

The argument for social and employment competence (Q1 – Q3)

1. To what extent is EU action in this area necessary for the operation of the single market?

We do not think it is necessary for the operation of the single market for the EU to regulate working conditions in the way it currently does. We note that other single markets operate effectively without extensive harmonisation of employment standards.

2. To what extent are social and employment goals a desirable function of the EU in their own right?

“Goals” can be set and achieved without EU legislation, through voluntary co-operation between the member states and the Commission. Such an approach is appropriate for broad-brush goals such as “full employment” and “social cohesion”.

3. What domestic legislation would the UK need in the absence of EU legislation?

Broadly speaking, the starting point should be the UK situation before the introduction of EU legislation on health and safety, working time, temporary agency workers, part-time work etc. In some areas (eg health and safety) there was extensive UK regulation beforehand. In other areas (eg working time) regulation was mainly via collective agreements tailored to meet the needs of specific sectors. In such areas the government and stakeholders would need to consider whether UK legislation would be needed or some other instrument.

Impact on the national interest (Q4 - Q7)

4. What evidence is there that EU action in social policy advantages the UK?

We do not have evidence to offer on this question.

5. What evidence is there that EU action in social policy disadvantages the UK?

To the extent that EU social and employment protection standards exceed those of competitor nations outside the EU this has probably been a contributory factor to the large-scale movement of manufacturing to Asia and elsewhere. The consequence has been increased unemployment and social costs in most member states.

For ourselves as employers, the EU directives have led to indirect compliance costs (especially relating to TUPE, equal pay and working time) as well as direct costs (eg equal pay, annual leave not taken because of sickness and treating inactive on-call time on employers' premises as working time). Some but by no means all of these extra costs would probably have been incurred to some extent without EU legislation.

There are no figures for the total costs involved for the public sector as a whole, but we are confident that the impact has been considerable.

6. Are there any other impacts of EU action in social policy that should be noted?

We are aware of examples of "risk averse" behaviour on the part of managers and employers, who are reluctant to apply the letter of UK law for fear of it being overturned, with retrospective effect, by the ECJ. In view of the ECJ's remarks in the Defrenne case quoted on page 11 of the Review document and other similar cases we submit that such fears are not irrational.

The principle of direct effect for "emanations of the State" means that as public employers we are more exposed than others to the consequences of legal challenges at EU level. A kind of double standard arises in that decisions can have direct effect on employees making claims in the public sector, but not for those in the private sector. ECJ cases therefore have a more immediate, potentially detrimental, impact on public sector employers.

7. What evidence is there about the impact of EU action on the UK economy? How far can this be separated from any domestic legislation you would need in the absence of EU action?

As public employers, the extra costs we incur due to EU legislation (see 5 above) mean either higher taxes or lower service standards, both impacting adversely on the overall economy. The impact of the Working Time directive (WTD) on 24/7 emergency services has been particularly noticeable.

Before the WTD there was no equivalent UK legislation (unlike the case for health and safety) so the WTD related costs and service reductions are in principle attributable to EU legislation and would only be offset by the impact of domestic legislation in what we consider to be the unlikely event that a UK government would choose to introduce a UK equivalent to the WTD if there was no longer an EU obligation to do so.

Future options and challenges (Q8 - Q12)

8. How might the UK benefit from the EU taking more action in social policy?

There is a commonly held belief that some countries do not apply EU legislation as rigorously as the UK does and that this gives those countries an advantage. There is a case, which the Commission may already have tacitly accepted, for switching attention from further regulation to ensuring compliance with existing regulation. If this leads to the conclusion that some existing regulation is counter-productive in some ways and therefore needs improvement (whether by simplification, reduction or amendment) so much the better.

9. How might the UK benefit from the EU taking less action in social policy, or from more action being taken at the national rather than EU level?

According to the accepted principles of subsidiarity and proportionality, it is axiomatic that it is better for decisions affecting the workplace to be taken at national or sub-national level rather than at EU level, unless there is a clear added value for EU-wide action. The increasing diversity between the EU member states makes it increasingly difficult to make effective legislation (without unintended consequences). Principles are sufficient and it would be preferable if the detail were left to member states.

An example of where EU action does add such value is in defining a system for working out which educational and vocational qualifications are equivalent to each other. This facilitates free movement. On the other hand, having EU rules on working time provides a single set of rules for a hugely diverse set of circumstances.

10. How could action in social policy be undertaken differently? For example, are there ways of improving how EU legislation is made e.g. through greater adherence to the principles of subsidiarity and proportionality or the ways social partners are engaged?

A/ The EU could stipulate goals only in headline terms (eg “no discrimination on grounds of gender, race, age...in the workplace”) and then delegate to member states who would have discretion on the process to determine the detail: national social partners to produce agreements or joint guidance/national legislation/government guidance; no appeal on detail to ECJ.

B/ Final legal appeal on social matters to be at national level.

C/ EU to limit social legislation to broad “frameworks” (as eg Health and Safety) leaving “daughter” legislation/guidance to national level.

11. How else could the UK implement its current obligations in this area?

We do not have evidence to offer on this question.

12. What future challenge/opportunities might the UK face in this area and what impact might these have on the national interest?

So long as the existing situation continues in which many member states seem to accept the process of further European integration by means of further European initiatives (often described by the protagonists as “more Europe”), there will be a need for those who value subsidiarity and proportionality to stay vigilant. A particularly telling example of this came recently in the form of the Commission’s proposals on “Solvency II” which in their original form would have left the local government and university pension schemes more or less completely unviable, without huge subsidies from the taxpayer. This initiative was fought off by a broad coalition, including the trade unions, but few believe it is dead and buried.

If the above is an example of the challenges we face as employers from Europe, it is more difficult to give examples of opportunities, unless there is a sea change in which the Commission is more open to real “subsidiarity and proportionality”, such as along the lines sketched out in 10 above.

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