

Social and Employment Balance of Competences Review

Note of stakeholder round table event – London 19 November 2013

Question 1: Is EU intervention in social and employment areas a necessity for the function of the single market (SM) or are these interventions desirable on their own? (And to what extent?)

Summary:

This was a broad discussion that raised some common themes around minimum standards and what issues the EU focuses on but without a clear consensus amongst participants.

Detail:

One participant felt that EU intervention was both necessary and desirable. Now integral to EU membership. No realistic scope to roll-back existing rights, even if leave EU. e.g. employers and workers have expectations around annual leave etc. These are sometimes disrupted by ECJ re-interpretation, but clearly need a final arbiter where disputes.

On the other hand it was felt that:

- EU intervention is not necessary for SM nor desirable. There is a lot that it misses out such as pensions.
- The EU should leave such social judgements at member state level. Why it is necessary for the EU to make laws that only affect some MS instead of the MS making the laws for themselves?

Some argued that EU intervention is necessary/desirable but it is not working properly. It is good for posted workers though, creates level playing field.

There's always going to be issues with this across the whole of Europe. The EU see that (from a business aspect) If there is closer regulation, then there is a greater cost for business' which leads to a less competitive market in regards to the rest of the world competition.

In relation to the concept of minimum standards to facilitate the SM, it was thought that:

- What counts as minimum standards varies between the different parts of the acquis, and within them. Thus, equal treatment is widely regarded as A Good Thing in its own right, and the minimum standards are quite high, whereas occupational safety and health (OSH) is more controversial and we might question whether some standards are truly minimum. Nevertheless, we would need some equal treatment and OSH laws irrespective of whether we were part of the EU or not.

- The EC tends to apply a ratcheting-up principle to social and employment legislation, so when one member state adopts higher than minimum standards, there is pressure for all to meet the new standard.
- There is an argument that existing MS have to be role models for developing states and E&SA legislation is important in this respect.
- EU focuses too much on the floor, what about the ceiling?

There was some questioning of whether need any further action at EU-level, but divergent views on that, reflecting different political stances on correct balance between ensuring a level playing field/avoiding social dumping/improving social cohesion and ensuring business competitiveness and economic growth.

Would all welcome better evidence, including of what current UK social provision might look like if we had not had added EU-level impetus, or had taken a more minimalist approach to enacting EU-level provisions.

There were also some specific points raised in relation to certain interventions:

- WTD is confusing and it's basis is not HSE legislation.
- Would be nice if the EU focused a little more on individual rights rather than collective rights.
- 2012 stats: the EU's social spending in the EU is 25% of the world's social spent.
- Work Councils culturally doesn't work in the UK, waste of money and time.

Question 2: 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?

Summary:

There was a good level of debate about this question. In particular, the question about whether the potential benefit of being a part of the single market offset the costs of EU social intervention generated strong views on both sides of the argument. In terms of identifying evidence, it was suggested that there was in general a lack of good evidence about the impact of EU action and there was some discussion about the difficulty of separating out the costs that come from the EU from those that come from UK.

Detail:

There were conflicting views on the overall positive impact of the SM on the UK economy. Some business surveys found that there was overwhelming support for the EU on the basis of ability to access the SM, whilst others

found a majority of those surveyed had a negative perception of the EU. Arguments raised in this context included:

- It is not clear if foreign investment is coming to the UK by using the SM as a gateway or they choose the UK on her own merits.
- Creating and running the SM is a success and the UK benefits from it.
- The costs of EU social action have largely been absorbed already; it would take a significant amount of new regulation to tip the balance away from EU membership.

It was suggested that there was in general a lack of good evidence about the impact of EU action:

- It is difficult to separate “evidence” from politics.
- OECD and BIS research say regulation doesn’t always have a negative impact on growth.

But some specific points were identified:

- The impact of EU action is that there has been an increase in collective rights and also increase in admin burdens and business costs.
- These admin burden mainly comes from complying with the detail of EU regulation

It was, however, difficult to separate out whether some costs derived from the EU or the UK:

- It can be argued that most regulations (especially equality legislation) would have been the same even in the absence of EU action in these areas. However some of these regulations would have been kept general and these would have been light on the specifics.
- Much of the cost of the regulations implementing the WTD would still be incurred by business even if we were outside the EU (holidays are the biggest cost and the UK already goes further than the minimum requirements). However, we would not have the detail on hours of work, etc. We would not have legislation on works councils and less on consultation. We would not have agency worker legislation - there was no case for this directive in the UK because of our labour market, so there were no benefits to workers and increased costs to business.
- In terms of gold-plating, it was felt that, with exceptions, this can be good/bad for both business & employee.
- All legislation has lots of evidence for both sides of the argument. The UK can easily “pass the buck” and blame the EU for errors or visa versa in regard to gold plating but there is no real hard evidence.

The majority thought there was a lack of quality evidence and analysis to underpin many Commission proposals. All welcomed Commission and UK commitment to Better Regulation, including for how UK implements EU-level proposals, and thought that this was leading to improvement, but that more

could still be done. E.g. to improve impact assessment and ensure consultation properly representative.

Some thought that the blocking of dossiers in Council, especially where EP demanded more action, produced no hardship and therefore was evidence of a lack of need for these measures.

There is too much EU focus on detail and process instead of outcomes. What appear to the EC to be small amendments to legislation can impose large costs on business. It is better to have one large change than several smaller ones (need for amendment of asbestos regulations because of EC views on UK implementation relevant here).

Question 3: 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 subsidiary and proportionality or the ways social partners are engaged?

Summary:

There was a greater degree of consensus in response to this question with broad agreement on need for a better evidence base and improved impact assessment processes across all EU institutions. There was also a discussion of transparency with a sense that this should be improved both in relation to UK Government engagement in the EU and to some of the EU processes themselves.

Detail:

There was general agreement about the need for a better evidence base and improved impact assessments etc.

- Commission IAs are most of the time rather poor, EP does better ones. In relation to this, subsidiarity and proportionality are very important. Lowering the threshold for yellow cards procedure might be useful. In relation to this, if the MS can prove to the Commission that it is already able to achieve the same outcome with its own laws, it should be exempt from EU legislation.
- Applies also to social partnership. There should be clearer tests of competence, subsidiarity and proportionality, and of better regulation – including alternatives to more law. Should also better support partners in negotiations, with analysis and legal advice, while some also stressed need to balance respect for their autonomy.
- Also applies to the EP too. More attention to amendments to draft law and other proposals in EP, which are having greater impact. Should be subject to same tests. Led to questions on correct balance of hard and

soft law, where EP has almost no role in latter. And to more use of yellow cards by national parliaments.

Some participants raised particular concerns about the role played by the European Court of Justice, suggesting that there is a need to minimise the potential impact of the ECJ, especially around reinterpreting existing EU legislation, and raising concerns about the cumulative impacts of ECJ judgements.

There was also a call for greater transparency, although this came up in two different contexts:

- UK Government should be more transparent whilst negotiating the EU Directives. Sometimes, the Government may decide to use a directive as a bargaining chip for a better outcome looking at the big picture.
- There was a concern raised on the lack of transparency of social partnership. Social partnership works well in some EU countries as that is what they need but there is a question whether it fits with UK. It is important that going forward there is greater transparency and representativeness on social partnership.

Other points raised included:

- Traditions within MS creates barriers for social partners and EU legislation because its not how the country runs, the MS is set in its ways and sometimes EU law will never change the general approach to life within that MS.
- Some people suggested that this should be completely left the MSs to decide.
- Some thought it was ridiculous to have an EU wide quota such as Women on Boards