his programme judging from the numbers that watched it. Senator Finucane also referred to the Comptroller and Auditor General and senior officials. I will return to that point to which Senator Mansergh replied. A Minister has overall responsibility for his or her Department and that includes the actions of civil servants and the explanation of same. I do not know how we could organise such a debate or which Minister would address the matter but I have been giving some thought as to how we would discuss the report.

Senator O'Toole referred to the Taoiseach's statement on ferry workers. Well done to the Taoiseach. He is the Prime Minister and he saw fit to condemn what is a most dreadful practice. I cannot believe that redundancy money is being dangled in front of workers who may have current needs and concerns about cash. They could not be faulted if they decided to take it up but the outcome would be that workers would be paid half the going rate. It is a terrible situation. It is wrong in every respect, financially, commercially but most of all socially and on a humanitarian level. The Taoiseach showed great courage in speaking as he did. Senator Ryan stated that seven or eight countries in Europe would not go along with that practice. Every sector of employment could be used in that way.

Mr. O'Toole: It is not redundancy at all.

Ms O'Rourke: No, it is not. It is masquerading under the guise of redundancy. The same thing could happen in the retail sector or some other sector of employment. Workers from other countries are being invited to come here and work for half-price. It is a terrible situation. I hope there is no watering down of the Taoiseach's condemnation of it.

Senator O'Toole also referred to the partnership programme. I agree with him. It does force people to talk, not just to each other but to listen and talk to other groupings. That is the glue that binds it together. We will have to wait and see. I hope this does not put an obstacle in the way of the present arrangement.

I fully agree with Senator Ryan that the Taoiseach's words must be translated into legislation. Among the many statistics he gave, he stated that six people were convicted in the area of taxation while 36 people were convicted and jailed for social welfare fraud. This pointedly shows up the difference between rich and poor. He also referred to the partnership process.

Senator Ó Murchú stated that one of the marks of a civic society is tolerance and respect for other religions. He condemned the use of the Last Supper as a gambling tool. People in advertising should use their talents more creatively.

Senator Bannon sought a debate on Sellafield. Senator Morrissey stated there would shortly be a capacity issue at Dublin Port and that the port in Drogheda is moving to Bremore. He asked if the Minister of State with responsibility for this area, Deputy Gallagher, could come to the House to discuss the matter. He also condemned what he described as Irish Ferries' race to the bottom, which would be the outcome. It is completely against everything Europe and most human beings stands for.

Senator Mansergh said Irish Ferries should be called "Central and Eastern European Ferries". He correctly pointed out that the Bill we will discuss today, which is a European directive translated into legislation, should be a suitable vehicle for the views that have been expressed here. The Senator said that if extra Revenue staff are necessary, they should be provided. I agree. Revenue would make up the cost in full when the money came back in.

Senator Mansergh offered a robust defence of Government decisions. One would be paralysed if one did not make decisions and all further action would be paralysed. The Senator also defended public servants. Mr. Trichet, president of the European Central Bank, said that Ireland has the best functioning economy in Europe.

Ms White: Hear, hear.

Ms O'Rourke: That was some accolade. We are so busy beating ourselves up that we do not make the good points. Certainly, Mr. Trichet's remark was a good point.

Senator Maurice Hayes referred to immigration policy and said the Polish version of *Newsweek* had a very damning report on how the Poles perceive themselves to be treated in Ireland. The Polish people are everywhere, including in hotels, restaurants and shops. They are invariably courteous and seem to be very good at their jobs. We had a debate on immigration shortly before the recess and the rule on repetition might rule out our having another in the near future. However, we will see.

Senator McHugh referred to the Polish workers. He also stated there should be a one-stop-shop for students. I could not agree more. They are running around bewildered wondering whether they should go to the VEC or the county council or whether they should apply to the college directly. Their heads are spinning and their parents' purses are emptying and therefore a one-stop-shop for all third level grants would be a very good idea.

Senator Lydon wants a debate on the Middle East, including Iran, Iraq and Israel. He is right to call for one because we did not have such a debate before the recess. We will seek one. The

Senator called upon the perpetrators of the advertisement using the image of the Last Supper to withdraw it.

Senator Kitt referred to the Comptroller and Auditor General's report and mentioned the clampers at Croke Park. Clamping is a policy and if one parks where one is not supposed to park, one will get clamped. We would all be subject to that.

On Senator Daly's remarks, it was suggested yesterday by Senator O'Toole that we should have a debate on regional transport, including a discussion on the Shannon and what is happening in regard to the bilateral talks. I thank the Senator for the suggestion. We will see if such a debate can be arranged.

Senator Quinn referred to Dr. T.K. Whitaker. I missed the relevant story in the newspaper. I am delighted for Dr. Whitaker. It shows——

An Cathaoirleach: Okay.

Ms O'Rourke: I have to curb my tongue. After three months, it is hard, a Chathaoirligh. It is very difficult.

After Senator Quinn had vanished from the Chamber yesterday, I praised him on his excellent article on the Oireachtas in *The Irish Times*.

Senator Ormonde called for a debate on immigration and asked a very relevant question which I cannot address because the Cathaoirleach will not allow me to do so.

An Cathaoirleach: It is not relevant to the Order of Business.

Ms O'Rourke: It is an interesting point.

An Cathaoirleach: It is interesting, but not to this House.

Ms O'Rourke: Senator Glynn called for a debate on cystic fibrosis, men's health and type 2 diabetes. It would be difficult to frame a health debate just on those three issues but we will have to find some mechanism for doing so because he has been raising the matter for some time.

Mr. Glynn: There would be no problem having a debate on type 2 diabetes which is ravaging the country.

Order of Business agreed to.

Treaty of Amsterdam: Motion.

Ms O'Rourke: I move:

That the proposal that Seanad Éireann approve, in accordance with Article 29.4.6° of Bunreacht na hÉireann, the exercise by the State of the option, provided by Article 3 of the fourth Protocol set out in the Treaty of Amsterdam, to notify the President of the Council of the European Union that it wishes to take part in the adoption and application of the following proposed measure:

proposal for a decision of the European Parliament and of the Council establishing for the period 2007 to 2013 the specific programme 'Civil Justice' as part of the general programme 'Fundamental Rights and Justice',

copy of which proposed measure was laid before Seanad Éireann on 1 June 2005, be referred to the Joint Committee on Justice, Equality, Defence and Women's Rights, in accordance with paragraph (1) (Seanad) of the Orders of Reference of that Committee, which, not later than 6 October, 2005, shall send a message to the Seanad in the manner prescribed in Standing Order 67, and Standing Order 69(2) shall accordingly apply.

Question put and agreed to.

Employees (Provision of Information and Consultation) Bill 2005: Order for Second Stage.

Bill entitled an Act to implement Directive 2002/14/EC of the European Parliament O.J. L080, 23/03/2002, p. 29 and of the Council of 11 March 2002 by providing for the establishment of arrangements for informing and consulting employees in undertakings and to provide for related matters.

Mr. Leyden: I move: "That Second Stage be taken now."

Question put and agreed to.

Employees (Provision of Information and Consultation) Bill 2005: Second Stage.

Minister of State at the Department of Enterprise, Trade and Employment (Mr. Killeen): I move: "That the Bill be now read a Second Time."

I am pleased to bring this Bill before the House. Its basic aim is to establish a general framework for the right to information and consultation of employees in undertakings over a certain size. The Bill introduces for the first time in Ireland a general right to information and consultation for employees from their employers and is without prejudice to existing rights to information and consultation, which at present are limited to specific circumstances, for example, collective redundancies and the transfer of undertakings.

I will first describe the background and set the context for the Bill and then outline the approach taken in transposing the directive. I will then describe the purpose and reasoning behind each section of the Bill. The Bill transposes the European Union Information and Consultation of

[Mr. Killeen.]

Employees Directive 2002/14/EC of 11March 2002. The directive was the result of extensive negotiations at the European Council and Parliament and, while it sets out clear principles, it leaves much of the detail of implementation to national governments. It aims to establish minimum requirements for information and consultation of employees across the European Union. For the first time, employers are obliged to establish arrangements for the provision of information and consultation to their employees. The directive is an important EU intervention in national industrial relations systems.

Much of existing EU-inspired employment legislation relates to individual rights such as the right to equal pay or health and safety. When it has impacted on collective rights, EU law has done so in limited circumstances. The rationale of this directive was based on the need to address perceived gaps in the existing legal frameworks for information and consultation at EU and national levels. These frameworks tend to focus on the provision of information and consultation when crises such as collective redundancies arise rather than on its provision on an ongoing basis. This does not contribute either to genuine anticipation of employment developments or to risk prevention.

The directive specifically states that its implementation shall not be sufficient grounds for any diminution in respect of the general level of protection of workers in this area. Accordingly, any obligations to inform and consult under this directive are in addition to existing obligations. Irish law, stemming from previous EU directives, already obliges employers to inform and consult their employees in certain defined circumstances. First, it includes the Protection of Employment Act 1977, as amended, which provides that employers planning collective redundancies must consult employees' representatives and notify the Minister for Enterprise, Trade and Employment at least 30 days before the redundancies commence. Unfortunately, there are exceptions to this. Second, in the event of a transfer of ownership of an undertaking, the Transfer of Undertakings Regulations 2003 provide that an employer has certain obligations to inform and consult employees at least 30 days in advance of the transfer. Finally, the Transnational Information and Consultation of Employees Act 1996 applies to Community-scale undertakings and Community-scale groups of undertakings, and provides for information and consultation of employees on transnational matters affecting those employees.

The intention of the information and consultation directive is to ensure that information and consultation are provided by employers systematically so employees can acquire an informed understanding of the challenges faced by the business. Timely information and meaningful consultation are prerequisites for the improved adaptability of Irish workplaces, which is vital to meet the challenges created by the globalised economy. It is incumbent on all of us to be aware of the advantages that flow from having such a transfer of information.

In transposing this directive into Irish law, there has been extensive consultation with the social partners and other interested bodies in recognition of the partnership approach that has served Ireland so well. Consultation with the Irish Congress of Trade Unions and the Irish Business and Employers Confederation included bilateral meetings, in accordance with the commitment given in the mid-term review of Sustaining Progress. The consultation process commenced in October 2002 and a formal consultation paper was issued in July 2003 which invited all interested bodies and individuals to make submissions setting out their views. The formal submissions received on foot of the consultation paper, together with the wider consultation process, helped inform the drafting of the Bill. The Bill is a balanced reflection of the needs of Irish employees and the needs of Irish business, within the context of the needs of Ireland as a society and an economy. I cannot pretend everybody agrees with me in that regard.

Ireland has a wide variety of systems of workplace relations in operation. My policy approach in transposing the directive has been to provide the maximum flexibility to employers and employees to devise arrangements which best suit their particular circumstances. The objective of the directive is to establish a general framework for the right to information and consultation of employees, and consequently it is not overly prescriptive in terms of its provisions. It leaves considerable discretion to member states in setting out national procedures. This discretion has been utilised by me to tailor the legislation to Ireland's workplace culture and to minimise the burden on enterprises. The Bill respects Ireland's voluntarist tradition of industrial relations and allows maximum flexibility to employers and employees to implement new procedures or continue with existing customised information and consultation arrangements. There is a wealth of research showing that companies which share information and consult with their workers are the high performing companies not only in today's but tomorrow's markets. Embedding effective information and consultation arrangements at the level of the workplace leads to a sense of involvement for employees and a greater understanding on their part of the environment within which the undertaking operates. This facilitates workplace adaptability and the development of a greater sense of partnership at the level of the enterprise, both of which are vital in maintaining and improving competitiveness.

This Bill aims to encourage and support the establishment of arrangements for information and consultation which will play a key role in increasing company performance through employee involvement.

I will outline the main features of the Bill. Section 1 is a standard section in all Acts. It provides for the interpretation of certain words or expressions which are mentioned in the Bill and also permits abbreviated references to sections, subsections and to other Acts. The section draws on the text of the directive, but it also interprets some terms not defined in the directive and includes terms such as employee and employees' representative which the directive leaves to be defined in accordance with national law and practice.

Section 2 is a standard provision which empowers the Minister for Enterprise, Trade and Employment to make such regulations as may be necessary to give full effect to the Bill. Section 3 establishes a right to information and consultation for employees in undertakings with 50 or more employees. The provisions set out in the Bill are without prejudice to existing rights to information, consultation or participation under other legislation, for example, collective redundancies and transfer of undertakings legislation. They are also in addition to the rights accorded to employees under the Transnational Information and Consultation of Employees Act 1996. Procedures established on foot of that Act are not sufficient to fulfil the rights accorded by this directive and hence this Bill.

Section 4 sets out the number of employees that must be employed in an undertaking for it to fall within the scope of the legislation. This section avails of the option in the directive to phase in its application in member states where there is no general statutory system of employee information and consultation, as is the case in Ireland. The timetable for the phased-in application of the legislation means that it will apply on a date to be prescribed to undertakings with 150 or more employees. I intend to make an order shortly after enactment of the legislation prescribing a date on which the legislation will apply to undertakings of that size. Undertakings with 100 or more employees will be covered from 23 March 2007 and by 23 March 2008 all undertakings with 50 or more employees will fall within the scope of the Bill.

Section 5 sets out the method of calculating the workforce thresholds for the purpose of determining whether or not an undertaking has enough employees to fall within the scope of the legislation. The directive allows member states to determine the method for calculating the thresholds of employees employed and the Bill bases the calculation on an average number of employees taken over a two-year period. This takes out seasonal factors which might skew the figures if employee numbers were to be counted on a certain date each year. An obligation is placed upon the employer to provide details of the workforce numbers within four weeks of such a request being received. This period of four weeks may be extended by agreement between the parties.

Section 6 defines an employees' representative for the purposes of the Bill. An employees' representative must be an employee of the undertaking and must be elected or appointed for the purposes of the Bill. This ensures that the representatives are democratically elected or appointed by the employees and are representative of them. Where it is the practice of an employer to conduct collective bargaining negotiations with a trade union or excepted body, which represents 10% or more of the employees, the employees who are members of that trade union or excepted body are entitled to elect or appoint their own employees' representative or representatives. This section also provides that the number of trade union or excepted body representatives will be determined on a *pro rata* basis with other elected or appointed representatives. There is an obligation in this section on the employer to arrange for the election or appointment of the employees' representative. Where a dispute arises under this section, it may be referred by the employer, trade union, excepted body or one, or more than one, employee to the Labour Court for determination in accordance with the procedures set out in subsections 15(6), 15(7) and 15(9).

Section 7 sets out the process by which employees may trigger negotiations that will lead to an information and consultation arrangement being put in place in the undertaking. At least 10% of employees must make a written request for an employer to commence negotiations to establish such an arrangement. This 10% is subject to a minimum of 15 and a maximum of 100 employees. An employer can alternatively commence negotiations on his or her own initiative. Provision is made for employees to make their request to either the employer or to the Labour Court or a nominee of the court and various steps are set down in terms of the Labour Court or a nominee of the court processing a request received. Negotiations must be concluded within a six-month period although this period may be extended by agreement of the parties.

There are two possible outcomes to these negotiations: the establishment of a negotiated agreement under section 8; or the application of the standard rules as set out in section 10 and Schedule 1. Where the employee threshold is not met at the time of making a request, the employees of the undertaking shall not make a further request for negotiations for a period of two years from the date on which the request was received by the employer or the date that the employer receives

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notification from the Labour Court that a valid request has been made.

Section 8 sets out minimum requirements for negotiated agreements on information and consultation. Employers and employees are given a wide degree of autonomy in these negotiations to devise their own information and consultation arrangements in line with the discretion allowed in the directive. In order to encourage such agreements, the conditions and limitations attached to them in the Bill are few. This affords the parties the opportunity to develop information and consultation arrangements that are tailor-made to their particular needs. This section also provides for different options for approving a negotiated agreement. A majority of employees or a majority of employees' representatives must approve the agreement.

Alternatively, some other system of approval can be agreed by the parties. At any time before a negotiated agreement expires or within six months after its expiry, the parties to the agreement may renew it for any further period they think fit.

Section 9 deals with pre-existing agreements which are information and consultation arrangements which are already in place in an undertaking before specified dates. Many undertakings already have agreements in place which provide for information and consultation either specifically or as part of a wider agreement on terms and conditions. Parties to these agreements may be satisfied that they have a workable and suitable system to meet the provisions provided for by Article 5 of the directive. In line with the policy to encourage tailor-made agreements, the conditions and limitations attached to these agreements are few.

In respect of undertakings with 150 or more employees I intend to make an order shortly after enactment of the legislation prescribing a date by which pre-existing agreements must be in place in undertakings of this size. Like section 8, this section also provides for different options for approving a pre-existing agreement. A majority of employees or a majority of employees' representatives must approve the agreement and as an alternative, some other system of approval can be agreed by the parties. Where a pre-existing agreement is not in force for a period of six months employees are then free, if they so wish, to trigger negotiations as set out in section 7.

Section 10 deals with the standard rules which are essentially a fall back position for setting up an information and consultation arrangement. The standard rules will apply if the parties agree to adopt them, or the employer refuses to enter into negotiations within a certain timeframe or the parties to the negotiations fail to agree within a certain timeframe. This section ensures that employees can exercise the information and consultation rights provided for in the Bill, if they wish, in the absence of agreement with the employer. The employer has six months to comply with the requirements of the standard rules. In the event that the terms of a negotiated agreement are not approved by the employees, a moratorium of two years will apply before the standard rules are initiated. Where during this two-year period the parties re-enter negotiations and approve a negotiated agreement, the standard rules shall not apply. This section also provides for a review of the standard rules.

Schedule 1 sets out the detail of the standard rules. These standard rules provide for the establishment of an information and consultation forum which comprises employees' representatives and provide details on the size and structure, expenses, rules of procedure and competence of that forum, together with the practical arrangements for information and consultation. Schedule 2 details the requirements for the election of employees' representatives to the information and consultation forum for the purpose of the standard rules.

Section 11 provides that, in relation to negotiated agreements and pre›existing agreements, an employee may exercise his or her right to information and consultation from the employer either by direct means or collectively by means of employees' representatives. In order for employees to change from a system of direct involvement to one of collective representation, there must be a written request to do so by at least 10% followed by the approval of a majority of those employees operating under a direct involvement system. Following approval of such a request there is an obligation on the employer to arrange for the election or appointment of representatives by the employees.

Section 12 provides that employers and employees and their representatives must work in a spirit of co-operation in implementing this legislation. Section 13 provides protection for employees' representatives in the performance of their functions in accordance with the Bill. It includes provisions contained in other employment legislation, such as protection against dismissal, against suffering any unfavourable change to the conditions of employment, against unfair treatment or any other action prejudicial to the employment. This section also provides for the facilities to be afforded to employees' representatives to enable them to effectively carry out their duties.

Section 14 deals with confidential information. It provides that specified individuals who receive information in confidence in the legitimate interest of the undertaking shall not disclose such confidential information to employees or to third parties, unless those employees or third parties are themselves subject to a duty of confidentiality. This duty of confidentiality will continue

to apply after cessation of the employment of the individual concerned or the expiry of his or her term of office and it also extends to the Labour Court regarding confidential information that it receives during proceedings taken under the Bill. This section sets out situations where the employer may refuse to communicate information or undertake consultation and where he or she is prohibited from giving information.

Section 15 sets out dispute resolution procedures in respect of different types of disputes. Disputes regarding agreements, the standard rules or systems of direct involvement may be referred to the Labour Court for recommendation or determination after internal dispute resolution procedures have failed to resolve the dispute. Subject to the agreement of the parties, the Labour Court may mediate or appoint a mediator to assist in resolving a dispute. Disputes regarding confidential information may be referred to the Labour Court for determination. This section sets out the role and procedures of the Labour Court in regard to these matters. In deciding what constitutes confidential information, the Labour Court may be assisted by a panel of experts to be appointed by the court.

Section 16 provides that the Labour Court has the power to administer oaths and compel witnesses in regard to matters referred to it under the Bill. Section 17 provides for enforcement of a Labour Court determination by the Circuit Court. Section 18 sets out the offences for non-compliance with the provisions of the Bill. Section 19 sets out the penalties for non-compliance with the Bill. Section 20 is a standard provision dealing with the Short Title of the Bill. It also provides that the Bill shall come into operation on such day or days as the Minister may appoint by order or orders.

The Bill seeks, as it must, to fully transpose the ED directive on information and consultation into domestic law. In drawing up this legislation, the Department consulted widely with the representatives of the business community and the representatives of employees. The legislation represents a balanced approach within the requirements of the directive. It ensures that the right of workers to information about the companies in which they work will be a real right and will have genuine force. The endorsement of the workforce is key to ensuring that both negotiated and pre-existing agreements are genuinely approved information and consultation arrangements which reflect the concerns of both sides. My approach to the Bill has been to facilitate a co-operative and positive approach by individual companies and their employees in meeting the objectives of the directive. This approach has resulted in a Bill which recognises the voluntarist tradition in Irish industrial relations and which will facilitate companies and their employees in establishing effective and efficient information and consultation arrangements.

The Bill introduces a new era of information and consultation in Ireland and marks an important development in the history of Irish industrial relations. It is another landmark in strengthening the consensus approach to industrial relations issues we have developed here since 1987 and represents an opportunity to foster and deepen customised partnership-style approaches to anticipating and managing change. In Ireland, we have seen the benefits of partnership at nationaI level. Our social partnership model has been a crucial element in the economic success we have achieved over the past decade. We now want to meet the challenge of embedding partnership and making it a reality for workers and employers at enterprise level. This Bill represents an important step in this direction.

Information and consultation of employees and the development of a greater sense of partnership at enterprise level are vital components of an adaptive workplace. Research both at home and abroad demonstrates the tangible benefits that effective and meaningful information and consultation arrangements can bring to both the business and the individual. Creating opportunities for effective dialogue leads to considerable satisfaction and a sense of value for employees as they input into organisational thinking. It is my firm belief that over time this Bill will increasingly have a considerable impact on the quality of interactions that take place in the workplace. In modem society organisations are undergoing continuous change driven by a complex combination of factors. It has been shown that effective information and consultation arrangements can help organisations improve their capacity to anticipate and manage change and I am convinced that it can lead to improved organisational performance and competitiveness.

I will introduce a small number of amendments on Committee Stage and I look forward to discussing those with the House. In the event that Members wish to bring forward amendments, I would welcome that and will give them careful consideration. I appreciate that Members of this House tabled amendments to the first Bill on health and safety that I introduced, and they resulted in a considerably strengthened Act. I welcome the input of Members. I hope it will be possible to reach a level of consensus with somewhat less difficulty than has been the case in the process we have undergone heretofore.

Mr. Coghlan: I welcome the Minister of State and thank him for his overview of the Bill. We welcome the Bill but once again must record that we are at a loss as to why it has taken this long for it to get to the floor of the House. This Bill is a transposition of an EU directive into Irish law. The process of consultation on this Bill began

[Mr. Coghlan.]

three years ago. The deadline for submissions from interested parties was September 2003. The original target date for enactment was March 2005 and it is now September 2005. I am sure the Minister of State will agree this is not good enough. I am aware that the drawing up of legislation is complicated. We have been the fiercest critics of the Government when it has attempted to rush through legislation as it did repeatedly, and hamfistedly, last year. For it to take three years for this Bill to get to the Seanad, and God knows how long it will take to get to the desk of the President, is too slow a work rate. The publication of the legislative agenda has shown just how light is the Government's schedule. The delay in getting this Bill to the House is a timely reminder of just how much there remains to be done.

It often amazes me that some legislation needs to be introduced at all, and this is one such Bill. It has always made good business sense to keep employees fully in the loop as to what is going on. Any manager knows that to keep morale and productivity high, he or she must make everyone feel like a stakeholder, a fully paid up member of the team.

Under the Bill, employers will have to provide information and consultation on issues such as the probable development of a firm's activities, the structure and future of employment in the business and any decisions likely to lead to major changes in work organisation or contracts. The Bill also obliges employers to provide enough information to enable worker representatives to make adequate preparations for consultation. Employers must begin negotiations to set up information and consultation procedures once 10% of employees make such a request.

The Labour Court will be able to investigate disputes about the operation of agreements. Employers could face fines of up to €30,000 for breaches of the proposed legislation.

This Bill is part of a suite of workers' rights legislation that has been brought to us from Europe. It is for reasons such as this that we are passionately pro-European. It is worth reminding the country that those on the far left who oppose the European project are being deceitful when they say that the EU is anything but a social project. It has been a leading force in securing better working conditions for Irish employees.

I thought that employers would be pleased with the provisions of this Bill and I was surprised to read of IBEC's reaction to it. Perhaps it has some genuine concerns that might have to be examined. However, I share the Minister of State's belief that the Bill does not tie the hands of business and its provisions are fairly flexible. For example, employers have the option under the Bill of putting in place agreements before a date to be prescribed following enactment of the Bill known as "pre-existing agreements", which can be tailor-made to suit the culture and circumstances of their own company. However, in a press statement on 19 September IBEC stated that any measures that make Irish business less able to adapt to changing global markets will undermine competitiveness and put jobs at risk. It further stated that companies that already have successful information and consultation procedures should be supported and allowed to continue without change.

I hope that when the legislation is enacted it will see that our competitiveness will not be undermined by this legislation. There are many Government actions and decisions that have hurt business and damaged our competitiveness; they gave birth to rip-off Ireland. However, this Bill is not one of those actions. Nevertheless, IBEC has concerns. I take the view, and I believe the Minister of State shares my view, that issues requiring amendment or clarification can be dealt with on Committee Stage. We will table a few amendments. I intend to examine IBEC's position. It wants a more flexible instrument that can cater for the wide diversity of employment situations in which employers and employees will have to operate information and consultation arrangements. We can examine that area, as suggested by the Minister of State, before the Bill is taken on Committee Stage.

I wish to raise two further points. The Bill specifically precludes companies with fewer than 50 employees. There may be a sound reason for this. Small firms have a particular need to be protected from overregulation and their distinctive competitive disadvantage means the Government must endeavour to protect them at all costs, not least because they tend to be indigenous. However, we must ensure that those who work in small firms are not treated as inferior to those who work in large companies. The fact that an employer has only 45 workers on his or her books does not mean that any of those employees should be treated with anything less than the respect and dignity as those who work for the Microsofts and Coca Colas of this world. I am interested in the Minister of State's views as to how the provision of information can be extended to everyone.

Before the summer recess my party's spokesman on enterprise, trade and employment, Deputy Pat Breen, who shares the same constituency as the Minister of State, met with a support group for the victims of workplace bullying. Members of the group had lost their livelihood and had to endure severe financial, emotional, psychological and medical hardship as a result of the way they were treated by their employers and colleagues. They told Deputy Breen that one of the crucial ways in which they had been mistreated was the withholding of information and the deliberate attempts by their tormentors to

keep them in the dark and out of the decision-making process. They were without the information necessary for them to do their jobs.

I would like to hear the Minister of State's views on how legislation such as this may be used to enforce a legal obligation on employers to ensure nobody becomes the victim of an information black hole, a tool often used by those who wish to get rid of people they may regard as more competent, talented and worthy of a place in the company, than themselves. In conclusion, we welcome the Bill. We will examine and seek to amend it as I have indicated, and we will support it. Given the state of our roads it takes many Members of the Oireachtas a long time to get to Leinster House. It seems that this Bill, too, has been the victim of that slow progress. I wish it a speedier journey through the House than it has enjoyed in reaching us. I wish the Minister of State the best of luck with it.

Mr. Hanafin: I welcome the Minister of State, Deputy Killeen, to the House and I also welcome the Employee (Provision of Information and Consultation) Bill 2005. It is particularly appropriate that we should be discussing this Bill in the light of the Irish Ferries dispute and what the Irish Continental Group is seeking from the workers. I have no doubt that if these employees were involved in the consultation process some time ago and had received these demands, they might well have asked members of management what their plans were for outsourcing their own jobs. The answer would have been interesting. I am sure they do not have any such intentions even while they no doubt constitute the costliest part of the company. It would be totally inappropriate at this juncture not to mention Irish Ferries and the sad agenda that company has presented to its workforce.

This Bill was spawned by Directive 2002/14/EC of the European Parliament. The EU's reasoning for the directive was pursuant to Article 136 of the relevant treaty. A particular objective of the Community and the member states is to promote social dialogue between management and labour. Point 17 of the Community Charter of Fundamental Social Rights of Workers provides, *inter alia*, that information, consultation and participation for workers must be developed along appropriate lines, taking into account the practices in force in different member states. The Commission consulted management and labour at Community level at the possible direction of Community action on the information and consultation of employees in undertakings. Following the consultation the Commission considered that Community action was advisable and again consulted management and labour on the contents of the planned proposal. Management and labour have presented their opinions to the Commission.

Having completed the second stage of consultation, management and labour have not informed the Commission of their wish to initiate the process potentially leading to the conclusion on an agreement. The existence of legal frameworks at national and Community levels, intended to ensure that workers are involved in the affairs of the undertakings that employ them and in decisions which affect them, has not always prevented serious decisions affecting employees from being taken and made public without adequate procedures being implemented beforehand to inform and consult them.

There is a need to strengthen dialogue and promote mutual trust within undertakings in order to improve risk anticipation, make work organisations more flexible and facilitate employee access to training — while maintaining security, making workers aware of adaptation needs and enhancing their availability to undertake measures and activities to increase employability. In short, there is a need to promote employee involvement in the future of the operation and increase its competitiveness. In particular there is a need to promote and enhance information and consultation on the likely development of employment within the undertaking. This is apposite where the employer's evaluation suggests that employment may be under threat. A statement of the possible anticipatory measures envisaged is crucial, in terms of employee training and development, in particular, with a view to offsetting negative developments and increasing the employability chances of those likely to be affected.

Timely information and consultation is a prerequisite for the success of the restructuring and adaptation of undertakings to the new conditions created by globalisation of the economy, particularly through the development of new forms of organisation of work. The Community has implemented an employment strategy based on the concepts of anticipation, prevention and employability, which are to be incorporated as key elements into all public policies likely to benefit employment, including those of individual undertakings by strengthening the social dialogue. This is with a view to promoting change compatible with preserving the priority objectives of employment.

Further development of the Internal Market must be properly balanced to maintain the essential values on which our societies are based and to ensure all citizens benefit from economic development. Entry into the third stage of economic and monetary union has extended and accelerated the competitive pressure at European level. This means that more supportive measures are needed at national level. The Employee (Provision of Information and Consultation) Bill 2005 establishes a general framework setting out minimum requirements for the rights of infor-

[Mr. Hanafin.]

mation and consultation of employees in undertakings. The new legislation transposes EU Council Directive 2002/14/EC on information and consultation with employees. The aim of the directive is to strengthen dialogue and promote mutual trust within undertakings. The Bill facilitates a co-operative and positive approach by individual undertakings and their employees to meeting the objectives of the directive. It encourages parties to agree arrangements for providing information and consultation best suited to their needs.

The Bill heralds a new era of effective two-way information and consultation practices in undertakings. It is a positive step on the road to improving competitiveness and the development of a greater sense of partnership at enterprise development level. Fostering worker involvement generates tangible benefits for both employer and employee and can serve as a catalyst for improvement in organisation performance. The Bill provides employees with a right to information and consultation, without prejudicing the responsibility of management to make decisions on the operation of the undertaking. I see it as being very advantageous to business and thus employment development and sustainability.

Respecting the tradition of voluntariness in Irish industrial relations, the Bill provides the maximum flexibility for employers and employees to devise arrangements which suit particular circumstances. It provides for a general framework to set out minimum requirements for the rights to information and consultation in undertakings with at least 50 employees. Its provisions will apply in accordance with the following timetable: undertakings of at least 150 employees from a date to be prescribed following enactment of the legislation; undertakings with at least 100 employees, from 23 March 2007; and undertakings with at least 50 employees, from 23 March 2008.

The Bill obliges employers to provide information and consultation in issues such as the probable development of an undertaking's activities and economic situation and as regards any decisions likely to lead to substantial changes in work organisation or contractual relations. Information must be given in such time and fashion and with such content as is appropriate to enable workers' representatives, in particular, to conduct adequate study and prepare for consultation, where necessary. At present the information and consultation rights of employees in Ireland are limited to specific situations, for example, collective redundancies and the transfer of undertakings. This new Bill is, without prejudice to those existing rights to information and consultation in Irish law, as provided for by the Protection of Employment Act 1977, as amended, the European Communities (Transfer of Undertakings) Regulations 2003 and the Transnational Information and Consultation of Employees Act 1996.

Employers have the option under the Bill of putting in place agreements before a date to be prescribed, following enactment of the legislation, known as pre-existing agreements, which can be tailor made to suit the culture and circumstances of the particular company. The Bill gives workers the right to request that an employer sets up an information and consultation procedure, once 10% of employees — subject to a minimum of 15 and a maximum of 100 — make such a request. An employer must enter negotiations to agree a procedure with employees. A third option is provided in the standard rules of the Bill, which prescribe the procedure to be followed in setting up an information and consultation forum. This forum comprises elected employee representatives. The Bill provides for the Labour Court to investigate disputes about the operation or interpretation of agreements. It provides for the enforcement of Labour Court determinations by the Circuit Court.

The legislation provides for penalties of up to €3,000 or imprisonment for a term not exceeding six months or both, on summary conviction for offences under the Bill — and on conviction on indictment to a fine not exceeding €30,000 or imprisonment for a term not exceeding three years or more. I commend the Bill to the House.

Mr. O'Toole: I welcome the Minister of State and his officials and thank them for the work they have done in drawing up this Bill. I am aware that the Government engaged in an intense process of consultation with the social partners on the legislation. Unlike my colleague, Senator Coghlan, I understand the reason such legislation takes a long time to produce. Nothing is easy and considerable compromise is required. Having been part of the negotiations on Sustaining Progress which resulted in the Bill, I am delighted it has finally been presented to the House.

This legislation reflects all that is important and good in the partnership process. It demonstrates that Ireland has come a long way in the 15 years since trade union leaders told employers they should ask their workers to take their brains to work with them, rather than treating them as statistics. The Bill is a further significant step forward. Its importance lies in its provisions to make employees and employers confront the problems faced by the other side. Workers must sit down with management to put their points of view and *vice versa* and both parties must share, engage and argue. This is how creative progress is made in any proper enterprise and can only be beneficial.

I first sought out section 14 on confidentiality. The confidentiality clause has, correctly, been included in the legislation to protect enterprises.

We do not want circumstances in which members of the consultation forum are unable to have an unspoken thought, nor do we want leaks and people deciding to deliver to the world around them every item of information they encounter. A professional approach requires that members of the forum respect confidentiality.

This legislation demonstrates a welcome and positive attitude on the part of Government and reflects maturing partnership. The obverse approach is reflected in the current set of proposals made by the Irish Continental Group, to which Senator Hanafin referred. The attitude of Irish Ferries is indicative of the direction Ireland does not want to take. The company is attempting to depress wages, repress workers and bring us back to the future of a spailpín fánach type economy in which immigrants and foreign workers are exploited, Irish workers sacked and money taken from the taxpayer. This irresponsible company will make decent businesses uncompetitive and is a terrible reflection of our economy at international level. Irish Ferries will be at the bottom of the pile when I choose how I intend to travel abroad. This episode also demonstrates the importance of ensuring there are no monopolies. It is an appalling reflection on Ireland and indicates that we appear to have lost our way.

In the past 20 years, we have attempted, through the partnership process, to avoid a race to the bottom in terms of wages and, instead, to increase productivity while maintaining competitiveness and rewarding workers adequately and fairly. This approach has worked extraordinarily well. Only once in the past 15 years — either in 2000 or 2001 — did Irish productivity fail to increase more rapidly than in all other western European countries. I do not refer to economic growth, an important consideration, but to output per person working in the economy. It is important to recognise this fact.

It is also important that those who repeat the rip-off Ireland mantra recognise that the proper and decent reward I and many others negotiated for workers is reflected in higher costs and prices. Ireland is not a cheap country and we are not about to reverse policy and pay people peanuts. Higher prices are the inevitable result of adequate, correct and fair remuneration.

Irish Ferries is trying to turn legislation on redundancy on its head. Sacking an employee and replacing him or her a week later does not constitute redundancy. It is appalling that the management of Irish Ferries has proposed to contemptuously charge the taxpayer 60% of the costs it incurs in putting Irish workers out of work and recruiting foreign workers at rates of pay far lower than those agreed. Those who believe otherwise should apply the company's logic to their own position and imagine their reaction if they were told tomorrow they would be paid half their previous wage from Monday onwards and that the other extraordinary conditions being put to workers in Irish Ferries would apply.

Why would 70% of workers in the company indicate they wished to accept the deal put forward by management? The reason is terror and the company's policy of frightening people and panicking them into the lifeboats to protect themselves. Workers are worried about their families' future and whether they will have something in the bank for a rainy day. Perhaps they were never fully informed, which brings us back to the legislation before us. I note the selective use of information in the statements issued by Irish Ferries. They inform us, for example, that ferry car business decreased last year but do not bother to mention that freight business has increased significantly. They also failed to note that, as Senator Morrissey pointed out earlier, we are fast approaching the point at which our ports will no longer be able to cope with the level of exports and imports they are processing.

Ten years ago, who would have thought that a regular freight service would operate from Shannon-Foynes to Rotterdam? The ports of Dublin and Drogheda are chock-a-block and new ports need to be developed. A forum of the type established under the new legislation would provide the relevant information to workers and require them to share with management responsibility for finding solutions to any problems faced by their company. The idea that a workforce should be completely oblivious to problems, risks and dangers confronting the company is daft. The value of the forum is that it will make the job of management easier. Everybody will be made aware of problems and will be required to help find solutions if the company is not to go under.

If Irish Ferries proceeds in the manner it proposes, Ireland would be better off without it and it would be preferable to try to find other employment for workers who wish to work elsewhere. We cannot countenance the company's proposals which were made immediately before negotiations begin on a possible new national partnership. They undermine trust and confidence. Little is required in the partnership process, whether on the part of IBEC on the management side, ICTU on the trade union side or the Government, to give sustenance to those who oppose agreement. Opponents will point to the actions of those on the other side and argue that the process will never work. Activity of the type proposed by Irish Ferries will reverberate around the trade union movement in the next couple of months and the company's name will be mentioned at every upcoming trade union meeting. Members will be asked why their trade unions should enter partnerships with employers or trust Irish business. Irish Ferries does not reflect business people in general. Most are happy to seek a decent profit, pay their workers a decent wage and remain competitive by arguing the toss

[Mr. O'Toole.]

between both. Access to accounts and information in Irish Ferries would have prevented us from reaching the point we are at today. This attempt by Irish Ferries to make itself anti-competitive by undermining competition with taxpayers' money, so it can sack workers and employ and exploit foreign workers to undercut its competitors on other routes, is unfair under European legislation. It is unacceptable, anti-European and uncompetitive and we cannot put State money into it. If we need legislation to copperfasten that position, we should introduce it.

Legislation, however, should not be necessary. Our redundancy legislation cannot be stretched to achieve the outcome Irish Ferries desires. The European directives will not allow us to put money into a company which then, using that money, is in a position to undermine the competition. It is not on, we cannot allow this to happen. It is not something we should be part of and if it goes to the wire on Monday, we should make our position clear. All speakers in this House and people across the labour spectrum have indicated their worries about it. Management is doing this without indicating what level of pain it will soak up. How many people from eastern Europe will be asked to run the company? None. This is an old fashioned anti-worker approach that we cannot accept.

12 o'clock

It is important that we see this Bill as part of a wider scheme to draw in workers. This does not give something away, it offers something. It does not expose the inner workings of accounts or strategies, it harnesses the creativity, views and ideas of the workforce and means that all sides must confront the issues, problems, threats and difficulties faced by a company. That must be a good thing. In the way that social partnership has shown itself a model of progress for economies across the world, this could do the same.

There are responsibilities alongside the legislation. The workers representatives on the forum must know why they are going in: not just to protect workers' views but to ensure that the enterprise is stronger for their involvement and the establishment of the forum, to ensure they have their input and that they take responsibility for decisions that come out of there. Representation at any level means that once a forum makes a decision, it must be sold by those who made the decision. The same goes for management, it must be courageous and talk to workers in a way to which it has not been accustomed but in a way that can only be good for the enterprise.

This is fine legislation that will be good for the economy. It shows that we are mature in Irish labour, industry and business and we can talk to each other, share information and move forward in a way that is good for everyone in the economy, not just the bosses and owners but also the workers and their families. This legislation is a Chinese bargain, where everyone walks away from the table having gained something.

Ms White: I welcome the Minister of State to the House. This legislation has good points and it is standard practice in good companies, which already have two-way contact procedures in place. Often one staff member represents the workforce and communicates with management on a regular basis. Senator O'Toole spoke as if there is a huge gap between management and workers but that is an outdated idea. No company can succeed unless management and staff work together.

I was nominated to the Seanad by the Irish Exporters Association and my company is a member of IBEC. The threat of imprisonment should be clarified because communication is such a vague area. The employer, after all, is the person who takes the risk. The legislation provides for penalties up to €3,000 or imprisonment for a term not exceeding six months, or both, on summary conviction for offences under the Bill, and on conviction on indictment to a fine not exceeding €30,000 or imprisonment for a term not exceeding three years or both. That must be cleared up.

IBEC feels this Bill is over-prescriptive. Speaking on behalf of IBEC, I want to say that the Government must ensure that legislation does not undermine a company's ability to adjust to new market conditions or the right of management to make the difficult decisions associated with such change. Any measures that make Irish business less able to adapt to changing global markets will undermine competitiveness and put jobs at risk. It is critical that companies that already have successful information and consultation procedures should be supported and allowed to continue without changing.

An overly-prescriptive approach would undermine established local procedures which promote dialogue and trust. It is a matter of concern that the tone and language in the Bill suggests that it has been written largely for companies operating within a collective ethos and it is alien to the majority of employers operating in this economy who are non-union. The Minister of State's speech smacked of collective bargaining but only 25% of the private sector is unionised and this must be reflected in the legislation.

In 1980 my husband won a scholarship to study the future of the Irish industry.

Fortunately, the award also paid for me to spend three and a half months with my husband attending meetings on future industrial development in Ireland. I wrote to my then colleagues at the National Building Agency, a semi-State body, that there was more socialism in American companies than we could even dream of in Ireland. The consultation process between management

and staff highlighted this relationship. The Leader is reacting to what I said and, of course, there are companies——

Mr. Coghlan: Was it shock horror or disbelief from the Leader?

Ms White: I do not know what it was. Probably disbelief. She had a visceral reaction.

Ms O'Rourke: I did not say a word.

Mr. Coghlan: Senator White was reading the back of the Leader's head.

Ms White: I am a union person and was on the national women's committee of the Federated Workers' Union of Ireland in 1973. I was very quiet because I was young then and did not know as much as I do now. Now I am at my peak with all my experience. It simply stands to reason that no company can compete in this intensely globalised and competitive business world unless it has good management-staff relations. Senator Quinn was one of the first to bring this on board in discussions and involvement with his staff. He brought the customer service aspect to the retail sector many years ago.

Only 25% of private sector workers are unionised. However, the Bill cannot be overly prescriptive for non-union companies. The EU directive, on which the Bill is based, allows for interpretation of national ethos in its implementation. Although it is an EU directive, each member state can have its own way in implementing it. The Bill provides that information and consultation will be exclusively between an employer and employee but, in any case, subject to the approval of the employees, both of which are welcome provisions. However, there is a need to copperfasten further the definition of employees as people who are contracted only to their employer. The Bill provides certain options by way of internal structures to implement the provision of information and consultation. However, it is important that the Bill will allow for more than one arrangement within a particular undertaking in order to achieve coverage of all employees, to cater for disparate geographical locations or for distinct staff groups. This is an important issue for large companies.

The Bill provides that after the issue of a ministerial order and subject to a request in writing of 10% of employees, the employees would then be able to trigger negotiations with their employer. It is essential that the provision for an opt-in trigger remains. However, for large undertakings the upper limit of no more than 100 employees needed to make the request is much too low and is wide open to possible abuse by minorities. It must be made proportionate to the real size of the undertaking. The provision of a trigger is consistent with article 15 of the preamble to the directive which states: "This directive is without prejudice to national systems regarding the exercise of this right in practice where those entitled to exercise it are required to indicate their wishes collectively". The trigger must provide proof that a significant proportion of the workforce back the request. The Bill has a low threshold.

There is a real concern in non-union employments that a single issue affecting one department could jeopardise an agreement approved by all employees, particularly in an e-mail environment where it is easy to quickly gather large numbers of signatures. Some 240 companies in Ireland have more than 1,000 employees. At a minimum the opt-in trigger in the Bill must be increased to 15% of employees in an undertaking. This means the figure is greater than 150 employees but not less than 250 employees. We do not want crank issues coming to the fore.

Many of the foreign direct investment companies in Ireland have state-of-the-art human relations procedures and personnel departments. Many working in them have Masters degrees on staff co-operation and getting employees to develop their potential. When my company, Lir Chocolates, became unionised I was delighted as it made it easier for myself and Connie Doody. As the company had become so large, we could not be negotiating with everybody. With the union, we then had one person to deal with instead of more than 30 employees. The multinationals which have made a large contribution to the Celtic tiger employ thousands, both directly and indirectly. It must be acknowledged they have management systems that Members would not even dream about. I am often gobsmacked by the way matters are dealt with in the Oireachtas with non-consultation at different times. I am not talking about the Fianna Fáil Party but how the Houses of the Oireachtas deals with matters and how slow that can be.

Mr. Leyden: Perish the thought.

Ms O'Rourke: My lips are sealed.

Mr. Coghlan: Fianna Fáil would never operate that way.

Ms White: The Oireachtas must face up to reality and operate in the 21st century like other European parliaments. I hope my contribution from my practical experience was helpful to the Minister of State. I am passionate about the role of American companies in Ireland and the development of our indigenous industry. In many ways, the development of our indigenous industry is much more difficult than getting in international investment. The multinationals are worldwide with large markets and resources. For Irish industries, as has often been said in the

[Ms White.]

House, the Irish economy is small. Small Irish companies must export or they will cease to exist.

I congratulate the Minister of State at the Department of Enterprise, Trade and Employment, Deputy Killeen, on introducing this Bill. We in Ireland deal with matters in our own unique way. This Bill must be tailored to the competitive conditions that exist for indigenous and international companies and cater for their particular arenas.

Mr. McDowell: I welcome the Bill but with less enthusiasm than most Members who have spoken heretofore. As Senator White rightly said, the central problem with the Bill is that its framework is good practice which is already happening within most good companies. However, the Bill does not help these companies in moving matters forward to any great extent. It simply gives them a legal framework in which to operate. The Bill lacks the teeth of a mandatory nature to enforce good practice on companies that do not want it, of which there are plenty.

The Bill is a product of the European factory of labour legislation. It was part of negotiations between the European Parliament and the European Commission for over five years, and it shows. By and large it is the kind of legislation that I and my party support and I do not demur in this case. However, there are difficulties with it. For example, it reflects the German system where there are two management boards within any large company, one a traditional board of directors in the Anglo-Irish style we would be familiar with, chaired by a chief executive or chairman, the other a supervisory board of which typically 50% would be representatives of the workforce and 50% the employers. It is a system which works well and has contributed in no small measure to making Germany the powerhouse of Europe for many decades. Even now that it is reviewing the way it does things the element of partnership which the supervisory board provides is questioned by relatively few people in the system.

Contrasting with the European way of doing things is the Anglo-American way described by Senator White as an old fashioned system where managers manage and workers work, but where occasionally there is confrontation between the two. That system resulted in many industrial disputes in this country in the 1970s and early 1980s. The current Irish system is something of a hybrid where the Irish partnership process has been grafted with some success onto the Anglo-American system of management and worker relationships. This is also informed by the fact that many of our large companies are American multinational corporations, which have their own ethos and way of doing things. To be blunt, most of these companies, while they may deal in a fair way with individual workers, are antagonistic to the notion of dealing with workers as a collective force. Many have made it quite clear, and the Minister will be aware of this, that they would not want to locate in Ireland if they had to recognise trade unions, deal with collective bargaining and negotiate with representatives of workers. Most of the companies of a size to be affected by this Bill are from that background. It does not affect the largely indigenous and some foreign owned companies who already have collective bargaining and consultative arrangements and who already negotiate with trade unions.

The Bill is addressed to largely American-owned multinationals who do not have those processes. We need to ask whether it will be effective in putting in place a forum for consultation and information within those companies. There are aspects of the Bill and matters arising from the negotiating process that suggest it might not be. For example, the Minister of State says there is a trigger mechanism conferring a right on employees to set up a forum, but there is none to actually set the forum up. It allows employees to give notice, if enough of them agree, that they want this type of consultative forum in place. From my little knowledge of American multinationals and the way the workforce behaves in those companies, I would be surprised if in three or four years time, if 10% of the workforce or 100 people took the initiative to act to put these fora in place, many would have been set up. The problem is that workers in these companies will mostly not seek these fora unless there is a crisis, like the recent events at Irish Ferries, or proposals for changes in work practices. There is a long lead-in period so I suspect in such companies where there are no trade unions nobody will take the initiative and nothing will happen. Suddenly, a year or two later, a crisis occurs and workers look to put in place a consultative forum but because the legislation allows the company to delay it for at least six months, the crisis passes and the information is of little use.

I am sceptical about the trigger mechanism and I am not sure it will be effective in providing information in companies where it might actually be relevant. It would be better if we had simply put in place a framework and required companies to implement it forthwith without requiring individual workers in non-unionised places of employment to take the initiative. The issue of trade union negotiating rights and representation is the elephant in the room. Nothing in this Bill will oblige companies to deal with trade unions. If there is already a trade union, and what the Bill calls a system of collective bargaining, the trade union will look to trigger the mechanism to set up the consultative forum and appoint people to it so it works successfully.

In circumstances where there is no union recognition it is difficult to see how the Bill is

going to work. The notion that 100 people will come together outside the structure of a trade union and act as a collective, in circumstances where were they to call themselves a trade union they would not be recognised, seems unworkable. I am sceptical we can give the law real teeth in those circumstances. Until we get meaningful legislation obliging companies in certain circumstances to recognise trade unions, legislation of this kind is less worthwhile than it should be.

The purpose of the Bill is to provide for consultation and information but it is light on specifics as to what that means. Two instances are given in the standard rules which are included in the Schedule, namely, circumstances of collective redundancy and where there might be major changes in work practices where consultation and information would be considered appropriate. We oblige people to give information and exchange views and there is a notional mandatory instruction to act in a bona fide manner. However, if an employer wants to block it he or she can do so. It is all very well to say there is a legal obligation to act in a bona fide manner and in a spirit of co-operation. However, it does not define what information has to be provided, nor does it say what consultation actually means. It refers to dialogue but it could be a dialogue of the deaf where the workforce expresses its views but nobody pays a blind bit of attention and there is no obligation to take those views into account. Indeed, it is difficult to see how employers could be legally obliged to do so.

Senator White mentioned the issue of penalties. I take the opposite view. If we accept that this is largely intended for big companies like, for example, Ryanair, then the level of penalty is really quite light and nothing that could not be absorbed over a period of time by large companies with deep pockets and significant resources. If multinationals announce they are about to transfer a large part of their undertakings abroad, what capacity do we have to enforce the legislation after they have left? Would it not be shutting the stable door after the horse has bolted? I do not wish to sound unduly negative, though I suspect I have, but this Bill is good in principle and fine on paper but when it comes to implementing it in circumstances of potential confrontation or if there is significant resistance from employers, I wonder if it has the teeth to make it happen.

Ms O'Rourke: I welcome the Minister to discuss this Bill, which is part of the social fabric, being the translation into legislation of an EU directive. I am glad it is the subject of primary legislation, because Ministerial Orders do not have the same effect. The law is the law and people have more respect for legislation. When I was in the Minister's job there was an ongoing struggle between the mandarins in the main Department and myself on Adelaide Road as to what was to be translated into legislation and what was to be translated into a statutory instrument.

Some things do not change. I hope the nice ministerial office is still there. The nicest ministerial office in Dublin is on Adelaide Road.

I am very pleased with the Bill but I accept what Senator McDowell has said in that it is limited in its scope. There has been so much comment in recent times on competitiveness that we are in danger of throwing out the baby with the bathwater. Competitiveness has become the new God, and anything impeding it is disbanded or put to one side. I have noticed this in a creeping fashion in many comments in newspapers and journals. We should beware of going too much to the other side.

Consultation is important, but the manner in which this consultation is triggered and information is dispersed appears unwieldy. It will not be a sharp enough process to deal with emerging situations, and it may not be sharp enough to deal with real situations as they develop. In preparing such legislation there is a series of meetings with IBEC and ICTU and other interested parties who give their points of view. It is part of the ongoing debate on the relevant EU directive.

Senator McDowell is correct in pointing out that Germany was the powerhouse of Europe for a long time, although it is no longer so. It has not quite experienced negative growth, as I understand that for the past few years, under Chancellor Schröder, growth averaged 0.5% per annum. I noted a letter in a newspaper stating that the Chancellor's name rhymed with "murder". Angela Merkel was to be the great new goddess who would bring in a regime of sharpness and competitiveness. She has received her answer and Mr. Schröder has stated that he will not leave his office. He is intimating that he won Germany's election even though he did not. Both party leaders have been called to order by the election results.

There are now 70 proposed directives in Europe. The President of the European Commission has swept these aside and they will be red-taped. Every so often, Ministers in regimes across Europe state intentions to deregulate because a heavy burden is being placed on small industries, for example. However, if the European ideal of social partnership and cohesion is to be kept up, measures that were decreed necessary should be put into action. Commissioner José Manuel Barroso would find the leap to be a dynamic one for competition.

On the Order of Business this morning, the Irish Ferries debacle was discussed. I am delighted at the Taoiseach's words yesterday in the Dáil on the manner in which the issue of redundancy is used as a tool. This case is not about redundancy, as when redundancy is

[Ms O'Rourke.]

offered, terms and conditions exist for such an offer. It is clear that the terms in this case are being used in a perverse fashion. If money is offered to workers it is no fault of theirs if they take it. The workers may be in a financial bind or big events may be imminent that must be funded. I do not know how true is the potential take-up figure of 70%, but people will nonetheless be inclined to take the offer. However, there is something perverse and basically wrong in replacing these workers with others from within Europe at half the cost.

According to television reports, Irish Ferries did not enter implementation talks in Government Buildings but sent in IBEC on its behalf. I do not know why the company did not partake to defend itself. There is something rotten about the company's behaviour in what it is trying to do and the way it is going about it. The company is treating workers, from this country and other eastern European countries, as pawns in a major competitive game in which it is involved. If the company cannot endure decent behaviour and treatment of workers, it should shut up shop. It cannot continue as a business by relying on a perverse use of redundancy and denuding workers of basic rights.

This is not radical, as employers and employees treat each other with respect here. I am surprised that Irish Ferries took this route to get its way and I hope it does not succeed. Employees in another country cannot be blamed for wishing to take up jobs. Therefore, workers on both sides are ciphers in a game being played out that should not be allowed in Ireland. The head of the European Central Bank, Mr. Trichet, has stated that Ireland is the best performing economy in Europe. If it is, this sidestep by Irish Ferries is not the way to go if the country wishes to further worship the God of competition.

I am glad to use this debate to express these issues. Consultation is important, but the manner in which the consultation process is triggered and the way information is distributed seems convoluted and clumsy. The Bill builds on earlier legislation and directives, but perhaps it could be made clearer and more definite. When I meet people from other countries who ask what has made Ireland a country with a strong economy, I reply that two things have done so, namely education and social partnership. They are my two pillars.

Ms White: Employment is also a factor.

An Cathaoirleach: There shall be no interruptions.

Ms O'Rourke: Education and social partnership have led to this country having a first-rate economy. I hope we go the well-trodden but well-respected way. Everybody should be treated with respect. The beauty of social partnership is that people and unions listen to each other. The discussion is equal and there is good practice and proper methods of treating people. I have never heard of anything like the Irish Ferries issue, and it is bizarre and unbelievable that an Irish company would seek to treat its present workers and potential employees in such a fashion.

Mr. Quinn: This is an interesting debate. I welcome the Minister of State and his first few words, where he stated, "research both at home and abroad demonstrates the tangible benefits that effective and meaningful information and consultation arrangements can bring to both the business and the individual." I agree entirely with this statement.

However, I am worried about the Minister of State's last few words. As Senator Coghlan has said, it has taken some time to get the Bill to this stage. The Minister of State has stated that amendments will be introduced at the next Stage. I do not understand this as we have taken much time to get the Bill into the Seanad.

I support the Bill and what it aims to achieve. I do this from a personal experience. For 40 years I found the benefits of sharing information.

Ms O'Rourke: Yes.

Mr. Quinn: Every Thursday morning I did so with my colleagues in the company which I ran for over 40 years. We began on the shop floor at 8 a.m. every Thursday, visiting each of the departments and talking to practically everyone in the company.

We told them about how well or badly we were doing and about the problems and successes. We shared information on sales, customers and profits. The benefits of sharing such information were amazing. It meant that when one informed them changes were needed, the employees were more receptive to them, even if they did not welcome them. We changed the name of the department from human resources to the talent department, because the objective was to develop and arrange talent to ensure that people's innate talent could be garnered and used for the benefit of the company itself and its stakeholders. I have seen the benefits of sharing information.

I have one concern. I want to make a clear distinction between sharing information and sharing responsibility for managing the company. Traditionally, some employers may have tended to resist consultation because they felt it diluted their ability to control and direct the fortunes of their companies. However, that is based on a misconception. Consultation is not a process of co-management. Sharing information and managing a company are two distinct functions and it is not difficult to keep them separate. Managers have no need to fear they are doing themselves out of

a job by consulting with their staff. Equally, the staff should not expect that under this Bill, they will end up running the business for which they work. I hope that will be understood.

However, I have real concerns. This summer, I went on two trips abroad, one to Budapest and the other to Prague. It was interesting to hear Senator O'Rourke mention how well-admired the Irish are. Monsieur Trichet, the president of the European Central Bank, has spoken about the Irish success. Even more significantly, the figures show how well we have succeeded.

Incidentally, have Members noticed how one no longer hears anti-Irish jokes? Two weeks ago, I watched a television programme made 30 years ago. It was interesting to hear a British comedian telling two anti-Irish jokes. One does not hear them any more because of the success we have made of this nation.

However, Members should not forget we are in a highly competitive Europe and world. I have real concerns, particularly after returning from Budapest and Prague. The high regard in which the Irish economy is held means that others are following our example. Others are asking how we did it. We are not simply in competition against other European countries. Europe and Ireland are in competition globally. Last week, I had a conversation with an Irish businessman who spoke about the regulations we introduced here as a result of a particular EU directive. He said that it takes him four months to get a decision whereas in the United Kingdom, which introduced the same directive, but in its own way, it takes three weeks.

Ms O'Rourke: The British economy is faltering.

Mr. Quinn: I am simply taking the United Kingdom as an example.

An Cathaoirleach: Senator Quinn should be allowed speak without interruptions.

Mr. Quinn: This man employs thousands around the world and hundreds in Ireland. However, he said we should be careful about foreign direct investment and what those who have a choice of where to invest might think. We must ensure we do the right thing and do not stifle the enthusiasm that has made Ireland high on their agenda.

Senator O'Rourke has spoken wisely about education and about her second point on social partnership. However, it is beneficial not to have too many regulations. Only a couple of weeks ago, Mr. Barroso announced that the EU had too many regulations. I understand he also said that insufficient attention had been paid to the question of subsidiarity and he wiped out 80 regulations. The idea was to make Europe more competitive around the world. We have competitors, not just in Europe or eastern Europe, who examine the directives and regulations coming through and who attempt to make their own regulations a little more attractive to foreign direct investment. We should not be afraid to state that we are in competition. We should recognise that we are in competition each time we examine whether this is the right place for someone to invest. We have done very well over recent years and should not damage this by introducing any stipulations that make us less attractive.

Members will have seen the figures published yesterday from the World Economic Forum in Davos where Ireland which used to be the fourth most competitive nation is now in 26th position. This is an improvement from the position of 30th we attained last year. I have a real problem with the regulations we introduce without considering if they may stifle the enthusiasm of foreign direct investors to come here. We do not perform regulatory impact analysis on all legislation and should do so. When this legislation is introduced, I want to establish whether we are doing the right thing and if we are doing it in a manner that will at least encourage our economy to continue to thrive and perform as well as it has in the past.

I wish to highlight some instances of some areas which concern me in this respect. For example, there is the question of those employers who do not traditionally deal with trade unions. As Senator White noted, only 25% of privately owned businesses here are now unionised. In the United States, the figure is even lower. I understand the percentage of unionised workers there is down to 18%. Many similar economies are very successful. We do not want to stifle the enthusiasm of someone thinking of opening in Ireland by insisting that he or she must operate in an unfamiliar fashion. We must be careful this Bill does not permit that to happen.

Senator O'Toole raised the question of confidentiality, which is dealt with in section 14 and which outlines the role of experts. The confidentiality aspect might scare some people. One could be forced to deal with someone from outside the company who in turn would be obliged to treat the information as confidential. However, this does not always happen. It fails on that basis because people do not always adhere to confidentiality.

I also wish to discuss the case made concerning the trigger mechanism for opening negotiations and in particular, the number of people for whom this applies. The figure of 10% has been discussed, which is understandable. If 10% of a company's employees want consultations to take place in the manner outlined, that must be recognised. However, what happens in a company like Intel, which has 5,000 employees in Ireland? The legislation proposes a maximum of 100 employees can trigger negotiations. In the case of

[Mr. Quinn.]

Intel, if 100 employees stated that they wanted to trigger negotiations, that is only 2% of the workforce. Usually, at least 2% or 3% of employees in any company are, shall we say, wildcats. I would hate to find that this figure means that 2% of the employees in a large company could trigger the mechanism that puts the process into place. This is why I mentioned my concern about the Minister's closing remarks to the effect that he is introducing the Bill — after a long period has elapsed — but plans to introduce amendments. I hope the amendments planned by the Minister will strengthen our ability to compete on the European and world stages and will be in the interests of those foreign direct investors who are thinking of coming to Ireland. They have other choices around the world. We should ensure that we do nothing to reduce Ireland's ability to be competitive.

Some years ago, I visited St. Petersburg, or Leningrad as it was at the time. Having seen the wonderful museums and other sights, I remember asking if I could see a grocery shop. After permission was granted, I was taken out to a supermarket on the outskirts. It was the worst grocery store I ever saw. The products and services were poor and the man behind the counter had a cigarette in his mouth. It was terrible. I asked him if he could tell me how many customers the shop served. He replied that the shop had 5,400 customers. I was very impressed that he had access to this information and asked him if he got it from the old-fashioned cash registers. He replied that 5,400 was the number of people who lived in the town. I asked him if they all shopped there and he replied that of course they did.

Ms O'Rourke: There was only one shop there.

Mr. Quinn: He said if it was a bigger town, it would have a bigger supermarket and if it was a smaller town, the shop would be smaller. There was no competition because they did not believe in it. It was an effort by that system to protect jobs but it was the wrong system. We should ensure that we do not introduce similar systems. Sometimes, in trying to do the right thing, we stifle the ability to succeed. I welcome the Minister and the Bill but urge him to be careful that any amendments do not weaken our ability to do that.

Mr. Leyden: I also welcome the Minister of State and his officials to the House to introduce the Employee (Provision of Information and Consultation) Bill 2005.

I note the length of time it has taken from the issuing of the directive to the enactment of the legislation before the House. I welcome the fact that the Minister of State has stated that he is prepared to consider amendments by all Members. There is a range of people in this House with experience in this area. They will be able to give some assistance to the staff of the Minister of State.

The Minister of State has set a magic number of 50 employees per company. Is this negotiable or is it part of the directive itself? Is it only applicable to companies with more than 50 employees? It is very important that all labour-related legislation be brought together in one Bill, or at least put into an information pack for employees. People should know all of the legislation that governs employment in Ireland and employees should be well aware of their rights. There is much legislation brought through both Houses that is often not acted upon. When this Bill is enacted, I hope the Minister of State engages his staff to inform employers and employees of this particular piece of legislation.

The greatest amount of non-consultation occurs in the public service. For example, nurses in hospitals often complain that they are never consulted about hospital management. There is certainly a lack of consultation from management to workers. Are we excluding the public service and, if so, why? That applies to all public service institutions that employ over 50 people.

As a former chairman of the Western Health Board, I have often found that the manager of a particular institution has complete control and there is very little consultation with the workers. There might be workers' groups and consultative councils and I feel that is an area in which it is worthwhile to empower the employees in the management of their organisations. That would apply to the work that many of them are undertaking at the moment. In the new HSE — which has not changed at all from the old health board system- I find it an appalling waste of time that the annual review of medical cards follows the same procedure. There may be no change in a person's circumstances, yet time and energy is wasted researching the person's situation to come up with the same result every year. Staff will complain that they could be better engaged in other types of work than doing this on a yearly basis. If the staff were allowed more consultation at all levels, companies would be far stronger and that is why I welcome the Bill. It will allow employees the opportunity to have direct consultation with the management of a company. Senator Quinn outlined very well how he operated this in his company for so many years and it was very successful on that basis. I welcome his input on this issue, along with that of Senator O'Rourke, Senator White and others. On this side of the House, we will not be putting down amendments, but we will rely on the Minister of State to put them on our behalf if we consider there are areas that could be amended to the benefit of the Bill.

Too many directives have been issued by the EU on this issue. This directive was agreed on 11 March 2002 after extensive consultation and it is

now September 2005. It was right and proper that there was also consultation with the social partners. Senator O'Rourke pointed out that education was the main reason for the strength of our economy and that social partnership was the second reason. Social partnership in this country is a shining example to other countries. It is progressive and consultative and that is what we want. The Bill will allow for proper consultation to take place between employees and employers. It provides a framework for consultation in a comprehensive way. I very much welcome the Bill and I compliment the Minister of State and his Department. He has been very innovative since he became Minister of State with responsibility for labour affairs and he has well qualified staff with him.

The recent ESB crisis provides a great opportunity for consultation for all unions. There is a shared management and union position which has been well worked out, yet there are a bunch of rebels who have been trying to upset the whole applecart. I am pleased that ultimately, sense prevailed. I hope they learned the lesson that there is an opportunity for consultation. I welcome the fact that the other unions involved were prepared to take on these rebels and passed the pickets, as it was not a justified dispute at that stage. The action put jobs and the economy in jeopardy. Certain individuals had no regard for the Irish economy and they were prepared to do the same thing at Irish Rail, but they failed there as well.

Ms O'Rourke: They failed because SIPTU stood up to them.

Mr. Leyden: I compliment SIPTU for doing that at the time and I also compliment the unions in the ESB. I congratulate the Minister of State on his work and I very much welcome this Bill.

Dr. Mansergh: I welcome the Minister of State to the House and I warmly welcome the Bill. Listening to Senator Leyden made it clear to me that there was a glaring gap in the drafting of this Bill, which occurs in section 1. There is no definition of a key word, "undertaking". If there were a definition, we could answer the Senator's question whether the Bill applies to Departments and Government agencies, or if it just applies to certain commercial enterprises. It may be that "undertaking" is defined in the European directive, but I recommend that the Minister of State add an amendment giving a definition of such a key term.

This Bill is very much in keeping with the ethos of social partnership which has been of so much benefit to us. I cannot see that it poses any problems of over-regulation or that it might frighten employers. It is not the same thing as requiring them to accept unions, but it would be essential practice for any employer to have some mechanism of consultation and if a sufficient number of employees want consultation on a matter, it should be granted.

Social partnership comes under attack from two quarters. We heard from Senator Leyden of the ideological, very left wing view of those people who wish to revive class war and confrontation and to "Scargillise" the Irish trade union movement. I am glad to say they do not tend to make a great deal of progress these days. We saw in the ESB and a year or two ago in the ASTI dispute that the other trade unions do not allow that kind of approach to go too far. One also gets attacks on social partnership from what I broadly describe as the "right".

1 o'clock

The Leader mentioned yesterday a very interesting and well-written article by Senator Quinn in *The Irish Times*. I do not, however, subscribe to the view that social partnership detracts in some way from democracy, rather it enhances it. I do not like the idea that those of us who are privileged to be Members of the Oireachtas have rights other groups and citizens do not, even if we have been elected. I believe very much in participatory democracy, which means something far more than simply having an elected assembly. Politicians are not necessarily the right people to negotiate and decide what social partnership agreements should entail. Part of our role is to act as watchdogs and another part is to act as legislators. It is correct that plans involving the interests of unions, employers, farmers, etc., should be negotiated by those interests. I would still contend were I in Opposition that the Opposition should not necessarily be involved as one needs an independent voice which is not directly involved and which is able to criticise. Of course, the Oireachtas is involved in the more consultative National Economic and Social Forum which has produced very useful reports on the care of the elderly and the very young.

It is a question of striking the right balance. As we can see from some of our European partners, over-heavy regulation and excessive bureaucratisation can be off-putting and discouraging to investors. While we are not exempt from the danger of going down that path ourselves, I am not in favour of the view that what is in the interest of employers is necessarily in all our interests. From time to time I see actions which disturb me greatly and cause me to wonder about the management theories taught in some of the institutes. The scandalous matter of Irish Ferries was discussed on the Order of Business this morning. We all have an interest in the issue as Irish Ferries was once a State-owned company which was sold off to the private sector. What is proposed is no great advertisement for privatisation. It is completely irresponsible to behave in a manner which is totally offensive to the ethos of the vast majority of people in our society and

[Dr. Mansergh.]

almost every group. Members of every party raised objections this morning, which was right. I hope Irish Ferries takes note of the Taoiseach's comments which represented the views of the vast majority of us.

Another decision which disturbed me considerably was the appointment of an individual as vice-chairman of a bank who is before a tribunal on foot of certain actions. The appointment seems to cock a snook at the rest of society. I have said several times and say again that I still feel very sore about somebody who made a profit of approximately 2,000% as a result of a poorly informed Government decision in 1995-96 and promptly became non-resident to avoid paying taxes. We require socially responsible employers. While it is in the interest of employees that companies make the profits they need to survive, it should happen in an ethical and socially-responsible manner. I hope the legislation before the House makes a small contribution to that objective.

Minister of State at the Department of Enterprise, Trade and Employment (Mr. Killeen): I thank all Senators who contributed to the debate. It has been wonderful to find people prepared to say what they think in the manner they have. What has been said will certainly be helpful in the deliberations to conclude the process.

The Bill transposes the European Union information and consultation of employees directive. The thrust of my overall approach has been to attempt to ensure we have the maximum flexibility while transposing the directive within the limitations set out. While the constraints are in some senses fairly wide, we must recognise that a wide variety of systems of workplace relations are in operation in Ireland. It would be impossible to introduce a single model to fit all sizes, which is why there is a perception the Bill is somewhat clumsy. It was an inevitable effect of trying to transpose the directive in a manner which best serves the interests of the great range of Irish enterprises which exist as illustrated by many of today's speeches.

I am very pleased that Senators have publicly enunciated opposing views which I have heard *ad infinitum* from the social partners but which I am not sure they have heard from each other to the extent they might have in the past. Senator Coghlan spoke about the length of time it took to bring the Bill to this stage. There were various points at which I thought we were coming close to a level of agreement in the consultation process only to have my hopes dashed subsequently. This was the principal reason it took so long. Senator Coghlan said rightly that the directive should have been transposed by 23 March of this year. That it will clearly take longer is something about which the Commission cannot be too pleased. I will deal first with queries raised by a majority of speakers before addressing within the limitations of time and my capacity to read my own writing regarding remarks by individual Senators.

The directive could have been applied either to undertakings of 50 or more employees or establishments with 20 or more employees, which was a choice which had to be made. The vast majority of submissions received favoured applying it to undertakings. Senators Mansergh and Leyden were quite right that a definition of each term is included in the directive and it is reasonable for us to consider before Committee Stage the potential merit of including both in the legislation. It would certainly be more accessible if the definitions were included in the legislation rather than simply in the directive. That only one definition has been included at this stage is reflective of the choice we made.

A number of speakers referred to penalties and, interestingly, they were mentioned from both perspectives. Senator White, in particular, felt that some of these were unusually draconian and unwarranted. Senator McDowell was concerned that the Bill lacked the teeth to deliver a proper information and consultation process. A few other speakers shared that view. Article 8.1 of the directive requires that member states shall provide for appropriate measures in the event of non-compliance with this directive by the employer or the employee's representatives. In particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligation deriving from this directive to be enforced and so on. Naturally we took advice from Parliamentary Counsel and we have enshrined in the legislation what we think meets that obligation. Senators may well wish to table amendments in that regard and, if that is the case, we will consider what they have to say.

A number of speakers referred to the trigger mechanisms from both perspectives. A very telling point was made by Senator Quinn to the effect that the maximum of 100 equates to 2% of the workforce in a particular establishment. We have very strong representations from the trade union side that the trigger mechanism, as Senator McDowell stated, militates against the information and consultation process coming into play. We have gone with what we believe meets the requirements of the directive and appears reasonable to us. I consider it unlikely that 100 employees would be likely to be on some daft crusade but in the event that they were and they invoked the trigger mechanism, ultimately if falls to the majority of the employees in the company to decide whether the process is continued with in that manner.

To be fair to the FDI companies, it must be acknowledged that more than any others they

have had in place comprehensive systems for conveying information to their employees. Some of them may well meet the requirements of pre-existing agreements which are provided for in the Bill. Many of them have had the common sense to take the nod that the directive exists and that we would be complying with the obligation to transpose it into legislation. The ones who have done that will have in place pre-existing agreements which meet the requirements both of the directive and the legislation.

It would be unfair to impose additional requirements in the legislation above and beyond those of the directive. Nobody could truthfully or accurately say we have done that. We have tried to strike a reasonable balance. We have put it in what the Leader might rightly say is a somewhat convoluted fashion but because of the nature of what we were trying to do, it was difficult to do it any other way.

Senator Leyden raised an interesting question about the public service. It really goes down to the definition of an undertaking as defined as the public or private undertaking carrying out an economic activity, whether or not operating for gain, which is located within the territory of the member state. Within the terms of the undertaking it will be decided who is in and who is out. We went for the undertaking rather than the alternative because we felt that, on balance, it was the better way. The representations and submissions suggested that it was the preferred way.

The IBEC reaction has been enunciated strongly here, as has the ICTU view. Senator Coghlan raised the issue of workplace bullying which was also mentioned on the previous occasion I was in the House. I received the report of the expert group in the interim. One of its recommendations is that specific legislation be put in place and that is something we must deal with in due course. I look forward to coming back to the House with that. It is not something that can necessarily be provided for within this legislation, except to say that the safeguards we have provided for employees who invoke their rights under the Employees (Provision of Information and Consultation) Bill are very strong. I will revisit the matter if anyone can persuade me that it needs to be strengthened but I believe the safeguards are particularly strong.

I thank Senator Coghlan for his comments and Senator Hanafin for his proposal and the points he made, especially one which I believe would get agreement across the spectrum, that all citizens must benefit from the economic prosperity and that all stakeholders in an enterprise at every level have a right to some involvement. In many instances they already have this, but sadly, in some cases, including the one that is on everybody's tongues today, Irish Ferries, they clearly have not. It would be well for us not to pretend that everything is rosy and to accept that there is an obligation on us to provide legislation or whatever is required, including penalties, to ensure that what we see as fair and equitable is provided for in the workplace.

Senator Hanafin also referred to pre-existing agreements. We must also face the fact that there are workers who do not want to have representatives receive or pursue information and consultation on their behalf and who very much want to have a personal involvement. Insofar as we can within the directive, we have also allowed for that to happen.

Senator O'Toole mentioned that from long experience the consultation process must be long. On this occasion it was long without achieving what I had hoped. That is one of the things one learns as one goes along. It is a quality of good partnership that it forces people to face up to, listen and confront each other's difficulties. That is one of the great benefits of the social partnership model. It will be a benefit that will go into enterprises on foot of this legislation. Senator O'Toole is right to point out that we have been successful in increasing productivity and that it is only fair and equitable that the wages of workers should reflect this.

Like virtually every other speaker, Senator O'Toole raised the point about the Irish Ferries case and whether it is a legitimate case for the payment of redundancy. More particularly, it has been asked if it is appropriate for the taxpayer to pay a substantial chunk towards that redundancy. That is a serious question and one to which we must face up, specifically in the case of this company. We must also face up to the underlying ethos, which, if it is allowed to go unchecked, will undoubtedly do enormous damage to this economy. It would not take very long for that to happen. I have no difficulty whatever about forcing the pace in regard to the payment of redundancy to people in a situation where a company has collapsed and the unfortunate workers are left with nothing. In that circumstance I will do everything in my power to ensure that redundancy is paid. That is not the situation in this instance and the matter will be looked at very carefully.

I have already dealt with some of the points raised by Senator White. She made the point, echoed by Senator Quinn and others, that sometimes we may be overly prescriptive or regulatory. In this instance, what we have tried to do is comply with the requirements of the directive and to do so in a manner that is fair to all the players. Given the diverse nature of our workplaces, it is very difficult to do that. It is inevitable that people would feel it is either clumsy or overly prescriptive. We have tried to do it in a manner that takes account of reality, the voluntary nature of the industrial relations system and the positive role that has been played by both employers' representatives and union representatives with

[Mr. Killeen.]

Government and the other social partners over the past 17 or 18 years.

The Leader is right; along with education, social partnership has been the foundation of the success of the economy. We must operate within the parameters of that process. We are trying to do that. I accept, as we all do, that the contribution of the American FDI companies to this economy has been tremendous. We know that, on the whole, their company management is not open to having union involvement in their affairs but I can assure them that the provisions of this legislation will be entirely to the advantage of their companies. There is no question of a blurring of the distinction which Senator Quinn made between the provision of information and the attendant consultation on the one hand and a sudden change to a management model from the workfloor on the other. That is not the intention of the legislation. In places where it has been a little too prescriptive it is in an effort to ensure that is what it provides for.

Senator McDowell raised what he sees as the central problem that this Bill will not move the practice forward. He is concerned that it lacks teeth to enforce good practice. If I believed that were the case I would be open to looking very carefully at it. I will state my views on it openly in the House and if Members make an alternative case I will consider it and, on balance, decide one way or the other. We must do this.

Senator Quinn commented on my intention to introduce amendments. Virtually all of my proposed amendments are technical but one or two will not have the effect of undermining the confidence of the companies about which the Senator is concerned, or the confidence of the trade union people. When addressing the Health and Safety Bill in this House, after its fairly tough passage in the other House, I discovered Senators were able to point out fairly obvious points to which none of us in the other House had adverted. In considering the role of the Oireachtas one must be aware that it is the job of Government to govern and the job of the Oireachtas to make the legislation. It would be very wrong of any Minister to close his or her mind to what might be said by any Member on any side of the House. I assure the Senators I will not do that.

Senator McDowell is correct in that a model has evolved that has used parts of the Germano-European model, parts of the Anglo-American model and parts which are entirely our own. If one were examining the theory behind the Irish social partnership model from outside, one would say the model could not work. In theory it seems to have many shortcomings but, in practice, we seem to work it wonderfully well in Ireland and very much to the advantage of all the stakeholders and the economy. Ultimately, while we want to ensure that wealth is distributed fairly, we must acknowledge that we will not be in a position to deliver any of the services people want unless we are in the business of creating wealth. In this regard, we have struck a reasonable balance. To ensure we have the very desirable level of consultation that ought to exist, we must accept that penalties must exist. We have done this as well as we can but we will consider what Members have to say on Committee Stage.

Senator O'Rourke asked whether the legislation will deliver. I believe it will. The legislation will bring about an evolution in practice in response to its provisions rather than have a big impact on day one. If it does so, Ireland, the companies and the operated enterprise level will be much the better therefor. It would quite undesirable to have a big-stick approach on day one rather than a facilitation of evolving circumstances with which, to be frank, people on both sides have enormous difficulty coming to terms. However, we are obliged to put the framework in place to encourage people to come to terms with the legislation, such that the kind of model Senator Quinn operated in his business will become much closer to the norm than is presently the case. If we manage to do this, we will have made significant progress.

We would be very big-headed if we were to assume for a moment that we are the people who must deliver everything for the next hundred years. People will emerge in three, four or five years with their own views and will decide how the process is to proceed. We will have done a good job if we have provided a reasonable platform on which the economy can be further advanced by the participation of workers and managers together. That is certainly what we have set out to do by way of this legislation. I am only sorry we are doing so against the background of the Irish Ferries dispute and the appalling message it sends as we are about to enter the next phase of social partnership.

Senator Quinn made a point about the confidentiality clause. It is clear to me that we need to have it in the legislation and that we need the capacity to enforce it. However, I accept the Senator's point that it might at some level be regarded by employers, and by FDI employers in particular, as unduly intrusive in their business. That is not the intention of the directive, nor will it be the outcome when the legislation is enacted. There is certain information which is clearly not that sensitive but is currently not provided in many instances. It is the kind of information that would allow employees to play a far more meaningful role in their companies and ultimately allow employers to operate a far more profitable business. The benefits, for all sides, arising from

the enactment of the legislation and its adoption will far outweigh the concerns that frequently loom large in advance of enactment and almost always dissipate subsequently when it is put into practice.

Senator Leyden made a very important point about the need to consolidate legislation. I am trying to do this and we have set the ball rolling. It will take some time but would bring considerable user-friendliness to this entire area. Senator O'Rourke knows exactly the difficulties that arise when one tries to decide under which of the 25 items of legislation, and with which of the seven bodies, one ought to proceed. This is a considerable job which we must complete. I am glad to have set it in train.

Senator Mansergh referred to the lack of a definition. As I explained, it is in the directive and I will consider whether it should be in the legislation. However, the legal advice is that we do not need to include it. I was very taken by what the Senator said about social partnership. Since I have been in this job, I have noticed, perhaps with more sensitivity, the number of people who are making what seem to be all kinds of unprovoked attacks on social partnership. I always say to them that if they have an alternative model, they should let us know about it. In the meantime, we should note that the social partnership model has worked very well for us. We will certainly use it until we have a better one.

Senator Mansergh also made the point about striking the correct balance. We have tried to do so. I agree with his point on the appointment of directors and his points about Irish Ferries, just as I agreed with the similar points made across the entire political spectrum of the Seanad. I heard most of the comments on Irish Ferries in the Seanad before I entered the House and it is unfortunate that this is the background against which we are introducing this legislation. I look forward to a more detailed debate on specific aspects on Committee Stage. I thank the Senators very much for their participation.

Question put and agreed to.

An Cathaoirleach: When is it proposed to take Committee Stage?

Ms O'Rourke: This day fortnight.

Committee Stage ordered for Thursday, 13 October 2005.

An Cathaoirleach: When is it proposed to sit again?

Ms O'Rourke: Next Wednesday at 2.30 p.m.

Adjournment Matters.

Company Closures.

Mr. Kenneally: I thank the Cathaoirleach for allowing me to raise this matter on the Adjournment. I welcome the Minister of State at the Department of Agriculture and Food, Deputy Brendan Smith, to the House. The matter I wish to raise concerns the decision made by Glanbia to close the cheese factory at Kilmeaden in County Waterford. This is a very short-sighted decision on Glanbia's part. Although time will tell, I believe it will not benefit the company at all. The cheese factory is in a rural area. We are all doing what we can to keep people in rural areas and provide them with employment, yet the factory, which is a rural-based company, is closing down.

The factory has an excellent workforce and the employees work on a seasonal basis, for six or seven months per year. They have acquired considerable expertise over many years. The milk coming in from local farmers is of the highest quality. To a certain extent, this market will be lost.

By and large, most organisations do what their members want them to do. Unfortunately that is not the case in respect of the Kilmeaden plant. On 17 May, the annual general meeting of the Glanbia co-operative society was held and a motion of no confidence in the board of directors was tabled and carried. In most organisations the board would get the message in such circumstances. I believe a similar motion was carried in Dairygold and the board resigned. However, the directors in the case in question have decided to hang on. They have their own agenda and are not doing what their members want them to do.

The 23 million gallons of milk which have been going to the factory in Kilmeaden for many years will be transported by road to Ballyragget in County Kilkenny, a distance of approximately 50 miles over some of the worst roads in Ireland. The journey will take the tankers through both Kilkenny and Waterford cities and the road between Waterford and Kilkenny is the worst stretch of national primary road in the country. This long journey will have an effect on the milk and will also have long-term effects for farmers who are not currently charged for the collection of their milk and its delivery to the local creamery. They will not be charged for their milk to be taken to Ballyragget but I question how long this will be the case. It would seem inevitable that bigger tankers will be required and these may be forced to travel outside working hours and collect milk at unsociable hours.

[Mr. Kenneally.]

The reasons for the sale seem to be the existence of a large debt and the value of the site. The cheese factory is on a large site and I suggest the cheese factory be retained while the land could be sold.

The cheese manufactured in Kilmeaden is a unique product which has won many awards, including awards at the Norwich international show, the Royal Bath and West County show, Ireland International cheese awards, the Royal Dublin Society Spring Show, British cheese awards, London international cheese and dairy competition and a gold and bronze medal at the world cheese awards.

We are in danger of losing this unique product. Milk varies according to the quality of the grass. This cheese cannot be produced to the same standard at another location. Milk is churned about when it is being transported long distances and its quality will suffer. I fear the new plant will not be properly regulated and not have adequate quality control for the large volume of milk. Kilmeaden has up-to-date laboratory facilities and expertise.

The management has stated that a saving of €2 million will accrue from this measure but it also states that the costs for transporting the milk to Ballyragget will be an extra €1.6 million, meaning this decision will result in a saving of €400,000. It is sacrificing a world-renowned brand for the sake of €400,000. I contend the company will be unable to reproduce this product with a resultant drop in sales and profits.

Transport costs will be greater than has been estimated by the company. The tankers are currently undertaking four daily runs. It will take approximately two hours to travel each way to north Kilkenny and allowance must be made for the tankers to be cleaned, giving a total of five or six hours. The tanker drivers will be required to use a tachograph and will not be permitted to drive beyond a certain length of time. This will be an additional cost. The company believes it can do the job with an extra four tankers on the road but I contend this is not possible. The costs to the company will be greater than any savings and it is jeopardising a world-renowned brand because of a short-sighted attitude to debt reduction. I suggest it could reduce the debt by selling part of the landbank at Kilmeaden. I ask the company to reconsider the decision to close the cheese factory.

Minister of State at the Department of Agriculture and Food (Mr. B. Smith): I thank Senator Kenneally for raising this matter. I note he has taken every opportunity available to him to address this issue and to highlight the concerns of the local community. It is clear from the Senator's contribution that he knows this subject exceptionally well.

On 5 September 2005 the board of Glanbia plc announced that its Kilmeaden cheese plant would close with the loss of 45 jobs, of which 41 were seasonal jobs. I understand that most of the workers generally worked for four or five months of each year. Glanbia intends to produce the Kilmeaden cheddar output at its larger Ballyragget facility and also at Dairygold's Mitchelstown site, where it has a milk processing agreement in place. I am assured that Glanbia will continue to evaluate alternative production options for the Kilmeaden site. While this is a commercial decision made by Glanbia our thoughts are foremost with those who will lose their jobs as a result of the decision.

The Kilmeaden brand will, however, continue to be made by Glanbia with the Kilmeaden cheese-making expertise and grading being retained and the award winning cheese-makers will use the same recipe as heretofore. Local farmers will continue to supply the same volume of milk in the same way with no additional cost or inconvenience.

The Irish food industry operates in a very dynamic and challenging global environment. If a company is to grow and thrive it must anticipate and react to the needs of its customers and consumers. Against this background it should be remembered that Glanbia, which is an international food company based primarily in Ireland with a turnover in 2004 in excess of €1.8 billion employing nearly 4,000 staff worldwide, is one of the world's top five cheesemakers. It is also the top dairy processor in Ireland accounting for over 1.3 billion litres of milk, which represents over 25% of the total allocated milk pool in the country.

The closure of the Kilmeaden cheese factory is due primarily to increasing cost pressures and the need for greater capacity utilisation within Glanbia's cheddar cheese manufacturing process. Glanbia continues to make considerable investments in research, development and innovation. In February it announced a €15 million investment in an innovation centre in Kilkenny to focus on developing products with a health based functional foods and nutritional emphasis. The centre will develop a range of nutritional solutions and functional ingredients and Glanbia is to be commended on taking the lead in investing in this high value added research facility. Innovation is at the heart of Glanbia's growth strategy and such an approach is very much in keeping with the Government's strategy for the development of the dairy industry.

In the challenging marketplace we must continue to build on Ireland's reputation as a quality food island and selectively market our products

in the most appropriate locations. Consumers are demanding new products, new tastes, a focus on health and well being and convenience and all without compromising on quality or cost. The industry needs to match product mix with emerging market and consumer demands and Glanbia has been to the forefront in doing this, especially with regard to the development of new products.

I am happy to report that the interagency group, set up under the chairmanship of the Waterford county manager, in response to the announcement of job losses in Waterford Crystal, has undertaken to include the workers at Kilmeaden in its deliberations. The workers from Kilmeaden will be offered supports and guidance for their future. In addition, Waterford County Enterprise Board will provide training and mentoring to any Kilmeaden workers interested in setting up their own business.

The Government's strategy for Waterford is to promote the development of Waterford city as a gateway location with which to attract industry to the city and county. The industrial development agencies, including the Waterford County Enterprise Board, will be making every effort to secure alternative employment for the area. The county development board is also involved in overseeing and co-ordinating the industrial needs of the area.

There has been success in attracting new knowledge-based industries with the locating in Waterford of Sun Life Corporation, AOL and Genzyme and there is a strong indigenous presence with companies such as Dawn Meats and Radley Engineering.

In addition, on 22 August last, my Government colleague, the Minister for Enterprise, Trade and Employment, Deputy Martin, announced that the US financial services company Bisys Hedge Fund Services was establishing a new operation in IDA Ireland's Business and Technology Park in Waterford and this will create 250 new jobs over five years.

As part of its support for start-up companies, Enterprise Ireland has provided €2.54 million for the construction of an incubation centre at the Waterford Institute of Technology and, in addition, Enterprise Ireland has approved €155,000 towards the management of the centre. The centre has now been completed, and it is expected that the first tenants will take up residence by the end of the year. Enterprise Ireland has also provided funding for the development of a number of community enterprise centres in Waterford. The aim of these centres is to promote the development of commercial enterprises in local areas.

I am satisfied that the combined efforts of the industrial development agencies and the interagency group will promote and drive positive future employment opportunities in Waterford. I reiterate my thanks to Senator Kenneally for this opportunity to address this important issue.

Mr. Kenneally: I thank the Minister of State for coming to the House to reply the matter I raised. I ask Glanbia to reconsider its decision, as it will not be ranked among the top five cheesemakers worldwide if it proceeds with it.

Telecommunications Services.

Mr. Browne: I welcome the Minister to the House. Two constituents of mine were on holiday in Florida recently. The wife of the constituent who contacted me gave her mobile phone to an American friend in Orlando in order that he could phone his wife in Boston. This Irish couple were able to connect to the US network on that mobile phone, which their American friend borrowed to telephone his wife. He promised to pay the cost of the call. There was no difficulty about that and that was sorted. However, on returning home the couple discovered that they had been billed for calls made in the US to the tune of €52 on the basis of Irish value added tax. My constituent was puzzled as to how that charge could be levied given that the calls were made in another country.

When one travels to France or America and buys petrol, one is not charged Irish VAT on the price. Alternatively, if one goes to a restaurant or books a hotel in another country, one does not pay Irish VAT on such bills. The charge in this instance is unusual. It raises the issue that effectively people are possibly being charged double VAT when they use their mobile phones abroad. If I use my mobile phone in Dublin to telephone a friend in France, it makes sense that I pay Irish VAT on the cost of that telephone call. However, if I were in France and returned a telephone call to a friend in Dublin, I would be charged French VAT on the cost of that telephone call. In this instance there seems to be an element of double charging. I look forward to hearing the Minister's reply on this matter. I said I would bring this matter to his attention. He can imagine the shock the couple got on returning home to discover a bill of €52 for Irish VAT on the telephone calls made, one being by their American friend to his wife in America.

Mr. Cowen: I want to explain that the VAT rating of goods and services is subject to the requirements of EU VAT law with which Irish VAT law must comply. The supply of telecommunications services is subject to the standard rate of VAT which in Ireland is set at 21%. The EU sixth VAT directive requires that such services are subject to the standard rate.

[Mr. Cowen.]

Under Irish law the charging of VAT on mobile telephone calls made and completed or initiated in another state is covered by section 5(5) of the Value Added Tax Act 1972, as amended, which transposes Article 9(1) of the sixth VAT directive. In this regard, Article 9(1) states:

> The place where a service is supplied shall be deemed to be place where the supplier has established his business or has a fixed establishment from which the service is supplied or, in the absence of such a place of business or fixed establishment, the place where s/he has his permanent address or usually resides.

Therefore, Irish suppliers of mobile phone services are liable to charge the Irish standard VAT rate of 21% on services provided to business and private customers, established or resident in the State, for their usage of those services anywhere in the world.

Senator Browne is referring to roaming services available to Irish mobile phone users which enable them to avail of that service anywhere in the world. In this regard, the provision of telecommunications services to mobile phone users is a contract between the customer and the provider of the service with whom they hold the contract. When a customer uses this service in Ireland, he or she is subject to the 21% VAT rate as the service is supplied wholly within the State. When a customer uses the service outside Ireland the contract remains with the Irish supplier and again is subject to the 21% VAT rate.

Roaming services are the subject of a contract between the supplier of the service here in Ireland and the telecommunications provider in the other country. At no stage does the supplier of the telecommunications service in the foreign country bill the customer directly. Instead, it bills the telecommunications company supplier in Ireland with whom the customer has the contract.

The Irish supplier is subject to Irish VAT on the total cost of providing the service to the customer, which includes any charges incurred outside the State. This would include the cost of the provision of the telecommunications service to its customer with whom it has a contract in Ireland. Therefore, an obligation to account for VAT on the total consideration is in accordance with Irish and EU VAT legislation.

For example, an Irish person having a contract with an Irish telecommunications provider may avail of that service anywhere in Europe. The service provider in Europe bills the Irish provider for the use of the service when the Irish customer uses the foreign service. The Irish customer only has a contract with the Irish provider and pays VAT at the rate proper to the Irish provider. At no stage is there any contractual agreement between the Irish customer and the foreign provider.

If Irish customers wish to avail of the VAT rates which apply in other countries, they would be required to enter into a contract with a service provider in that specific country. I hope this clarifies the matter for the Senator and provides him with an explanation at least of why the situation prevails.

Mr. Browne: Does the Minister agree that there is an element of double charging for this service? I am sure that when Vodafone receives a bill from the telecommunications provider in France or Spain, it pays VAT at the local rate in that country and the consumer, in turn, also pays Irish VAT on calls made there. Therefore, there is an element of double charging.

Mr. Cowen: I do not know if, in the contract between the service providers, they are allowed to include VAT as a charge for the service, but I can check that and come back to the Senator with that clarification. I am not aware whether they would only charge a call rate and that subsequently VAT is paid to the Irish provider. I expect that the purpose of these EU directives or double taxation treaties is to avoid a situation where the consumer is liable to tax in both jurisdictions. I expect the position is that they simply charge the call rate as part of the contract between, for example, the service providers in the US and Vodafone here, and subsequently the VAT is added on here. The contractual arrangement is between the home service provider and the customer here, regardless of where the call is made in the world. I can check that specifically but I imagine that is the position. I agree it is not clarified in the reply and I will try to get further clarification on it.

Tax Code.

Ms White: It is a great opportunity and an honour for me that the Minister has come to the House to reply to this matter. I am a member of the Oireachtas Joint Committee on Finance and the Public Service and members of the committee have had meetings with Department of Finance and Revenue officials. Having studied the issue I wish to raise, various aspects have come to my attention. When one studies an area, one learns a great deal about it.

I am concerned about the whole business of the tax exile and non-resident status of certain Irish people. I will attempt to put this in simple language. Capital gains tax was reduced from 40% to 20%. There are people on the island of Ireland who have made multi-million euro profits who

benefit from non-residency tax status. The tax rules allow people to claim non-residency status and still spend half the year, or 183 days, in Ireland. The 1994 "Cinderella" rule provides that a day spent in the State does not count if the person leaves at midnight. I have heard anecdotal stories about people leaving this jurisdiction at five minutes before midnight, flying north and coming back to Dublin for meetings at 8 a.m.

I am not naming individuals. However, at the last meeting of the Oireachtas Joint Committee on Finance and the Public Services, at which members met with representatives of the Irish Taxation Institute, they said that tax reliefs have a shelf live. This tax relief status was introduced when Ireland had a flagging economy. The Minister for Finance has said that any tax incentive must ensure the right balance is achieved between the benefit to the investor and the good of the community. Tax incentives must be driven by the socio-economic needs of the country. Therefore the litmus test is whether the incentives for the tax exiles have delivered the desired socio-economic objective.

The Minister is also on record in asserting that the Revenue objective must be to continually improve the equity of the tax citizen. This is the crux issue and one where tax residency appears to fly in the face of equity. I believe that where Irish people have made millions of euro in profits here and are not prepared to pay 20% in capital gains tax, that is sheer greed. Without naming them, many of these people make conspicuous sponsorships and charity donations. Most of the PAYE workers in Ireland make charitable donations. I wonder whether such contributions are a more significant part of such workers' disposable incomes than the contributions made by multimillionaires who will not pay 20% capital gains tax.

Leaving these rules in place has changed Ireland. Such people are held up as icons. They are seen to be successful because they make millions of euro. They have helicopters and can fly out of the country at five minutes before midnight — excusing themselves at parties and dinners on the grounds that they must leave the jurisdiction before midnight.

Anyone who has raised this matter with the Minister is hot under the collar about it, and the bad example these people are giving. What about public servants, people who stay in the Civil Service, for example, who are not concerned with making megabucks? They want to give public service and pay their PAYE. I am not impressed with successful business people of this type being presented to us as role models for younger people.

It would be significant if Fianna Fáil could look at this again. The Minister told the Dáil earlier in the year that the matter would again be looked at. I do not believe this situation is necessary. I raised the matter with the Minister's predecessor, the former Minister for Finance, Deputy McCreevy, a year ago and he took the nose off me, saying there would be no change. Following that I have been talking to people on the ground who feel it is very bad example. Its shelf life is over and we do not need to stimulate the economy any longer. Neither do I accept at this stage that such people are putting all this money back into the economy.

Mr. Cowen: It is important to set out the facts for the record. It is necessary at the outset to remind the House that the need for a definition of residency arises from the need for clarity as regards which sovereign jurisdiction has the taxing rights in relation to particular taxpayers. If such rules were not formulated and applied there would be potential confusion and conflict, and unfairness to the taxpayer and tax authorities. Different approaches can be taken as to how this dividing line is drawn, but in all cases, persons will fall either one side of the line or other. Tax administrations must strike a reasonable balance while remaining consistent as far as possible with international norms in this regard.

The residency rules in Ireland are of long-standing. Up to 1994 they were a mixture of common law, Revenue practice and court decisions. In order to codify and clarify issues as far as practicable, they were last updated by the Fianna Fáil-Labour Party Government in the Finance Act 1994 following a comprehensive review of the matter by the Revenue Commissioners and the Department of Finance. Under the present residency rules, a person is regarded as resident in Ireland for tax purposes in a particular tax year if he or she spends 183 days in the State in that year, or 280 days in aggregate in that tax year and the preceding tax year. This aggregation rule does not apply if he or she is in the country for less than 30 days in the tax year being looked at. A person is regarded as having spent the day in the State if he or she is there at midnight.

The 183-day rule that contributes to determining residency in Ireland is also a core element of a number of other countries including Australia, Canada, the Czech Republic, Denmark, Finland, Germany, Italy, New Zealand, Norway, Portugal and Sweden. There seems to be a mistaken belief in some quarters that non-residents escape Irish tax totally if they are non-resident. Even if non-resident in Ireland, there is a liability to Irish income tax on Irish income, for example, income from directorships, rented properties, etc. Also, where individuals are resident in countries with which Ireland does not have a double taxation agreement they continue to be subject to a 20%

[Mr. Cowen.]

withholding tax on dividends paid to them by Irish companies. Non-resident individuals are also liable to Irish capital gains tax on gains from land, buildings, business assets, minerals and exploration rights in the State or from unquoted shares which derive the greater part of their value from assets in these categories.

Since 2002, income tax returns require data from self-assessed taxpayers in relation to their residence and domicile status. This is not captured electronically at present but will be in the future. This will make it practicable to derive overall statistics as regards claims to non-residence status. There is no statutory obligation on non-resident individuals to return details to Revenue of income or gains arising anywhere else in the world as these are not liable to tax in Ireland. Therefore, it is not possible to provide the information in the manner the Senator desires. There is nothing untoward in this. Tax authorities are usually not concerned with income over which they have no taxing rights. However, I believe that, in the context of the Senator's concerns, we may be dealing with a fairly well defined group of individuals.

2 o'clock

It is not correct to regard residency rules as a specific tax relief scheme as such, for the reasons explained at the outset. They are therefore not included in the review of tax relief schemes that I announced in last year's budget. However, as already outlined to the Dáil on 1 June last, I have asked the Chairman of the Revenue Commissioners to monitor the application of the current non-resident rules, through examination of cases handled in the Revenue large cases division, and to provide me with a report once this is completed. The Chairman has confirmed to me that this work is under way and that he will report to me as soon as possible. I am also informed by the Revenue Commissioners that a number of audits are under way in their large cases division into claims to non-residence as part of their risk based programmes.

Ms White: I am *au fait* with the points made by the Minister in the earlier part of his reply. I am aware that qualifying individuals pay tax on dividends and income derived in Ireland and residency rules do not form part of the review of tax reliefs announced in the most recent budget. However, the Taoiseach stated recently — I believe it was in April or May — that this issue, which has also been discussed at the Joint Committee on Finance and the Public Service, would be examined. Will it be possible to retrieve the information I require as part of the examination under way in the Revenue's large cases division? Would the taxes foregone as a result of residency rules not be sufficient to cover the costs of delivering the improved child care policy I seek?

Mr. Cowen: There is no evidence to that effect. The residency rules are long-standing and were subject to review in 1994. I have explained in detail how the regime works. As I outlined, the belief that non-residency, by definition, involves non-payment of taxes is incorrect. The Revenue Commissioners monitor the situation on an ongoing basis and are satisfied with the operation of the rules. Should the position change, they will report to me on the results of any examination they undertake. It should not be presumed that Revenue is not applying the rules as they stand. As I outlined, the rules are comparable with many countries. They should be dealt with on the basis of evidence rather than anecdote.

The Seanad adjourned at 2.05 p.m until 2.30 p.m. on Wednesday, 5 October 2005.