

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

London businesses generally see the harmonisation of regulations across the EU as vital to the functioning of the single market. Product standards harmonisation, particularly in sectors such as manufacturing and pharmaceuticals, benefits businesses by removing barriers to competition across the EEA and bringing economies of scale.

EU social and employment policy plays a role in facilitating the free movement of workers across Europe. Large UK companies operating in other EU member states in particular benefit from greater certainty that local regulations would not diverge greatly from domestic ones. Any differences in national regulations may add to business costs and disincentivise companies from trading or expanding abroad.

However, additional regulation has always been among London businesses' top concerns, as it involves higher costs of compliance and can act as a barrier to growth. UK employment legislation, the majority of which originates in Brussels, is the top area of competence London businesses believe should be transferred from the EU to the UK's national government, with 62 per cent calling for it to be repatriated as part of a renegotiation process.¹

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

Regulations to prevent the exploitation or unfair treatment of workers and to protect their safety are important. However, excessive and overly stringent regulation in this area hinders London businesses and reduces flexibility in the labour market, which affects both employers and employees. Therefore, there should be a light touch approach to EU social and employment regulations, which should only be initiated or amended if there is concrete evidence of its necessity to protect workers' rights. Where possible, this should be done through EU Directives, which allow national governments the flexibility to implement the regulations in a way that is optimal to the unique situations facing businesses. The Agency Workers Directive is an example of where, following negotiations with business organisations and trade unions, the Government secured important exemptions (in this case, a 12-week qualifying period) for UK businesses.

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

¹ For more information please see LCCI (2013): *Help or hindrance? The value of EU membership to London business*, at www.londonchamber.co.uk/research/EUreport

In the absence of EU regulation, the UK would still require some regulation to protect workers' rights, with a large proportion of basic regulation like anti-discrimination, maternity rights, and health and safety at work remaining. However, some of the social and employment regulation initiated by the EU would not have been introduced in UK domestic legislation had the Government not been obliged to do so. Were the UK Government freed from this obligation, some of the more unhelpful regulations, for example the Agency Workers Directive and Working Time Directive, may have been removed. Other regulations could also be simplified and diluted, either in terms of imposing minimum service requirements or caps on the levels of compensation available, or by including exemptions from some provisions for SMEs. LCCI believes that, while remaining within the EU is in the best interest of London businesses, the UK Government should continue to promote business interests in European regulations and negotiate the most favourable terms possible, whilst driving the fulfilment of a true single market and securing a true level playing field for UK businesses.

Impact on the national interest (Q4 - Q7)

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

As outlined in question 1 above, EU social and employment policy plays a role in facilitating the free movement of workers across Europe and provides greater certainty for UK companies operating in other EU member states.

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

Many London businesses feel that in some cases the UK Government has implemented EU Directives in social and employment policy beyond the minimum necessary to comply with them, a practice generally known as 'gold-plating'. An example of this is the EU Acquired Rights Directive, implemented in the UK under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE), which extended the regulation provisions to the transfer of non-physical assets when a service was outsourced, brought in house or retendered, sometimes preventing failing companies from being successfully restructured.

LCCI recognises that EU Directives tend to be vague, as the English legal system and labour model are different to those of the rest of Europe. Therefore, additional provisions sometimes need to be included when transposing EU Directives into English law to avoid ambiguities on how the regulation applies in different circumstances. Nevertheless, London businesses see 'gold-plating' as placing an additional and unnecessary burden, putting them at a disadvantage to their European competitors. LCCI was encouraged by the commitment to end 'gold-plating' in the Coalition Agreement, and welcome the statement made by the Business Minister in April 2013 that 'gold-plating' had "effectively stopped"² thanks to new guidance to avoid early transposition and "copy out" EU Directives in the future.³ However, further review of existing regulations is also needed.

² BBC News Online (April, 2013) <http://www.bbc.co.uk/news/uk-politics-22277927>

³ HM Government (2011): *Transposition guide: how to implement European directives effectively*

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

Examples of EU social and employment regulations that negatively impact on London businesses include the Agency Workers Directive and Working Time Directive. London businesses opposed the Agency Workers Directive, which extended the same rights and benefits of permanent employees to temporary and agency workers, as it was contrary to the UK philosophy of a flexible workforce and being able to have people employed on a temporary basis. It was particularly restrictive for businesses that have a very changeable workforce or a seasonal business model where they need extra people during Christmas or summer time, for example. Following negotiations with business organisations and trade unions, the Government secured a 12-week qualifying period for UK businesses.

London businesses also saw the 1993 Working Time Directive as too restrictive and inflexible in areas where long hours are a generally acceptable practice. This is particularly the case for sectors like transport and food processing that deal with perishable goods. There is also little evidence that working long hours in itself is an issue, especially if this involves a variety of tasks. The UK regulations included exemptions for certain job categories and allowed individuals to opt out of the working week limit. Some other EU member states have opposed the British opt-outs in both cases, but it is important for the UK Government to preserve them. Further revision and simplification of these regulations would also be beneficial.

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?

EU-driven social and employment regulations impose an increasing burden on UK businesses. A recent paper calculated that the 100 EU regulations have a total cost to the UK economy of £27.4 billion a year (in 2013 prices) and for 24 of those the estimated costs outweigh the benefits.⁴ Another report estimated that over two-thirds of the annual cost arising from EU law in this area comes from the Working Time Directive – calculated at over £2.6 billion a year, and the Agency Workers Directive – calculated at nearly £2 billion a year. The research suggested that a halving of this type of regulation by the EU could boost the UK's GDP by £4.3 billion and create 60,000 new jobs.⁵

As mentioned in Question 3, even if the UK were to leave the EU, a large part of EU-initiated regulations like anti-discrimination, maternity rights and health and safety would remain. However, all additional regulations carry costs of compliance for businesses associated with having to spend time handling their administration, as well as potentially increased labour costs. The UK Government should seek to engage within the EU institutions to simplify or remove many of the most costly pieces of social and employment legislation.

⁴ Open Europe (2013): *Top 100 EU regulations cost the UK economy £27.4 billion a year – and costs outweigh benefits in a quarter of cases*, Briefing Note, at <http://www.openeurope.org.uk/Content/Documents/Pdfs/131021Top100Regulations.pdf>

⁵ Fresh Start Project (2013): *Manifesto for change: a new vision for the UK in Europe*, p. 20, at <http://www.eufreshstart.org/downloads/manifestoforchange.pdf>

Future options and challenges (Q8 - Q12)

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

Rather than EU activism being focused on the introduction of new regulations and legislation, it is important for business that the European Commission regularly review the functioning of existing regulations to ensure they are fit for purpose, and to abolish them if not. LCCI welcomes the recommendations to cut EU red tape by the Business Taskforce⁶ and believes that the UK Government should be actively engaged within the EU to implement the proposals for reform to EU rules, regulations and practices.

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?

As outlined in Question 7, EU-driven social and employment regulations impose an increasing burden on UK businesses, who would prefer less EU action in this area. There should be a light touch approach to EU social and employment regulations, which should only be initiated or amended if there is concrete evidence of its necessity to protect workers' rights, and providing sufficient flexibility for national governments in their implementation.

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?

Any changes to social and employment regulations need to be carried out with the full consultation of the business community. The Government needs to fully understand the impact of regulatory proposals on businesses and to better communicate the reasons for new regulations, as well as the minimum levels of implementation needed by businesses to ensure compliance. Regular reviews of existing regulations should also be undertaken at both national and EU level.

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

Overall, London businesses are less concerned with specific EU regulations and more concerned that they are not enforced equally stringently across other EU member states. Variable enforcement means that other European companies can gain fair access to the UK market but UK-based companies doing business across the EU are placed at a competitive disadvantage. EU social and employment regulations can play a role in securing a level playing field for businesses across the EU single market. A stronger emphasis on enforcement is needed to avoid uneven implementation between EU member states, and the UK Government must ensure that the European Commission oversees consistent national implementation more effectively to maximise the economic benefits of membership of the single market.

⁶ Business Taskforce (2013): *Cut EU red tape: Report from the Business Taskforce*, at <https://www.gov.uk/government/publications/cut-eu-red-tape-report-from-the-business-taskforce>

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

The current debate on the UK's role in the EU threatens the UK's position within the EU. LCCI believes that the Government should clarify that remaining within the EU is in the national interest in order to drive a wide-ranging reform of EU rules, regulations and practices, whilst driving the fulfilment of a true single market, in the best interest of London businesses and the UK economy. The Government must protect businesses from the impact of any future social and employment law proposals, whilst continuing to lobby for regulations simplification at the EU level and ensuring that regulations are applied uniformly across member states so as to give business fair access to other markets.

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