

## **Equality and Diversity Forum response to the consultation on the balance of competences in relation to economic and social rights**

### **Introduction**

The Equality and Diversity Forum (EDF) is a network of national organisations committed to equal opportunities, social justice, good community relations, respect for human rights and an end to discrimination based on age, disability, gender and gender identity, race, religion or belief, and sexual orientation.<sup>1</sup> Further information about our work is available at [www.edf.org.uk](http://www.edf.org.uk).

Our members value the equality provisions in the European treaties and the subsequent directives. We regard these as providing an important set of minimum standards applicable across the common market. If the internal market within the EU is to operate effectively then these standards are the essential glue that holds the internal market together.

**Our answers to these questions relate only to the equal treatment provisions.**

### **The argument for social and employment competence**

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

This question can be answered simply at the economic level. The EU's single market is based on the principle that there should be free movement in goods and services, capital and labour. This has enormous benefits for UK business because it gives us access to one of the biggest trading units of the world – the EU is the world's biggest exporter and the second-biggest importer. Social protection is an integral part the trading agreements between member states. Such common minimum standards of social protection can only be set at the European level. If there is no minimum level of social protection that operates across all member states then the state with the lowest level of social protection is likely to have a competitive advantage because its costs will be lower than those of other countries. An example of this would be the protection of maternity and pregnancy – a member state which did not offer financial and legal protection for pregnancy and maternity would have fewer costs to meet and employers would appear to make financial savings as a result. However, if women are dismissed for pregnancy or not paid during maternity there will be greater turnover of staff as well as a loss of staff expertise. Providing women with appropriate maternity leave makes a more efficient

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<sup>1</sup> A list of EDF members is attached as annex 1.

use of their skills in the longer term which is beneficial to the businesses that employ them and to the economy as a whole.

In addition, most European states have written constitutions which guarantee protection of human dignity and equality between all persons. These states would not be willing to work in a framework of a single market if another potential member of that market did not also subscribe to the same basic fundamental social rights.

There are two examples of this from the very earliest stages of the EU. Firstly, the right to equal pay for work of equal value was built into the first Treaty. That right had first been set out in 1918 in the Treaty of Versailles but it was not universally applied. The Treaty of Rome remedied this. It is clear that without this provision having been set out in the original Treaty there would be no social dimension to Europe.

Secondly, to make the right to free movement of persons a reality those who move had to be protected from discriminatory treatment in the country to which they move wherever that might be in the EU. This was achieved by Regulation 1612/68 and later Regulation (EEC) No 492/2011 which made discrimination against EU nationals on grounds of their nationality unlawful.

These two elements were essential to build an economic unit within Europe and they operate to the benefit of UK citizens as well as UK businesses seeking to expand into the EU and to move their staff there. Employers and employees alike benefit from the clarity and potential for common standards that the EU can provide and this will become more important as current trends in globalisation continue.

In the late 1990s the rise of the far right in Austria provided the prompt for the inclusion of what became Article 13 EC which enabled the Union to legislate more widely in relation to discrimination on other grounds including race. This happened through the amendments made by the Amsterdam Treaty. Those protections have meant that persons can now exercise free movement rights knowing that if they are old or disabled or from an ethnic minority they can expect the same minimum levels of protection against discrimination wherever they go.

A further and more specific example of this is the protection of persons who are disabled or who have reduced mobility who wish to travel within Europe. The UK already had some of these standards in place by virtue of our disability legislation but common standards across the EU have now been achieved in relation to rail, bus and air travel across Europe. The range of six basic fundamental rights can be seen at <http://ec.europa.eu/transport/passenger-rights/en/17-rail-reduced-mobility.html>. They include rights to adequate assistance, reimbursement for rerouting, compensation for delay, specific assistance for death and injury, and specific assistance for disabled persons. These rights could not have been achieved without a European agreement. They assist not only those exercising rights to work abroad but also those who travel to receive services abroad such as holidays. It means, for example, that a disabled person wishing to travel by a variety of means from London to Prague will receive a similar level of assistance across Europe. These rights have enhanced the provision available within the UK for

disabled people they have also made it possible for disabled people from the UK to travel and work across the EU.

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

We consider that these social and economic provisions are both a key constituent part of the internal market and desirable in and of themselves. They are desirable in and of themselves because they set standards about the kind of societies EU member states want to be: societies in which a person's chance to flourish and to contribute is not limited by prejudice or discrimination.

The social and economic dimensions therefore complement one another: the completion of the internal market is only possible if effective social protection and safeguards for public services are guaranteed. Support for the internal market among people living and working in Europe will only be maintained if the social dimension is retained. These standards also ensure that there is a level playing field between member states so that unfair competition and the undercutting of employment standards is not permitted and employees of UK businesses can work in other member states without fear of experiencing discrimination. For example, there are nearly 400,000 UK citizens living in Spain and 150,000 living in France.<sup>2</sup> These UK citizens benefit from common equality and employment standards.

The equality directives provide an important minimum level of protection from discrimination for all UK citizens which helps to ensure that they are treated fairly whatever their sex, race or other protected characteristic. In employment it ensures that the best qualified staff are taken on based on their merit and qualifications alone and that they are not discriminated against once in employment.

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

The UK has extensive provisions on equal treatment that give effect to the treaty provisions and the directives so no further domestic legislation would be needed in the absence of EU legislation. However, if EU legislation was removed or disapplied there would be nothing to prevent a future Government repealing these laws and we would not want to see this situation applying. Additionally, if there was no EU legislation on equality then the many UK nationals living and/or working in the EU would be without protection from other member states discrimination against them.

### **Impact on the national interest**

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

The inclusion of new grounds of discrimination in what became Article 13 EC led the UK to legislate to outlaw discrimination on grounds of religion or belief, sexual orientation and age in employment. This is of considerable advantage to employees

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<sup>2</sup> <http://www.theguardian.com/news/datablog/2012/jan/26/europe-population-who-lives-where>  
Data derived from Eurostat.

who are threatened with discrimination. It also benefits workplaces which have become more inclusive and which value their employees' skills regardless of their religion or belief, sexual orientation or age.

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

The EDF does not consider that these EU actions in social policy disadvantage the UK.

**Future options and challenges**

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

The proposal to introduce a new equality directive to cover discrimination on grounds of disability, religion or belief, sexual orientation and age outside the employment sector would benefit UK citizens when they are living or working elsewhere in the EU or if they are travelling around the EU. It would ensure that they receive a common minimum standard of treatment. There is a similar need for a specific directive to deal with the needs of transgender people across Europe. We also consider that the draft revised pregnant workers' directive should be approved.

**Equality and Diversity Forum, 17 January 2014**

## **Annex 1: Equality and Diversity Forum Members**

Action on Hearing Loss

Age UK

British Humanist Association

British Institute of Human Rights

Children's Rights Alliance for England (CRAE)

Citizens Advice

Disability Rights UK

Discrimination Law Association

End Violence Against Women Coalition

Equality Challenge Unit

EREN – The English Regions Equality and Human Rights Network

Fawcett Society

Friends, Families and Travellers

Gender Identity Research and Education Society (GIRES)

JUSTICE

Law Centres Network

Mind

National AIDS Trust

National Alliance of Women's Organisations (NAWO)

Press for Change

Race on the Agenda (ROTA)

Refugee Council

RNIB

Runnymede Trust

Scope

Stonewall

The Age and Employment Network (TAEN)

Trades Union Congress (TUC)

UKREN (UK Race in Europe Network)

UNISON

Women's Budget Group

Women's Resource Centre

### **Other signatories**

Equanomics UK