

Can the Patient Survive the Cure:

Austerity and Labour Law in Ireland

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IRELAND

aus·tere

(of living conditions or a way of life)

- Having no comforts or luxuries; harsh or to renounce material comforts.
- Having no adornment or ornamentation; bare.
- Leading a life of self-discipline and self-denial.



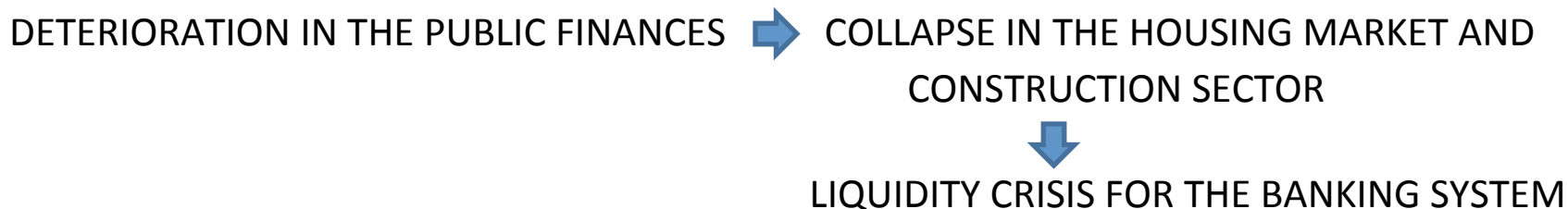
- Came to the brink of economic collapse
- Was the recipient of a 'bail-out' deal from the Troika
- Agreed Memorandums of Understanding with the Troika
- Pledged to undertake specified legal, economic and political reforms

The system of employment relations



- **Voluntarist** – State provides supportive framework for collective bargaining
- Employees have a **constitutional right** to *form* trade unions
- Employers are not obliged to recognise a trade union for collective bargaining purposes
- **Social pacts 1987-2010**– social partners (the State, the Unions, Employers)
 - issues of pay, tax reform , other socio-economic issues
- **Rule** : Collective agreements do not produce *erga omnes* effects
- **Exceptions** : Agreements registered with the Labour Court produce *erga omnes* effects
 - Registered Employment Agreements (**REAs**)- e.g. construction
 - Agreements by Joint Industrial Councils (**JICs**); -Employment Regulation Orders (**EROs**) set **legally binding minimum wages and conditions**- e.g. retail, catering

IRELAND – “the social partnership juggernaut crashing to a halt”



● **MARCH 2009** – the government unilaterally introduced an **emergency budget** (pay-cuts for all public servants)

● **DECEMBER 2009** – attempts to negotiate a new social pact **collapsed**

● **MARCH 2010** – Public sector Unions + Employers



4-year Public Service Agreement (the ‘Croke Park Agreement’)

● **NOVEMBER 2010** – MoU with the Troika (4-year austerity plan)

- FINANCIAL SECTOR REFORMS
- STRUCTURAL REFORMS TO THE LABOUR MARKET
- REDUCTION IN THE NATIONAL MINIMUM WAGE (approx. 11,5%)
- INDEPENDENT REVIEW OF THE REA AND JLC ARRANGEMENTS



EARLY 2011 – new coalition government



further austerity measures

2013 – renegotiation of the Croke Park Agreement

Agreement



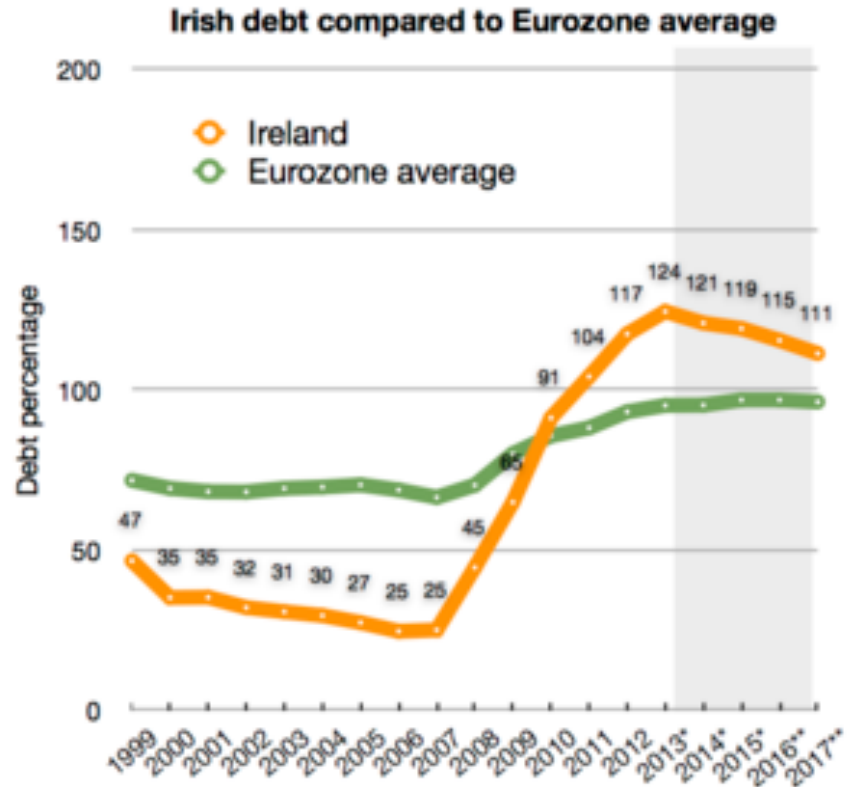
REJECTED

Croke Park Two



Haddington Road Agreement

- PAY CUTS
 - INCREMENT FREEZES
 - SUBSTANTIAL CHANGES TO WORKING CONDITIONS FOR PUBLIC SERVANTS
- ‘Negotiated’ with the public service trade unions



Source: Eurostat (1/2013)

*estimates

**estimates from Ernst & Young using data from Oxford Economics (3/2013)

The Legislative Response

IRELAND



- Relatively few requirements in terms of reforming labour market regulations
- The employment legislative framework has remained largely intact
- Reconstituted ERO and REA systems (not abolition); The Industrial Relations Act 2012
- BUT Focus on statutory minimum standards (minimum wage restored); reflects EU-level trend
- De-prioritising the role of the social partners (wage-setting; policing)

Public sector reform



2013 – the Financial Emergency Measures in the Public Interest Act (FEMPI)

= members of unions that refuse to sign the Haddington Road Agreement

- ◆ pay cut
- ◆ terms and conditions of employment altered by legislation



DEPARTMENT OF PUBLIC EXPENDITURE AND REFORM (DPER)

– determines pay and general employment terms

Guarantees of social partner autonomy under European Law

- **Art. 11 of the European Convention on Human Rights** guarantees the right to form and join trade unions
- **Art. 6 (3) of the new Treaty on European Union** states that fundamental rights shall constitute general principles of the Union's law
- **Art. 28 of the Charter of Fundamental Rights** provides for the right of trade unions to negotiate and conclude collective agreements and, in case of conflicts of interest, to take collective action to defend their interests, including strike action.
- **Art. 152-155 of the Treaty on the Functioning of the EU** states that the Union 'recognises and promotes the role of the social partners' at both Union and Member State level



Recent jurisprudence of the Court of Justice militates against collective approaches to labour market regulation. The '**Laval Quartet**' judgements of the CJEU has severely restricted the rights of trade unions to act in order to protect collective agreements in cases where the rights of free movement of services or establishment are involved.



LUXEMBOURG
RUFFERT
VIKING
LAVAL

promoted by

- Single market



a particular form of **governance**
• **regulatory**
• **deeply interventionist**

- CJEU - Free Movement provisions = status of Fundamental Rights
- spill-over of MARKET INTEGRATION rules into almost all areas of national law



= main principle of POLICY-MAKING
(any regulatory policy choice is assessed in terms of its ability to favour this specific model of market governance)

CJEU in 'Laval Quartet': **ECONOMIC FREEDOM** = 'the rule'

COLLECTIVE LABOUR RIGHTS = 'the exception';

'requires 'THE SOCIAL to defend itself from THE ECONOMIC'



- ➔ *Albany* [1996] : upheld national law provisions on collective agreements
 - competition law did not apply, as long as the CA was aimed at improving working conditions

- ➔ cf. *Alemo - Herron v Parkwood Leisure Ltd* [2011] – Art. 16 of the Charter - imposing collectively agreed terms (after the date of transfer) on a transferee



the transferee's contractual freedom is *'seriously reduced to the point that such a limitation is liable to adversely affect the very essence of its freedom to conduct a business'*

- MARKET ECONOMY RULES  stable and unchangeable element, to which national legal orders should adjust



'Euro Plus Pact' - participating Member States must 'review the wage setting arrangements, and, where necessary, the degree of centralisation in the bargaining process'



increasingly dominant intergovernmentalist approach to EU decision-making



'Neo-liberal' Ireland must be closely monitored; **Heavily -regulated Greece, for example,** must dismantle worker protections

AUSTERITY MEDICINE

ACCEPTED



ACCEPTED CURE FOR THE UNION'S ILLS

- Fundamental questions around democracy (witness Euro elections 2014)
 - young workers
 - migrants
 - trade unionists



**The Economic and Financial Affairs Council (ECOFIN)
dominance**

**Re-assertion of collective autonomy
necessary**



- **Social partners + trade unions** – more active role in terms of their participation in defining the rules which govern industrial relations at a transnational level

- EU SOCIAL POLICY  REGULATORY STATUS
 REDISTRIBUTIVE STATUS



REINTRODUCTION OF POLITICAL AND LEGAL
CONTROL OVER COMPETITION
(possible? likely?..)



After the crisis, where next for (what remains of) 'social Europe'?

