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Chapter 15
Ireland: life after social partnership

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Traditionally, scholars have characterised the Irish system of industrial relations as a 'voluntarist' regime, as employment conditions tend to be set by 'free' collective bargaining between employers and workers' representatives rather than by laws (Von Prondzynski 1998). The role of the state is to provide an adequate framework in which this can happen (Doherty 2014), for instance, by sponsoring various institutions for conflict resolution, such as the Labour Court and the Workplace Relations Commission (WRC). With some exceptions that will be discussed below, the terms set by collective bargaining do not extend beyond the signatory parties.

This voluntarist reading has been called into question as a result of two developments: first, decreasing union density and the weak legislative framework supporting collective bargaining; and second, the increase in individual workers' rights (Doherty 2016). Indeed, although the Irish labour market is characterised by light regulation and Ireland is classified among the OECD countries that offer the lowest employment protection to workers, throughout the 1990s and the 2000s several pieces of legislation that increased individual workers' rights were introduced, partly in response to various European Union (EU) directives.[2] This has led to a shift 'from a bargaining-based employment relations system to a rights-based system' (Doherty 2016: 3).

Irish labour relations have been influenced by the increasing presence of multinational companies (MNCs) that are barely unionised and are predominantly, but not exclusively, of US origin. Irish economic policy places a strong emphasis on foreign direct investment (FDI) flows and attracting multinationals in high-tech services, such as information and communication technology (ICT) and financial services (Brazys and Regan 2017). The presence of foreign multinationals and the role played by lobby groups, such as the American Chamber of Commerce, have significantly influenced the government's unwillingness to legislate for a legal right to collective bargaining. The combination of growing employer preferences for non-unionised firms and structural changes in the economy have thus led to a drop in the rate of union density in the export sectors (Roche 2008). This decline in the rate of union density has not been limited to FDI firms but has been extended more generally to the whole private sector (Walsh 2015, 2016; see Table 15.1).

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1. We wish to thank Tom Gormley, Bill Roche and the participants in the peer-review meetings organised by the editors for their useful comments on previous versions of this chapter. Needless to say, all errors are ours.

2. It should be noted that Irish governments, in cooperation with the United Kingdom, have often tried to stop the introduction of these directives at the EU level (Doherty 2016). After Irish unions threatened to reject the Lisbon Treaty, however, the Irish government did not use the United Kingdom's opt-out from the EU Charter of Fundamental Rights (Béthoux *et al.* 2018, Erne and Blaser 2018).

Table 15.1 **Principal characteristics of collective bargaining in Ireland**

Key features	2000	2016/2017
Actors entitled to collective bargaining	Trade unions, excepted bodies, employers	
Importance of bargaining levels	Main bargaining level: tripartite national agreements (Social Partnership)	Main bargaining level: industry-level bargaining for the public sector, firm-level bargaining for the private sector
Favourability principle/derogation possibilities	No opt-out clauses from REAs and EROs	Opt-out clauses for employers in financial difficulty provided in SEOs and EROs
Collective bargaining coverage (%)	44	40 (2009)
Extension mechanism (or functional equivalent)	No extension, except for REAs and EROs	No extension, except for SEOs and EROs
Trade union density (%)	34 (2005)	24
Employers' association rate (%)	60	60 (2011)

Sources: Central Statistics Office and Appendix A1.

Industrial relations context and principal actors

Despite the FDI-oriented growth model, from 1987 to 2009 Irish industrial relations were dominated by 'social partnership', a series of tripartite national wage agreements negotiated by the Irish government and the peak organisations of unions and employers. This is in clear contrast with the liberal model of industrial relations, in which collective bargaining takes place at the firm level, if it takes place at all. Social partnership did not survive the economic recession. At the end of 2009 the system of national tripartite wage agreements collapsed when the Irish government bypassed the unions and unilaterally introduced severe cuts to public services and public sector wages (McDonough and Dundon 2010; Culpepper and Regan 2014; Geary 2016). That said, the remarkable Irish recovery after the crisis cannot be explained by austerity policies, but rather by the important role played by foreign-owned MNCs that were somehow sheltered from the economic crisis (Kinsella 2016; Brazys and Regan 2017). Since then, national collective bargaining has taken place only in the public sector, whereas in the semi-state[3] and private sectors, bargaining has been decentralised to the company level, albeit with some qualifications that are discussed below.

As union density constantly decreased throughout the social partnership era (see Table 15.1) and the framework for union recognition remained weak, some scholars have considered social partnership to be a 'Faustian bargain' (D'Art and Turner 2011). The wage share as a percentage of GDP diminished consistently in comparison with the 1980s (see Appendix A1.B). Whereas Irish wages grew considerably in nominal terms, they did not follow the enormous GDP growth figures caused by genuine FDI, as well as multinationals' transfer pricing mechanisms. Moreover, after the end of social partnership, the Irish unions also had to face the additional constraints

3. The Irish 'semi-state' sector covers limited companies, such as Iarnród Éireann (Irish Rail) or Dublin Bus, which are (partially) owned by the state but operate formally as private companies.

imposed by the Irish government and the Troika (Geary 2016). Despite the application of what the International Monetary Fund (IMF) defined as one of the most severe austerity programmes in modern times (Whelan 2014), the rate of strikes and public demonstrations in Ireland was comparatively low compared with other countries, such as Greece and Portugal. This can be explained by a number of factors, such as the decrease in union density, ideological tradition and unfavourable legislation.

The end of the social partnership era also brought changes to the structures of workers' and employers' organisations. The Irish Business and Employers' Confederation (IBEC) redirected its activities towards lobbying and is now in direct competition with the American Chamber of Commerce for membership (Regan 2017). During the crisis, fragmentation emerged across unions, weakening the Irish Congress of Trade Unions (ICTU). In response, the unions attempted to pursue institutional renewal (Geary 2016; Hickland and Dundon 2016) and proposed to rationalise the number of ICTU affiliates, on the example set by Dutch unions (Hickland and Dundon 2016), reducing the number from 48 to six larger sectoral organisations. This has yet to materialise, but three unions in the public sector, the Irish Municipal, Public and Civil Trade Union (IMPACT), the Public Service Executive Union (PSEU) and the Civil and Public Services Union (CPSU), have recently merged, giving birth to a larger union Fórsa ('strength/force of the people') of 85,000 members (Sheehan 2017a). It is also worth noting that in the private sector, despite the high number of unions, four organisations, Mandate; Services, Industrial, Professional and Technical Union (SIPTU); the Technical Engineering and Electrical Union (TEEU); and Unite, organise half of all union members (Roche and Gormley 2017b).

In addition, the ICTU and its affiliates created the Nevin Economic Research Institute (NERI) to provide an alternative to mainstream economic policies (Geary 2016; Hickland and Dundon 2016). In an attempt to halt the decline in union density, some unions have tried to follow the example of workplace activism from the United States and set up organising departments (Geary 2016; Hickland and Dundon 2016). In addition to workplace organisation, the largest Irish union, SIPTU, has tried with some success to develop social movement campaigns to raise awareness of poor working conditions in low-paid industries, such as hospitality and cleaning (Murphy and Turner 2016; Geary and Gamwell 2017). Similar campaigns have been conducted in retail by Mandate.

Extent of bargaining

The extent of bargaining refers to the proportion of employees covered by collective bargaining. In the case of Ireland data on coverage of collective bargaining from Appendix A1.A are too sparse to give a precise trend. Collective bargaining coverage was estimated at 44 per cent in 2000, then decreased to approximately 42 per cent in 2005 and 40 per cent in 2009. Eurofound (2015) reports that in 2013, 46 per cent of employees were covered by collective bargaining, according to data provided by the European Company Survey. Eurofound also reports that the terms of collective agreements remain valid after their expiry until a new agreement is signed. This is because collectively agreed terms and conditions are part of each individual employment contract and, legally, individual contracts can be terminated but not changed unilaterally.

Given the characteristics mentioned above, particularly the role played by the voluntarist tradition of wage setting, the extent of collective bargaining in Ireland is very much shaped by the extent and level of trade union density, which has increasingly become concentrated in the public and non-traded sectors of the economy. Hence, density matters more in Ireland compared with some other western European countries. This structure of collective bargaining impacts upon the strategies of the various actors as they determine the power resources available to trade unions (Regan 2012).

Union density in Ireland diminished consistently throughout the 1990s and 2000s. This is a trend observed more generally across Europe (see Chapter 1), but in Ireland the decline appears to be even greater. In 1990 approximately 50 per cent of employees were union members. This had dropped to 31 per cent at the beginning of the crisis (Appendix A1.H). Using the data provided by the Central Statistics Office (CSO 2017a), the decline in union density appears to have continued even during the crisis, reaching the historically low point of 24 per cent at the beginning of the second semester of 2016.[4] Although these data are very significant, the aggregate numbers hide a growing 'dualisation' between sectors. The first substantial difference is between the public and private sectors: union density is significantly higher in the former, in which it stood at 62.9 per cent in 2014, while in the private sector it declined to 16.4 per cent in the same year (Walsh 2015). As a result, public sector workers[5] in 2014 represented 55 per cent of the total unionised workforce, up from 40 per cent in 2004.

We can make further industrial distinctions, although with some limitations due to data availability. The data elaborated by Walsh and Strobl (2009) show that in 2006 union density was relatively high in construction and manufacturing, with the exception of non-unionised ICT, compared with the service industries, such as hospitality and retail, except for unionised retail banking. The data from the CSO show that 10 years later, in 2016, the aggregate industry rate had dropped more quickly, declining from 30 per cent to 17 per cent between 2006 and 2016. Unions seem to have performed slightly better in services, where density was 34 per cent in 2006 and fell to 27 per cent in 2016, and this is likely to be related to the performance in the public sector. This significant drop in manufacturing is at least partly linked to the increase in employers' union avoidance practices, especially on the part of multinationals, which have increased the use of so-called 'double breasting', that is, adding new non-unionised plants to an older unionised establishment (Gunnigle *et al* . 2009).

A country can have a low rate of union density and high collective bargaining coverage if legislation provides for adequate extension mechanisms. In the Irish case, coverage is high in the public and semi-state sectors. In the public sector, wage agreements are negotiated between the government and the public service executive of ICTU and apply to the entire national public sector workforce. Until 2009 in most of the Irish

4. The reason for this discrepancy arises from using two different sources of data. For a detailed discussion of the issues related to measuring union density in Ireland see Roche (2008) and Walsh (2015).

5. Walsh's (2015) definition of the public sector includes the following industries: public administration, defence, mandatory social security, health and education. The latter two categories also include the workers of private firms in those industries, but according to the author the trends in density are confirmed even excluding these 'mixed' categories.

private sector there were no extension mechanisms, with two exceptions: registered employment agreements (REAs) and employment regulation orders (EROs). EROs set the wages and working conditions for low paid services, such as catering or cleaning services, while REAs covered mostly the construction and electrical contracting. A report estimated that in 2009 approximately 15 per cent of the employees in the private sector were covered by EROs, while 8 per cent were covered by REAs (Duffy and Walsh 2011).

Although these institutions have been in place since 1946, throughout the 2000s a diverse group of employers demonstrated a clear preference for liberalisation. In 2007, the Irish Hotel Association initiated a legal challenge against the ERO in their industry. The rationale was that the joint labour committee (JLC), the tripartite body in charge of making a recommendation to set an ERO at the Labour Court, was considered to be unlawfully substituting the parliament (the Oireachtas) in the law-making process. Despite this legal challenge, employers and SIPTU reached agreement before going to court and the case was withdrawn (O'Sullivan and Royle 2014). In 2009, a group of fast food businesses, including foreign MNCs such as McDonald's, Subway and Burger King, launched a legal challenge against the EROs using the same rationale as the employers of the hotel federation (O'Brien 2009). In 2011 the High Court upheld the legal challenge, with the effect that the EROs were declared unconstitutional. Following the example of the fast food employers, a group of electrical industry contractors proceeded to challenge the REAs. After the High Court refused to consider the case, the employers appealed to the Supreme Court, which in 2013, applying the same reasoning as the High Court in the case of EROs, ruled REAs unconstitutional. It is worth noting that this ruling occurred at the same time that the Troika were also questioning these wage setting institutions (Maccarrone 2017).

Subsequently, the Fine Gael–Labour government introduced two legislative changes: the Industrial Relations Acts 2012 and 2015. The Industrial Relations Act 2012 reintroduced the EROs, although reducing the number of industries covered and the scope of the conditions set by these institutions, as well as introducing opt-out clauses for employers in financial difficulty. In addition, when setting the EROs, joint labour committees were now asked to consider competitiveness factors such as wage standards in similar industries within the country and the EU more broadly, as well as the possible impact of labour costs on the employment level (Kerr 2014).

The Industrial Relations Act 2015 introduced new Sectoral Employment Orders (SEOs) to substitute the now unconstitutional industrial REAs. The scope of SEOs was restricted compared with that of the REAs, and as in the case of EROs the Act provided opt-out clauses to employers in financial difficulties. Unlike previously, before making the recommendation to institute an SEO, the Labour Court now must take into account several factors, such as the SEO's potential impact on levels of employment in the identified industry, as well as wage competitiveness in the industry, but, in contrast to the 2012 Act, not with regard to other EU countries. The Labour Court must also take into account remuneration in other industries in which workers of the same industrial occupation are employed. Hence, 'considering an SEO in electrical contracting, the Court would have to look at remuneration of electricians in other sectors' (Higgins

2015). At the time of writing, only two new EROs are in place, in the security and contract cleaning industries, but they are not yet found in other large industries where they previously existed, such as retail, hotels and restaurants,[6] while a SEO for the construction industry was finally signed in 2017. Given the reduction in the total number of industries covered by binding wage setting mechanisms and the contemporaneous decrease in union density, we might conclude therefore that coverage has diminished since the crisis.

The reform of industrial wage setting mechanisms was part of the Troika's, comprising the European Commission, the European Central Bank and the IMF, list of suggested supply-side structural reforms during the bailout period. In the first Memorandum of Understanding (MoU) the establishment of a commission for the review of functioning mechanisms was agreed. Through the following MoUs, and the quarterly reviews of the Irish programme, the international institutions closely monitored the reform process (Maccarrone 2017). After two court judgments in 2011 and 2013, the Troika suggested specific indications to be followed throughout the reform process (*ibid*.). For instance, the Troika seemed particularly interested in the provision of opt-out clauses for employers in financial difficulties (Hickland and Dundon 2016), similar to what was asked of other countries under financial conditionalities, such as Portugal and Spain (Marginson and Welz 2015).

The national minimum wage was another policy that the Troika wanted to reform. Statutory minimum wages were introduced in Irish legislation in 2000 within the framework of social partnership in response to a campaign against low-pay work conducted by unions and NGOs (Erne 2006). When discussing the national minimum wage, it was noted that its introduction would have been beneficial for low-paid workers for whom the ERO–REA system did not offer enough protection (Nolan 1993). Initially set at €5.59 per hour, corresponding to 55 per cent of the median industrial wage, the national minimum wage has subsequently been increased several times, usually following negotiations between the social partners as part of the social partnership agreements, or after unilateral government intervention following a recommendation of the Labour Court (Erne 2006).

In the first MoU in 2010, the Troika imposed a reduction of the national minimum wage, claiming that this would boost employment growth.[7] This was later reversed by the new coalition government in 2011 following negotiations with the Troika. The government subsequently raised the national minimum wage, and in January 2018 it was set at €9.55 per hour. In 2015, with the National Minimum Wage Act, the government also created the Low Pay Commission, with representatives of individual employers

6. Moreover, a group of over 30 employers belonging to security sector recently announced their decision to launch a legal challenge against the new ERO in their industry (see Higgins 2017b).

7. It should be noted that the literature on the potential negative effect of minimum wages on employment is, at best, inconclusive. For a review of the debate on the topic see Duffy and Walsh (2011). In the case of Ireland, previous studies have found no negative employment effect related to the introduction of a minimum wage (Erne 2006).

and trade unions,[8] aimed at generating recommendations on the level of the national minimum wage to the Minister for Jobs.

A new question added to the Quarterly National Household Survey (QNHS) in 2016 made it possible to estimate that 'over the three quarters between Q2 and Q4 2016, an average of 10.1 per cent of employees for whom earnings data was reported, earned the National Minimum Wage (NMW) or less' (CSO 2017). A recently published ETUC policy brief suggests that Ireland is among the 10 EU Member States in which the minimum wage is lower than 50 per cent of the national median wage (ETUC 2017).

To conclude, union density is far more important in Ireland than in many other countries to sustain the coverage of collective bargaining (Regan 2012). Given that union presence is increasingly concentrated in certain sectors of the economy, particularly in the public and the semi-state sector, construction and retail banking, while declining in other industries of the economy, this is likely to constitute a political challenge to the unions' capacity to extend the benefits of collective agreements to the largest possible share of the workforce.

Security of bargaining

Security of bargaining refers to the factors that determine the unions' bargaining role. As should be clear at this point, Irish legislation is unfavourable to the development of collective bargaining. Although the Irish Constitution recognises the right to form an association, including a trade union, Irish legislation is an exception among European countries in that it does not contain a legal right to collective bargaining (Doherty 2016). Although consistent with the voluntarist approach (Doherty 2009), this distinguishes Ireland from other neoliberal economies, such as the United States, which does have such a right in the legislation (Cullinane and Dobbins 2014). This reinforces the conclusion of the previous section about the importance of trade union density in securing the development of collective bargaining. Where unions are strong, collective bargaining is protected, while where they are weak, there is little security of bargaining, given the absence of legal extensions and legal recognition. This section charts the various attempts to address these issues, which were also impacted by a notorious decision of the Supreme Court in 2007 in a case involving the low-cost airline company Ryanair.

At the beginning of the 2000s, the Irish government and the social partners negotiated the Industrial Relations Acts 2001 and 2004, as part of the social partnership agreements, and created a 'right to bargain'. The idea behind the 'right to bargain' was to provide unions with the opportunity to obtain a legally binding determination from the Labour Court regarding pay, conditions of employment and procedures for conflict resolution in firms in which collective bargaining did not take place (Cullinane and Dobbins 2014; Doherty 2016). For unions, the fact that the determinations issued by the Labour Court

8. The body is technically not purely tripartite, however, as it also includes representatives from academia and civil society and because the rationale used for selecting representatives has been their expertise and not whom they represented (Regan 2017).

would have been legally binding, in contrast to what had been prescribed by previous legislation concerning union recognition,[9] should have constituted an incentive for employers to allow collective bargaining to take place, although this seldom materialised (Cullinane and Dobbins 2014). The legislation of 2001 was informed by the work of a tripartite working group, the 'High-level Group on Trade Union Recognition', which also involved representatives of the Industrial Development Authority (IDA), the Irish government agency responsible for attracting FDI. It is well documented that the key obstacle to introducing a legal right to bargaining is the perception among senior policymakers that it would negatively affect the FDI growth model (D'Art and Turner 2005). Throughout this period, all governing centre-right parties agreed with the IDA and actively resisted trade union pressure.

Assessments of the effectiveness of the Industrial Relations Acts of 2001 and 2004 are inconclusive. D'Art and Turner (2003, 2005, 2011) have argued that the laws did little to increase union presence in the workplace and, if anything, legitimised the status of non-union firms. Cullinane and Dobbins (2014) have a more benign assessment, arguing that the legislation provided for an increase in pay and working conditions for workers in non-unionised firms, although the numbers remained modest. Indeed, up to 2007 the Labour Court heard 103 cases, involving 89 different employers (Doherty 2009). Three-quarters of the firms involved were indigenous Irish firms and most of the cases involved workers from low-paid industries, such as retail and security (*ibid.*).

There were some exceptions, however, and the Ryanair case was one of them. After a failed attempt by Ryanair pilots to negotiate collectively with the company, well known for its anti-union stance (see O'Sullivan and Gunnigle 2009), the pilots' branch of the trade union IMPACT brought a case to the Labour Court, which issued a determination against the company. Ryanair responded that the Labour Court had no jurisdiction to evaluate the case under the existing Industrial Relations Act because company-level collective bargaining was taking place through employee representative committees (O'Sullivan and Gunnigle 2009). IMPACT's counter-argument, which was accepted by the Labour Court and the High Court, was that such committees do not constitute collective bargaining, because 'nominees are chosen by management, there are no elections, a person can be a member for only two consecutive years thereby ensuring no stability, and committees do not set their own rules' (*ibid.*: 260). After the High Court's ruling, Ryanair appealed to the Supreme Court, which upheld its case. The ruling of the Supreme Court meant that a firm could avoid the procedures set by the Industrial Relations Acts of 2001 and 2004, if it had established an 'independent' body composed of employees for bargaining purposes, even without the involvement of trade unions.

The impact of the Supreme Court ruling in favour of Ryanair meant that only four cases were heard under the Industrial Relations Acts of 2001 and 2004 between 2008 and 2012 (Cullinane and Dobbins 2014), making the law practically ineffective. It took a decade before a new law was introduced dealing directly with collective bargaining. It

9. Throughout the 1980s and the 1990s, the Labour Court often found in favour of union recognition under the previous Industrial Relations Act but given that the orders were not legally binding employers were inclined not to respect them (Cullinane and Dobbins 2014).

was eventually instituted in 2015 under the influence of the minority Labour Party in government, which had committed itself to such legislation in its election manifesto. This was inserted after an intense lobbying activity on the part of the trade unions, which also filed a case at the International Labour Organization.

The new legislation, inserted in the Industrial Relations Act 2015, has consequences for both unions' and employers' strategies. First, when comparing pay and working conditions with other firms in the same industry, the Labour Court must consider non-unionised firms and similar firms outside Ireland. This will make it harder for trade unions to sustain their claims (Sheehan 2015). Second, the new legislation states that the number of workers must not be insignificant with regard to the total number of workers employed (Doherty 2016). On the other hand, and crucially after the Ryanair decision, the law makes it harder for employers to argue that they are already engaging in collective bargaining with a non-union body, by providing stricter criteria for assessing the independence of such 'excepted' bodies.

In the first case under the new law, involving the food company Freshways, the Labour Court backed SIPTU's claim for a pay rise. Interestingly, there was no need for the Court to issue a binding recommendation, as the union and the firm reached a voluntary collective agreement. Hence the union obtained both improved conditions and formal recognition (Sheehan 2017b). More recently, a group of left-wing opposition parties has backed a further amendment to the Industrial Relations Act 2015 to allow a 'right of access' to workplaces for trade unionists. According to Prendergast 'the Bill sought to amend the 2015 Industrial Relations Act to provide a statutory basis (2017) allowing trade unions access to their members in the workplace for purposes related to the employment of their members, for purposes related to the union's business or both'. Both the ruling party centre-right Fine Gael and the main opposition centre-right party, Fianna Fáil, however, refused to support the Bill, making its future unclear (*ibid*.).

To conclude, when compared with other countries, security of bargaining in Ireland is low. The voluntarist nature of Irish industrial relations, combined with the liberal character of its economy and the relevance of FDI, have resulted in a framework in which there is no statutory recognition of trade unions. It should also be added that, in contrast to countries adopting the so-called Ghent system, there is no relationship between the social protection regime and collective bargaining. The legislation introduced to tackle the issue of union recognition at the beginning of the 2000s led to some, albeit limited, results which were abruptly interrupted by the Supreme Court judgment in 2007. The new legislation introduced in 2015 could lead to some improvement in this respect, but the number of cases under the new legislation is still too low to give a definite answer. The difficulties of the Bill in trying to provide trade unions with a 'right of access' in the workplace show that the issues are far from being resolved.

Level of bargaining

From 1987 to 2009, the landscape of Irish industrial relations was dominated by social partnership, a series of centralised wage bargaining agreements between the

government and peak labour and employers' organisations (see Table 15.2).[10] From the first agreement in 1987, the Programme for National Recovery, the social partners negotiated seven pacts through the Prime Minister's Office (Regan 2016). This process collapsed in 2009 during the economic crisis, which shifted the locus of policymaking power to the Department of Finance. These agreements were not only meant to regulate wage growth, but embraced a variety of public policy areas, which gradually increased over time (Regan 2016). Such was the degree of centralisation of pay bargaining when compared with other social pacts, that some industrial relations scholars have defined the social partnership era as one of 'organised centralisation' (Roche 2007: 402). As a first response to the crisis, the social partners renegotiated 'Towards 2016', agreeing on pay pauses in both the public and the private sectors (Regan 2012). At the end of 2009, however, when the government unilaterally imposed a second pay cut in the amount of almost €1.3 billion, the social partnership process collapsed (McDonough and Dundon 2010; Culpepper and Regan 2014). Since then, one can distinguish two forms of collective bargaining involving the public and the private sector.

Table 15.2 **The seven social partnership agreements**

Name of the agreement	Period covered
Programme for National Recovery (PNR)	1987–1990
Programme for Economic and Social Progress (PESP)	1991–1994
Programme for Competitiveness and Work (PCW)	1994–1996
Partnership 2000 (P2000)	1997–2000
Programme for Prosperity and Fairness (PPF)	2000–2003
Sustaining Progress	2003–2005
Towards 2016	2006–2016*

Note: * terminated in 2009. Source: Authors' own compilation.

In the public sector, after having imposed the two unilateral wage cuts in 2008 and 2009, collective bargaining re-emerged, as reflected in the Croke Park (2010) and Haddington Road (2013) agreements. These concessionary agreements were negotiated through the Department of Public Expenditure and Reform with the public service committee of ICTU. This arrangement constituted a core part of the government's austerity adjustment. At the core these agreements were a combination of pay cuts and pay freezes, productivity increases, staff number cuts and retention of industrial peace in return for no compulsory redundancies for permanent staff. With the beginning of the recovery, the Lansdowne Road agreement (2015) and the Public Service Stability agreement (2018) provided for an initial phased restoration of pay.

The institutional heritage of social partnership played a role in facilitating the emergence of these centralised agreements (Regan 2017). Having said that, some qualifications are

10. Parties to these agreements included some farmers' associations as well as, from the second agreement onward, the Construction Federation Industry (which is outside IBEC). From the fourth agreement ('Partnership 2000') NGOs and civil society organisations were also involved as a 'social pillar' to respond to criticisms of the lack of social policies in social partnership agreements (see O'Connor 2011).

needed concerning the terms under which the negotiations happened. Although the Croke Park agreement had excluded further wage cuts over the period 2010–2014, in 2013 the government proposed to renegotiate the agreement, seeking additional cuts of €1 billion (Erne 2013). Even though the leadership of the two largest unions in the public sector, SIPTU and IMPACT, campaigned for a 'yes' vote, most rank-and-file members of SIPTU rejected the agreement (Erne 2013). The vote of SIPTU members, combined with that of members of other unions, led to a rejection of the agreement.

The government then proposed a new agreement, 'Haddington Road', while at the same time introducing a new Financial Emergency Measures in the Public Interest Act (FEMPI), which provided that 'members of unions that refuse to sign up to the Haddington Road Agreement will simply have their pay cut, and terms and conditions of employment altered, by legislation' (Doherty 2014: 17). At the same time, the government started a series of separate bilateral negotiations on the new agreement with each union (Sheehan 2013). Using bilateral bargaining and the threat of unilateral legislation, the government was eventually able to secure an agreement, which was voted on and approved by the majority of union members, including those from most of the unions that originally voted 'no' to 'Croke Park II' (Szabó 2016).[11]

In the private sector, those industries covered by industrial wage setting mechanisms underwent some changes after the two court judgments that struck down EROs and REAs. In security and cleaning employers and unions signed new sectoral agreements. Employers were keen to maintain industrial wage setting mechanisms and thus avoid social dumping, given that these industries are heavily based on competitive public tenders (Higgins 2017). To reinforce our previous point about the importance of trade union density for collective bargaining in Ireland, these are also industries in which union density is stronger vis-à-vis other industries covered by EROs.[12] Indeed, the signing of a new agreement for cleaning was reached after a successful union campaign (Whitston 2014; Geary and Gamwell 2017). Also in construction, in which large firms favour industry-wide agreements, a new SEO was agreed in 2017 to replace the old REA. In important industries such as hotels and restaurants industrial agreements have not been replaced, however, because of the employers' hostility.

In the rest of semi-state and private sector, bargaining has been decentralised to the firm level after the fall of social partnership. Recent empirical work shows that this was not a case of 'disorganised decentralisation' (Roche and Gormley 2017a, 2017b). Immediately after the demise of social partnership, ICTU and IBEC signed a protocol for the private sector 'that prioritised job retention, competitiveness and orderly dispute resolution' (Roche and Gormley 2017b: 6). Analysing almost 600 pay deals signed between 2011 and 2016 in manufacturing, retail and financial services Roche and Gormley (2017a, 2017b) demonstrated that a form of coordinated pattern bargaining emerged after the first years of 'concession bargaining' at the beginning of the crisis. The authors show that from 2011 SIPTU's manufacturing division started to target employers in

11. Among the exceptions is the Association of Secondary School Teachers in Ireland (ASTI), which also rejected the recent extension of the Lansdowne Road agreement.

12. Authors' conversation with a SIPTU officer, June 2017.

manufacturing that were relatively sheltered from the effect of the crisis, pursuing a strategy of wage increases of approximately 2 per cent a year. The rationale behind this norm was that 2 per cent was an affordable rate; it respected the European Central Bank's (ECB) inflation target and was consistent with the trends in similar industries in other EU countries, particularly the German chemical industry (Hickland and Dundon 2016; Roche and Gormley 2017a).

SIPTU's norm of 2 per cent has since been followed by other unions, such as Mandate, TEEU, the Financial Service Union (FSU) and Unite, extending over more firms and industriies, outside manufacturing. The 2 per cent norm also became a benchmark in non-union firms and has since been 'institutionalised' in various Labour Court recommendations. In 2016, after a series of industrial disputes in transport that challenged the norm, ICTU announced a new 4 per cent target for 2017 (Roche and Gormley 2017a). Roche and Gormley's analysis also points to some positive effects for unions outside the social partnership framework, in terms of increased involvement of shop stewards and local union members. This leads us to the next section on the depth of bargaining.

Depth of bargaining

Depth of bargaining refers to the extent of involvement of local employee representatives in the formulation of claims and the implementation of agreements. The social partnership era was a clear case of centralised wage bargaining, with limited involvement of local workplace unions and managers. The negotiations took place among the leadership of peak-level organisations of employers and labour, together with government officials. Although one might expect that corporatist agreements would also be able to facilitate the emergence of workplace organisations, such as works councils, the Irish social pacts were more of an attempt to compensate for their absence. Attempts to develop workplace partnership agreements occurred in the mid-1990s, when the fourth social partnership agreement, Partnership 2000, provided a framework to incentivise employers and unions to engage in such workplace arrangement (Roche and Teague 2014). The framework was remarkably loose for the private sector, leaving firms 'complete autonomy to pursue corporate strategies of their choosing at the company level' (Teague and Donaghey 2009: 67). The number of firms that adopted workplace partnership agreements, however, remained low (Roche and Teague 2014). In the public sector, the use of local partnership agreements was more widespread, although its outcomes for employees have been contested. A study of workplace partnership in a major local council developed by Doherty and Erne (2010) showed that local partnership was used more to introduce market-based 'modernising' reforms rather than to reach shared decisions. With the end of social partnership both private and public local partnership lost importance. Furthermore, despite the 2002 EU Employee Information and Consultation Directive, the impact of the growing statutory rights for employee voice remained very limited in Ireland, notably due to regulatory loopholes that enabled employers to devise their own 'counterbalancing forms of (pseudo) consultation' (Dundon *et al.* 2006: 492).

On the other hand, as described in the previous section, the effect of the end of national wage bargaining and the decentralisation of bargaining at the firm level is increased involvement of local employee representatives in the private sector in the formulation of claims and the implementation of agreements. In light of this, many union leaders, and activists, welcome the end of social partnership, as it potentially ushers in a new era of workplace activism. The implication, however, is that ICTU, as a confederation, has a reduced role to play in national industrial relations. Moreover, it should be noted that this renewed involvement of local members has not (yet) been translated into an increase in union density in the private sector. Rather it is a case of unions embedding their local strategies into the firms and industries where they continue to be strong.

Employers also welcomed the end of social partnership and the decentralisation of collective bargaining in the private sector because, in their view, this allows for wages to grow in line with productivity (Roche and Gormley 2017a). After the end of social partnership, IBEC downsized its industrial relations unit, although it continues to assist individual employers in collective bargaining disputes. In unionised industries the emergence of pattern bargaining was supported by the employers, as it 'afforded them considerable flexibility to seek productivity concessions and to conclude deals of varying duration' (Roche and Gormley 2017a: 19). In non-unionised firms, at which collective bargaining does not take place, conditions are mostly set by local HR in a market-driven process. In industries affected by the reform of extension mechanisms, employers' preferences have varied considerably: while in hotels and catering they have opposed the return of industrial wage-setting to cut labour costs, in industries strongly characterised by tendering for contracts, such as construction and cleaning, employers favour them as they avoid a race to the bottom.

As emerged from the discussion on the Croke Park II agreement (see above), Irish public sector unions are organised in such a way that rank-and-file members may be able to change decisions agreed by leaders at national level through votes on public sector agreements. Similarly, local members have a certain autonomy vis-à-vis the central level as regards strike action. Although union executives have the right to not support an industrial action balloted by local members,[13] usually this does not happen. A notable example is the strike involving the tram drivers of Transdev, a subsidiary of the French multinational Veolia, which manages the 'Luas' tram service in Dublin. Although tensions emerged between local shop stewards and SIPTU's officials (Sheehan 2016), the Luas strike was nonetheless supported by the union's Executive Council.

Degree of control of collective agreements

The degree of control of collective bargaining refers to the extent to which the actual terms and conditions of employment correspond to the terms and conditions originally agreed by collective bargaining.

13. See, for instance, the Rules of SIPTU, p. 41: 'The National Executive Council shall have full discretion in relation to organising, participating in, sanctioning or supporting a strike or other industrial action notwithstanding that the majority of those voting in the ballot (…) favour such strike or other industrial action.'

One of the features of centralised wage bargaining in Ireland during the 1970s was the increased level of upward pay drift at firm level (Roche 2007). Conversely, during the social partnership era, the degree of control exercised by national agreements was high, with limited scope for workplace pay bargaining and limited pay drift (*ibid.*). If anything, the degree of control increased throughout the various social partnership agreements, after the first attempts at decentralisation at the firm level in the 1990s for the public and private sector led to deviations from the trends prescribed at national level (*ibid.*). As described in the previous section, with the end of social partnership, collective bargaining has remained centralised at the national level for the public sector and has been decentralised to the firm level for the private sector, with few exceptions. The analysis of Roche and Gormley (2017a) suggests that in the latter a pattern of bargaining around a 2 per cent norm has emerged since 2011, and that the norm was respected until 2017, although wage drift might now emerge as a result of the accelerated recovery.

Because collective agreements in Ireland are not legally binding, except for the REAs, EROs and SEOs discussed above, possible breaches of the terms set by collective bargaining are usually solved by the parties through negotiation, which can also involve industrial action. The state provides a system of conflict resolution for collective disputes through the Labour Court and the Workplace Relations Commission (WRC). The WRC was established in 2015 and subsumed the functions of a number of conflict resolution bodies in an attempt to simplify the state's industrial relations machinery (Regan 2017).

It is worth mentioning how the labour inspectorate, the National Employment Rights Authority (NERA), now embedded in the WRC, came to be established. After the introduction of the minimum wage in 2000, the unions reported several cases of employers breaching the legislation (Golden 2016). In 2005, after two particularly serious cases involving the companies GAMA and Irish Ferries, the Irish government reacted by creating the NERA and agreed with the social partners to increase the number of labour inspectors.[14] Among its competences, NERA oversaw the compliance of employers also with the terms set by the industrial wage setting mechanisms, EROs and REAs. This improved enforcement of the regulation because compliance with the terms set by joint labour committees was arguably a major trigger for the constitutional challenge to EROs (O'Sullivan and Royle 2014). Indeed, in 2009 79 per cent of employers inspected in catering were found to be non-compliant with joint labour committee terms (*ibid.*). Such issues are yet to be solved, as 37 per cent of employers inspected were found to be in breach of employment legislation to some extent in 2016 (WRC 2016: 25). Moreover, in 2015 a labour inspector logged claims under the Protected Disclosures Act alleging 'systematic favouritism to employers in the WRC'. These allegations, however, were not substantiated by the former IBEC director, who was chosen by the Department of Business, Enterprise and Innovation to review them (Smith 2019).

14. The Turkish company GAMA, which had been awarded several public tenders, was found to be paying its Turkish employee a wage well below the national minimum wage. In the case of Irish Ferries, the company announced its intention to substitute its Irish workers with eastern European workers, who would have been paid a wage of 3.60€ per hour. The plan was dismissed only after a huge demonstration and the unions' refusal to take part in negotiations on the new social partnership agreement until the issue was solved.

Scope of agreements

One of the defining characteristics of social partnership was the number of topics included in these agreements, which extended well beyond wage setting to cover broad areas of economic and social policy. The policies evolved over time, and generally reflected the electoral and political interests of the government of the day. Whereas the first pacts were concerned with the management of the economic crisis during the 1980s, and with meeting the criteria to join the Economic and Monetary Union, the following pacts were a response to new problems associated with the strong economic growth of the late 1990s, ranging from improving the skills of the workforce to rising housing prices. Crucially, all the agreements, apart from Sustaining Progress (2003–2005), involved a quid pro quo, including income tax breaks, increases in social spending and, in particular, increased capital expenditure (Regan 2012; Roche 2007). While these tax reductions were not specified in the pay component of the social pacts in the 2000s, they 'lubricated' the deal and enabled union leaders to sell the agreements to their members.

With the end of social partnership, the government only negotiates as an employer with public sector unions, concerning pay, pension and workplace reforms (Regan 2016). Even the more recent agreements focused only on restoring pay levels. As for the private sector, Hickland and Dundon (2016) find a reduction in the scope of collective bargaining agreements within manufacturing, which are often limited to concessionary bargaining. The analysis of Roche and Gormley (2017a) of the wider private sector contrasts with this view. While acknowledging the essential concessionary role of collective bargaining between 2008 and 2010, the authors find that since 2011 almost one-third of agreements signed have involved non-pay benefits of various kinds, such as reduced hours/extra leave or pension-related payments. Finally, the process of reforming the only industrial wage-setting mechanisms in Irish legislation, EROs and REAs, has also led a reduction of their scope. After the Industrial Relations Act 2012, Joint Labour Committees can no longer set working conditions already provided by general legislation, such as rest breaks and redundancy payments (Whitston 2014). The new SEOs apply only to remuneration, sick pay schemes or pension schemes (Kerr 2015: 311), while the REAs could include various provisions, such as health insurance, production procedures, disciplinary procedures and working hours.

Conclusions

What conclusions can be drawn from the trajectory of collective bargaining in Ireland over the past 20 years or so? The most important institutional change brought by the recession is undoubtedly the end of social partnership, which had dominated the Irish industrial relations scene since 1987. The picture is now one in which national bipartite agreements take place, but only in the public sector and with significantly less scope than in the past (Regan 2017). In addition, the government has shown a willingness to impose unilateral legislation when bipartite agreements have been rejected by a majority of union members (Doherty 2016). In the unionised private sector, bargaining has been decentralised to the firm level, but until 2017 collective agreements could

perhaps be described as a variant of 'pattern bargaining', due to the coordinated pay strategy of some of the larger Irish unions (Roche and Gormley 2017a). Despite relatively strong economic growth, a return to centralised tripartite bargaining in the form of the social partnership seems unlikely, as the ruling centre-right Fine Gael government has consistently ruled it out, and IBEC have reduced the industrial relations function of their organisation. Given the 'Faustian' character of social partnership agreements (D'Art and Turner 2011) and the potential for increased members' involvement outside centralised bargaining, even for the unions a return to social partnership may not be the most favourable option.

Despite the voluntarist tradition of Irish industrial relations, the role played by state regulation throughout the past fifteen years has been significant. First, several pieces of legislation aimed at increasing individual workers' rights have been introduced, mostly in response to EU directives. Second, a statutory minimum wage has been enacted and some industrial wage-setting mechanisms have been reintroduced. Third, the Industrial Relations Act 2015 attempted to address the problem of union recognition, after the Supreme Court's judgment in 2007 made the previous legislation dealing with the issue ineffective. Finally, the Workplace Relations Act 2015 attempted to simplify the dispute resolution system. These developments suggest a continuation of the shift towards a rights-based system, in which the roles of collective bargaining and collective labour law are reduced in favour of legally binding and individual dispute resolution mechanisms (Doherty 2016).

The most worrying aspect for Irish trade unions is the sharp decline in union density, which started during the 1990s (Roche 2008) and continued into the 2000s. Union density remains significantly higher in the public than in the private sector, and is declining in key industries dominated by multinationals, which are adopting union avoidance practices, although some important manufacturers, such as Apple, are unionised. Other explanations for the fall in unionisation include changing attitudes and public opinion toward unions (Culpepper and Regan 2014); the lack of an enforceable legal framework for union recognition; the increase in individual employment rights 'displacing' the role of unions; and the passive attitude of some trade unions towards recruitment during the years of social partnership. To this should be added structural factors, such as the relatively higher growth of employment in industries and occupations that are generally associated with lower unionisation rates (Ebbinghaus 2002; Roche 2008).

Since the crisis, and subsequent adjustment, unions have aimed at institutional renewal, setting up organising departments and increasing workplace action, both in the service and manufacturing industries. Examples of this include a successful campaign in cleaning to re-establish the industrial wage agreement (Geary and Gamwell 2017), as well as the coordinated bargaining strategy that started in manufacturing, and was then extended to service industries, such as retail and banking (Roche and Gormley 2017a). An important recent development involved Ryanair, where pilots organised through the Irish Airline Pilots' Association forced the company to pledge to recognise the union thanks to a transnationally coordinated campaign. As this chapter has argued throughout, especially after the end of social partnership, union density matters in the Irish context, as state support for collective bargaining institutions is low. Whether these

initiatives will be able to reverse the trend of union density and collective bargaining coverage as it has developed over the past 20 years is the key challenge for Irish trade unions.

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All links were checked on 19 July 2018.

Abbreviations

CSO	Central Statistics Office
CPSU	Civil and Public Services Union
ERO	Employment Regulation Order
FSU	Financial Service Union
FDI	Foreign direct investment
IDA	Industrial Development Authority
IBEC	Irish Business and Employers' Confederation
ICT	Information and Communication Technology
ICTU	Irish Congress of Trade Unions
IMPACT	Irish Municipal, Public and Civil Trade Union
JLC	Joint labour committee
MoU	Memorandum of understanding
MNC	Multinational company
NERA	National Employment Rights Authority
NERI	Nevin Economic Research Institute
PSEU	Public Service Executive Union
QNHS	Quarterly National Household Survey
REA	Registered Employment Agreement
SEO	Sectoral Employment Order
SIPTU	Services, Industrial, Professional and Technical Union
TEEU	Technical Engineering and Electrical Union
WRC	Workplace Relations Commission

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