Ireland

The Irish government, as part of its bailout by the EU and the IMF on 28 November 2010, has agreed to a range of measures which directly impact the labour market. The terms are set out in the 'Memorandum of financial and economic policies'[1] of 7 December 2010, following the so-called Memorandum of Understanding on specific economic policy conditionality (MoU)[2] with the EU and the IMF, adopted on 3 December 2010, which lays down the schedule of reforms on a quarterly basis until the end of 2013.

Under the heading 'Safeguarding Public Finances' (points 21 to 25 of the 'Memorandum of financial and economic policies'), most of this adjustment will come from the expenditure side, pursuing public service numbers reductions through natural attrition and voluntary schemes, adjustments in public service pensions, and further savings on social transfers: from reductions in working age payments, reductions in universal child benefit payments and other reforms. An income tax-led revenue package will supplement expenditure measures in 2011, in particular with a widening of the tax base, by lowering income tax bands and credits by 10 % and by reducing various pension-related tax reliefs. Further reductions in public sector numbers, social benefits and programme spending are foreseen for the reference period 2012-2014. Additional measures include moving towards full cost-recovery in the provision of water services and ensuring a greater student contribution towards tertiary education, while ensuring that lower-income groups remain supported. In addition, the process of placing the pension systems on a path consistent with long-term sustainability of public finances is to be accelerated.

Under the heading 'Raising the Growth Potential', the National Recovery Plan includes a strategy to remove remaining structural impediments to competitiveness and employment creation. To reduce long-term unemployment and to facilitate re-adjustment in the labour market, the benefits system is to be reformed, as is the national minimum wage. Specific changes will be introduced to provide greater incentives to take up employment (point 27).

[1] http://ec.europa.eu/economy_finance/articles/eu_economic_situation/pdf/2010-12-07-mefp_en.pdf

[2] http://ec.europa.eu/economy_finance/articles/eu_economic_situation/pdf/2010-12-07-mou_en.pdf

In the MoU of 3 December 2010, however, different measures are listed which will affect minimum wages. These include a review of the framework of Registered Employment Agreements (REAs) and Employment Regulation Orders (EROs) (point iii. Structural reforms: *To facilitate adjustment in the labour market*) as well as the request to introduce legislation to reform the minimum wage in such a way as to foster job creation notably for categories at higher risk of unemployment and prevent distortions of wage conditions across sectors associated with the presence of sectoral minimum wages in addition to the national minimum wage. Measures will be as follows: to reduce by €1.00 per hour the nominal level of the current national minimum wage, and to enlarge the scope of the "inability to pay clause" permitting firms to invoke this clause more than once. These measures should come into effect by May 2011.

In Ireland, the Joint Labour Committees (JLCs) or independent bodies are responsible for determining minimum rates of pay and working conditions for workers in certain sectors. Each JLC is composed of workers' and employers' representatives in the sector concerned. The pay and conditions agreed by the representatives on the JLCs are given force of law in Employment Regulation Orders (EROs), which exist in sectors such as hotels and catering, cleaning and retail. Registered Employment Agreements (REAs), on the other hand, are minimum rates of pay and conditions agreed between employers and workers/unions in a sector or enterprise, which are then registered with the Labour Court to make them legally binding. They exist in sectors such as agriculture, construction and electrical contracting.

The so-called 'Duffy-Walsh review' – after the independent experts conducting it, Kevin Duffy, Chair of the Labour Court and Dr Frank Walsh of University College Dublin – was considered necessary as EROs and REAs were fuelling 'labour market rigidity by preventing wage levels from adjusting'.

In April 2011, their report, entitled 'Independent Review of Employment Regulation Orders and Registered Employment Agreement Wage Settling Mechanisms', was published. The report states that continued maintenance of the current system of JLCs and REAs is necessary and justified. In the case of JLCs, the overriding rationale for this conclusion is the need to provide a mechanism to maintain reasonable employment standards for unorganised vulnerable workers in the sectors concerned. As for the REAs, the report identified a need for a system in which collective agreements concluded between substantially representative parties can be made universally applicable and given legal effect. However, the report also concludes that the system requires a radical overhaul to make it fairer and more responsive to changing economic circumstances and labour market conditions and makes 19 recommendations along those lines. It remains to be seen how this reform will be pursued.

Furthermore, the MoU provided for a reform of the unemployment benefit system in such a way as to provide incentives for an early exit from unemployment, enhance conditionality on work and training availability, and strengthen 'the application of sanction mechanisms for beneficiaries not complying with job search conditionality and recommendations for participation in labour market programmes set in such a way as to imply an effective loss of income without being perceived as excessively penalising so that it could credibly be used whenever lack of compliance is ascertained'.

Further reforms target pensions. Legislation is to be introduced to increase the state pension age. Under it, the age at which people will qualify for the State Pension will be increased to 66 years in 2014, 67 in 2021 and 68 in 2028. With regard to the public service pension system, pension entitlements for new entrants to the public service will be reformed with effect from 2011. This will include a review of accelerated retirement for certain categories of public servants and an indexation of pensions to consumer prices. Pensions will be based on career average earnings. New public service entrants will also see a 10% pay reduction. New entrants' retirement age will also be linked to the state pension retirement age.

Turning to the domestic services sector, the government will introduce legislative changes to remove restrictions to trade and competition in sheltered sectors including the legal profession (establishing an independent regulator for the profession and implementing the recommendations of the Legal Costs Working Group and outstanding Competition Authority recommendations to reduce legal costs), in medical services, and in the pharmacy profession. For the draft budget for 2012 aiming to further reduce the government deficit in line with the National Recovery Plan, the following measures are foreseen: a lowering of personal income tax bands and credits, a reduction in private pension tax reliefs, a reduction in general tax expenditures and reduction of public service numbers and public service pension adjustment.

With the MoU, the Irish government has undertaken to review by March 2011 EROs and REAs, collective agreements signed in certain industries for wages and working conditions. These agreements generally provide for hourly wage rates EUR 0.50-0.60 higher than the minimum wage. In January 2011 the Services, Industrial, Professional and Technical Union (SIPTU) expressed its concerns about pressure from Brussels to review agreements in low-wage sectors, in the absence of consultation for the implementation of the recovery plan negotiated with the IMF and the EU. It fears negative consequences for workers across the whole of the EU if the Commission succeeds in undermining the right of national parliaments to deal with such issues as well as the autonomy of the social partners, the importance of social dialogue and the specific exclusion in the EU Treaties of a European competence on pay. Indeed the review could lead to a decrease in hourly pay in the sectors concerned and count Sunday work as work on a normal weekday. This must all be seen against the background of the memorandum of understanding signed by the Irish social partners and the government in June 2010, and designed to revive national social dialogue, which had been stuck for months. The unions are complaining of the absence of consultation on the implementation of the agreement signed with the international and European institutions.

In April 2011, it was reported that Ireland would review its Act on staff representation and collective bargaining, as well as reviewing sectoral wage agreements and reviving cross-industry social dialogue. At that time, the government coalition that had emerged out of the February 2011 election was working on a legal framework strengthening the right to collective representation and recognizing collective bargaining, an item belonging to the programme of the Labour Party, which came in second and became the junior partner of the coalition government led by Fine Gael, the centre-right party which won the election. Reprimanded several times by the European Court of Human Rights, Dublin must fill the legal void surrounding collective bargaining, a right absent from Irish legislation, with the exception of cases of collective redundancies. Within the framework of the current system, characterised as voluntarist, employers and unions are under no obligation to open negotiations on wages or working conditions. This has led to a situation where some businesses bargain collectively, while others do not. For the latter category, legislation adopted in 2001 provided the possibility for courts to rule on wages and working conditions. However, in 2007, the Supreme Court deprived this legal provision of its substance by adopting a broad definition of collective bargaining, covering all discussions between the employer and a group of workers, regardless of their form. As a result, the government is now working on an appropriate legal framework.

In its statement of 26 April 2012, following their mission to Ireland, the EC, ECB and IMF reported that Ireland's programme implementation continued to be strong. Fiscal targets for 2011 were met with a healthy margin and consolidation remained on track in the first quarter of 2012. The authorities have also pressed ahead with comprehensive reforms to restore the health of the Irish financial sector. Market confidence in Ireland's policies has improved, contributing to some stabilisation in Irish bond spreads, although they remain elevated.

In their **s**tatement[3] on the 8th Review Mission to Ireland of 25 October 2012, the EC, ECB, and IMF stressed that although Ireland's gradual economic recovery had continued, its domestic demand and employment continued to decline owing to on-going household balance sheet repair, the weak labour market, and low lending to households and SMEs. Prospects for growth in 2013 were for modest pickup to just over 1 % as domestic demand declines moderately, although weak trading partner growth could continue to dampen net exports despite Irish competitiveness gains. However, unemployment remained unacceptably high, especially among the young, making job creation and growth a key priority. Accordingly, plans were progressing to utilise resources from the European Investment Bank, the National Pension Reserve Fund, and private investors to finance job-rich projects in several sectors. The

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http://europa.eu/rapid/press-release_MEMO-12-808_en.htm

Action Plan for Jobs was expected to contribute to employment generation through a wide range of measures. It was also important to ensure that job seekers were well prepared to fill positions when they became available by strengthening employment and training services through vigorous implementation of the Pathways to Work initiative. Engagement with the long-term unemployed should be a priority, including through timely and well-designed involvement of the private sector in providing employment services.

Furthermore, the future legal framework is intended to strengthen the right to collective bargaining in conformity with the Irish Constitution which recognizes the right to assemble, while the Council of Europe has repeatedly admonished Dublin about the closed-shop practice, tolerated by law, which allows employers to make recruitment conditional on union membership. The review should also help increase protection for union representatives against discrimination.

As far as wages are concerned, the "national union" government is committed to restoring the statutory minimum wage to its 2010 level, i.e. €8.65 an hour (the previous government had reduced it to €7.65 in January 2011). The new government also inherited the reform of EROs (Employment Regulation Orders) and REAs (Registered Employment Agreements), wage agreements in low-income sectors. Planned for a long time, the reform process quickened in 2011, under pressure from the EU and the IMF in the context of Ireland's bailout. The previous government had launched a consultation which ended shortly before the election. The reform, organized by an independent structure, could lead to a drop in hourly rates in the sectors covered by these agreements. The first government recommendations were expected in May or June 2012. The government has undertaken to leave the Joint Labour Committees (JLC) untouched. JLCs are structures on which employers and employees are equally represented and where EROs are negotiated. Previously some employments were covered by agreements made by Joint Labour Committees. On 7 July 2011 the High Court ruled that the legislation delegating powers concerning pay and conditions to Joint Labour Committees (JLCs) was unconstitutional. Following the High Court decision Employment Regulation Orders ceased to have statutory effect from 7 July 2011. Employees who were covered by an ERO have existing contracts of employment which govern their pay and conditions of work. If an employer reduces an employee's rate of pay this would be a change in their contract of employment and normally it requires the employee's consent. Until new EROs are made (see 'Reform of JLC system' below) the pay and conditions of employees who start work after 7 July 2011 is governed by employment legislation such as the minimum wage. The Industrial Relations (Amendment) Act 2012 reforming the Joint Labour Committees and Registered Employment Agreements (REAs) wage-setting mechanisms came into force on 1 August 2012.

The Act's provisions include:

- JLCs will have the power to set a basic adult rate and 2 additional higher rates
- Companies may seek exemption from paying ERO and REA rates due to financial difficulty
- JLCs will no longer set Sunday premium rates. A new statutory Code of Practice on Sunday working is to be prepared by the Labour Relations Commission
- When setting rates JLCs will have to take into accounts factors such as competitiveness and rates of employment and unemployment

Other reforms, which do not need legislative change, include reducing the number of JLCs to 6 and standardising benefits such as overtime through a nationally agreed protocol or Code of Practice.

Reform of the labour-related complaints procedure was launched in November 2011. Its aim is to save money by ensuring faster treatment of labour-related complaints. The draft bills were sent to Parliament in July 2012 and included the following proposals:

- the merger of the five existing institutions (the Employment Tribunal (an independent tripartite body in charge of conciliating, mediating and arbitrating collective bargaining); the Labour Relations Commission (LRC, which monitors industrial relations); the Employment Appeals Tribunal (the judicial body in charge of enforcing the law); the National Employment Rights Authority (NERA, similar to the general labour inspectorate); and the Equality Tribunal (responsible for discrimination cases). Two levels (sharing administrative services) are proposed: a Workplace Relations Commission that would deal with first-instance complaints, and a Labour Court which would be an independent appellate body.
- The creation of a Workplace Relations Commission (WRC) with the same prerogatives as the LRC, the Equality Tribunal, the Employment Appeals Tribunal (for first-instance cases only) and the NERA. The Commission, which will answer to the Department of Jobs, will be governed by a tripartite board comprising employee, employers and department representatives. Its Director, appointed by the Minister following open competition, may not hold office for more than 10 years. The WRC will provide information to employers, employees and the social partners. In this respect, it will issue a new code of conduct on industrial relations, as consultation prior to the bill brought out the need to review existing codes, notably to merge the documents on harassment and bullying at work.
- In mediation and first-instance cases, the Commission will work to solve disputes as soon as possible to keep the cases from going to court. With the information service and a new web portal, employers are encouraged to supply employees with information on the existing disciplinary procedures. Employers will now be notified of any complaint lodged against them within five working days. The Bill also creates a new system which the Minister is hoping will help reduce the time it takes to hear a complaint – currently up to two years. A focus is also put on the resources for workplace mediation to avoid a court hearing. When a case goes to court, the

parties will be permitted to rely on information exchanged during the mediation process. First-instance judges will be chosen from a panel of professionals in the field of IR, HR and law and will hear the case privately, not in the form of a tripartite tribunal as some suggested during consultation. Finally, the reform aims to limit to 3 months the time between complaint and hearing, with reasoned decisions being announced within 28 working days in 90 % of cases.

- Labour inspectorate reform: The Bill mandates labour inspectors, who now answer to the Commission, to make decisions in cases pertaining to minimum rights, e.g. compliance with minimum wages or annual leave, and to order payment of compensation. Until now, the NERA had to rely on voluntary compliance. The reform introduces a system of notices, sent to employers who are in breach of the law, setting out the steps they need to take to effect compliance. An employer may appeal against the notice to the Labour Court. On the other hand, failure to comply with the notice may result in the Labour Court, following a hearing, issuing a binding order on the basis of the labour inspectorate's opinion. Failure to comply with such an order would in turn be a prosecutable offence. In addition, the Minister is proposing a system of fixed fines determined by labour inspectors if the employer in question fails to rectify non-compliance within 14 days. These fines target cases where the employer fails to provide an employee with written terms and conditions of employment, refuses to provide a pay slip or to record deductions, or even fails to produce employment records to the labour inspectorate
- Finally, with regard to the Labour Court and the enforcement of sentences, the Labour Court will continue the work done by the Employment Appeals Tribunal. It will act as a last resort and its decisions can only be challenged by the High Court. The Labour Court will have one Chairman, four Deputy Chairmen and eight Ordinary Members. The Bill introduces the possibility for the Court to take a case and ask the WRC to initiate an investigation in a company. The Court will hear all appeals against WRC decisions within 42 days and the parties will have to attend the public hearing. Finally, the Bill sets up a department in charge of enforcing the decisions by the WRC and the Labour Court. When called on by the plaintiff, they may order application via a civil tribunal, within the framework of civil and/or criminal proceedings.

By an Act of 16 May 2012, Ireland transposed the European directive on temporary work. The Act was passed in the absence of a negotiated deal between the primary social partner bodies, the Irish Business and Employers' Confederation (IBEC) and the Irish Congress of Trade Unions (Congress). The Act allows temporary workers in Ireland to enjoy equal treatment in their employment and working conditions with the permanent workers of the company where they are assigned from day one in relation to "basic working and employment conditions", covering pay, working time, rest periods, night work, overtime, annual leave and public holidays. The Act defines pay as "basic pay, and (b) any pay in excess of basic pay in respect of shift work, piece work, overtime, unsocial hours worked, hours worked on a Sunday." Matters such as occupational pension schemes, financial participation schemes, sick pay schemes, benefits in kind, bonus payments, maternity and adoptive leave pay, and redundancy payments are outside the remit of the Act. The Act does not apply to an agency worker employed by an employment agency under a permanent contract of employment, provided that the employment agency notifies the agency worker in writing that, if the agency worker enters into that contract of employment, the principle of equality will not apply and that, between every assignment, he/she will be paid an amount equal to not less than half of the pay to which he or she was entitled in respect of his or her most recent assignment. The Act also provides that the user company has to inform temporary employees of any vacant position of employment with the company for the purpose of enabling the agency worker to apply for that position. The Act introduces the principles of continuance for temporary assignments: when there are several assignments for the same job in the same company with no more than three months in between, it is considered that there is only one assignment. The employment agency is liable for failure to provide equal treatment in terms of basic working and employment conditions such as pay, while the hirer bears liability for failure to provide access to collective facilities and/or access to information on vacancies. Agency workers can take claims to the Rights Commissioner which can then be appealed in the Irish Labour Court. The maximum financial penalty an employer can face for breaching the Act is two years' remuneration.

On 14 January 2013, the government and trade unions started discussing pay and working conditions in the public sector. The government wants to save an additional EUR 1 billion in the next three years. The government is mostly targeting civil servants who refuse to be transferred to other posts or whose profile makes this transfer difficult. Increasing working time in return for maintaining pay should also be discussed. This targets in particular civil servants who work less than 40 hours a week (34 hours in some local communities), whose working time could increase by 4 hours per fortnight. The government is also planning cuts to overtime budgets, especially on Sundays, and to high salaries in the sector. These measures are questioning the "Croke Park" agreement signed in 2010 for 4 years, where the Irish government promised not to make any staffing or pay cuts in the public sector in exchange for unions being involved in the reforms restructuring the sector. By March 2012, the measures implemented had already downsized the Irish public sector by 28,000 civil servants. And in September 2012, an Irish labour court ruled that the working week in local authorities was to be increased to at least 34 hours for existing staff and 35 for newly hired or promoted staff. It had been the trade unions that had taken the local authorities to court when these changes were announced in early 2012. Unions claimed that this increase constituted a de facto wage cut which was precluded by the Croke Park agreement. The ruling will affect over 5000 employees in clerical, administrative, engineering, technical and related grades.

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Contributions by ETUC affiliated organisations:

ETUC Litigation network (meetings 29 June 2012 and 10 December 2012)

ETUC Social Policy and Legislation Ad hoc working group (Meetings 13 November 2011, 5 April 2012, 24 October 2012).

ETUC Legal Experts Network NETLEX (Annual Conference 1-2 December 2011, 11–12 December 2012)