

## Trade unions, collective bargaining and the economic crisis: where now?

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### Editorial

A key side-effect of the economic crisis in Ireland has been the collapse of consensus approaches to social and economic policy making. The outcome is that, for the first time in over 20 years, there is currently no formal institutional process governing collective bargaining.

At the same time, economic governance continues to rely heavily on the social partners and in particular, trade unions, to achieve goals. An obvious example is the Croke Park Agreement underpinning government plans for economic recovery. The agreement relies on the co-operation of public sector unions for its success. Unions in the private sector are also involved in often difficult processes of negotiation and re-adjustment in a radically changed industrial relations environment.

This *Spotlight* examines the pressures facing trade unions and the implications for policy-makers and legislators in the newly de-centralised collective bargaining context.

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## Summary

The economic crisis and subsequent collapse of the social partnership process have led to several challenges for the Irish collective bargaining system. These twin events have exacerbated long-term organisational issues facing the trade union movement. A key outcome is a changing industrial relations system, in which the future role of the State is unclear.

There are now effectively two separate collective bargaining systems, in the public and in the private sector. The Croke Park Agreement structures pay bargaining in the public sector, while in the private sector collective bargaining has largely decentralised to enterprise level. Hence trade unions in the two sectors face separate as well as shared challenges.

Although trade unions at national level benefited from an influential voice during the partnership years, at local level cross cutting trends over a number of decades critically weakened private sector unions. Perhaps the most obvious problem was a decline in membership levels as a proportion of employees, as union recruitment failed to keep pace with the growth in employment throughout the boom.

Alongside this, it has been suggested that legislative and attitudinal shifts have made unions appear less relevant to potential members. Developments in labour legislation have provided alternative platforms for workers to access employment rights protection at local level. At national level, the benefits of the union role in the partnership process may not always have been visible to potential members. And at the same time, there have been a growing number of employers hostile to unionisation, and a corresponding growth in non-union workplaces.

A parallel trend is growing pressure on the State's dispute resolution services reflecting both these legislative developments and growing economic pressures on firms.

The outcome of these various developments is an industrial relations system described as increasingly fragmented and decentralised, with growing diversity in industrial relations between union and non-union workplaces, and the public and the private sector. These long term trends

have been exacerbated by the recent return to enterprise level bargaining.

These trends are not unique to Ireland. Unions across the EU27 face declining membership levels (to greater or lesser extents). Generally speaking, there has also been a long-term trend towards the decentralisation of collective bargaining towards firm level. The economic crisis has challenged the social partners to find consensual solutions right across the EU27, with varying levels of success. However, the turn away from tripartite structures has been particularly acute in Ireland, reflecting the severity of the economic crisis and the concomitant tarnishing of the highly institutionalised social partnership process.

In its 2011 analysis of industrial relations in the crisis, the European Commission warned about the prospect of what it termed 'disorganised decentralisation', and pointed to the importance of state-provided frameworks to underpin collective bargaining in the absence of national level structures. Key issues for the future of Irish industrial relations are how best to steer de-centralised collective bargaining, while tackling growing pressures on the State's dispute resolution structures and avoiding industrial conflict, in the public sector in particular.

For 22 years the role of the State has been clearly delineated, and supported by an encompassing network of institutions and structures radiating out from government, sustaining collective bargaining systems in workplaces throughout the country. Where the State should take its place in the emerging industrial relations system is a key question for policy makers.

## Introduction

In December 2009, the centralised pay bargaining system which held sway in Ireland for 22 years ended. The breakdown of government and public sector union attempts to agree on ways to reduce the public sector pay bill was followed by the formal withdrawal of the Irish Business and Employers' Confederation (IBEC) from the terms of the social partnership agreement.<sup>1</sup>

<sup>1</sup> Sheehan, B. (2010) "Employer body issues bargaining guidelines after pulling out of national pay talks", EIROnline, published online 31/03/2010, link at:

One of the outcomes of this breakdown is a division between the procedures for pay bargaining in the public and private sector. Since late 2009 there are in effect two separate systems of collective bargaining:

- The *Public Service Agreement 2010-2014* (the Croke Park Agreement) provides the context for public sector pay bargaining;<sup>2</sup>
- The IBEC-ICTU *National Protocol for the Orderly Conduct of Industrial Relations and Local Bargaining in the Private Sector* (the IBEC/ICTU Protocol) lays down principles for negotiation and dispute resolution in the (unionised) private sector. The Protocol was negotiated in March 2010, and reviewed and extended in February 2011.<sup>3</sup>

The social dialogue element of social partnership theoretically continues for non-pay elements, as one commentator notes, but: “the pay agreements were always the ‘glue’ that held the wider social partnership process together”.<sup>4</sup>

The wider context is one where Irish trade unions face considerable pressures, some reflecting the economic crisis, and others which predate it. A recent study of Human Resources (HR) in the recession pointed to a number of problems for unions. These included the sheer scale of the recession, the collapse of national social partnership, and the outlook of members which is described as subdued, compliant and fearful:

*“The recession has debilitated trade unions and it may be that the current situation could have permanent negative consequences for trade unions in that they might be unable to recoup lost members and bargaining power when economic conditions improve.”<sup>5</sup>*

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<http://bit.ly/m2XsIP>, accessed 17/05/2011.

<sup>2</sup> A summary of key aspects of the deal is available in the Library & Research Service publication *Research Matters*, link at: [http://khiisa01/library/LibraryandCMS/Policy\\_docs/ResearchMatters.pdf](http://khiisa01/library/LibraryandCMS/Policy_docs/ResearchMatters.pdf)

<sup>3</sup> Link at: <http://bit.ly/mJYwCO> (Accessed 17/05/2011)

<sup>4</sup> Sheehan, B. (2010) op. cit

<sup>5</sup> Roche, W.K., Teague, P. Coughlan, A. and Fahy, M. (2011) *Human resources in the Recession: Managing and Representing People at Work in Ireland (Executive Summary)*, p. 42, link at: <http://bit.ly/IYJ9CZ> (Accessed 02/03/2011).”

A debilitated trade union movement is not just problematic for union members. Research suggests industrial conflict may be more rather than less likely when unions are weakened, and unable to assist in ordering industrial relations systems.<sup>6</sup> In particular, current economic and social policy in Ireland relies on unions being able to enforce agreements made with employers and the State. It is clear that “the conduct of pay determination and industrial relations, especially in the public sector, is now a significant influence on a country’s credit-rating and hence on the cost of borrowing and the resulting scale of public debt.”<sup>7</sup>

For over 20 years, economic policy making and the marketing of the Irish economy abroad relied on industrial peace as a key outcome of partnership. A central question for policy-makers is how this can be maintained in the context of an industrial relations system in flux.

## Profile of trade union membership

### Numbers

Union membership can be measured in different ways, the most straightforward being the number of members in absolute terms. Currently union membership is in the range of 535,000 to 579,578 members, depending on the source of the data (more on this below). However, alongside this it is standard to look at union density, which is membership measured either as a proportion of the workforce, including the unemployed, or as a proportion of employees.<sup>8</sup> The density data in this *Spotlight* is based on membership as a percentage of employees, from the CSO’s Quarterly National Household Survey (QNHS) which has an occasional module on trade union membership and density. The most recent was Q2 2009.<sup>9</sup> There is some debate about the best source of data on trade union membership, and consequently, about the

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<sup>6</sup> European Commission (2011) *Industrial Relations in Europe 2010*, link at: <http://bit.ly/kcid8h> (Accessed 20/05/2011).

<sup>7</sup> Labour Relations Commission (LRC) (2011a), *Strategic Plan, 2011-2013*, link at: <http://bit.ly/ii2iOk> (Accessed 01/06/2011)

<sup>8</sup> Wallace, J., Gunnigle, P. and McMahon, G. (2004) *Industrial Relations in Ireland* Dublin: Gill and Macmillan, p. 125.

<sup>9</sup> CSO (2010), *QNHS Union Membership Quarter 2 2009*, link at: <http://bit.ly/kwtxTK> (Accessed 02/06/2011)

precise level of membership. It is worth noting that the trade union movement has questioned QNHS data, which returns lower levels of unionisation (535,000 in 2009) than data provided by unions themselves (579,578 in 2011).<sup>10</sup>

It is possible to have an increase in union membership but a decline in union density, if the absolute number of employees rises by more than the absolute number of union members.

This was the case in Ireland in recent years.

**The general trend illustrated in Table 1 is of increasing union membership levels alongside decreasing union density.**

This reflects rapid employment growth for most of the period, with union membership failing to keep pace.<sup>11</sup> However, the most recent data indicate an increase in density from 31% in 2007 to 34% in 2009, alongside a decrease in absolute numbers of members from 565,000 to 535,000.

**Table 1: Union membership and density, 1994-2009**

Year	Membership	Density
1994	432,900	45.8%
1996	468,600	44.5%
1997	463,600	42.3%
2001	534,900	38%
2003	553,000	37%
2004	538,000	35%
2007	565,000	31%
2009	535,000	34%

Source: CSO<sup>12</sup>

<sup>10</sup> "Membership of unions down 20,000" *The Irish Times*, 14/06/2011. Union data may include lapsed, retired or inactive members, and thus may over-estimate membership. On the other hand, QNHS data is based on survey data and involves some degree of estimation. (Roche, W.K (2008) 'The Trend of Unionisation in Ireland since the Mid-1990s' in Hastings, T (ed) *The State of the Unions: Challenges facing Organised Labour in Ireland* Dublin: Liffey Press.

<sup>11</sup> Dobbins, T (2010) *Trade union strategies to recruit new groups of workers – Ireland*, link at: <http://www.eurofound.europa.eu/eiro/studies/tn0901028s/ie0901029g.htm> (Accessed 09/12/2010).

<sup>12</sup> Data for 2003 -2009 from CSO (2010) op.cit.. Data for 1994-2001 from CSO QNHS Union Membership 1994 to 2004, link at <http://bit.ly/k6nZCC> (Accessed 20/06/2011). In 1997, the QNHS replaced the Labour Force Survey, and data are not comparable between the two surveys: see link at: [http://www.cso.ie/qnhs/what\\_is\\_qnhs.htm](http://www.cso.ie/qnhs/what_is_qnhs.htm) (Accessed 13/12/2010).

## Patterns of union membership

There is substantial variation in trends in union membership by economic sector and other employment characteristics; and by age, nationality, and gender. Some of these patterns of variation are discussed briefly here.

### Economic sector and employment characteristics<sup>13</sup>

Union membership varies strongly by economic sector. In Q2 2009 the highest level of membership was the *Public administration and defence* category, where 81% of employees were union members. Membership was lowest in *Accommodation and food service activities* where only 6% of employees were union members. In effect membership is highest in the public sector, although data is not explicitly collected by public/private sector.

Unionisation also varies by employment patterns, and by form of enterprise.

- **Full time employees** were more likely to be union members (37%) compared to part-time employees (20%).
- **Employees of larger (100+ employees) enterprises** were more likely to be union members (50%), compared to employees in smaller (1-10 employees) enterprises (17%).
- Trade union membership is strongly patterned by **age**, with the youngest and oldest employees far less likely to be members. Unionisation is lowest for employees aged 15-19 (4%) and those over 65 (16%), and highest for those aged 45-59 (47%).
- Patterns of union membership by **gender** have reversed since the earliest survey data in 1994. This showed that 47% of male employees were union members compared to 44% of women. In Q2 2009, the equivalent figures were 32% for men and 35% for women.
- Union membership was twice as likely among **Irish nationals** (37%) as non-Irish nationals (14%);
- Finally, **married employees** had a far higher rate of membership (41%) than single employees (25%);

<sup>13</sup> Data in this section from CSO, (2010), op. cit.

### Union membership is more common:

- In the public rather than private sector;
- among prime age more than older or younger workers;
- among Irish nationals more than immigrants;
- for married rather than single workers;
- in larger rather than smaller enterprises;
- and is marginally more common for women.

## Industrial disputes

Data on industrial disputes is collected by the CSO.<sup>14</sup> Table 2 summarises data on industrial disputes between 2002 and 2010. Key points include:

- In 2010, there were 14 industrial disputes which affected 511 workers with a loss 6,602 days.
- This compares with 23 industrial disputes in 2009, affecting 278, 228 workers with a loss of 329,593 days.
- These figures illustrate the **impact of the public sector disputes** in 2009. Excluding 2009, the figure of 6,602 days lost in 2010 is an increase on the 4,147 in 2008. However, the 2008 figure was the outcome of a steady decline since 2003, when there were 37,482 days lost.

According to the Labour Relations Commission (LRC):

*“Against the background of a benign economic and fiscal environment, industrial conflict and disputes fell to historically low levels and the parties to collective bargaining availed to an*

*increasing extent of the services of the State’s institutions for conflict resolution.”<sup>16</sup>*

However, the collapse of partnership, and the emergence of a far less benign economic context have sharpened the focus on the State’s dispute resolution structures, as addressed in the following section.

## A collective bargaining system in flux?

### Structure of the industrial relations system

Until recently, the Irish collective bargaining system was highly centralised in comparative terms. This is based both on the structure of the trade union movement and the institutional organisation of collective bargaining. The Irish trade union movement ranks as the fourth most centralised in the EU27.<sup>17</sup> This reflects the fact that there is just one peak union confederation, the Irish Congress of Trade Union (ICTU). Across Europe, the number of confederations varies from 1 (Ireland, Austria, Latvia and the UK) to 9 (France). Irish trade unions are also quite concentrated in comparative terms, according to a standard measure of the ‘effective’ number of unions. This varies across the EU27 from 5 in Ireland to 67 in France.<sup>18</sup> One side effect is an intensification of the importance of individual large unions in industrial relations.

Collective bargaining can take place at a number of different levels: national level; sectoral or industry level; and local or company level. From 1987 until late 2009, the national

Table 2: industrial disputes, 2002-2010

	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>Number of Disputes</b>	27	24	11	15	10	6	12	23	14
<b>Number of firms</b>	43	32	11	14	10	6	10	168	14
<b>Workers involved</b>	3,553	3,567	10,227	3,292	1,186	1,436	356	278,228	511
<b>Total days lost</b>	21,257	37,482	20,784	26,665	7,352	6,038	4,147	329,593	6,602

Source: CSO (2011)<sup>15</sup>

<sup>14</sup> Disputes are only included if a stoppage of work lasts at least one day and the total time lost is 10 or more person days.

<sup>15</sup> CSO (2011) *Industrial Disputes Quarter 4 2010*, link at: <http://bit.ly/jvOsMh> (Accessed 01/06/2011).

<sup>16</sup> LRC, (2011a), op.cit.

<sup>17</sup> European Commission (2011) op. cit.

<sup>18</sup> This is a measure calculated by a mathematical formula: SIPTU represents 36% of all union members, the next four largest organise 40%, and the next 30 unions organise the remaining members. Using the relevant formula, this gives an effective union score of 5.3 (European Commission, 2011, p.22, op.cit.)

level dominated the Irish collective bargaining system.<sup>19</sup> A distinctive feature of the national level pay bargaining system was that it was a “one-size-fits-all” system, with a schedule of pay increases that applied across both the public and the private sectors.<sup>20</sup> Although in the private sector only union members were generally covered by collective agreements, non-union firms often benchmarked pay against the agreements.<sup>21</sup>

In terms of the legal-institutional structure, the Irish collective bargaining system has historically been voluntarist, implying minimal legal intervention in industrial relations, and a focus on voluntary collective bargaining, underpinned by a variety of state institutions (discussed further below). In summary then the Irish system of collective bargaining has been relatively centralised around social partnership, based on an underlying system of voluntary collective bargaining. However, there have been fundamental shifts to the architecture of this system in recent years.

### Recent shifts

It has been suggested that a series of transformations to both the legal and value systems underpinning the collective bargaining system are leading towards an increasingly decentralised, fragmented, and rights based industrial relations system.<sup>22</sup> There is also a growing distinction between the public and private sector. These outcomes reflect long running trends which have been intensified by tumultuous economic events. The key drivers of this change are declining private sector density, reflecting the impact of new patterns of employment on both employer and employee attitudes to unions. Alongside this have run changes to employment law which have

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<sup>19</sup> The sectoral level has not been prominent in Ireland, with the exception of the construction industry (as discussed in more detail below).

<sup>20</sup> Sheehan, B. (2010) op.cit.

<sup>21</sup> D’Art and Turner (2011) “Irish trade unions under social partnership: a Faustian bargain?” in *Industrial Relations Journal*, 42:2, pp. 157-173.

<sup>22</sup> Teague, P. (2009), “Path Dependency and Comparative Industrial relation: the Case of Conflict Resolution Systems in Ireland and Sweden” in *British Journal of Industrial Relations* 47: 3 September, pp. 499-520. Teague suggests the emergence of a number of self-contained sub-systems. See also Dobbins, T. (2009) *Ireland: Industrial Relations Profile*, published online at EIROnline, link at: <http://bit.ly/kQnXWM> (Accessed 25/05/2011).

undermined voluntarism, further eroding density and the commitment to collectivism. Finally, the economic crisis has exacerbated these fault lines, further decentralising and fragmenting the industrial relations system.<sup>23</sup>

One important outcome is a lack of clarity around the future role for public policy and the State in industrial relations.

### Declining private sector density

As described above, trade union density has declined substantially in recent years, largely in the private sector. There is no accurate data available on private sector density levels, but one recent estimate suggests density levels of between 21 and 23 per cent in 2007, a drop of around 20 percentage points since 1990.<sup>24</sup> Declining private sector density reflects many factors, but growing resistance to unionisation among employers over at least a decade and probably more is certainly one. One 2008 overview of the industrial relations system suggested that:

*“It seems reasonable to conclude that growing employer resistance to unionisation represents the most significant negative institutional change of the past decade.”<sup>25</sup>*

The outcome of declining density is that conflict resolution in the private sector is increasingly taking place in non-unionised workplaces, and one suggestion is that this has resulted in “a weakening of ‘cognitive’ lock-in: fewer firms are accepting that workplace conflict resolution systems need to be organised along collectivist lines.”<sup>26</sup> The evidence for the emergence of new forms of conflict resolution at firm level is mixed: there is evidence of a growing diversity of practices for resolving conflict, but also of a continuation of traditional collective industrial relations practices.<sup>27</sup>

### Impact of social partnership

Critical accounts of social partnership suggest that the process did not just mask declining

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<sup>23</sup> Teague (2011) op.cit. inter alia

<sup>24</sup> D’Art and Turner (2011) op.cit. estimate based on ICTU membership data.

<sup>25</sup> Roche, 2008, op.cit.

<sup>26</sup> Teague, P. (2009), op.cit., p.517.

<sup>27</sup> LRC, (2011a); Hann, D., Teague, P. and Roche, W.K. (2010) “Is ADR crossing the Atlantic? Survey Evidence from Ireland” Queen’s University Management School Working Paper Series, link at: <http://bit.ly/mNiRCL> (Accessed 01/06/2011).

density levels, but actually contributed in a number of ways:

- by supporting legislation which indirectly provided a legal basis for companies to oppose union representation;
- by public policy shifts which facilitated anti-union employers in the interests of attracting Foreign Direct Investment (FDI);
- by obscuring the role of unions in securing benefits for members;
- and by creating 'top-down' as opposed to 'bottom-up' mobilisation strategies within unions.<sup>28</sup>

In addition, a number of authors have suggested that the collapse of national level collective bargaining also reflects declining support for the process at the political level, possibly permanently.<sup>29</sup>

**Public sector unions** are not completely insulated from contemporary pressures. The Association of Higher Civil and Public Servants has reported the loss of about 10 per cent of its members over the past year, as a result of the recruitment embargo, and the Public Service Executive Union has reported membership losses also.<sup>30</sup> Nevertheless the general picture is of a unionised public sector increasingly contrasting with a private sector with generally lower rates of unionisation (varying across sector).<sup>31</sup> To some extent, the issues facing public sector unions reflect this disjuncture in the employment context between the two sectors, illustrated by such different patterns of union density.

### **Institutional change and dispute resolution**

Many observers have suggested the erosion of the traditional voluntarist system of industrial relations, due in particular to the growth in domestic and European employment law.<sup>32</sup> Examples include legislation on unfair dismissal, redundancy compensation, health and safety,

<sup>28</sup> McDonough, T. and Dundon, T. (2010) "Thatcherism delayed? The Irish crisis and the paradox of social partnership" *Industrial Relations Journal* 41:6, pp. 544-562 *inter alia*.

<sup>29</sup> Teague, P. (2009) *op.cit.*, Roche (2011), *op.cit.*

<sup>30</sup> "Is the sun setting on Irish trade unionism?" *The Irish Times*, 30/04/2011, link at: <http://bit.ly/kondi8> (Accessed 01/06/2011).

<sup>31</sup> Roche, (2011), *op.cit.*

<sup>32</sup> Dobbins, (2009), *op.cit.*

equality, maternity protection, adoptive and parental leave, atypical work and working time, and a national minimum wage (NMW).<sup>33</sup> As a result, some authors have suggested that unions have less to offer potential members.<sup>34</sup> A second (and related) issue is growing use of the state's dispute resolution structures. The Labour Relations Commission has pointed to an 'explosion' in employment rights referrals and the increasing use of employment rights bodies for 'collective' dispute resolution. Last year, some 15,000 complaints were submitted to the LRC, the highest level of referrals ever submitted. The LRC suggested that the current system of employment rights needs 'fundamental review' in the light of the increasing burden being placed upon it.<sup>35</sup>

There are currently multiple bodies operating in the area of employment rights and industrial relations and a 2004 review suggested that "the situation has now become so complex that even seasoned practitioners in the area have difficulty making sense of it all".<sup>36</sup> The *Report of the Special Group on Public Service Numbers and Expenditure Programmes* recommended that the 'very complex structure for industrial relations institutions has to be simplified and streamlined'.<sup>37</sup> Most recently, the Minister for Jobs, Enterprise and Innovation, Richard Bruton T.D., has suggested that up to five of the bodies in the area could be merged as part of reforms simplifying the 'bewildering array of options' facing those wishing to initiate a claim.<sup>38</sup>

### **Bargaining in the recession**

In the private sector, pay bargaining has generally decentralised to enterprise level, where it is clear that the bargaining position of

<sup>33</sup> *Ibid*

<sup>34</sup> *Ibid*. See also Teague (2009).

<sup>35</sup> LRC (2011a), p. 21.

<sup>36</sup> Department of Enterprise, Trade and Employment (2004) *Report of the Review Group on the Functions of the Employment Rights Bodies*, link at: <http://bit.ly/mEw2k9> (Accessed 28/06/2011). These include the LRC and Rights Commissioner Service, the Employment Appeals Tribunal, Labour Court, Health and Safety Authority, Equality Authority, Equality Tribunal and the National Employment Rights Authority (NERA). The LRC recently undertook a further review of employment rights legislation, completed in April 2010, but at time of writing this had not been published.

<sup>37</sup> Full details are available at: <http://bit.ly/jof0nD> (Accessed 01/06/2011).

<sup>38</sup> "Bruton says five bodies dealing with workplace disputes could be merged." *The Irish Times*, 02/06/2011

unions has weakened considerably “reflecting the outlook of their members who are subdued and compliant, fearful for their jobs, pensions and livelihoods.”<sup>39</sup> Survey evidence of employees underlines this, pointing to an increase in employee’s willingness to accept poorer conditions (e.g. increased pressure, increased supervision, having to work unsocial hours).<sup>40</sup> The LRC have suggested that in many workplaces the focus of collective bargaining has shifted from “bargaining over improvement in pay and conditions to bargaining over concessions to pay and conditions and working practices”.<sup>41</sup> There have been instances of pay increases in a small minority of cases, but measures more commonly include revised pension arrangements, short-time working, compulsory and voluntary redundancies, and changes of work practices.<sup>42</sup>

A focus group of union officials surveyed on HR in the recession cited three key factors making employer-union relations more problematic for unions:

- The current state of the labour market;
- The speed and depth of the recession which left unions “little time to tackle issues, develop a strategic approach or consult with members”;
- Change in business culture and ideology.<sup>43</sup>

The survey further found that while there was little evidence of employers launching a concerted offensive to by-pass unions, and they were engaged in order to secure consensus on restructuring plans, there was also little evidence of unions being involved in negotiating joint solutions.

In addition to de-centralised voluntary bargaining, there are some **legally-binding industry level agreements**. Joint Labour Committees (JLCs) set minimum terms and conditions in some sectors, known as Employment Regulation Orders (EROs). In addition, collective agreements can be registered with the Labour Court, (at the request of both parties) and the agreements then

<sup>39</sup> Roche et al, (2011), p.42

<sup>40</sup> [http://www.esri.ie/news\\_events/latest\\_press\\_releases/national\\_employer\\_and\\_emp/index.xml](http://www.esri.ie/news_events/latest_press_releases/national_employer_and_emp/index.xml)

<sup>41</sup> LRC (2011a), op.cit. p. 6

<sup>42</sup> Ibid

<sup>43</sup> Roche, (2011), op. cit. p. 22.

become Registered Employment Agreements (REAs). Together they cover workers mainly in the construction, retail grocery and catering sector. The subject is currently one of intense debate following the publication of the *Report of the Independent Review of Employment Regulation Orders and Registered Employment Agreement Wage-Setting Mechanisms*.<sup>44</sup>

At the time of writing, a High Court judgement on a challenge by employers to the JLC system in the fast food sector is pending. In addition, the Minister for Jobs, Enterprise and Innovation, Richard Bruton T.D., has indicated he wishes to make radical reforms in the area in the near future. There has been substantial media speculation on the precise content of these actions suggesting very divergent views among the former social partners and the existence of differences of opinion within government. However, the Minister has stated that his initial proposals have been amended following consultation with trade unions and employers which highlighted some unanticipated and unwanted consequences. Media sources suggest that changes to Sunday premium payments are likely to be contained in the revised proposals.<sup>45</sup>

## Comparative snapshot: Ireland in an EU context

Industrial relations systems differ considerably from one country to another, but some of the trends in union membership outlined above are visible in other European countries also.<sup>46</sup> In particular, there is a continuing trend across the EU27 towards declining union density, which declined from 27.8% in the EU27 in 2000, to 23.4% in 2008. However there is substantial variation across countries, and density levels varied from 68.8% in Sweden and 67.6% in Denmark to 7.6% in Estonia and 7.7% in France.<sup>47</sup>

<sup>44</sup> The review estimated between 150,000- 200,000 workers were covered by JLCs/REAs in 2009.

<sup>45</sup> “Bruton planning to reform wage-setting mechanisms” *Irish Times*, 25/05/2011; “For unions, Bruton’s reforms will slash wages and may be straw that breaks camel’s back” *Irish Times*, 27/05/2011. “Changes to proposal for wages, says Bruton” *The Irish Times*, 30/06/2011, “Bruton to push ahead with elimination of special rates for Sunday work” *The Irish Examiner*, 30/06/2011.

<sup>46</sup> Unless otherwise stated, this section is taken from European Commission (2011) op.cit.

<sup>47</sup> Ibid, p.26



Decline in density levels is uneven across sectors and populations. As in Ireland, there is a trend towards lower levels of density among young people rather than older people, and among those working part-time than full-time, although again the extent of these differences varies from country to country.<sup>48</sup> In addition, unionisation is generally higher in the public rather than the private sector, rises with establishment size, and is trending towards more women members (a so called 'feminisation' of unions). In general terms it has been concluded that:

*"The Achilles heel of European trade unions is the lower and often decreasing unionisation rates of young people, the difficulty to recruit and retain union members in the expanding services sector, in small firms and among those with flexible and fixed-term employment contracts. The mirror image of this weakness is that unions are ageing and increasingly reliant on the public sector."*<sup>49</sup>

However, the strength and influence of trade unions cannot be read off directly from their size. Also important is what has been termed the 'legal-institutional framework of collective bargaining'<sup>50</sup>, which includes the way collective bargaining is structured in a given country, the role of the state, the legal framework within which trade unions operate, and the attitudes of employers and their organisations. All of these factors affect the way in which trade unions are responding to the changed economic context, as is discussed next.

## European trade unions and the crisis

Recent research by the European Trade Union Institute (ETUI) and the European Commission reviewed collective bargaining responses to the economic crisis in Europe focusing in particular on 'negotiated responses' between the social partners (as of 2010).<sup>51</sup> Negotiated responses

<sup>48</sup> For example, the differences between unionisation among part-time and full-time workers is smallest in countries where part-time work is culturally more accepted, and supported by social legislation e.g. Denmark, Finland and Sweden: European Commission (2011) op.cit.

<sup>49</sup> Ibid p.19.

<sup>50</sup> Glassner, V. and Keune, M. (2010a) "Collective bargaining responses to the economic crisis in Europe" European Trade Union Institute (ETUI) Policy Brief: Issue 1/2010, p.2, available at: <http://www.etui.org/Publications> (Accessed 19/05/2011).

<sup>51</sup> Glassner and Keune (ETUI), 2010a, op.cit., European

were contrasted with unilateral responses, or with situations of disagreement and conflict. Table 3 outlines where social dialogue successfully found solutions, and where it failed to do so.

As the table overleaf illustrates, negotiated responses are possible at different levels: national level, sectoral or industry level and local or company level. It can be seen that Ireland is included with countries where national level social dialogue solutions failed to emerge. Unlike some other EU states, sectoral level negotiations have not been common in Ireland, but may become more central.

More generally, Ireland is described as being one of a group of countries where disagreement on appropriate measures to tackle the crisis predominated, as opposed to those where there is either a greater or lesser degree of bi-partisan consensus.<sup>52</sup>

At **national level**, collective bargaining successfully played a role in a variety of countries, in particular in implementing statutory short-time working schemes providing some level of unemployment benefit for those affected. Provisions for short-time working already existed in some countries (Austria, Belgium, France, Italy and the Netherlands). In other countries governments extended the eligibility criteria for such schemes, or introduced provisions for the first time.<sup>53</sup> Such schemes have been broadly welcomed as achieving "the combined goals of employment protection, avoiding the social costs of rising unemployment, maintaining human capital and increasing companies' internal flexibility."<sup>54</sup>

At **sectoral or company level** short-time working may also be implemented through agreement along with other types of solutions. Agreements about 'flexibilisation' of wage-setting have been introduced in many countries at both levels (e.g. in Finland in the technological manufacturing sector in 2009, and in Germany in the metal sector in 2008).<sup>55</sup>

Commission (2011) op.cit.

<sup>52</sup> European Commission, (2011), p. 77, Table 2.3

<sup>53</sup> Glassner and Keune, (2010a) op. cit.

<sup>54</sup> Glassner and Keune, (2010b) *Negotiating the crisis? Collective bargaining in Europe during the economic downturn* DIALOGUE Working Paper No. 10, p.8., ILO: Geneva, link at: <http://bit.ly/lDirDX> (Accessed 20/06/2011).

<sup>55</sup> Glassner and Keune, (2010a).

**Table 3: Social dialogue outcomes EU27, 2010\***

	Social dialogue reached agreement	Social dialogue failed to reach agreement
<b>National Level</b>	Cross-industry agreements signed by the social partners (bipartite), or by the social partners and government (tripartite), in 11 member States: Belgium, Bulgaria, the Netherlands, France, Spain (bipartite), Poland, Estonia, Latvia, Lithuania, the Czech Republic and Slovakia. (In the last six countries, this was the first time such agreements were signed).	Six member States held unsuccessful negotiations: Hungary, <b>Ireland</b> , Luxembourg, Slovenia, Spain (tripartite) and Finland.
	Social partners were involved in designing specific public policy measures (usually short time working schemes) in 7 member states: Germany, Luxembourg, Slovenia, Italy, Austria, Denmark and Finland.	In Spain, tripartite talks re-opened after a considerable gap, and agreement on a range of issues was reached in February 2011.  In Luxembourg, Slovenia and Finland: there was continued involvement in designing public policy measures (see column on left).
<b>Sector and company level</b>	Specific crisis response signed between management and trade unions, particularly in manufacturing (especially metalworking and chemical industry): in Italy, Germany, France, Spain, Denmark, the UK, Poland and the Netherlands.	The Commission notes that at sector level, it can be difficult to identify instances of failure to agree (or conflict over) crisis response measures. However, there seem to have been few specific measures of this type in the member States of central and south-eastern Europe.

(\*Events until April 2010) Source: table compiled by L&RS, based on EUROPA (2011) and European Commission (2011).<sup>56</sup>

The most common forms of agreement at company level include flexible reduction of working time, and internal restructuring through mobility procedures (e.g. transferring within companies), work-sharing and solidarity contracts, and training programmes for temporarily unemployed or inactive workers.<sup>57</sup> Concession bargaining – trade offs between employee flexibility, and pay and conditions – also featured.

Underlying these outcomes is a continuation or acceleration of long-running trends towards a decentralisation of collective bargaining where “the centre of gravity in decision-making on employment contracting, wages and human resources has moved closer to the firm.”<sup>58</sup> For many countries, the shift can be seen in an increase in sectoral agreements being amended by company-level agreements. In others, (such as Ireland in 2009 but also Finland in 2007 and Slovenia in 2010) the shift can be seen in the ending of national pay agreements. There is

variation too in the extent to which this decentralisation is ‘organised’ by agreed frameworks or rules at a higher level.<sup>59</sup>

It is worth noting that (by definition) the table above does not include unilateral actions. The Commission notes that these are likely to have been widespread across countries, in the (private) services sector in particular. Across Europe the **public sector** was the particular focus of austerity policies.<sup>60</sup> In particular, wages have been frozen or cut, generally by unilateral state action. It has been suggested that this signals a change in the mode of public sector wage determination, indicating a weakening of trade union bargaining power which is likely to have knock on effects on the private sector.<sup>61</sup>

<sup>56</sup> EUROPA press release 03/03/2011, link at: <http://bit.ly/kllCbJ>; Information on recent Spanish talks from EIROnline, link at: <http://bit.ly/ljyTlt> (Accessed 04/06/2011).

<sup>57</sup> Ibid.

<sup>58</sup> Ibid. p.39.

<sup>59</sup> Traxler (1995) cited in European Commission (2011) op.cit. p.131.

<sup>60</sup> Glassner, V. (2010) *The public sector in the crisis* ETUI Working Paper 2010.07, link at: <http://bit.ly/k77soe> (Accessed 30/05/2011)

<sup>61</sup> Ibid, p. 6.

## Explaining different outcomes

The European Commission's review of industrial relations in 2010 suggests that variation in the level of consensus on policy responses to the crisis relates to two factors.

- The scale and timing of the crisis in different countries;
- The institutional arrangements for bi-partite and tripartite social dialogue.

Ireland is located with a group of countries (Hungary, Slovenia, the Baltic states and Greece) where the crisis was most severe and where disagreement predominated. However, the degree of economic crisis did not explain the differences between countries with greater or lesser degrees of consensus. Nor did it explain why disagreement predominated in some countries (Sweden and Bulgaria) where the economic crisis was not so severe. The conclusion most relevant to Ireland is that:

*"...faced with a crisis of extreme severity, robust institutional arrangements for social dialogue may not be able to withstand the centrifugal pressures at play, with the social partners unable to forge common ground over public policy responses. This has been the case in Ireland and latterly Greece and Slovenia."*<sup>62</sup>

## Where now?

### Trade unions and partnership: the legacy

It is difficult to summarise the legacies of partnership for unions because there is no consensus on its benefits or deficits, either for trade unions or the wider polity. This *Spotlight* is focused on the legacy for trade unions and the collective bargaining process, rather than the wider impact on the Irish economy and society.

For the trade union movement, critical accounts suggest that the influence they gained on the policy process was offset by declining density levels, and by the failure of attempts to push partnership down to workplace or local level, or to achieve effective legislation on trade union recognition.<sup>63</sup> Thus it has been argued that the legacy of partnership in organisational terms is a

union movement considerably weakened at local level, and increasingly sidelined by legal and institutional developments outlined above. However, although there are some arguments that partnership impacted negatively on trade union numbers, recent media reports suggest that renewal of social partnership has been effectively called by a senior trade official.<sup>64</sup>

The Taoiseach, Enda Kenny T.D., stated recently that: "It may well be the case that formal social partnership agreements are not appropriate to the current circumstances and issues that we face." However, he suggested that the social partners should have opportunities to engage in dialogue with government and each other.<sup>65</sup> It is currently not clear if full scale social partnership will be revived, in its previous or any other form.

### Issues for the future

There is a surprising lack of analysis around the future direction of collective bargaining, either in the form of a resumption of national level bargaining or a continuation of the current de-centralised and fragmented model.<sup>66</sup> Few have paused to consider the implications for the role of the State in industrial relations in the future.

The comparative literature provides some useful questions, however. A key issue in the current absence of national pay agreements is likely to be **how best to steer de-centralised collective bargaining**. Currently, as noted, the IBEC/ICTU Protocol operates to structure this process. This is not underpinned by wider institutional supports although the creation of a tripartite structure is mentioned in the Protocol. The ETUI suggested that where negotiated responses to the crisis emerged, the role of governments was decisive in providing a supportive framework for collective bargaining.<sup>67</sup> Commenting directly on the Irish case, research on collective bargaining in Europe during the crisis pointed to the risk of the breakdown of social partnership in Ireland becoming:

*"... a decisive rupture in which the decentralised, company-based determination of wages which has ensued becomes largely*

<sup>62</sup> European Commission, (2011), p. 78.

<sup>63</sup> McDonough and Dundon, (2011) op.cit., D'Art and Turner (2011), op.cit., Teague, (2009) op.cit..

<sup>64</sup> "Social partnership back on the agenda for Coalition and unions" *The Irish Times*, 04/06/2011.

<sup>65</sup> "Kenny sees social partner policy role" *Irish Times*, 18/06/2011.

<sup>66</sup> Although see Roche (2011) op.cit.

<sup>67</sup> Glassner and Keune, (2010a), p.2 op.cit.

*'disorganised' despite the joint effort of the central employer and trade union organisations to steer it.'*<sup>68</sup>

Disorganisation in this sense implies the lack of a framework for company-level agreements and sectoral agreements in the absence of national level structures.<sup>69</sup> However, it is clear that sectoral agreements may be hard to come by, as the current debate about the future of JLCs makes clear. One outcome therefore is that there may be a continuing use of **dispute resolution structures**. The LRC have commented on this, pointing out diverse trends. On the one hand, there have been increases in industrial disputes. However, these have been from historically low levels, and there have been infrequent large disputes. In addition, the parties have resorted to the services of the LRC and the Labour Court.

While there are positive aspects to this, it has created its own issues. According to the LRC, 'complex, multi-faceted disputes requiring intensive and highly skilled conciliation activity' which had already featured during the boom, are becoming a hallmark of the recession. An additional feature is 'compacted' time lines. The LRC further commented that a "a perceived deficit in bargaining skills caused by the limited experience of negotiators on both sides of bargaining at firm level or over concessions has been a subject of commentary in the unionised sectors."<sup>70</sup>

It is difficult, if not impossible, to predict if **industrial conflict** will increase or not. On the one hand, unions in the private sector are at a historic low in terms of density levels and morale. Hence, one observer suggests that industrial conflict seems unlikely to escalate in the private sector at any rate, with pragmatic deals that reflect commercial circumstances emerging instead.<sup>71</sup> On the other hand, weaker unions do not necessarily mean less industrial conflict:

*"It has long been noted that strong unions may call strikes only rarely and judiciously, whereas*

<sup>68</sup> Glassner, V., Keune, M., and Marginson, P. (2010) "Collective Bargaining in a time of crisis" *GUSTO WP6 Working Paper*, link at <http://bit.ly/mGI9L7> (Accessed 01/07/2011).

<sup>69</sup> Glassner and Keune (2010b), p.20

<sup>70</sup> LRC, (2011a), op. cit. p. 7

<sup>71</sup> Roche, (2011), op.cit.

*weaker unions have very limited control over the strike weapon.'*<sup>72</sup>

The LRC noted that unions feel they operate in a new and hostile environment and that this has introduced "a new and volatile element into industrial relations in both the public and private sector, making it harder to broker and to gain acceptance for collective agreements and for change programmes, especially perhaps in the public service."<sup>73</sup>

It has been suggested that one by product of the collapse of partnership may be a less supportive State approach to public sector workers than has been the case to date.<sup>74</sup> The Croke park agreement is intended to avoid public sector industrial conflict, but it is clear that the changes to work practices and service delivery will also place big demands on public sector workers.<sup>75</sup> Much therefore rests on industrial relations in the public sector:

*"A failure to achieve sufficient progress to stave off unilateral pay cuts or even compulsory redundancies could plunge the public service into extreme industrial disorder, with inevitable spill-over for economic stability and international confidence in Ireland as a location for investment of any kind."*<sup>76</sup>

However, not all the commentary on the future for trade unions without partnership is negative. Thus, according to comments by ICTU general secretary David Begg the collapse of partnership liberates the movement to 're-connect' with members and advocate for its own policies without restraint.<sup>77</sup> Similarly, one industrial relations expert suggests that unions have a chance to "get back to basics", and reconnect and engage with members.<sup>78</sup> Media reports suggest that a wide-ranging review of how unions are organised is being finalised by senior members of the trade-union movement. It remains to be seen what policy prescriptions for recovery this may suggest.<sup>79</sup>

<sup>72</sup> European Commission, (2011), p.47.

<sup>73</sup> LRC, (2011a), op.cit., P. 9.

<sup>74</sup> Doherty, (2011), p. 38)

<sup>75</sup> LRC (2011a), op. cit., pp. 8-9.

<sup>76</sup> Roche, W.K. (2011) "The Breakdown of Social Partnership" in *Administration* Vol. 59 no. 1, pp. 23-38.

<sup>77</sup> "End of social partnership can liberate unions" *The Irish Times*, 18/01/2010.

<sup>78</sup> "Is the sun setting on Irish trade unionism?" *The Irish Times*, 30/04/2011.

<sup>79</sup> Ibid.