



New EU directive would allow Irish people to be prosecuted for acts that are legal in Ireland: Lisbon strikes again!

DESPITE the opt-out in the area of justice and home affairs presented as part of the Lisbon Treaty, the Department of Justice has confirmed that Ireland has opted in to negotiations on a directive to establish a European Investigation Order (EIO). This directive would make a number of changes to existing rules governing the gathering and transfer of evidence in criminal cases among EU member-states.

A number of such changes to the present legal framework would constitute an attack on the national sovereignty of member-states. Since the signing of the Lisbon Treaty, justice and home affairs are among the few areas over which we retain control of our own affairs.

There was no public announcement that Ireland would be opting in—in contrast to the actions of the Conservative Home Secretary in Britain, Theresa May, who announced that she plans to sign up to the EIO, provoking a public debate in Britain.

At present the transmission of criminal evidence between member-states of the EU is governed by a number of different legal instruments, such as the Schengen Convention (articles 48–53), which applies to all the



member-states except Ireland, and a framework decision adopted in December 2008 establishing the European Evidence Warrant (EEW). The European Investigation Order (EIO) Directive would repeal the framework decision establishing the EEW.

The directive was proposed on the basis of article 82 (2) (a) of

the Treaty on the Functioning of the European Union—the Lisbon Treaty—concerning mutual recognition in criminal matters. This “legal base” means that the proposal is subject to qualified majority voting in the European Council with a “co-decision” of the European Parliament (known now as the “ordinary legislative procedure”). This means that there is no veto for any member-state, though Denmark will not be bound by it at all.

The EIO will cover every “investigative measure” except the setting up of a joint investigation team and the gathering of evidence within a joint investigation and the interception and immediate transmission of telecommunications.

The concept of “investigative measure” is not defined, so many other types of investigative processes may be covered by the directive. The directive would regulate most issues excluded from the EEW—hearings, bodily examinations, analysing data, and similar actions, along with obtaining bank data.

Civil liberties watchdogs such as Statewatch say that the move will force the police to investigate individuals for acts that are not considered crimes in their home country and say there is no longer a basis for refusal on the grounds of territoriality and what is called “dual criminality”—that the act for which information is sought must constitute a crime punishable in both states.

This would now mean that a person who committed an act that is legal in the member-state where it was carried out could, according to critics, be subject to body, house and business searches, financial investigations and some forms of covert surveillance if the act is regarded as a crime under the law of another member-state.

The directive (article 10) repeals the main grounds that have traditionally been available for refusing a request for mutual assistance, going far beyond other EU measures on this point. In particular, there would be no grounds for refusing an order on the basis of double jeopardy, even though this was a possible

ground for refusal of an EEW, is a *mandatory* ground for refusal of a European arrest warrant, and is a basic right enshrined in the EU's Charter of Fundamental Rights (article 50).

The exception for territoriality, i.e. the possibility of refusing when the alleged crime was committed in the territory of the requested (executing) member-state, would be dropped also—again for the first time in any EU measure.



The combination of these changes would mean that a person who committed an act that is legal in the state where it was carried out could be subject to body, house and business searches, financial investigations, some forms of covert surveillance or any other investigative measures within the scope of the directive with regard to any “crime” whatsoever that exists under the law of any other member-state if that other state extends jurisdiction for that crime beyond its own territory. There is nothing in EU law or any other that restricts a state from extending its extra-territorial jurisdiction over criminal offences.

The abolition of dual criminality and territoriality requirements represents both a fundamental threat to the rule of law in criminal law matters—which is required by article 7 of the European Convention on Human Rights (legal certainty of criminal offences) and article 8 of the convention in this field (invasions of privacy must be in accordance with the law)—and an attack on the national sovereignty of member-states, which would in effect lose their power to define what acts are in fact criminal if committed on the territory of their state.

■ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:350:0072:0092:EN:PDF>

■ <http://www.statewatch.org/news/2010/apr/eu-council-investigation-order-9145-10.pdf>

■ <http://www.statewatch.org/news/2010/apr/eu-council-investigation-order-9145-cor-1-10.pdf>

Mode 4 posted workers: Laval all over again?

“MODE 4,” in the language of the World Trade Organisation, means “the temporary movement of natural persons across borders for the purpose of supplying services.”

Mode 4 has been fitted into trade in services as another mode of provision of cross-border services. Mode 1 is cross-border supply (e.g. via the internet); mode 2 is consumption abroad

(e.g. the foreign student market); mode 3 is a commercial presence (e.g. corporate subsidiary), and mode 4 is the presence of natural persons (e.g. workers moved across borders by a company or posted workers in EU-speak).

The EU is offering mode 4 access in all the trade agreements it is negotiating. In the WTO General Agreement on Trade in Services (GATS) in the Doha Round, the EU Revised GATS offer, tabled in June 2005, includes mode 4 offers across service sectors. The EU is including mode 4 offers in all the bilaterals and economic partnership agreements under negotiation, where there is actually much more progress than in the Doha negotiations.

The EU requirement is for skilled workers. India has made most demands for mode 4 access, though the texts of bilateral agreements such as the EU-India bilateral agreements are secret until negotiations are completed.

It is hard to find out about mode 4, which is usually referred to as “sensitive,” mainly because the movement of people is a very much bigger deal than the movement of goods, services, or capital. The main sensitivity is the potentially negative labour effects within host countries.

The “intra-corporate transferee” (posted worker) category is a major part of mode 4, allowing transnational companies to bring workers across borders and to capitalise on wage differentials. It appears that member-states’ existing national labour migration policies have relevance to the mode 4 commitments that the EU is making on their behalf, and that mode 4 openings vary between member-states.

The posted workers situation is the internal EU parallel to mode 4, with similar language and concepts, for example “cross-border establishment” and “movement of service suppliers.”

The posted worker situation is proving problematic for workers; and when this has gone to law the decisions of the European Court of Justice decisions in the Laval, Viking, Ruffert and Luxembourg cases have clearly indicated that the tide is against the right of workers’ to protect their wages and conditions. So we can look to the “posted worker” situation as a further model for the potential effects of mode 4.

The EU mode 4 offers are without quotas and without “economic needs tests” (ENT).

There are different working conditions and wage levels in different countries, and there are

some places where workers have achieved much more in working conditions than in others. There are not so many parts of the world where the balance of labour and capital is such that it has allowed for the development of labour rights. Those achievements are fragile, and can be lost.

Insofar as mode 4 allows corporations to bring cheaper labour into EU countries and capitalise on the wage differential, workers in the host countries have a great deal to lose. The argument that mode 4 is for temporary labour movement does not lessen this, because temporary workers are generally less likely to be unionised and would not be allowed to join unions, and their comparative advantage or the comparative advantage that transnational corporations can offer through mode 4 would be lost if they did.

It is a very significant shift when any policy-making is lost from the arena of the democratic process and put instead into the hands of corporations, particularly when that shift is irreversible, as is effectually the case with trade commitments. In this case it is the policy area of labour migration. Mode 4 commitments, once made, are there for corporations to use, to raise disputes and to seek compensatory measures either through their governments or directly, depending on the agreement.

The EU is negotiating on mode 4 and making offers without the knowledge of citizens of member-states and without any public debate. This is a major issue and points once again to the fundamentally undemocratic nature of the EU.

Government calls for expanded EU military role: The end of Irish independent contributions to UN missions



THE Government has called for a debate in the EU on deeper military co-operation with the United Nations, saying that the union now has the capabilities necessary to make UN missions more effective.

In a paper presented to EU ambassadors, Ireland calls for an examination of the potential to go beyond separate EU-led and UN-led missions “to the concept of EU force components forming an integral component of a UN ‘blue helmet’ operation.

“EU member states would have the re-assurance of being part of an EU force element, while at the same time contributing directly to, and reinforcing, UN-led crisis management operations.” Crucially, the paper also says it will be “necessary to reconcile the issue of EU autonomy of action” with the operational requirements of UN missions operating under the control of the UN Security Council—a move that would see an end to independent Irish contributions to UN missions.

Israel is a member of the European Union without being a member of the “institution”



IN a book to be published in November, David Cronin, the Brussels correspondent of Inter Press Service, will present an analysis of the EU’s relations with Israel. In his preface he says: “Israel has developed such strong political and economic ties to the EU over the past decade that it has become a member state of the union in all but name.”

Indeed it was the former NATO secretary-general Javier Solana, the EU’s foreign policy chief, who said last year that “Israel, allow me to say, is a member of the European Union without being a member of the institution.”

As Cronin says, “the EU’s cowardice towards Israel is in stark contrast to the robust position it has taken when major atrocities have occurred in other conflicts.”

After the Russia-Georgia war in 2008, for example, the EU charged an independent mission with finding out if international law had been flouted, and after Sri Lanka’s war against the Tamil Tigers it demanded an international inquiry into human rights abuses. But the EU accepted the Israeli-sponsored “independent inquiry” into the recent piracy and killing of Turkish activists on the high seas, while Somali piracy—triggered by EU over-fishing off the Somali coast—merited a task force. Meanwhile,

Israeli piracy was completely ignored.

Cronin, a former European correspondent of the *Sunday Tribune*, convincingly argues that an extraordinary financial arrangement exists in "Palestine." The EU funds millions of pounds' worth of projects in Gaza. These are regularly destroyed by Israel's American-made weaponry

So it goes like this: European taxpayers fork out for the projects. American taxpayers fork out for the weapons that Israel uses to destroy them. Then European taxpayers fork out for the whole lot to be rebuilt—and that's you and me.

A book to look forward to!

Political support in Germany for referendums on EU issues



POLITICIANS in Germany are proposing to introduce national referendums, following local referendums with a high turn-out in Bavaria and Hamburg. While Social Democrats and Greens are in favour of referendums, the Christian Democrat Party only wants to allow them on EU issues. The secretary-general of the Christian Social Union, Alexander Dobrindt, says that "when Germany indefinitely transfers important competences to Europe or when new states are entering the EU, the people should be able to vote about that."

Meanwhile the EU Commission is proposing that no part of EU treaties can be challenged by a petition. The Belgian EU presidency wants to secure an inter-institutional deal on implementing the initiative by December, but it increasingly looks like the toothless tiger that it was predicted to be.

German professor proposes euro-zone core, excluding Ireland



WILHELM Nolling—one of the five German professors challenging the legality of the European Financial Stability Facility (EFSF)—has warned that the new euro-zone rescue mechanism could engender deep tensions between EU citizens.

"A transfer union will destroy the social peace in Europe," he said, predicting that people in lender countries will increasingly question the

utility of the ESFS as a whole, especially if Greece is unable to repay its loans.

Echoing numerous economic commentators, Nolling said: "We need to form a new heart of the euro: France, Germany, Finland, Austria and the Netherlands. All the other states should be given their freedom back. That would give them a real opportunity to increase their competitiveness through currency devaluations."

And that would be an ideal opportunity for Ireland!

EU Common Fisheries Policy is unsustainable

A REPORT by the New Economics Foundation, *Fish Dependence: The Increasing Reliance of the EU on Fish from Elsewhere*, calls for a new, sustainable policy when negotiating the coming reform of the Common Fisheries Policy (CFP), as 72 per cent of European fish stocks are over-fished.

■ <http://action.openeurope.org.uk/page/m/4b660e47/1ba938e1/8346970/7c5534ac/1428393227/VEsP/>

Icelanders' opposition to EU membership is due to lack of information: Where have we heard that before?



THE EU Commissioner for Enlargement, Štefan Füle, has said he is "concerned by the current lack of broad public support for EU membership in Iceland. This shows that there is a need for more information about the EU and its policies. The decision should be based on facts and figures not on myths and fears."

The most recent Gallup poll has found 60 per cent of Iceland's population to be opposed to membership. Iceland has demanded special concessions for its fishing industry and an exclusion from the whaling ban. "The EU has to respect the fact that this is part of our tradition," they pointed out.

Most Spaniards think the peseta would have helped tackle the crisis

A RECENT opinion poll by *Eurobarometer* has revealed that 54 per cent of Spaniards think they



could have overcome the economic crisis more easily if they had kept their own currency, the peseta. This figure is higher than the euro-zone average of 45 per cent.

The Head of the Commission's representation in Barcelona retorted: "This makes us think that the public has not understood the advantages of the euro." Of course they may also have twigged the disadvantages!

Meanwhile, banks have begun early-stage planning to deal with the potential fall-out on the derivatives and bond markets from a European country being forced to leave the euro. The International Swaps and Derivatives Association, representing the industry, last week contacted some of its members to form a group to consider what they may need to do if a euro-zone state is ejected.

The right to collective bargaining is a fundamental right, but EU public procurement rules must prevail: Laval strikes again!



THE European Court of Justice recently ruled that agreements reached under collective bargaining arrangements between local authorities and their staff are subject to EU rules, which provide for the allocation of contracts based on competitive tenders. The award of contracts for pension services by public authority employers in Germany should be conducted by using outside tendering procedures—as required under EU public procurement law.

The court declared that insofar as service contracts in respect of occupational old-age pensions were awarded directly to bodies referred to in the collective agreement, without a call for tenders at the EU level, Germany failed to fulfil its obligations on procedures for the award of public service contracts.

The judgement has been strongly criticised in a statement by the European Trade Union Con-

federation. "Relying extensively on the Viking and Laval case law, the Court ruled that although the right to collective bargaining is a fundamental right, the EU public procurement rules must prevail."

According to the general secretary of the ETUC, John Monks, "this is another damaging judgement for social Europe. The application of economic freedoms makes no sense when, more than ever, practical solutions need to be found for the sustainability of pensions throughout Europe. This judgement ignores the public authorities' independence when they are acting as employers.

"More worryingly, it also confirms the supremacy of economic freedoms over fundamental social rights. The dark series initiated by the Viking and Laval cases is far from over."



The ETUC called on the Commission "to confirm that the EU is not just an economic project, but has as its main objective, the improvement of living and working conditions of its populations."

The German government claimed that the contracts at issue are not contracts for pecuniary interest, as "the employer merely forwards to the pension provider, on the worker's behalf, the premiums deducted from the earnings." But according to the ECJ "the local authority employer negotiates the terms of a group insurance contract with a professional insurer that is subject to specific prudential constraints guaranteeing its financial soundness."

Cleaning up the Parliament?

THE *Irish Times* reports on the campaign conducted by an Italian activist, Andrea d'Ambra, to ban people with criminal convictions from working in the European Parliament. The article notes that, following d'Ambra's claims, a written declaration proposing a "clean Parliament" has now been presented by four MEPs. The leader of the BNP, Nick Griffin, the leader of the French far-right Front National Jean-Marie Le Pen and the Italian Lega Nord representatives Mario Borghezio and Vito Bonsignore are some of the convicted MEPs now sitting in the European Parliament.

■ www.europarl.europa.eu/sidesSearch/search.do?type=WDECL&language=EN&term=7&author=96916

Newbridge asks, “Where are the Lisbon jobs now?”

A POSTER parade of the political parties’ Yes posters will be held in Newbridge, Co. Kildare, on Saturday 14 August to demand the jobs that

were promised if people voted Yes to Lisbon. The parade will assemble at the post office at 2 p.m.

Please try to support this local initiative. All welcome.

