



Collective bargaining and social dialogue in the public services An overview of recent reports

Labour Research Department

September 2014

Published with financial support of the European Commission



Introduction

In recent years there have been a number of initiatives that clearly recognise the scale and importance of the reforms and restructuring that has taken place and in some cases been imposed on public sector trade unions.

In June 2012, the European Commission's DG Employment and Social Affairs organised a conference with the International Labour Organisation on "Public Sector Adjustments". The conference publication included 15 country studies looking at developments in collective bargaining and social dialogue.

In late 2012 and early 2013, two projects – "Public sector pay, procurement and inequalities" and "Strengthening public services social dialogue in an era of austerity" – funded by DG Employment published their findings and country reports. In April 2013, DG Employment published *Industrial Relations in Europe 2012* with two chapters concentrating on developments in the public services.

Finally, in March 2013, the International Labour Organisation published *Collective Bargaining in the Public Services: A Way Forward*. Although this has a global perspective, it has a particular relevance to Europe and the threats to collective bargaining in the public sector.

This report summarises the main findings of these studies which have a number of common messages about the extent of collective bargaining and social dialogue in the public sector and the ways in which it has been affected by the ways in which the European Commission and national governments have responded to the crisis.

Adjustments in the Public Sector in Europe: Scope, Effects and Policy Issues

The study commissioned by the International Labour Organisation (ILO) and the European Commission provides detailed evidence on 15 countries. The damage inflicted is not just on the pay and conditions of public service workers but also on the quality of the services they provide as well as the process of social dialogue. The findings also raise serious concerns about the long-term effects.

The main findings included the following :

- Some governments were guilty of a lack of planning and transparency in the reforms and restructuring they were carrying out.
- There was evidence of an increase in low pay in some countries along with other factors, like cutbacks in training, that were creating problems for recruitment and retention.
- Short-term changes were being implemented without a full appreciation of the long-term costs.
- While some countries were looking to privatise and outsource services, the research raised questions about the extent to which there was clear evidence that these processes would deliver greater efficiency or cost savings without jeopardising quality.
- There had been a widespread failure to assess impact of reforms before they are undertaken.
- Broadly the tendency had been for governments to cut public expenditure rather than consider ways of to increase revenues.
- There was clear evidence of an impoverishment of social dialogue and need to take action to strengthen or even start rebuilding social dialogue in some countries.

The 15 country studies that followed provide plenty of detail to support these key conclusions and at the conference that discussed the report EPSU affiliates were able to complement this with examples from their own countries as well as making some more general points.

- Richard Holzer from GÖD in Austria argued that public sector unions were conscious of the need to improve efficiency but were not convinced that this was a question of learning lessons from a private sector that had been responsible for the financial and economic crisis.
- Rosa Pavanelli from FP-CGIL in Italy said that the situation in Italy reflected the situation in many other European countries with a government making positive statements about the need for public investment and social dialogue while failing to take any real steps to promote either in practice.
- Cristina Iftimescu from the Sanitas health union in Romania warned of the potential long-term damage being caused by the current restructuring, underlining

the difficulties already created by large-scale emigration of health workers from her country and other parts of Central and Eastern Europe.

Labour ministers from four countries (Czech Republic, Latvia, Lithuania and Romania) were joined by a representative of the Spanish central administration to discuss how governments were dealing with the issues of restructuring and social dialogue. While all were supportive in general terms about the importance of the process, none of the five explicitly addressed the weakening or undermining social dialogue in their own country.

They were joined on the panel by ETUC general secretary Bernadette Ségol who stressed the need to understand the nature of the public service mission and that it couldn't necessarily be delivered with private sector methods nor could it be replaced on a large scale by charitable or voluntary provision. Also on the panel was Milena Angelova of the CEEP, the Centre of Employers and Enterprises providing Public services, who said that there was a need for a long-term approach that looked at the need for public investment and what could be done to maintain and improve the attractiveness of the public sector as an employer.

Representatives of the employers in Romania (private sector) and Germany (local authorities) underlined the importance of social dialogue in the process of restructuring and in creating a stable environment.

In terms of social partner involvement at European level, the EPSU general secretary and representatives of the CEMR local government and EUAPE central government employer organisations agreed that they had been working together on key issues like restructuring and how there was potential for further cooperation in the future on important themes such as sustainable development.

Industrial Relations in Europe 2012

The "Industrial relations in Europe" reports are published every two years and the memo attached to the 2010 report already included a note about the developing situation in the public sector, saying that "The crisis-induced increases in public debt led several governments to adopt fiscal consolidation programmes affecting the public sector. Public sector wages were frozen or cut to different degrees in Belgium, Slovenia, Estonia, Latvia, Lithuania, Romania, Bulgaria, Greece, Hungary, Ireland, France, Italy, the Netherlands, Portugal, Spain and the UK. With the exception of Belgium and Slovenia, these measures were imposed rather than negotiated between employers and trade unions."

That memo also noted the level of protests growing in a number of countries and that: "As the debate about the distribution of the costs of the crisis continues, there is further potential for social conflict arising from the impact of the cuts in public

expenditure, especially in the absence of effective social dialogue. There is also a gender dimension to consider: While the first phase of the crisis was felt most in the private sector and affected men proportionally more than women, public sector cuts tend to affect women more than men due to the structure of employment in the sector.”

In recognition of the major impact of austerity on industrial relations in the public sector, DG Employment and Social Affairs decided to focus a significant part of the next Industrial Relations in Europe report on the public sector.

The 2012 Industrial Relations in Europe report provides important detail of the impact of fiscal consolidation on public sector industrial relations but doesn't question whether this a policy that was actually working at the time. Indeed it maintains that the policy was essential and acknowledges the scale of its impact: “For countries hit by the debt crisis, fiscal consolidation, financial stability and structural reforms are conditions to restore confidence, re-establish fiscal solvency and foster economic growth over the medium term. In these countries the measures are necessarily more severe than those taken by private companies during the 2008-2010 recession.”

In an extremely important assessment, the report concedes that there have been significant effects on collective bargaining systems with reforms sometimes taking place with proper consultation or negotiation: “In some countries, these measures included reforms of collective bargaining systems where they were seen as part of the problems to be addressed. Even if the Commission has always stressed the importance of social dialogue, of the autonomy of social partners and of the respect for national circumstances and practices, reforms were not always accompanied by a fully effective social dialogue.”

The report is clear about the consequences of austerity for public service trade unions and also argues that the changes that have been taking place mark a significant shift industrial relations:

“The impact of the crisis on industrial relations in the public sector is severe, particularly for the trade unions. For some time now, the public sector has provided a core group of trade union members; trade union density in many Member States has been considerably higher in the public than in the private sector, and the combination of austerity policies leading to a shrinking public sector and demographic trends is likely to further reduce trade union density in services overall in the coming years. As a result of the reforms in the public sector and the current conflictual environment, industrial relations in the public sector have almost certainly changed fundamentally.”

The report draw together some important conclusions that pose major challenges for public service trade unions: “Within this diversity, the crisis has exercised some common pressures: a return to unilateralism on the part of governments and public

employers to the detriment of forms of social dialogue, at times instrumental to the introduction or strengthening of private-sector style human resources management practices; a weakening of special prerogatives of public employees, where they existed; top-down determination of wages and a reduced role of trade unions, in terms of density rates and of capacity to influence government and public employers' policies.”

The report also tries to provide a justification for the imposition of austerity on the public sector in terms of equity and the need to shift resources to other sectors: “It is indisputable that while initially the response to the first phase of the crisis involved mainly the private sector, governments have targeted the public sector as a key sector for adjustment, also to achieve a more equitable distribution of the burden of the adjustment and to promote sectoral reallocation in favour of tradable sectors.”

The report suggests that the prospects for industrial relations in the public sector is not very positive and this is very important in the light of the International Labour Organisation's (ILO) report on collective bargaining in the public services (see below). In that report the ILO emphasises not only the significance for collective bargaining in being line with many of the essential aims of public service delivery but also that the global trend was towards an increase in collective bargaining in the public sector.

The Industrial Relations in Europe report is, therefore, of concern for public sector institutions and trade unions by concluding that: “... regulation of the employment relationship through collective bargaining is highly constrained because of the reduction in available resources, wage freezes and the suspension of normal bargaining mechanisms. A new centralised unilateralism is emerging, which resembles the traditional unilateral regulation of public sector industrial relations by central political authorities, with a new emphasis on effectiveness and efficiency, rather than impartiality and equity.”

Public sector pay, procurement and inequalities

This was a five-country research project coordinated by Professors Damian Grimshaw and Jill Rubery at the European Work and Employment Research Centre, University of Manchester. The comparative and country reports are all available [here](#).

The research set out to examine the following issues:

- patterns of public sector pay reforms and pay settlements since 2005;
- government and social partner strategies towards public sector pay and the extent of changes in processes of social dialogue and in the industrial relations climate in the public sector;
- changes to government use of public sector procurement and the implications for pay and employment conditions;

- the implications of public sector pay reforms and procurement strategies for indicators of wage and employment inequality; and
- lessons for improving the mechanisms for, and quality of, social dialogue.

The countries covered were: France, Germany, Hungary, Sweden and the UK. Among its general observations, the research found that: “Social dialogue arrangements are relatively weak in the face of major budget cuts and a determination of the state to enforce changes to wage systems.” However, it also noted that it was not only the rights of employees that were vulnerable to government’s unilateral actions but also that the needs of service users also tended to be overridden by fiscal concerns.

The research investigated the extent of outsourcing to reduce costs and its impact in practice, particularly on the pay and conditions of workers. The findings suggest that the results of outsourcing are open to debate argues firstly that: “better scrutiny of outsourcing decisions should be introduced involving social dialogue systems to ensure a proper business case exists;” and secondly that: “monitoring of the actual delivery after outsourcing should be more effectively scrutinised and be part of social dialogue as some services may need to be re-internalised and outsourcing should not be considered a one way process.”

With the amendments to the procurement directive being debated between the European Council, Commission and Parliament, it is particularly significant that the research says that: “the extent to which quality human resource practices can be included in tender arrangements in the EU needs clarifying - and if necessary changes to EU competition law passed to allow, for example, calls for tenders to insist on appropriate pay and grading, training and staffing levels as a minimum condition in tenders.”

The research also looked at the question of gender equality and the extent to which there was a pay premium in the public sector. It found that: “This analysis demonstrates the importance of the public sector for gender equality but also the variations in this role across countries. Cuts to the public sector are primarily, however, hurting women and even where there are pay premiums, these may offset very low and discriminatory wages in the private sector.”

Social dialogue and public services in the aftermath of the economic crisis – strengthening partnership in an age of austerity

This was a six-country research project coordinated by Professor Stephen Bach at King’s College in London. The final conference took place in February 2013 and the comparative and country reports are all available [here](#).

The central questions that the researchers set out to answer were:

- What have been the main drivers and measures of austerity adopted in each country?
- How have these changes been implemented and to what extent has social dialogue contributed to the change process at national, sectoral and workplace level?
- How have institutions of social dialogue influenced industrial relations processes/ outcomes in the public services?

The six countries covered – Czech Republic, Denmark, France, Italy, Netherlands and UK – provided a range of examples of different traditions of and developments in social dialogue and collective bargaining in the public services.

Among the main conclusions of the research was that social dialogue had been weakened where the scale of cuts was the largest: “It is almost certainly no coincidence that in the countries in our study undertaking the largest combinations of pay and employment cuts, governments have used policies of restriction to bring about the rapid changes they seek, regardless of the impact on social dialogue and the longer term consequences for public service quality and employment standards.”

In contrast, the report found that: “In Denmark, France and the Netherlands the dominant tendency is the resilience of social dialogue within local government and this has also often been combined with attempts at reconfiguration. In all these countries, a shift in power relations in the direction of employers has occurred but social dialogue institutions are resilient and the legitimacy of social partner involvement is not questioned.”

While the research confirms fears about the attacks on social dialogue at national level, it found examples of different approaches at local level: “Overall, the widely expressed concern that social dialogue is being undermined because austerity measures are being formulated and implemented without recourse to the social partners is confirmed by national level developments especially with regard to wage developments. The position is more complicated, however, if the focus shifts towards local government and includes more decentralised levels with signs of resilience and reconfiguration.”

In line with the findings of the research on public sector adjustments commissioned by the International Labour Organisation, this project notes the threat to the public sector’s role as a good employer and highlights the important role of social dialogue in the process of reform and restructuring: “In combination with wage cuts, employment reductions and pension reforms the role of the public sector as an employer of choice is being challenged. In these circumstances effective social

dialogue to safeguard social partner voice and to ensure more orderly and effective processes of change remains of paramount importance.”

The International Labour Organisation’s General Survey: *Collective Bargaining in the Public Services – A Way Forward*, 2013

Collective bargaining in the public services – a fundamental human right

In 1979 the ILO governing body approved a report that said that Convention 151 and Recommendation 159, both covering labour relations in the public services, were “instruments to be promoted on a priority basis, under the heading “fundamental human rights”. The General Survey provides an assessment of overall trends in collective bargaining in the public services along with some specific examples. However, it also importantly underlines the significance and relevance of collective bargaining to the public service mission.

Linking collective bargaining to the basic aims and objectives of public services

A significant point made by the ILO in a number of sections of this report is the connection between collective bargaining and the broad aims and objectives of public service organisations. It highlights this firstly in paragraph 25 on page 6: “In this respect, the Committee recalls that it has repeatedly highlighted the connection between the right to organize and collective bargaining on the one hand and the development of human potential, economic growth, social justice and sustainable peace on the other hand, as well as the relevance of this right to achieving the objective of decent work, particularly during times of economic crisis.”

It then goes into much more detail on pages 71-71 (paragraphs 224-227) where it lists a broad range of attributes that are expected of the public services and which can best be guaranteed where there is a system of collective bargaining: “The Committee recalls that the public service must be effective and efficient in order to ensure the effective exercise of rights and improve citizens’ quality of life (public safety, education, health, social security, culture, access to housing, law enforcement in the numerous areas of competence of the public service, etc.), as well as being a vital factor in sustainable economic and social development, the well-being of workers based on fair conditions of employment, and the progress of sustainable enterprises. This objective requires the provision of high-quality services by public institutions – which are often essential and highly complex – as well as sufficiently qualified and motivated staff and a dynamic and depoliticized public management and administrative culture, with an ethical focus, which combat administrative corruption, make use of new technologies and are founded on the principles of confidentiality, responsibility, reliability, transparent management and non-discrimination, both in access to employment and in the provision of benefits and services to the public.”

Few restrictions on the coverage of collective bargaining

The report emphasises that the right to collective bargaining should be afforded to the vast majority of public service workers. It acknowledges that the police and armed forces may be excluded but also notes that these groups of workers do have collective bargaining rights in some countries. It also concedes that some high-level workers or those dealing with highly confidential issues might be excluded but warns against “overly broad definitions” that prevent larger groups of workers exercising their rights.

“The Convention [151] applies to “all persons employed by public authorities, to the extent that more favourable provisions in other international labour Conventions are not applicable to them” (Article 1). The only categories of public employees that can be excluded from the scope of the Convention by national laws and regulations (other than the armed forces and the police, as was the case with previous Conventions) are: “high level employees whose functions are normally considered as policy making or managerial” or “employees whose duties are of a highly confidential nature.”

Collective bargaining in the public services has spread

The trend noted by the report is for collective bargaining to become the practice in the public services in a growing number of countries and so any block or reverse of this trend, as has been the case in Europe, should be treated as a matter of major concern: “The recognition of public sector workers’ trade union rights, including the right to collective bargaining, has long been claimed by the trade union movement and, in the last 50 years, many countries have adopted standards in view of achieving this objective. A review of different national legislation demonstrates a clear global tendency towards acknowledging these rights.”

The report later adds: “With regard to collective bargaining in the public administration worldwide, the adoption and ratification of Conventions Nos 151 and 154 by a significant number of States have in recent decades made the international community aware that employment conditions in the public sector cannot be established on a unilateral basis and that trade union organizations of public employees must participate fully in the process. In the context of this evolution, as well as widespread recourse to bipartite consultation, a clear expansion can be observed globally in the right to collective bargaining on employment conditions in the public administration sector in Europe, Oceania and Latin America, in a considerable number of African countries and in a number of Asian countries.”

Emergency situations are not an excuse to undermine collective bargaining

The ILO report underlines that “the freedom of association Conventions contain no provisions that allow the invocation of a state of emergency to justify exemption from the obligations arising under the Conventions or the suspension of their application.” (Paragraph 90, page 23)

Collective bargaining is broader than negotiating collective agreements

The report makes clear that the conventions on collective bargaining can cover a range of situations and are not limited to the negotiation and signing of collective agreements. They “allow for different approaches to harmonizing the principle of collective bargaining with the statutory nature of relationships between the State, as an employer, and public servants.” (Paragraph 268, page 90)

Hindering representation

The ILO cites examples where trade union representation is hindered or prevented by restrictive rules, particularly requirements that trade union support reach certain thresholds. It points out that high thresholds should not be used to exclude trade unions or restrict representation to particular trade unions and that even thresholds of 30% or lower are not all compatible with the Convention.

No reason to exclude pay bargaining

While the ILO concedes that there are particular circumstances in the public services such as the economic constraints that may be faced by state authorities, this should not prevent trade unions being able to negotiate on pay: “The Committee emphasizes that under Convention No.154, which covers terms and conditions of employment as a whole, public employees should be able to negotiate wages collectively (mere consultation of the unions concerned, which would be allowed only under Convention No.151, since it affords member States the choice between collective bargaining and other methods of determining public employees’ terms and conditions of employment, is not sufficient – after a certain time has passed since the ratification – to meet the requirements of Convention No.154 in this respect).”

Intervention of international or regional bodies in times of crisis

The situation in Europe, with the European institutions intervening in collective bargaining at national level, is not seen as, “in principle, incompatible with the provisions of Conventions Nos 151 and 154 provided that these regulations are adopted after intensive discussions and consultations with the parties concerned.”

Collective bargaining and the economic crisis

While acknowledging that economic crises might require emergency action by governments, the ILO stresses that any such measures should be subject to prior consultation with trade unions and meet four criteria:

1. They are applied as an exceptional measure.
- 2 They are limited to the extent necessary.
- 3 They do not exceed a reasonable period.
- 4 They are accompanied by safeguards to protect effectively the standard of living of the workers, concerned, in particular those who are likely to be most affected.

The report further states that any existing agreements should be honoured up to their normal expiry date with exceptions only in cases of “serious and insurmountable difficulty” and even these exceptions should be “examined prior to their implementation through a process of social dialogue”.

In terms of restrictions on pay bargaining the Committee considers a three-year period of limiting collective bargaining as “a substantial restriction” and that if such a restriction is imposed then collective bargaining on non-monetary matters should remain unaffected.

The report indicates ILO concern about developments in some countries, particularly Greece, where reforms have included giving employers the right to withdraw unilaterally from agreements, to move to enterprise-level bargaining and even to negotiations with non-unionised representatives. The ILO further notes that: “Some countries have adopted these measures either without consulting trade unions or in spite of their opposition, in the wake of emergency EU, IMF, or World Bank bail-out packages requiring rapid, or even hasty, responses, which have not always had the desired effect.

The report also calls on international bodies to recognise the responsibilities of governments who signed up to ILO conventions: The Committee considers it important that, when adopting measures in times of economic crisis, all international organisations take fully into account the obligations of States arising from their ratification of ILO Conventions, and particularly those concerning collective bargaining.” And following the crisis: “The Committee emphasizes that when national economies return to normality, intensive tripartite dialogue must be undertaken to ensure that the exceptional measures adopted are not consolidated...”

Ratifications

27 of the 48 countries that have ratified Convention 151 are in Europe, including Slovakia and Slovenia, who ratified it as recently as 2010.

Countries in the EPSU region that have ratified 151

Albania, Armenia, Azerbaijan, Belarus, Belgium, Cyprus, Denmark, Finland, Georgia, Greece, Hungary, Italy, Latvia, Luxembourg, Moldova, Netherlands, Norway, Poland, Portugal, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, UK

Countries in the EPSU region that have not ratified 151

Austria, Bosnia & Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, France, Germany, Iceland, Ireland, Israel, Kazakhstan, Kyrgyzstan, Lithuania, Macedonia, Montenegro, Romania, Russia, Serbia, Tajikistan, Ukraine

The report notes that ratification of 151 is on the agenda in the Czech Republic and Macedonia while in contrast no analysis of national legislation has been carried out to

assess conformity with 151 in either Bosnia & Herzegovina or Israel, nor has possible ratification been the subject of tripartite discussion in Bulgaria. Serbia may consider ratification of 151 after completing ratification procedures for three other conventions.

A number of countries claim that elements of their legislation are incompatible with ratification of 151, including Lithuania, Germany, France and Portugal. While the government of Romania “does not deem it necessary to ratify the convention.” However, the claimed incompatibilities may not be so problematic: “The Committee notes that a number of the obstacles raised should not prevent ratification and hopes that this Survey will help clarify the scope of the provisions of the Convention for the countries concerned.”

Conclusion

As general conclusion to this report it may be appropriate to quote the ILO report in its assessment of the significance of collective bargaining: “The Committee wishes to point out that collective bargaining is one of the most important and useful institutions developed since the end of the nineteenth century. As a powerful instrument of dialogue between workers’ and employers’ organizations, collective bargaining contributes to the establishment of just and equitable working conditions and other benefits, thereby contributing to social peace. It enables the prevention of labour disputes and the development of procedures to resolve specific problems, particularly in the context of adjustment processes in the event of economic crisis or cases of force majeure, as well as worker mobility programmes. Collective bargaining is therefore an effective instrument which facilitates adaptation to economic and technological change and to the changing needs of administrative management, often in response to demands from society.”