

## 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?***

Action in this field is an essential complement to the operation of the single market. One of the basic foundations of the single market is free movement of persons. Individuals who are vulnerable to discrimination will be reluctant to exercise their free movement rights unless they are guaranteed a comparable standard of protection from discrimination in the Member State to which they are moving. In comparison to many other EU Member States, the UK has a longer tradition of anti-discrimination law and it has often been at the forefront of legal developments in this field. Setting common minimum EU standards benefits the UK because it helps to ensure (for example) that British citizens will not be deterred from exercising their free movement rights due to inadequate protection from discrimination elsewhere in the EU.

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

Social and employment goals are a desirable function of the EU. Given EU integration, it is not possible to contain social problems within a single Member State. For example, the well-documented discrimination and exclusion of Roma communities in some parts of eastern Europe has a cross-border effect because it may cause increased levels of migration by those seeking to escape discrimination.

Furthermore, the EU seeks to promote equality through its international development policies, for example in relation to women. It can only do this convincingly if it has strong internal standards in this sphere.

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

The UK would continue to need a comprehensive framework of anti-discrimination legislation even in the absence of EU legislation. The Equality Act 2010 already goes beyond EU minimum standards in certain respects: for example, discrimination on grounds of religion, age, disability and sexual orientation is prohibited in access to goods and services (which is not yet a requirement of EU law). The UK would continue to have obligations to combat discrimination under other international human rights instruments, such as the UN Conventions on the Elimination of Racial Discrimination, on the Elimination of Discrimination Against Women, and on the Rights of People with Disabilities. Furthermore, the UK would still be bound by the European Convention of Human Rights, which includes the right to non-discrimination in Article 14. Domestic legislation would be necessary to ensure adequate protection of the rights derived from Article 14.

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

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

EU law has been helpful in improving the quality of UK anti-discrimination legislation through pioneering judgments of the EU Court of Justice (CJEU). For example, in 1996, in *P v S and Cornwall County Council*, the CJEU held that the dismissal of a woman following gender reassignment was unlawful discrimination on grounds of sex. This led to amendment of the Sex Discrimination Act 1975. Although the decision was novel at the time, few would argue today that the law should not protect people from dismissal following gender reassignment. Likewise, it is possible to point to other aspects of anti-discrimination law where the CJEU helped to develop the law and these principles have since become widely accepted. For example, the CJEU developed the concept of indirect discrimination within its case-law on equal pay in order to tackle covert sources of gender pay inequality. Alternatively, in *Webb v EMO Air Cargo*, the CJEU clarified the need for the Sex Discrimination Act 1975 to prohibit pregnancy discrimination.

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

We do not believe that EU action in social policy disadvantages the UK.

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

Tackling discrimination across the EU also provides common benefits because of the potential to learn from the experience of other jurisdictions in relation to making law more effective. The development of EU anti-discrimination law has led to much greater exchange of information and experience between NGOs, legal practitioners and government bodies with an interest in this field. This favours the improvement of law and policy over time as there is an opportunity to borrow successful techniques developed elsewhere, as well as avoiding the adoption of measures that have proven to be problematic outside the UK. For example, the experience in Germany with positive action in recruitment and promotion (and the resulting CJEU case-law) clearly shaped the drafting of section 159 of the Equality Act 2010.

**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?**

We believe that anti-discrimination legislation is beneficial to the UK economy. Within the workplace, it ensures that the best use of all available talent is made and it seeks to avoid the economic marginalisation of certain groups. The latter imposes costs on the state and society, such as increased rates of unemployment. For example, age discrimination forces older people to leave the workforce earlier than necessary with consequent impacts on reduced contribution to taxation and increased reliance on social welfare. Moreover, anti-discrimination law seeks to ensure that services are accessible to all people. This is beneficial to business as it widens the pool of customers; for example, inaccessible buildings exclude disabled consumers. Alternatively, if people face discrimination in access to credit and finance, then this can hinder the growth of business and expansion of the economy. We believe that the UK would need domestic anti-discrimination legislation in the absence of EU action, but the EU has been a constructive force in enhancing domestic law, e.g. its extension to include age discrimination in 2006.

## Future options and challenges (Q8 - Q12)

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

As mentioned earlier, domestic legislation on anti-discrimination goes beyond the minimum requirements set by the EU (e.g. in respect of material scope). This means that UK citizens who exercise their free movement rights may not enjoy the same level of legal protection elsewhere in the EU that they currently find in the UK. This may be a barrier to free movement or hinder British businesses operating in other EU Member States. It would be in the interests of the UK to see the quality of EU anti-discrimination law enhanced further, in particular through the adoption of the 2008 proposal to extend the prohibition of discrimination on grounds of religion or belief, age, disability and sexual orientation.

### **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?**

We do not believe that it is in the interests of the UK for the EU to take less action in social policy.

### **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?**

EU legislation in the field of anti-discrimination already provides sufficient guarantees with regard to subsidiarity and proportionality. For example, the Directives leave Member States great flexibility with regard to what type of institutional support is provided to individuals (such as equality bodies). These vary across the Member States, often reflecting local traditions and context. Likewise there is considerable flexibility regarding the enforcement infrastructure. While the UK has retained its emphasis on Employment Tribunals, other states have relied on local legal traditions, such as Ombudsmen. There is also flexibility with regard to the exceptions permitted within anti-discrimination law. For example, some states have chosen to retain mandatory retirement ages. Arguably, the main concern is that excessive flexibility risks undermining minimum standards.

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

Both the current and previous governments have been committed, in principle, to the implementation of the Equality Act 2010. This comprehensive legislation was adopted after extensive public and political debate over many years. While it implements Britain's obligations in relation to EU anti-discrimination law, it goes further and includes domestic legal initiatives (e.g. the public sector equality duty). In principle, the UK could return to the earlier piecemeal implementation of EU Directives via ground-specific legislation, but this would be a retrograde step. By advancing coherence across the protected characteristics, the Equality Act 2010 offers many benefits for individuals and businesses in comparison to the opaque and fragmented legislation that existed previously.

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

The UK needs to be in the vanguard of promoting high standards on equality across the EU. This requires a strong legal foundation of comprehensive anti-discrimination legislation, which is still lacking at EU level. Failure to make progress in advancing equality within the EU is likely to exacerbate push factors around migration by compelling the most marginalised groups to consider relocating to avoid discrimination. Likewise those arriving in the EU as new migrants can be expected to avoid Member States where there is widespread discrimination and exclusion of minority communities. A balanced and constructive migration policy within Europe demands a strong internal commitment to combating discrimination across the EU.

A first step in promoting a more coherent EU anti-discrimination legal framework would be for the UK to advocate in favour of adoption of the 2008 proposed Directive on extending anti-discrimination law.

