

6. Post-crisis social dialogue and economic governance in Ireland

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1. Introduction

The core argument of this chapter is that despite the collapse of social partnership in Ireland, the institutional memory of previous negotiations has facilitated the emergence of three important public sector industrial relations agreements: Croke Park, Haddington Road and Lansdowne Road. These public sector agreements have facilitated the implementation of the Government's fiscal adjustment programme and have promoted industrial peace. In this regard, centralized collective bargaining in the public sector has enabled rather than disabled the Government's ability to adjust to new Eurozone constraints. Without these public sector agreements, it is highly questionable whether the Government could have implemented fiscal adjustment policies whilst retaining social peace.

However, whilst collective bargaining has been recentralized in the public sector, it has been decentralized to the enterprise level in most of the private sector. In most of the non-unionized sectors, the adjustment has occurred via a reduction in jobs and employment, rather than wages and working hours. In the competitive traded sectors of the economy, particularly in the internationally traded business services (computer and information services), there has been wage and employment growth. These non-unionized, US foreign direct investment (FDI) – led sectors have been relatively immune from the internal adjustment that has occurred within the public sector.

There have been no “supply-side structural reforms” or liberalization of the labour market. On the contrary, there has been increased State regulation of labour relations. In response to weak employment protection in the low-paid sectors of the economy, the 2011-16 centre-right Fine Gael/Labour Party coalition introduced new regulatory policies that included: the reestablishment of wage-setting councils for the security and contract cleaning sectors; the establishment of a low-pay and minimum wage commission; an increase in the minimum wage; and the introduction of new industrial relations legislation aimed at strengthening collective bargaining. The social partners have been involved bilaterally, but the main actor responsible for these changes was the minority Labour party in government.

In terms of social dialogue, the only remaining forum where this takes place is the National Economic and Social Council (NESC) – which has not been involved in any of the crisis or post-crisis economic reforms. The NESC meets monthly but there has

been a qualitative shift in domestic politics, in such a way that public policy formation is increasingly perceived to be the preserve of Parliament and not that of organized interest groups. The NESI is considered to be part of the “old” social partnership regime, therefore lacking both the legitimacy and capacity to engage in policy-making. In 2015, the outgoing Fine Gael-Labour Government created a new consultative forum for “National Economic Dialogue” (NED). This did not take the form of traditional tripartite negotiations. Rather it was designed as a consultation forum to listen to the views of societal stakeholders as part of the European Semester.

2. The economic and political context

Prior to 2008 Ireland experienced a twenty-five year economic boom. Successive Irish Governments used this economic growth to both cut income taxes and increase public spending. This *quid pro quo* underpinned the national tax-based income policies of seven centralized wage agreements, which were negotiated directly between the Irish Congress of Trade Unions (ICTU), the Irish Business and Employers’ Confederation (IBEC) and senior civil servants in the Prime Minister’s Office (Regan, 2016; Bach and Stroleny, 2013; Geary, 2016). This ‘social partnership’ regime was widely considered a causal factor behind Ireland’s ‘Celtic Tiger’ economy from 1987. But it also meant that it was held responsible for the collapse of the Irish economy in 2008.

In a period of strong growth, low inflation and relative wage restraint, income tax cuts became the main mechanism to increase the disposable income of workers. The path dependent effect of this social bargain shaped public policy during the 1990s and it continued after Ireland joined the single currency, with the exception of public sector wage restraint. During the 2000s, the cheap credit and low interest rate environment of the Economic and Monetary Union (EMU), combined with a domestic (and politically inspired) pro-cyclical fiscal regime, fuelled a boom in domestic demand, particularly in housing. Exports declined, imports increased and the non-traded sectors of the economy grew in importance. By 2007, construction accounted for approximately 13.3 per cent of employment, the highest in the Organisation for Economic Co-operation and Development (OECD).

In 2007, the Irish debt to GDP ratio was less than 25 per cent, the budget was in surplus, and Ireland had a sovereign wealth fund that equalled 20 per cent of GDP – or 6,200 Euros per person (Whelan, 2014). All of this suggested that if there was a slowdown in the economy, the public finances had sufficient capacity to absorb losses. But when the Irish property and banking sector collapsed in 2008, the fragility of the public finance regime was quickly revealed. Between 2008 and 2009 real GDP declined by 16 per cent, from 190 to 160 billion Euros. Public revenues, which had become hugely dependent on taxing property transactions, collapsed by over 30 per cent, whilst the Government guaranteed bank debt drove the debt to GDP ratio to above 120 cent.

2.1 The collapse of social partnership and fiscal adjustment (2008-12)

The collapse in government revenue created a crisis of social partnership. The social partnership model was built around a centralized wage agreement that provided a non-binding framework for pay bargaining. When the crisis hit, the political actors



that were party to this regime – the Irish Congress of Trade Unions (ICTU), the Irish Business and Employers’ Confederation (IBEC) and a centrist Fianna Fáil Government – received a lot of critical media attention (Roche, 2010). Public opinion towards the tripartite model of social partnership changed, leading to a crisis of legitimacy for the institutions (Culpepper and Regan, 2014).

In this context, as the banking crisis unfolded, and under increased pressure from external markets and the European Central Bank (ECB), the fiscal policy choices facing the Government narrowed. In 2009, given the new Eurostat rules (where the bank bailout scheme of the Government was included as a public expenditure), the budget deficit momentarily increased to a staggering 32 per cent. The Government had little room for negotiation with the social partners, unless public sector union leaders could ballot their members to vote for direct pay cuts.

This type of concessionary bargaining proved impossible for the Fianna Fáil Government, elected in 2007, one year prior to the economic crash. In this election, the Fianna Fáil had won 77 seats in Parliament. After the 2011 election, the party held only 19 seats, reflecting their worst election in history. In 2008, Bertie Ahern, the Fianna Fáil leader and then Irish Taoiseach (Prime Minister), stepped down, and was replaced by Brian Cowen. This was an important change that would influence the trajectory of social partnership during the crisis period. Bernie Ahern, and the Fianna Fáil party more broadly, were closely associated with the public sector unions, and directly negotiated all but one of the partnership agreements.

Shortly after this change in leadership, the Government implemented a unilateral adjustment programme, from 2008-09, that equalled 18 per cent of GDP – or 28.8 billion Euros – in pay/welfare cuts and tax increases. According to the International Monetary Fund (IMF), this is one of the largest fiscal adjustments ever recorded in the contemporary economic world (Whelan, 2014). The adjustment included a wage cut in the public sector, which averaged 14 per cent, and required the adoption of new legislation: the *Financial Emergency in the Public Interest Act (2009)* (hereafter referred to as FEMPI). It also required passing specific legislation aimed at implementing a public sector tax (a pension levy), referred to as *Public Service Pension Legislation Acts*.⁴⁵

This legislation marked the beginning of a series of Government emergency reforms, coordinated by the Department of Finance, and later the Department of Expenditure and Reform, which were aimed at stabilizing the public finances.

After a unilateral adjustment of 28.8 billion Euros, which included direct public sector pay cuts, the Department of Finance suggested that there would be no return to the social partnership model. In 2010, however, the Fianna Fáil Government and the leadership of the civil and public sector trade unions negotiated a bilateral collective bargaining agreement for the public sector called *The Croke Park Agreement*. From 2010-14, this Agreement facilitated an additional saving of 7.8 billion Euros, and it marked an early attempt by the Government to revitalize social dialogue in the public sector, following the cancellation of the social partnership agreement. It was accepted by a majority of public sector union members – and whilst there was some opposition,

⁴⁵ For more details, see the legislation at: <http://www.per.gov.ie/en/public-service-pension-legislation-including-financial-emergency-in-the-public-interest-fempi-acts-2009-and-2010/>



it was implemented in its entirety over the course of two Governments, without any industrial action.

The Croke Park Agreement was a milestone, in that it was the first time since the foundation of the Irish State that a concessionary collective bargaining arrangement had been negotiated in the public sector. The negotiated exchange was based around a *quid pro quo* that the Government would not unilaterally cut pay – in return for flexibilization and a guaranteed no-strike clause. Whilst it was a public sector agreement, the no-strike clause provided a broader climate of political stability for the Government's export strategy.

2.2 The shift toward bipartite collective bargaining in the public sector (2013-15)

The Croke Park Agreement created some intra-union conflict, but for the most part it provided unprecedented stability for the Government to implement its fiscal adjustment. This fiscal adjustment, however, failed to satisfy the financial markets (primarily because of the cost of the bank bailout). In 2010 the interest rate charged on ten-year Government bonds exceeded 8 per cent, spurring a sovereign debt crisis. Ireland was cajoled into accepting a non-market financial loan from the ECB, the IMF, and the European Commission (EC). The loan totalled 85 billion Euros with a blended 5.8 per cent interest rate. Fifty billion Euros were provided to run the State (public sector pay and social welfare transfers), and 35 billion Euros to recapitalize the banks (plus an additional 17.5 billion Euros from the sovereign wealth fund).

The agreements between the Government and the EU/IMF⁴⁶ committed the former to introducing two additional fiscal reforms to its adjustment, which would prove to be politically costly: a new property tax and a new flat rate *water charge*. Minimal focus was placed on bank reform. The water charge was introduced by the newly elected Fine Gael/Labour coalition Government in 2011, and was one of the policy reforms that would lead to its collapse in 2016. The EU/IMF programme also committed the outgoing Fianna Fáil /Green coalition Government to increasing VAT to 23 per cent, cutting the hourly minimum wage to 7.65 Euros, reducing public service pensions by 4 per cent, and cutting social welfare expenditure by an additional 2.4 billion Euros. The programme also guaranteed that all new entrants to the public sector would face an additional 10 per cent pay cut.⁴⁷

As noted above, Fianna Fáil experienced its worst ever electoral result in the 2011 election, losing over 50 seats in Parliament. The Green Party lost all its seats. The Fianna Fáil/Green coalition was replaced by a centrist Fine Gael/Labour coalition, which secured 113 seats, giving the coalition the largest government majority in the history of the Irish State. In particular, the Labour party experienced its best ever electoral result, winning 37 seats in Parliament, whereas Fine Gael won 76 seats. This massive majority of 113 seats, in addition to the Croke Park Agreement, provided the Government with unprecedented political stability.

⁴⁶ EU/IMF in this context refers to the European Commission (EC), the European Central Bank (ECB) – both of them acting on behalf of the Eurozone Member States – and the International Monetary Fund (IMF). It is largely an inter-governmental arrangement to address the fiscal crisis in Europe, namely in those Eurozone Members under an Economic Adjustment Programme.

⁴⁷ See all Memoranda of Understanding (MoUs) at: <http://www.finance.gov.ie/what-we-do/eu-international/ireland%E2%80%99s-programme-eu-imf-programme/memorandums-understanding>



The Fine Gael /Labour Government was elected on a platform to renegotiate the EU/IMF agreement. This never occurred. The agreement was continued in its entirety by the newly elected Government, successfully implemented from 2011-14, with one major exception. The Government reversed the national minimum wage cut. It also managed to reduce the interest rate charged on non-market financial loans, in addition to reforming industrial relations. But for the most part, its fiscal policies continued with structural adjustment in its totality.

2.3 The political consequences of fiscal consolidation

In 2016, the electorate voted the Fine Gael/Labour coalition Government out of office. The coalition went from 113 to 56 seats, well below the 86 seats required to secure a parliamentary majority. Fine Gael fell from 76 to 49 seats, whilst the Labour party experienced a massive defeat, going from 37 to seven seats. Although Fianna Fáil experienced the second worst ever election in its history, it increased its parliamentary seats from 21 to 44. The left-nationalist party, Sinn Féin, won 23 seats. The remaining seats in Parliament were split across a broad spectrum of independents and various left-leaning parties, with the implication that no party was in a position to form a government.

However, the role played by the public sector unions in facilitating the Government's adjustment and promoting industrial stability is – from a social dialogue and industrial relations standpoint – the most important observation from the post-crisis period. When the Fine Gael/Labour Government was elected in 2011, it established a new Ministry (separate from the Department of Finance) called the *Department of Public Expenditure and Reform* (hereafter referred to as DPER). DPER became the new human resources manager of the public sector, dealing directly with the leadership of public service unions in implementing the agreement.

There was limited dialogue in national policy-making with the social partners under both the Fianna Fáil /Green and Fine Gael/Labour coalition Governments. Given the crisis conditions, economic policy was highly centralized during the Fine Gael/Labour Government, and decisions were taken within a newly-formed *Economic Management Council*. This centralized Council consisted of the Prime Minister (Fine Gael), the Deputy Prime Minister (Labour), the Minister of Finance (Fine Gael) and the Minister of Public Expenditure and Reform (Labour). It was this Council that decided all economic policies, as opposed to the Government, Parliament, or tripartism.

The Fine Gael/Labour coalition renegotiated the Croke Park Agreement in 2013, which was rejected by Ireland's largest trade union, the Services Industrial Professional Technical Union (SIPTU). In response, the Fine Gael-led Government introduced new emergency legislation – the FEMPI, which introduced measures to cut public sector pay unilaterally. However, in order to avoid such a move, the Workplace Relations Commission intervened and brokered a new collective bargaining agreement called the *The Haddington Road Agreement*, which passed.

The Haddington Road Agreement, negotiated between the DPER and the leadership of the public service committee of the ICTU, contained one important concession. Public service unions received a commitment from the Government that the “*pay cuts were temporary rather than permanent*”. This meant that as the economic recovery began to



stabilize in 2015-16, public sector unions could seek a reversal of the crisis pay cuts. Further, it sent a signal that in a period of economic growth, trade unions would give up their “non-opposition” to government and advance a new battle for pay claims. This is precisely what is occurring at the time of writing. In the first quarter of 2016, Ireland experienced more days lost to industrial unrest than during the entire period of austerity, 2009-15.

2.4 Diminishing role of the social partners

In the absence of structured tripartite national social dialogue, the ICTU and IBEC no longer have a direct point of access in the Government to solve industrial disputes, or to discuss emergent labour relations problems before they get politicized in the media. Senior civil servants in the Taoiseach’s Office previously acted as the focal point. But all relations are now built on a *bipartite* basis with individual ministers and government departments.

The shift away from tripartism was reflected in the Fine Gael/Labour Government’s approach to labour market policy. From 2011-16, labour market and employment policy was coordinated by the Department of Jobs, Enterprise and Innovation, and captured in the initiative *Action Plan for Jobs* (hereafter APJ).⁴⁸ This plan was coordinated by the Minister of Jobs but had the authoritative backing of the Taoiseach’s Office (much like previous social partnership agreements). However, unlike social partnership, neither the ICTU nor the IBEC was directly involved in the implementation of the APJ, which was mainly centralized within the Government – which set a target of creating 100,000 new jobs under this plan from 2012-16 (largely delivered).

The expansion of the United States FDI – led sectors provides an important context for understanding the changed politics of social dialogue. New employer lobby groups, such as the American Chamber of Commerce (AMCHAM), have become increasingly influential within Irish policy-making, given that they represent those firms that are shaping the economic recovery. Ireland’s post-2012 recovery has been largely driven by FDI (Regan and Brazys, 2016), particularly tech firms in the information and computer services sector. These United States (and predominately non-unionized) firms generally do not resort to collective bargaining, social dialogue or industrial relations institutions. This structural shift in the labour market is also reflected within the internal structures of the IBEC, which is now competing for influence with AMCHAM.

3. The role of social dialogue in national policy-making

From the standpoint of the ICTU and its affiliates (particularly the SIPTU and the IBEC), the absence of social partnership has created an “institutional deficit” (Sheehan, 2015). This deficit is predominantly caused by the absence of a single point of contact within the Government, to discuss policies that cut across individual departments such as vocational training, higher education, social insurance, the apprenticeship system, pensions and infrastructural investment. Previously, senior officials in the Prime Minister’s Office took on this coordinating role, both within government and within the social

⁴⁸ See: <http://www.actionplanforjobs.ie/> and <https://www.djei.ie/en/Publications/Publication-files/Action-Plan-for-Jobs-2016.pdf>



partnership process, thereby linking civil society to public policy-making (Hardiman and Scott, 2012; Regan, 2016,).

But from the Government's perspective, there is little inclination to return to a structured system of social dialogue in national policy-making, particularly one that is directly coordinated via the Taoiseach's Office. Therefore, policy-makers tend to disagree with those trade unions that favour a return to structured tripartite social dialogue. Hence, since the collapse of social partnership, the ICTU has had a reduced role to play in national policy-making and industrial relations. The presence of the minority Labour party in government compensated for this, as will be detailed in sections 4 and 5.

The 2011-16 Prime Minister, Enda Kenny, expressed his views against returning to a system of national social dialogue in a number of parliamentary speeches. The following quotes illustrate the point:

"We are not going back to social partnership in the way that it was... the primary point of contact for interaction between representative groups and the Government is with the relevant Ministers who have functional responsibility in a policy area".⁴⁹

"The social partnership model practised by previous Governments had become a closed shop, where decisions with national consequences were made behind closed doors by a chosen few, accountable to nobody".⁵⁰

The preference of parties in government since 2008 has been to strengthen the policy-making capacity of Parliament. It is argued that the relationship between the social partners and government departments should occur on an informal *bilateral* basis, and that policy responsibility lies with individual ministers. This reflects a growing view among Irish parliamentarians that the formal processes of tripartism are not inclusive enough.

The national institutions of social partnership were able to withstand critique during the 1990s and 2000s because they were associated with positive economic and employment performance. This is no longer the case. Further, from an institutional perspective, the coordinating role previously provided by senior government officials in the Taoiseach's Office ensured that the tripartite social partnership agreements had *authority* within the Government. Since the crisis, all of these officials have either been moved or retired, with the implication that the institutional memory of social dialogue is in decline.

3.1 National Economic and Social Council

The only remaining *statutory* tripartite body is the National Economic and Social Council (NESC), which is an independent government agency affiliated with the Taoiseach's Office. The NESC was founded in 1973 and mandated to advise the Prime Minister on those strategic policies pertaining to socio-economic development. In 1973, the rationale for establishing the NESC came from the Labour party in government, who wanted to create a

⁴⁹ see <http://www.parliamentary-questions.com/question/45695-12/same/>

⁵⁰ http://www.taoiseach.gov.ie/eng/News/Taoiseach's_Speeches/Speech_by_the_Taoiseach_Enda_Kenny_T_D_Opening_of_the_National_Economic_Dialogue_Dublin_Castle_Thursday_16_July_2015.html



strategic planning agency with autonomy from the Department of Finance (O’Riain, 2014; Regan, 2016).

The Secretariat of the NESC is permanent, whereas the Prime Minister appoints the thirty-three members of the Council for three-year terms. These include: representatives from the business and employers’ community; trade unions; farming and environmental groups; community, voluntary and religious charitable organizations; representatives from government departments; and independent academic experts. The Council meets on a monthly basis – but the overall policy agenda is set by the Secretariat, according to the preference of the Government of the day.

From the standpoint of the NESC Secretariat, the Council’s role has evolved from servicing the process of national social partnership to writing technical policy reports for individual ministries. These include topics such as environmental protection and social housing. From the standpoint of the trade unions and employers, the Council has evolved into a “campaigning forum” for a diffuse set of community and voluntary interest groups, thereby disabling a more focused strategic approach to labour market issues.

Hence, in the absence of national tripartite social partnership, the role of the NESC has been reduced. It used to provide a problem-solving forum for the leadership of unions and employers to engage in dialogue, and it was not obliged to represent the immediate concerns of its members. This enabled the leadership of various organizations to reach a ‘shared understanding’ on certain policy priorities. Previously, this ‘shared understanding’ among the social partners was considered beneficial, but today it is perceived as leading to ‘a *phony consensus*’. In light of this, unions and employers have a preference for a return to a more narrow ‘*labour-employer conference*’ that would not include all of civil society. This is where social dialogue and the European Semester may play a future role.

3.2 National Economic Dialogue

As mentioned earlier in the text, the Fine Gael/Labour Government set up a *National Economic Dialogue* (NED)⁵¹ in 2015, despite political resistance to the reintroduction of a structured process of tripartism. This forum consulted civil society groups before the 2015-16 National Budget. In 2015, these consultations took place over a period of two days and involved all the major organized interest groups in Irish society, including the ICTU and the IBEC, and various independent experts. It was structured around a major plenary session, led by the Department of Finance. The plenary session then broke up into smaller groups, organized around a set of specific policy themes (such as education/skills) with individual ministers.

The NED differs fundamentally from social partnership and the NESC. When it met in 2015, it differed from the Council in three ways. First, it was an open consultation where the media could observe and record. Second, it was not a negotiation whereby different interests bargained independently via a political exchange aimed at a *quid pro quo*. Third, the Department of Finance laid out the fiscal and macroeconomic policies to be discussed. Indeed, the process is more a mere exchange of information rather than effective social dialogue.

⁵¹ See: <http://www.budget.gov.ie/Budgets/2015/BreakoutSession.aspx>



However, it was the first time since the collapse of social partnership that the IBEC and the ICTU had sat down at the same table to discuss public policy. It was clear that they both agreed on two issues: better public services and a public capital investment programme. But disagreements arose as to who should cover the financial costs – i.e. taxation. This tension has shaped public debate since the crisis: a preference for more expenditure *and* lower taxes. It is perhaps in this area – the core fiscal problem – that the most social dialogue is required.

The aim of the NED in 2015 was to enable the Fine Gael/Labour Government to facilitate consultation aimed at social dialogue, which has been specified as an important indicator in the new European Semester, as outlined by the EC. But the European Semester officers were not invited to the NED, as the political parties in the Government considered that the presence of any external monitoring would complicate, rather than contribute towards, the revitalization of social dialogue. It is for this reason that all discussions on social dialogue refer to domestic economic problems – but not to the European Semester.

4. Public sector industrial relations and collective bargaining

Despite the collapse of social partnership, the Government – as the largest employer in the State – did not opt for a unilateral approach to its own industrial relations or collective bargaining processes. On the contrary, industrial relations and collective bargaining in the public sector have become even more *centralized* during the crisis and post-crisis period. It is in the public sector where the collective bargaining institutions (and unions) are the strongest, implying that the term ‘industrial relations’ is now used as shorthand for the State sectors.

This stems from the voluntarist nature of Irish industrial relations. Labour law is minimal and built around the tradition of common rather than civil law. The implication is that collective bargaining institutions are dependent upon the relative ‘strength’ of unions (measured in terms of density and bargaining coverage) rather than legal-formal institutions and labour laws. This voluntarist system benefits unions where they are strong (public sector and manufacturing), but puts them at a disadvantage where they are weak (in the non-traded and internationally traded services sector). Simultaneously, from the perspective of the Government and employers, it facilitates flexibility in the labour market.

4.1 Public sector industrial relations

During the crisis and post-crisis period most employment changes have occurred in those sectors where trade unions are weak. Overall trade union density declined from 35 per cent in 2007 to 27 per cent in 2015, reflecting an all-time historic low (Walsh, 2015). In the public sector, it declined from 69 per cent in 2007 to 63 per cent in 2014, whilst in the private sector it fell from 24 to 16 per cent during the same time period.

The result of these trends is that collective bargaining coverage has become increasingly concentrated in the public sector (Roche and Teague, 2014).

Nonetheless, as noted earlier in the text, centralized industrial relations and collective bargaining in the State sectors have proven to be effective in implementing economic



adjustment. The presence of these industrial relations institutions meant that the Government could engage in a direct political negotiation, via the DPER, with the leaders of the main public sector service unions – via the public service executive committee of the ICTU. In this regard, centralized bargaining provided the necessary coordinating capacity for the largest employer in the State to implement cost saving reforms.

It is difficult, however, to equate the bipartite public sector agreements with national tripartite social dialogue. These bipartite collective agreements did not include any public policies pertaining to jobs, employment, taxation, housing and infrastructure; neither did they include any involvement from the wider membership of the ICTU and IBEC. They are sectoral agreements between the specific interests of the public sector unions and the Government – as employer.

There are three public sector agreements that shaped national policy-making during the crisis (2008-12) and post-crisis (2013-15) periods:

- Croke Park Agreement
- Haddington Road Agreement
- Lansdowne Road Agreement

4.2 The Croke Park Agreement

The *Croke Park Agreement 2010-14* was brokered by the Chief Executive of the Workplace Relations Commission (WRC), Kieran Mulvey, and signed by the centrist Fianna Fáil/Green Government and the Public Service Committee (PSC) of the ICTU in June 2010. The Agreement also included the signatories of non-unionized professional associations in the public sector – such as those representing the Irish police force. Whilst there was some resistance from the teacher unions on the PSC of the ICTU, it was overwhelmingly supported. Those unions who opted to vote against the Agreement went along with the majority vote of the PSC and supported its implementation.

The Croke Park Agreement was one of the first attempts to re-establish public sector dialogue following the end of the social partnership agreement in 2009. In addition, it had three major policy-making objectives:⁵²

- To reduce costs in the public sector pay bill through a voluntary reduction in the number of people working in the public sector.
- To increase the flexibility of the public sector through the redeployment of workers.
- To increase productivity across the public sector through facilitating an increase in the use of shared and online services.

The Agreement was the Government's score strategy to consolidate its fiscal adjustment from 2010-14 (Higgins and Sheehan, 2010). As long as the unions guaranteed to not engage in industrial action, the Government committed to not unilaterally cutting pay any further. Crucially, the Agreement provided for the establishment of an implementation body to measure the progress of reforms in each of the following sectors: health, education, security, public administration and local government. This implementation

⁵² For more detail see: <http://www.per.gov.ie/en/croke-park-agreement/>



body not only monitored the implementation of the Agreement, but also was responsible for the costing of reforms, which became particularly important under the auspices of the EU/IMF reviews.

4.3 The Haddington Road Agreement

In 2013 the Government attempted to renegotiate the Croke Park Agreement before it expired. This was aimed at cutting an additional 300 million Euros from the public service pay bill before the end of 2013, and then making an additional billion Euros in savings before the end of 2015. The outcome was a new collective agreement entitled ‘Croke Park II’, which was supported by the leaders of all the major trade unions, but rejected by the public sector membership, by 54 to 47 per cent.

In response, the FEMPI was passed in 2013, which would have enabled the Government to implement a unilateral 7 per cent pay cut. The Government argued that with or without union support, it had to achieve its fiscal targets – as set out in the MoU with the EU/IMF. In the aftermath of the rejection, the SIPTU leader, Jack O’Connor, called on the Government to avoid using unilateral pay cuts to achieve its fiscal targets, if it wanted to avoid mass strike action.

By the end of June 2013 a new industrial relations agreement was negotiated under the auspices of the WRC. The new *Public Services Stability Agreement: 2013-16* was renamed *The Haddington Road Agreement*⁵³ (HRA) and included very specific sector-based reforms aimed at reducing the public service pay bill, in order to achieve an additional one billion Euros saving before the end of 2015.⁵³ Some of the industrial relations reforms included:

- A freeze in automatic increments for different pay grades.
- Additional temporary pay cuts for those earning over 65,000 Euros per annum.
- A cut in the pension for retired public sector workers.
- New flexible workplace practices, including an extension of the working week for all public sector employees.
- Increased flexitime for civil servants.

4.4 The Lansdowne Road Agreement

What is perhaps most remarkable from a public policy perspective is that the fiscal adjustment was achieved without any trade union industrial action. There was certainly disagreement by smaller unions – but, in general, this was minimal. This is reflected in the third public industrial relations stability agreement: the *Lansdowne Road Agreement*, negotiated in May 2015, which extends the HRA until 2018. The new Agreement sets out a plan to reverse some of the pay and pension cuts implemented since 2008.

The *Lansdowne Road Agreement* has gradually turned the tide on the period of concession bargaining in the public sector. In a period of growth, more conflict is likely to emerge. Some of the industrial relations proposals include:

- Most public servants to receive an average pay increase of 2,000 Euros achieved over three stages from January 2016 to September 2018.

⁵³ For a detailed list of reforms in the agreement see: <http://www.per.gov.ie/en/haddington-road-agreement/>



- A partial reversal of pay cuts and a gradual removal of the public service pension levy to allow for this increase.
- Those earning over 100,000 Euros who had pay cuts implemented under the HRA will have these restored by 2017.

The cumulative cost of these restorations to public service pay will amount to approximately 840 million Euros (Sheehan, 2015a). From the Government's standpoint, the Agreement guarantees three more years of political stability. It will extend into the next electoral cycle – with the implication that regardless of what government is elected (or not elected), there will be wage stability for at least 24 months.

All unions on the public service committee of the ICTU have accepted the Agreement, with the exception of the two secondary school teacher unions: the Teachers' Union of Ireland (TUI) and the Association of Secondary Teachers of Ireland (ASTI). Whilst their rejection is not sufficient to block the PSC Committee of the ICTU from ratifying the Agreement, they have taken the unusual step of declaring that they will “*not be bound*” by the PSC's majority decision. This suggests that in a period of economic recovery, some trade unions will be willing to use their relative power to challenge the Government.

The core inference to be drawn from all of this is that there has been a recentralization of collective bargaining in the public sector, which has made it easier for the Government to implement its fiscal adjustment – whilst ensuring industrial stability in the public sector. These Agreements have been a defining characteristic of national policy-making in the post-crisis period of adjustment. Without these collective bargaining institutions, it is highly unlikely that the Government could have implemented economic adjustment. But it is important to note that these collective agreements are qualitatively distinct from the tripartite arrangements of social partnership.

5. Private sector industrial relations and collective bargaining in the post-crisis period

5.1 The minimum wage

Ireland has the highest gross market income inequality in the OECD (measured at a market income Gini coefficient of 0.58). After State intervention and social transfers, this is then reduced to the OECD average (measured at a Gini coefficient of 0.31) (OECD, 2015). The reduction in market income inequality shows both the distributive effect of the social State and the importance of the tax and transfer system in mitigating household inequality (and from a macroeconomic perspective, maintaining a floor below which domestic consumption will fall). But this State role in mitigating market inequality also illustrates the constraining effect of high levels of structural unemployment on fiscal resources.

The weakness of labour earnings at the bottom of the income distribution is in those jobs where collective bargaining is weak. This is what prompted the 2011-15 minority Labour party in government to introduce a series of legislative changes to improve the incomes of the low paid. The first step was to reverse the minimum wage cut. In 2010, as part of the EU/IMF programme, the Government had been required to cut the national minimum wage, which fell from 8.65 to 7.65 Euros. In 2011 the Fine Gael/



Labour Government restored the rate to 8.65 Euros, and in 2015 it decided to increase it to 9.15 Euros – a change that would commence from 1 January 2016, despite IBEC opposition.

5.2 Low pay commission

From a trade union standpoint, legislative increases to the minimum wage are necessary to compensate for weak collective bargaining institutions. Previously, private sector trade unions had been reluctant to support increased State intervention in the market as it might potentially undermine the voluntarist nature of Irish collective bargaining. But in a context where trade union density in the private sector is only 16 per cent, trade unions are increasingly looking to the Government to provide social protection measures. Up until 2008, the national minimum wage was negotiated in the tripartite social partnership agreements. When this collapsed, there was no forum for social dialogue on the question of low pay. As a response, trade unions, particularly the SIPTU, turned to the Labour party in government to push for stronger collective bargaining rights.

In 2015, the Government established a new low pay commission. This was a direct outcome of the appointment of a new ‘Super Junior Minister’ (Labour) within the Department of Jobs, Enterprise and Innovation, which was designed as a concession to the Labour party in government. The unions actively supported the creation of this post given the absence of social partnership. The new Super Minister, Ged Nash, was specifically tasked with delivering two core objectives of the Labour party in the Government (and of the trade union movement): strengthening collective bargaining legislation and protecting the low paid.

The creation of this new low pay commission marked the first time that a new statutory body – with explicit representation from employers and unions – had been created since the collapse of social partnership. However, it was not technically a tripartite institution as it contained eight ‘commissioners’ from across the business, academic, trade union and civic society sphere (Prendergast, 2015). Representatives were selected on the basis of their ‘expertise’ rather than for whom they ‘represented’. The IBEC chose not to participate and disputed the extent to which the body was a ‘technocratic’ agency.

5.3 Sectoral employment orders

The second major State intervention to tackle the problem of low pay was to re-establish the sectoral wage-setting agreements (*Sectoral Employment Orders*, SEOs), which were declared unconstitutional by the High Court in 2013. The new SEOs were designed to replace the previous *Registered Employment Agreements* (REAs), negotiated by employers and unions; they covered several thousand workers in the electrical and construction sectors. An additional 190,000 workers in the cleaning, security, hotel and retail sectors had their pay set by *Registered Employment Orders*, negotiated via *Joint Labour Committees* (JLCs) and registered at the Labour Court. The EU/IMF challenged the effectiveness of these wage-setting institutions and publicly called for their liberalization. But when the High Court declared them unconstitutional in 2013, employers simply abandoned them.



The re-establishment of SEOs was introduced as part of the *Industrial Relations Amendment Act* (2015). Under the new 2015 Act, unions and employers can no longer autonomously negotiate an agreement and seek to have it registered at the Labour Court. Rather, they can request the Labour Court to examine the pay and conditions of employment in a given sector and then ask the Court to make a recommendation. For this to occur, the union requesting an employment review must be “substantially representative” of the sector. If this is the case, and if the union and employer in question represent a sufficiently large number of employees in the sector, then the Labour Court (a voluntarist body) will invite public representations.

Unlike in the past, however, the Labour Court must take into consideration additional economic criteria when making its judgement (Higgins, 2015). These include:

- The potential impact on employment and unemployment
- The terms and conditions of existing national wage agreements
- The impact on the firm’s competitiveness
- The existing rates of pay of a class of similar workers who are employed in the same sector.

The new legislation also attempts to streamline the number of SEOs in existence, whilst restricting the number of additional pay rates that can be added to the minimum rate agreed. It allows for ‘two’ additional rates, which must be justified on the basis of skill and productivity. Employers can also seek exemptions for three to 24 months on the basis of an inability to pay clause. Furthermore, all registered agreements must now be published online to ensure transparency in the process.

The first legally binding orders were signed in 2015 and covered the security and contract cleaning sectors. Employers in these sectors, as well as in the electronics and construction sectors, were not hostile to the re-establishment of the sectoral wage-setting system, as SEOs provide them with *certainty* on pay rates. But this does not apply to employers in the restaurant and hotelier sector, who have refused to recognize the new system. Their argument is that unions only represent 4,000 workers in their sector, whereas overall employment in the sector is above 50,000. On this basis, they argue that trade unions are not representative, and therefore employers should not have to engage with them.

5.4 Collective bargaining legislation

One of the most important features of the industrial relations regime in Ireland is the absence of a legal right to collective bargaining. In 2011, Fine Gael and the Labour party negotiated a Programme for Government, which was committed to changing this. The right to engage in collective bargaining has been a core objective of the trade union movement, particularly since 2007, when the Supreme Court found in favour of Ryanair against the Irish Municipal, Public and Civil Trade Union (IMPACT). The Supreme Court argued that the ‘employee’ association set up by Ryanair constituted a collective body for employees, and therefore equalled collective bargaining. IMPACT argued that it was a kangaroo association and not autonomous from the employer.

In June 2015, the minority Labour party in government introduced new collective bargaining legislation to rectify this situation. The new legislation specified that where it can be demonstrated that collective bargaining does not exist, a group of workers



have a right to be heard at the Labour Court by a trade union. The union can argue, on their behalf, for better pay and conditions vis-à-vis the conditions in similar firms. If the Labour Court finds in the workers' favour, the agreement becomes legally binding on the employer (Sheehan and Prendergast, 2015). It does not require employers to actually *recognize* trade unions for the purpose of collective bargaining.

What the legislation does provide, however, is a mechanism for workers to have their voices heard collectively in the Labour Court (through a trade union). But the trade unions must demonstrate that the pay and conditions of the workers in question are out of sync with the pay and conditions of similar workers in a similar sector. To do this, they must base their claim on strong empirical evidence, and therefore the strength of the claim will be fundamentally contingent upon the quality of information presented in front of the Labour Court (Sheehan and Prendergast, 2015).

It is important to note that the Government's legislation emerged more from the electoral process than from tripartite social dialogue – and from a commitment contained within the Programme for Government. From the State's standpoint, it is now complying with the European Court of Human Rights; and from that of the employers, there is still no legal requirement to recognize trade unions or to engage in collective bargaining. From the perspective of large private sector unions, such as the SIPTU, the legislation is only as strong as the evidence they are able to present in Court.

5.5 Workplace Relations Commission

To recap, the Government has – during the period of economic recovery, and in response to weak collective bargaining for the low paid – actively intervened in industrial relations by creating a new Super Junior Minister dedicated to labour affairs; establishing a new low pay commission; increasing the minimum wage; re-establishing sectoral wage-setting mechanisms for low paid workers; and introducing new collective bargaining legislation. In addition to this, the Government has implemented a new piece of legislation entitled *the Workplace Relations Act 2015*, which is aimed at simplifying and streamlining all the dispute resolution procedures in employment law.

The legislation integrates all the conflict resolution bodies under one State body: the Workplace Relations Commission (WRC). Previously, and depending on the employment dispute in question, workers could take their complaint to the Employment Appeals Tribunal (EAT), the Equality Tribunal, the Labour Relations Commission (LRC) and/or the National Employment Rights Authority (NERA). In turn, if there was an appeal, it went either to the Circuit Court or to the Labour Court. Institutions had been layered on top of each other via successive social partnership agreements (Killalea, 2015).

Under the new system all workplace-related disputes, regardless of what the conflict is about, will be referred directly to an 'adjudication' officer in the newly established WRC. The overriding objective will be to resolve the conflict voluntarily, through mediation, and without recourse to the Courts. If a dispute cannot be settled, or an appeal is made, it will go directly to the Labour Court (which, since the foundation of the State, has been a voluntarist institution – i.e., non-legally binding). However, employers can no longer opt out in the first instance when a private adjudication is sought.



All the social partners have welcomed these new reforms, as they retain the voluntarist nature of Irish industrial relations, whilst reducing legal creep into the collective bargaining process. While some commentators may conclude that these changes reflect a new labour-friendly variant of social partnership, others claim differently – mainly because many of the changes can be traced back to the minority Labour party in government and not to tripartite social dialogue. Further, the changes directly pertain to the low-paid sectors of the economy (where unions are weak) and not to the competitive traded sectors – where, in Ireland, the high-tech United States FDI – led sectors remain largely union free.

6. Conclusions

The major conclusion from this study is that throughout the post-crisis period of adjustment there has been a qualitative shift away from national tripartite social dialogue toward bipartite public sector agreements. Collective bargaining has been recentralized in the public sector and decentralized to the firm level in most of the private sector. This recentralization of industrial relations has enabled the Government to internalize the constraints of the EMU, and to implement its fiscal adjustment. Hence, contrary to the assumptions of the EU/IMF programme, centralized collective bargaining institutions have enabled rather than disabled attempts to restore labour market competitiveness. Moreover, these collective agreements have provided unprecedented political stability for the Government, whilst maintaining open channels of social dialogue between the public service executive committee of the ICTU and senior civil servants of the State.

There have been no supply-side structural reforms of the labour market. On the contrary, there has been an increase in State regulation of the labour market – in response to weak collective bargaining in the low-paid sectors of the economy. This regulation has included: increasing the minimum wage; establishing a low pay commission; re-establishing sectoral wage-setting mechanisms; and introducing new collective bargaining and industrial relations legislation. This legislation is designed to make it easier for trade unions to represent employees in the Labour Court, when an employer refuses to engage in collective bargaining. These reforms were largely achieved through the partisan effect of the minority Labour party in government, and less so through national tripartite social dialogue.

In 2016, the Fine Gael/Labour coalition Government was voted out of office. The Labour party, in particular, lost popularity following the years of austerity – despite introducing labour-friendly industrial relations reforms. For trade unions, particularly the SIPTU, the presence of the Labour party in government meant that they were less willing to revert to strike action and to create political instability. But in a period of economic growth, and with no Labour party in government and/or no structured national forum for social dialogue, trade unions may be more inclined to advance wage and pay claims through more traditional methods: strike action. It is just this threat of instability that may lead to a formal resurrection of national social dialogue.

Hence, in the absence of a formal process of social dialogue in national policy-making, there is an institutional deficit. There is no longer a structured mechanism for the actors to engage in a dialogue on those labour market policies that cut across government departments: employment, taxation, social insurance, education, capital investment



and vocational training. What is more, there is no national wage coordination, with the implication that unions are free to bargain independently of any guidance from the ICTU. The Government's present viewpoint is that national social partnership, as it previously existed, is unlikely to be resurrected. But if political and labour market instability becomes an issue, policy-makers, and union leaders, may be compelled to respond with a new framework to address the new economic realities.



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Appendix

List of persons interviewed for the study

Government

Secretary General, Department of Expenditure and Reform
Minister for Jobs, Innovation and Enterprise
Minister for Labour Affairs
Principal Officer, Department of Jobs, Innovation and Enterprise
Director, National Economic and Social Council (NESC)

Employers' Organizations

Head of IR/HR, Irish Business and Employers' Confederation (IBEC)

Workers' Organizations

General Secretary, Irish Municipal, Public and Civil Trade Union (IMPACT)
General Secretary, Services, Industrial, Professional and Technical Union (SIPTU)
Policy advisor, Irish Congress of Trade Unions (ICTU)

Note: Several interviewees have asked not to be listed.

