Balance of Competences: call for evidence

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The argument for social and employment competence

We welcome the launch of the third stage in the Balance of Competences Review, an initiative aimed at deepening public understanding of the United Kingdom's EU membership. We believe that an evidence-based analysis of the added value of EU regulatory action will develop a better understanding of the nature of our relationship with the EU. This submission aims to set out the areas in which EU action in social policy is fundamental for the efficient functioning of the Single Market whilst accepting that there are elements which need to be reviewed and reformed and areas which are best dealt with at Member State level.

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

Our view, one which is not shared by all political groups, is that a Single Market in goods and services does not require full social harmonisation. Nevertheless, certain elements of EU action in social policy contribute directly to the functioning of the Single Market and are integral on this basis. However we believe that such action should not be unfettered and controls should be exerted where possible to ensure that proposals are proportionate and remain within EU competence. Examples of this will be given where appropriate and more detail about exercising these controls will be given later.

Regulating the competing rights within the Single Market

Conflicts between social and employment rights and the fundamental freedom of movement[1] show that the Single Market is not an independent element of Union membership which can be detached from the wider environment in which it operates. To guarantee the four fundamental freedoms as the foundation of the Single Market, the EU must be able to intervene to monitor and assist its operation. It is on this basis that proposals such as Monti I[2], the Posting of Workers enforcement Directive[3] and the free movement of workers enforcement directive[4] were presented: to reconcile economic aims and social rights.

Although these proposals have controversial elements, the recent Business Taskforce report 'Cut EU red tape' accepted that the Posting of Workers directive "could really help"[5] when businesses send workers abroad. This is an example of a measure which although useful for the operation of the Single Market, in certain areas it goes too far in the detail, in this case by prescribing a joint and several liability regime. As well as being unnecessary and inconsistent with some Member State legal systems, this demonstrates that there are limits to the Single Market justification which need to be respected. Moreover, protectionism, which goes completely against the Single Market, should not be introduced through the back door[6].

Setting minimum standards in order to create a level playing field

The setting of minimum standards, as is enshrined in the Treaty[7], is the main extent to which EU action in this field is necessary for the operation of the Single Market. This has been demonstrated in

[1] Viking (Case C-438/05) and Laval (Case C-341/05)
[2] Council Regulation (EC) No 2679/98 on the functioning of the internal market and the free movement of goods
[3] Proposal for Directive concerning the enforcement of the provision applicable to the posting of workers in the framework of the provision of services - COM(2012) 131
[4] Measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers 2013/0124(COD)
[5] Page 25 'Cut EU red tape' Report from the business taskforce
[6] Artcile 9 Posting of Workers enforcement directive engendered much debate on the subject of protectionism
[7] Article 153(2)(b) TFEU

the area of Health and Safety[8]. In this area, as in others, such standards are important to reinforce the level-playing field and are vital for strengthening the Market[9]. They prevent competitive advantages[10] or 'social dumping' whilst still allowing Member States the freedom to implement higher standards of protection. Furthermore, they encourage labour mobility which is essential for satisfying the labour demand which stems from the Single Market[11].

Despite the imprecise nature of the term 'minimum standards', Article 153(2)(b) TFEU[12], the principles of subsidiarity and proportionality[13] and a robust impact assessment should guide the legislative process and inform whether harmonisation at EU level is necessary in the area concerned. This is a very important point: legislating minimum standards in social policy must respond to a specific need within the Union and must be adequately justified on this basis.[14] This approach goes some way to overcoming the near impossible task of predicting in which areas minimum standards could be beneficial.

When considering whether a proposal would in fact create 'minimum standards', the levels of protection already provided in each Member State should be taken into account. Consequently, any proposal which goes over and above the current EU average could not be considered a 'minimum standard'. In that respect, proposals should aim to go no further than raising the standards in those Member States which are below the current average in order for the aforementioned positive effects to be realised. They should not aim to impose standards which reflect impractical ideals or would impose excessive burdens on Member States and businesses. Adequate flexibility of method and implementation should always be ensured in order to take account of the differences in Member State regimes and labour markets.

Many argue that previous pieces of legislation in this area, such as the Working Time Directive, have not adequately abided by these principles and have introduced minimum standards which are seen as overly restrictive and inflexible. This piece of legislation will be discussed in a later section.

Maintaining the Single Market's competitiveness with third countries

In current economic times, maintaining the Single Market's competitiveness with third countries is extremely important. Social policy should not be used as a pretext for complete deregulation. Instead, Europe should work towards creating a successful social market economy[15] which aims to achieve economic efficiency while ensuring balanced social development[16]. The principle of flexicurity[17], or a balance between labour market flexibility and security, should be central to this development to allow businesses to grow, trade, attract inward investment and create employment opportunities without compromising on agreed minimum standards of protection, whether they are created at Union or Member State level.

[8] Health and Safety at work Framework Directive 89/391/EEC and others.
[9] Single Market, Equal Rights? UK perspectives on EU employment and social law Edited by Adam Hug and Owen Tudor, p.30 Ariane Poulain
[10] Ibid Karen Clements p.27
[11] http://www.eef.org.uk/representation/consultations/submissions/employment/EEF-response-to-Balance-of-Competences-Review-on-the-Free-Movement-of-Persons.htm
[12] This article sets out in which areas the EU has competence to adopt minimum standards such as the health and safety of workers, working conditions, social protection etc.
[13] Article 5 TEU
[14] Hug and Tudor op. cit. footnote 9 Ariane Poulain p.31
[15] Article 3 TEU
[16] Social economy and social entrepreneurship- Social Europe guide volume 4
[17] For more information on this concept, please see:
http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/flexicurity.htm

Coordination to encourage labour mobility which is essential to the Single Market

Coordination is another area of legislative action on social policy which is necessary for the operation of the Single Market[18]. Such coordination should remain limited to defining when competence transfers from the home Member State to the host Member State. Without coordination of social security systems[19], citizens would be discouraged from taking advantage of the free movement provisions through fear of losing their entitlements[20] or through simple lack of understanding of the rules which would apply. This would again remove the ability of labour mobility to satisfy labour demand and would decrease the inherent flexibility of the Market on which businesses rely. This fundamental freedom has been described as 'a positive channel that widens the available talent pool'[21] and it is therefore imperative that EU action on social policy encourages this.

This explanation also applies to legislation covered by other calls for evidence such as on the portability of pensions.

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

Equality and Anti-discrimination: integral to the Single Market but inherently justifiable

Certain social and employment goals reflect the European Union's intrinsic values and are therefore desirable in their own right. Equal treatment[22] and anti-discrimination are the most fitting examples. Although initially confined to gender equality and equal pay, action in this area has continually developed and now covers: sexual orientation, age, disability and religion or belief in employment, vocational training and other areas such as access to goods and services[23]. Equal treatment is integral to the functioning of the Single Market as it guarantees freedom of movement of workers: notably non-discriminatory access to employment opportunities across the Union and equal treatment with regard to social security entitlements[24]. It also guarantees access to goods and services across Europe to all citizens regardless of the aforementioned characteristics. Non-discrimination and equal treatment are principles upon which Europe should not be willing to compromise and even without the benefits to the Single Market, such aims are justified on this basis and as such should remain competences of the Union.

Tackling labour market developments: sharing information and learning from each other

This is an area in which Member States are best placed to make the required reforms but the EU can play a coordination and guidance role. The most prominent current example is of course, tackling unemployment. Working together to get the approximately 26, 654 million people currently unemployed across the EU[25] back into the labour market is integral for social convergence and mobility and for the economic and social development of those Member States that are most affected. Be this through non-legally binding Council recommendations[26], through the Open Method of Coordination[27] or through incentive measures such as the current proposal on the coordination of

[18] Article 48 TFEU
[19] Regulation 883/2004
[20] Council Directive 98/49
[21] http://www.eef.org.uk/representation/consultations/submissions/employment/EEF-response-to-Balance-of-Competences-Review-on-the-Free-Movement-of-Persons.htm
[22] Article 2 TEU: '*The Union is founded on the values of respect for….equality…human rights, including the rights of persons belonging to minorities'*
[23] Directive 2000/43, Directive 2000/78, Directive 2004/113, Directive 2006/54 etc.
[24] Regulation 492/2011
[25] http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Unemployment_statistics
[26] Article 145 TFEU
[27] Art 5 TFEU

Public Employment Services[28], action at EU level has the advantage of building on the experiences of 28 Member States when considering, and sharing information on, the possible ways to resolve these issues.

This justification is relevant to many areas of social policy, from measures specifically targeted at vulnerable groups such as NEETs[29] or the long-term unemployed to responding to labour market developments such as the ageing population[30] or the integration of migrants.

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

In the absence of EU legislation in social policy, the UK would have to legislate in almost every area currently covered by such legislation. For example, it would be necessary to put in place levels of annual leave, rest periods, criteria for agency workers' rights, a health and safety framework with additional legislation for specific areas etc. This would be so even if the detailed content of the legislation, the criteria and the thresholds would be different..

Domestic legislation required in the absence of EU legislation necessary for the Single Market

In the absence of social policy at EU level which is necessary for the operation of the Single Market, Member States would need to adopt domestic legislation which mirrored the previous EU standards. Without so doing, companies operating in more than one Member State would have to comply with more than one set of rules, thus increasing cost and administrative burden. The argument has also been made that certain EU-wide social or employment standards are beneficial for companies operating in a solely domestic capacity as it prevents them from being undercut by firms operating from countries with less strict rules or less regulation[31]. EU standards in this context help to prevent a race to the bottom.

If EU legislation remained, the UK would be prevented from adopting contravening domestic legislation in its place if it still wanted access to the Single Market. It is important to note that even those countries which are not part of the Union, such as Norway, have to implement Union social policy for this reason[32].

Domestic legislation required in the absence of EU legislative coordination

Replacing legislative coordination of Member State systems[33] with domestic legislation is unfeasible notably because we would lose the benefits detailed above.

More importantly, many of the principles on which Member States currently rely when considering an EU migrant's entitlement to benefits and services, such as the requirement of habitually residency, are found in legislation on the coordination of social security systems[34]. If domestic legislation were to replace the existing EU arrangements, the UK would have to ensure the two were compatible or it could risk the domestic law being set aside[35].

General division of competences: specific examples

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[28] Proposal for a decision of the European Parliament and the Council on enhanced co-operation between Public Employment Services (PES) ((COM(2013)0430-C7-0177/2013-2013/0202(COD))
[29] Not in Employment, education or training, e.g. Youth Guarantee, Youth Employment Initiative etc
[30] European year for Active aging and solidarity between generations http://europa.eu/ey2012/
[31] FSB response to consultation on the new EU occupational safety and health policy framework p.4
[32] http://www.efta.int/media/documents/legal-texts/eea/the-eea agreement/Annexes%20to%20the%20Agreement/annex18.pdf
[33] Coordination of social security systems under Regulation 883/2004
[34] Ibid.
[35] Amministrazione delle Finanze dello Stato v Simmenthal SpA Case 106/77

Anti-discrimination legislation is integral to the European Union and a harmonised approach at EU level is necessary and should not change. This also applies to health and safety regulation where a European framework is valuable, as stated above.

However, there are areas in which the argument for action at national level is much stronger. In the case of annual leave as regulated by the Working Time Directive or maternity or paternity leave, there may be a case for the setting of EU-wide minimum standards in these instances. Conversely, regulation of the working week should only necessitate the setting of a point at which overtime should be paid and any further work should be voluntary. There is no strong argument for this to be done at EU level unless there is a specific cross-border element. This is notably demonstrated when considering the number of national opt-outs that are currently in place for this particular provision[36].

Nonetheless, the criticism here relates to the impracticality of the general provision. There are certain specific safety critical areas, such as in the transport field, where the nature of the work may require the pilot or driver to cross borders. This should give rise to a more stringent regime in defining shift times and rest patterns and there is a clear benefit of such rules being set at EU level[37]. The Temporary Agency Workers Directive, Part-Time and Fixed Term Workers Directives are more difficult to divide. Ensuring equal treatment of workers and preventing the abuse of short-term or temporary contracts are desirable aims but whether these proposals were necessary at EU level is controversial. Arguably, more flexibility could have been given to Member States and the 12-week qualifying period negotiated by the Social Partners in the UK is evidence of this. Measures exempting SMEs and more robust impact assessments could have prevented some of these issues and this will be expanded upon later.

The effect of EU social policy on the UK national interest (*questions 4-7*)

The areas in which EU action in social policy is advantageous to the UK have been considered above. These benefits are difficult to quantify and other organisations may be better placed to provide evidence in response to these questions.

Nevertheless, it is important to stress at this point that although specific pieces of social policy legislation can undoubtedly be criticised and are said to disadvantage the UK, this should not be used to discredit all EU action in social policy or even those pieces of legislation in their entirety. This call for evidence recognised the advantages of several pieces of legislation[38] and the recent report on cutting EU-red tape recognised the value of the recent Posting of Workers enforcement Directive[39]. On this basis, we should look at maintaining current flexibilities[40] and how the criticised legislation can be reviewed and improved whilst preventing similar problems in the future.

Future options and challenges

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

EU competence in this area should not be expanded. Any further action would therefore have to be within the confines of current competences and should follow the approach and recommendations detailed below. Providing these steps are followed, further EU action in social policy could benefit the UK. Additional areas of minimum standards could continue to reinforce the level-playing field and strengthen the Single Market. It could also promote social convergence within[41] and between Member States in order to gradually bring lagging Member States up to the average level. This convergence

[36] Article 22(1) Working Time Directive 2003/88
[37] E.g. Regulation 561/2006
[38] Call for Evidence: Social and Employment Review p.25 para 35
[39] 'Cut EU red tape' op.cit footnote 5 p.25
[40] Such as defending the WTD opt-out
[41] Equal treatment led to social convergence of equal pension age for men and women. Call for evidence p.15, para 20

would mean businesses would be less likely to relocate to benefit from cheaper running costs and all Europeans would benefit from similar rights and protections.

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

It is undeniable that more action taken at UK level would better cater for the specific characteristics of the UK labour market and that this should be the preferred option in certain circumstances. For example, as this call for evidence points out, there is a higher level of permanent part-time employment in the UK[42] as well as a large number of self-employed people[43]. This flexibility is integral to the UK labour market and should be respected whether action is taken at national or EU level.

However the UK as part of the Union is not a completely inward-looking country and divergent standards created at national level could, in areas that affect the operation of the Single Market, be a disadvantage. The reasoning for this is detailed above. EU action should therefore be adequately scrutinised to ensure that the detail of a proposal does not go beyond its stated justification. Member State opposition to these details will simply delay a proposal and fuel a call for less EU action in social policy[44]. It is therefore in the interests of all actors that proposals are concise and refined to the particular issue.

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 way social partners are engaged?

Improving EU action in social policy

The main principle upon which future action should be based is better regulation. This is not only for the benefit of businesses, to ensure they do not face disproportionate administrative burdens which can hamper their competitiveness and ability to expand. It is also for policy makers on the basis that "the better designed a regulation, the higher the compliance rate it achieves[45]". This approach has been taken because although EU action in social policy can be necessary, it can also be improved. Many of the points below can be applied to EU action in many areas but reference has been made to social policy where possible.

a) Ensuring action at EU level is necessary

As has been repeatedly stated in this submission, proposals must respond to a specified aim and must take care to not go beyond this. This must be the first stage in the policy process and should involve consultation with stakeholders from across the Union. This is particularly important in the area of social policy, given the division of competences and the divergent Member State systems. A current relevant example is the Information and Consultation Directive[46]. The recent Cut EU red tape report states that businesses believe the current arrangement works well and should not be reformed. This view should be taken into account when the Commission decides whether to propose a revision.

b) The importance of impact assessments at each stage of the process

Once a proposal has been deemed necessary, an impact assessment must take place.

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[42] Call for Evidence: Social and Employment Review p.16 para 22

[43] http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Self_employed_status,_2012.png&filetimestamp=20130523151120

[44] COM(2012) 131 op. cit. footnote 3

[45] FSB Response to the Prime Minister's Business Taskforce on EU Regulation p.3

[46] Directive 2002/14

The Commission is well versed in providing impact assessments with its proposals. These should be used throughout the legislative process, thus avoiding elements that were modified or removed due to the results of the assessment being reintroduced at a later stage. Such impact assessments could arguably also look further into the long-term impacts of a proposal in each Member State such as the Agency Workers Directive[47].

It has also been stated that more needs to be done to ensure that the advice in the assessments is followed[48] and even that negative results should be binding. This is an important point: impact assessments will only be effective if they play a substantial and effective role in the entire policy process and are not simply a 'tick box' exercise.

Moreover, aside from the Commission, the Parliament and the Council[49] should be required to undertake impact assessments where they introduce significant amendments to a proposal and also during trialogue negotiations between the three institutions. This should be on a mandatory basis for significant proposals but MEPs should be encouraged to use the unit on a voluntary basis in order to reinforce their amendments. This unit must therefore have adequate resources and a similar establishment should be developed in the Council[50].

In addition, it has been suggested that a 'jobs test', which would establish whether job creation would be stifled or existing jobs lost as a result of regulation, should be included in all impact assessments[51]. This could be a valuable proposition and requires further investigation.

c) The role of the Council and the subsidiarity and proportionality principles

These principles are a fundamental control possessed by the Member States which should be utilised more effectively. Where proposals are thought to breach these principles, Member States have a responsibility of scrutiny and national parliaments to make proper use of the Yellow Card procedure. The UK must make a conscious effort to engage like-minded Member States within Council and through bilateral contacts to form blocking minorities where necessary. Again, this is particularly important in social policy due to the division of competences, the differences between Member State systems and the potential for these principles to be breached. Moreover the House of Commons and House of Lords have a role to play in better holding Ministers to account both before and after they take decisions at the Council level.

d) The need for democratic legitimacy in social partner agreements

Social partner agreements are particularly contentious from a UK perspective due to the lack of a national social partner system. More should be done to ensure such agreements are democratically legitimate such as ensuring they do not become legislation without being adequately scrutinised, with possibility for amendment. Moreover, social partners do not sufficiently represent or consult with small businesses, particularly in sectorial agreements, and any agreements could therefore place a disproportionate burden on them. An example of this is the recently scrapped agreement in the hairdressing sector which has been described as being "poorly written" with a "lack of clarity [which] could increase the fear of litigation[52]. Progress should thus be made to ensure these bodies and any subsequent agreements are more representative and are subject to adequate scrutiny and assessment such as by involving one of the impact assessment bodies early in the process.

[47] Hug & Tudor op. cit. footnote 9 p.41
[48] Business Europe position paper: Smart Regulation- Reduction of Regulatory Burdens p.4
[49] Hug & Tudor op. cit footnote 9 Karen Clements p.28
[50] Ibid
[51] Ibid p.29
[52] FSB op. cit. footnote 31 p.9

Furthermore, the Council should play a stronger role here by ensuring that such agreements are rejected where necessary.[53]

e) Periodic reviews or "Fitness checks"

We welcome the reviews that are currently taking place. The REFIT programme, the review of Health & Safety legislation, the 10 most burdensome EU laws for SMEs are all useful means of presenting the issues and considering solutions.

These should be accompanied by periodic reviews of significant pieces of legislation and it has even been suggested that no new legislation should be introduced in an area until existing legislation is reviewed[54]. One of the criticisms of the contentious Working Time Directive is that it has not kept pace with changing labour markets and employment situations and a review should therefore be undertaken. Nevertheless, the current flexibility derived from the opt-outs should be retained even if a review takes place.

These reviews could be considered as an ex-poste impact assessment and should, as appropriate, be followed by a proposal for a recast of the piece of legislation in question. It has been argued that any such proposal which aims to reduce the burden of a piece of legislation should have access to a fast-track legislative procedure in order to ensure new burdens are not introduced during the normal procedure[55]. This should be considered further. The effects of ECJ judgments could also be considered, notably whether they have expanded or distorted the original aims of the legislation. Where this is the case, a revision should be undertaken.

It is also important to point out that such "fitness checks" can have positive effects and can thus be used to defend EU action in this area. This has been demonstrated in the call for evidence document for this review.[56]

f) The importance of flexibility

The difference between Member State national traditions is recognised in the call for evidence as one of the potential difficulties of EU action in this area. It has therefore been argued that proposals should place more emphasis on the outcome rather than the means by which it is to be achieved[57]. The Treaty recognises this and states that Directives should be used for this reason[58]. More effort should therefore be made to ensure that the Directives are not overly prescriptive when considering the appropriate method of implementation.

For areas where a more prescriptive approach is necessary, exemptions should be included to recognise that a Member State may be achieving the current standard by means other than those specified. It may also be appropriate to provide opt-outs if the Member State can demonstrate that such a proposal would be damaging or that the flexibility is integral to a certain area of the labour market[59].

g) The specific case of SMEs

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[53] Call for evidence op. cit. footnote 38 para 28
[54] FSB Evaluate first principle
[55] Business Europe op. cit footnote 46 p.4
[56] Call for evidence op. cit. footnote 38 para 35 : for the Collective redundancies Directive, the Acquired Rights Directive and the Information and Consultation Directive
[57] FSB op. cit. footnote 31 p.4
[58] Article 153(2)(b) TFEU
[59] The need for flexibility in the NHS: http://www.nhsemployers.org/EmploymentPolicyAndPractice/European_employment_policy/Pages/Working-Time-Directive.aspx

SMEs are, and will continue to be, integral to the growth and competitiveness of the Union as a whole as well as to individual Member States. It has been found that between 2002 and 2010 85% of net new jobs in Europe were created by SMEs.[60] It is therefore vital that EU action in social policy takes into consideration the specific requirements of these organisations and the burden which administrative obligations can place on them.

Recommendations have been made to simplify obligations for these organisations, allow for longer compliance periods and to provide exemptions where appropriate[61]. This submission fully supports these proposals and believe they would go a long way to reducing the negative perspective of many pieces of EU legislation in this area. This should be combined with the continued integration of the 'think small first' principle into policy making in order to recognise the needs of these enterprises from the beginning of the policy process.

h) MS implementation: gold plating

It must be stressed that some of the burden in this area comes from national decisions to 'gold-plate' EU law. A recent IoD report identified 15 examples of gold-plating in employment law[62]. Amongst these are examples from the contentious Working Time Directive, the Part-time Work Directive and the Fixed-Term Work Directive.

National governments must take responsibility for these decisions and should not be able to blame the Union for any additional burden. Indeed, Member States should be obliged to make a statement explaining this decision in order to increase transparency[63] and allow for an honest analysis of the impact of EU action in this area. Authorities often consider that they are obliged to take certain actions when transposing directives into national law. Member States and the UK in particular, should better consult with the Commission and take legal advice from appropriate sources when doing so as potential 'over-implementation' could be averted if greater legal clarity is sought prior to implementation.

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

As has been explained above, the aim for future EU action in social policy should be to improve the legislative process and to review and reform specific pieces of legislation when problems arise. The UK should therefore focus on the points made above such as: strongly opposing proposals on the grounds of subsidiarity or proportionality where appropriate, taking responsibility for decisions to gold-plate directives upon implementation, scrutinising and opposing social partner agreements if necessary and pushing MEPs and ministers in council to obtain flexibilities which reflect the characteristics of the labour market or for SMEs.

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

There is currently a strong push at EU level by some political groups for further social integration and particularly for the strengthening of the social dimension of the EMU. These proposals stem from the social effects of the economic crisis and the suggested need to take action at EU level to prevent further social divergences. These social effects are undeniable and are demonstrated in unemployment rates and poverty levels across Europe. As stated earlier, the most appropriate role for the EU in this area is one of guidance. The Europe2020 targets and the Country specific

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[60] http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance review/files/supportingdocuments/ 2012/do-smes-create-more-and-better-jobs_en.pdf (FSB footnote 31)

[61] FSB op. cit. footnote 31

[62] http://www.iod.com/influencing/press-office/press-releases/gold-plating

[63] Business Europe op. cit. footnote 46 p.5

recommendations are the best means of drawing on the knowledge and experience from across the Union to aid Member States to implement the necessary structural reforms. This guidance role should be maintained and competence in this area should not be expanded.

Concluding remarks

In this submission, we have outlined areas in which EU action in social policy is necessary for the Single Market and areas in which it is inherently desirable. It has been established that a certain level of action at EU level is necessary and useful, particularly for the successful operation of the Single Market and the four fundamental freedoms, notably the freedom of movement. However, we do not need or support the complete harmonisation of social policy nor do we believe that the current competences would allow this. The current balance of competences therefore strikes the right tone and should be maintained and not expanded.

We have taken the approach that the focus should be on better regulation. The legislative process in all of the institutions can be improved and this should go some way to preventing problems in this field in the future. Criticised pieces of legislation can be, and should be, reformed but more should be done in the preparation phases to identify and resolve potential problems. Member States should also be accorded adequate flexibility of implementation to take account of the different systems and to benefit SMEs whilst still meeting the overall aim of the legislation. This is an important point and should be considered alongside the decision to gold-plate proposals. Member States must take responsibility for decisions taken at national level and should seek legal advice from the Commission and others where appropriate.

Several specific examples have been given of areas in which EU competence has not been adequately justified and where Member States would be better placed to act. This is notably so for the restriction of working hours under the Working Time Directive and the number of current opt-outs to this provision clearly demonstrate this. Furthermore, the rules on social security coordination whilst essential should be closely monitored to prevent unjustified restrictions to a Member State's ability to set their own levels of social security whilst ensuring that everything is done to prevent abuses of the right to freedom of movement.

Finally, more independent information on the effects, economic and social, of EU action in social policy should be sought. These costs are not easily quantified and it may be difficult to determine which originate from the original proposal, which could be avoided and which would be incurred if similar action were to be taken at national level. Nevertheless, an effort should be made to do so in order for a transparent and evidence-based picture to be established. These costs should also be considered alongside the benefits the UK gains from its membership of the EU and of the Single Market in order to avoid the tendency to overestimate the costs and underestimate the benefits.