STRUCTURAL REFORMS IN THE SHADOW OF THE TROIKA

THE CASE OF IRELAND

Introduction

In October 2005, I addressed a conference as part of a project promoted by the Agenzia Regionale per il Lavoro Regione Autonoma della Sardegna and funded by the European Commission. One of the aims of the project was to promote social dialogue as a "relational instrument" for the social partners involved and as "the driving force in economic and social innovation".

During the course of my presentation I said that, since 1987, six successive national programmes of Social Partnership had been seen by many as "a significant factor in achieving a positive investment climate, near full employment, relatively low inflation, high growth levels, major reductions in the national debt, record low levels of industrial disputes and the creation of a stable labour relations environment".

These programmes were not simply centralised wage agreements. The then current programme - *Sustaining Progress* - set out 10 special initiatives to be progressed during its lifetime focussed on key issues of economic and social policy which had been identified by the parties (which included, in addition to the social partners, various community and voluntary sector groups). These were housing and accommodation; cost and availability of insurance; migration and interculturism; long term unemployment; educational disadvantage; waste management; people with disabilities and older people; alcohol/drug misuse; information and communication technologies; and child poverty.

The programme envisaged that the social partners would engage at senior governmental level on each of the initiatives in a timely and focussed way to assess the relevant policies and arrangements already in place and to identify initiatives likely to contribute to achieving the desired results.

Three years after delivery of that paper, social partnership collapsed. As talks were under way between employers (both private and public) and the trade unions over a new national wage agreement, it became obvious that Ireland was facing "the most serious economic crisis in its history".

The then government decided to guarantee the Irish bank system, covering both customer deposits and the bank's own borrowings , to an estimated total of €440 billion. The Financial Emergency Measures in the Public Interest Acts 2009 were quickly enacted providing for a pension levy and reductions in public sector salaries of between 5 and 15%.

Methodology of Approach

To explore the current state of social dialogue in Ireland, we examined developments with regard to macroeconomic fiscal policies, employment, industrial relations and labour law reforms. Our main focus was on the periods of recession and Ireland's emergence therefrom. We explored the effects of the socio-economic adjustments undertaken in these periods on social dialogue and the involvement of the social partners in designing and implementing labour market/labour law reforms in Ireland. A key element in our approach was the series of in-depth qualitative interviews capturing the experiences of the social partners and others.

The main themes explored in the interviews were:

> How has the social dimension been effected by the adjustments to the economic crisis?
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> To what extent, and in what way, have policies been directed at the objectives of enhancing flexibility and employability, reducing labour market segmentation and maintaining the quality of work and employment protection?
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> What effect, if any, have the reforms had on social dialogue and what role did the social partners play in designing and implementing those reforms?
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> How best to advance the contribution of social dialogue to the EU social model?

The arrival of the Troika

On the 28th November 2010, the then government accepted the terms of an IMF/EU Programme of Financial Support. The first Memorandum of Understanding dated the 1st December 2010 was focussed principally on measures relating to fiscal consolidation and financial sector reforms (such as legal costs). It did contain, however, various measures concerning "structural reforms" relating to the Irish labour market.

When the Troika arrived, the national minimum hourly rate of pay established by the National Minimum Wage Act 2000, was €8.65. In addition there were a range of sectoral wage mechanisms which had been established under the Industrial Relations Act 1946 - Joint Labour Committees and Registered Employment Agreements - which prescribed statutory minimum rates of pay in excess of the national minimum wage. These mechanisms operated in sectors such as agriculture, contract cleaning, catering, retail grocery, security, construction, and electrical contracting.

The IMF/EU Programme of Financial Support sought a commitment by the then government to a reduction in the national minimum wage of 11.7% and the establishment of an independent review of the JLC/REA systems with terms of reference and follow-up actions to be agreed with the European Commission. The concern was expressed by the Troika that there were distortions of wage conditions across certain sectors associated with the presence of sectoral minimum wages in addition to the national minimum wage.

Other than those, no demands were made to impose general reductions in statutory employment rights, reflecting no doubt the lack of any rigidity in the Irish labour market caused thereby.

The Programme also sought to strengthen competition law enforcement to avoid sectoral exemptions. Accordingly, the Memorandum of Understanding required the government to ensure that no further exemptions to the "competition law framework" would be granted unless they were "entirely consistent" with the goals of the Programme and the needs of the economy. Consequently, the commitment given by the previous Government to amend the Competition Act 2002 to allow voice over actors and freelance journalists to exercise their right to engage in collective bargaining was vetoed by the Troika on the basis that, according to "settled EU case law", such self-employed individuals were "undertakings". It should be noted that the current government has recently indicated its support for a Private Members Bill which will enable vulnerable self-employed workers, such as journalists, actors, session musicians and voice-over artists, to engage in collective bargaining. The Minister for Jobs, Enterprise and Innovation has signalled, however, that the Bill, as currently drafted, appears to infringe Article 101 TFEU and that government amendments would be introduced to address the policy objectives of the Bill in a more targeted way consistent with EU competition law.

The reduction in the national minimum hourly rate of pay to €7.65 was mandated by s. 13 of the Financial Emergency Measures in the Public Interest Act 2010, with effect being given to that reduction from the 1st February 2011. The independent review carefully examined all of the suggested disadvantages of the two systems of sectoral wage determination and found none of them to be substantial. Nor did the evidence indicate any substantial difference in the degree of wage rigidity. The authors acknowledged, however, that both systems of sectoral wage determination needed to be reformed to render them fit for purpose and various recommendations were made in that regard.

Following a general election in early 2011, a new government came to power and one of the first steps taken was to reverse the reduction in the national minimum hourly rate of pay. Section 22 of the Social Welfare and Pensions Act 2011 required the restoration of the rate to €8.65 which was achieved, following some discussion with the Troika, with effect from the 1st July 2011. The rate has now been increased to €9.15 with effect from the 1st January 2016.

Before any action could be taken to give effect to the independent review's recommendations on reforming the sectoral wage determination mechanisms, there were two dramatic interventions by the Courts. In decisions delivered in July 2011 and May 2013 the High Court and Supreme Court respectively, on applications by employers, declared as unconstitutional the relevant parts of the Industrial Relations Act 1946 establishing the two sectoral wage determination mechanisms.

Legislation was eventually enacted re-establishing the two systems but with some significant variations . Joint Labour Committees, when formulating their proposals, are now required to take account of a variety of factors, such as the legitimate commercial interests of employers and levels of employment and wages in comparable sectors both in Ireland and within the European Union. The European Commission welcomed the legislation saying that it eliminated "any impediments to job creation/reallocation, while safeguarding basic workers' rights" and was essential "to ensure that the emerging recovery benefits all". The Commission also expected that orders emerging from the revised system would be "leaner and more employer-friendly". The revised Registered Employment Agreement legislation now applies only to enterprise level agreements but empowers the Minister for

Jobs, Enterprise and Innovation to make "sectoral employment orders" regulating the terms and conditions relating to the remuneration, and any sick pay or pension scheme, of workers in a specific sector of the economy. The limited nature of such an order is clearly a factor in the trade unions recently declining an employer request for such an order in the construction industry.

Emerging from the Troika's rule

Accompanying the collapse of Social Partnership in 2009 came a significant disavowal, in political circles and amongst employers, of the Social Partnership model. According to one interviewee, " it lost ideological legitimacy to respond to economic or social issues and therefore was not in a position to implement change". The brand had become "toxic". That is not to say that the social partners have lost their influence as lobby groups but it is acknowledged by all interviewees that, during the recession, there was little room for negotiation or discussion with macro fiscal concerns dominating employment/labour market decision making. Trade union interviewees conceded that their main goal during this period had been to keep their members in employment: "keeping people secure and ensuring that people knew they had a job was critical". Both acknowledged that it was hard to argue for a pay rise with zero percent inflation. Employer interviewees, however, welcomed increased *bilateral* discussions with government departments which enabled them to advise government "on how to create a more pro-business environment" in an efficient manner.

One employer interviewee went so far as to say that the traditional trade union model was outdated: social dialogue, she said, was the "language of yesterday's world". It is noteworthy that neither the previous nor the current government has engaged with the trade unions as a social partner in any structured way. As one trade union interviewee put it: "The trade union movement, as the biggest civil society organisation, should have some mechanisms by which to engage with the government".

Once Ireland left recession, the deficit in social dialogue has undoubtedly led to more conflictual relationships as exemplified by the long running dispute between the SIPTU trade union and TransDev Ireland Ltd - a dispute which was ultimately resolved through the Labour Court in June 2016.

To some extent this conflict has been institutionalised. One legacy of the previous government is the Low Pay Commission - a body established in July 2015. Its principal function is to examine the national minimum hourly rate of pay and to make recommendations as to whether, and if so by how much, that rate should be increased. The Commission consists of eight members, two of which are trade union representatives, and an independent Chairperson.

In its most recent report, published in July 2016, the Commission recommended an increase in the national minimum hourly rate of pay of 1.1% to €9.25. Three members of the Commission, including the two trade union representatives felt unable to endorse a 10 cent increase which they considered to be "completely inadequate" and did not respond to the needs of workers on the minimum wage. The trade union Minority Report went so far as to express the concern that wage competitive arguments predominate over the actual socio-economic effect of low pay on workers and that "parity of esteem" was not applied to those conflicting interests. The Minority Report concluded by warning: "Persistence with this approach would, in our view, be a serious challenge for the future work of the Commission."

Conclusion

As Ireland emerges from recession and enters a period of growth, the authors of the Irish report are satisfied that some form of resurgent social dialogue is required. Our research, however, illustrates that there are radically different perspectives among the social partners. Independent observers, such as the recently retired Director General of the Workplace Relations Commission, suggest that a streamlined and efficient form of social dialogue would be a welcome and effective medium to mitigate industrial relations chaos in which those with the biggest muscle get the biggest settlements and those with little muscle get nothing.

Our conclusion was that a new and inclusive mechanism is required to facilitate constructive social dialogue. Our study suggests that there is an appetite among the social partners for a streamlined and more effective mechanism. The trade union interviewees accepted that a "lot of mistakes" had been made in the previous social partnership model. If there was to be a new dialogue "it should be open and transparent and support trade unions in setting out their vision as to what might make things better for workers' quality of life". The "continuous lobbying of political parties is not the way to go".

It is therefore the suggestion of our report that a new form of social partnership should be sought which is derived through: an analysis of the old form of social partnership; a revision of the inefficiencies in this mechanism; a review of the changes in legislation and industrial relations issues in a post-recession Ireland; and the examination of international examples of best practice in social partnership. This further research would support the design of a new model of social partnership based on a participative co-design including inputs from the government, the trade unions and employer organisations. This would encourage social partner participation in this new mechanism furthering the ultimate goals of achieving relative industrial peace in an effective and fair labour market which functions through inclusive dialogue.

Postscript

In June 2016, the Minister for Public Expenditure and Reform announced that the government had decided to agree the principle of a new structure for dialogue between representatives of employers and trade unions to be known as the Labour Employer Economic Forum (LEEF). The forum would discuss economic and social policies insofar as they affect employment and the workplace. Areas it might consider would be competitiveness, sustainable job creation, labour market supports and widening occupational pension coverage. The aim, he said, "would not be to reach agreement but to develop shared understanding and some level of consensus on key policies affecting employment and the workplace". It was a way for the government to be "inclusive and informed" and to enable it "plot a course for the future". The Minister made it clear, however, that this was not Social Partnership. The forum would not discuss or determine wage levels or wage increases within the public or private sectors and the Workplace Relations Commission/Labour Court would remain the key dispute settling industrial relations institutions.

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