

## 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?***

The answer to this question depends on what one means by the operation of the single market. If one simply means a free market without borders, then the provisions on freedom of movement are sufficient. But one of the main purposes of the single market is supposed to be the improvement of living standards of everyone – and indeed that has in general been one of the successes of the EU. The problem then posed is the risk of regulatory competition between states or ‘race to the bottom’, in which states compete for capital investment and jobs by reducing domestic regulation and protections for workers. Minimum standards directives can prevent this. This is the main justification, for instance, for the directives on collective redundancies, acquired rights, and insolvency. These arguments are accepted, for instance, in the USA, with the Fair Labor Standards legislation (minimum wage, working time rules), which is a single market par excellence. In the EU, however, member states have chosen to retain the competitive advantage of lower wages.

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

There are two main arguments for EU action in this field.

1. Social Dumping. Although this term has a variety of uses, in this context it refers to two phenomena: (i) the use by foreign employers of foreign workers in a foreign country on terms and conditions of employment that are extremely poor and thereby the foreign employer can undercut terms and conditions in the UK (and other countries such as Germany and France) with the consequence that either there is a loss of jobs in the UK or that UK employers are forced to reduce benefits to domestic workers. (ii) the use by foreign employers of foreign workers in the UK on terms and conditions that are much worse than those enjoyed by UK workers (posted workers), which has the same adverse consequence.

2. Human Rights. Some labour rights (but not all) are regarded correctly as human rights (eg those covered by Art 4 ECHR – slavery, forced labour, trafficking) and the EU can often more effectively protect these rights since there can be a transnational element (eg trafficking of UK workers to Sweden).

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

This question lacks clarity. Presumably, if we left the EU, Parliament would decide what is needed. In theory it could abolish the Equality Act 2010 and the Health and Safety at Work Act 1974, for instance, but that seems an unlikely scenario. In my view, the UK would have to address all the issues currently raised by EU directives, though no doubt it could have slightly different rules.

#### **Impact on the national interest (Q4 - Q7)**

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

This question is ambiguous. Does it mean that there are advantages to workers in the UK or to employers? Or is the reference to the net benefit of the single market. The point about social dumping raised above is that a fully functioning single market should only be politically acceptable if certain protections are afforded to domestic workers against unfair competition from other member states. For instance, the posted workers directive requires foreign employers bringing foreign workers to the UK to pay the national minimum wage. Without this protection, gangmasters would thrive and there would be a loss of jobs for british workers (and a decline in tax revenues).

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

**There should be no disadvantage to the UK vis a vis other Member States if the directives impose minimum standards.**

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

*noted?*

There is a subtle impact that often goes unnoticed. The EU always must use the law to function effectively, and typically must do so by conferring rights on individual workers. That has two effects: (1) it bypasses institutions of collective bargaining and indeed permits individual workers and employers to challenge the outcomes of collective agreements; (2) it creates additional work for labour courts (in the UK Employment Tribunals) when workers try to enforce their rights. Theorists speak of the 'juridification of employment law'. Most people recognise (I think) that this juridification has adverse effects and social costs; and successive governments have tried to find mechanisms for informal resolution of disputes outside or before the legal process. This may not be possible as the EU will always require effective legal redress to be available.

***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?***

#### **Future options and challenges (Q8 - Q12)**

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

The present situation (despite your discussion paper's claims) is that no serious action is being taken in social policy. The soft approaches of the OMC may well be having impacts, but they are effectively left to member states. Directives tend to be consolidation and clarification, rather than innovative instruments. Just occasionally the social partners reach agreement, but the terms of the agreement are vague and have no significant impact on the UK. There are areas however whether further clarification of the legal position is desirable. The so called Monti- proposals tried to sort out the problems caused by the case known as Viking (which confuses the legal situation with regard to strikes in a cross-border context) but these were not accepted.

***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?***

***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?***

The engagement of social partners seems to be beneficial in terms of producing sensible proposals, but I am concerned by the 'representativeness' of the process, in particular the role or engagement of small businesses.

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

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

The disengagement of the UK from social policy has the following adverse effect. Our failure to insist on the export of our own national standards (with the exception of disclosure of terms of employment (Employment Rights Act 1996 s. 1 and the insolvency directive, and the race directive) means that other member states can avoid the costs that these measures impose on domestic employers. If we insisted on minimum standards that we approve being rolled out through the EU, we would achieve a more level playing field and discourage the exporting of jobs to other member states. The key provision would be a minimum wage throughout the EU. That is probably not possible at present, but more practical would be requirements for compensation for unfair dismissal and redundancy.

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