Senior European Experts

EU Social & Employment Policy

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Introduction

Most social and employment legislation in the EU is the responsibility of Member States but some aspects of employment and social protection are affected by EU legislation. While there has been social and employment legislation in the EC/EU since the Treaty of Rome, the amount of legislation in this policy area has increased since the 1980s and particularly since the inclusion of the social protocol in the 1992 Maastricht Treaty.

This subject has often been controversial in the United Kingdom because of concerns that some of the employment legislation is damaging to business. Initially the UK did not participate in the Maastricht Treaty protocol on social policy but the 1997 Blair Government was elected with a mandate to end Britain's opt-out in this area and did so at the time of the Amsterdam Treaty. Since then controversy over the Working Time directive in particular has continued.

This paper explains the history of social and employment policy in the EU, identifies the main treaty provisions in this field, and considers the on-going debate about the costs and benefits involved.

Background

The main concern of the Treaty of Rome with social and employment policy was with the free movement of labour within the Community. During the 1960s and 1970s social policy questions formed part of Ministerial discussions but there were few items of legislation. The most significant developments were the establishment of the European Social Fund, to provide the resources to support skills training and other projects, and legislation on equal pay and equal rights for women employees.

The failure to reach agreement at political level on proposals for improving the rights of workers to be consulted in multinational companies – the Vredeling draft directive of 1980 – highlighted the divisions within the Community on social and employment policy. Right of centre governments, like that of Mrs Thatcher in Britain at the time, objected to measures they saw as unnecessary, potentially damaging to business and inappropriate for the EC to pursue while governments of the centre and left tended to view social policy as an important, perhaps balancing (to the single market), factor in developing European integration.

The 1986 Single European Act led to some increase in EU legislation on social and employment policy because it contained provisions allowing for legislation on the health and safety of workers, which would be decided by qualified majority voting (QMV). The subsequent decision of the European Commission under the leadership of Jacques Delors to use these provisions to promote a range of social and employment legislation led to a number of legal challenges on the grounds that the proposed measures were not really

concerned with health and safety but had wider social policy implications. The most significant of these was the UK Government's challenge to the 1993 Working Time Directive; the UK argued that this was not a health and safety matter (*i.e.* one requiring QMV to pass) but a social policy measure (*i.e.* one requiring unanimity). The European Court of Justice ruled that it *was* a matter of health and safety.

The debate in the Community had moved on however with a fresh initiative from the Delors Commission, which was concerned that there should be a social dimension to the 1992 Single Market campaign. This concern was not shared by the British Government but was supported by a number of other Member States. Several Member States felt that they could be harmed economically in the Single Market by the phenomenon known as "social dumping" – companies choosing to locate their business in the Member State with the least social protection (and therefore lowest costs to employers) or choosing to relocate from one Member State to another with that aim.

The European Social Charter was the culmination of that phase of the Delors Commission's work on social policy. Adopted by 11 out of 12 Member States at the 1989 Strasbourg European Council (the UK being the sole dissenter) the *Community Charter of the Fundamental Social Rights of Workers* listed 12 categories of rights. These included:

- freedom of movement;
- employment and remuneration;
- improvement of living and working conditions;
- social protection;
- freedom of association and collective bargaining;
- vocational training; and
- information and consultation at work.

While the Charter had political support, it had no legal status. The Commission brought forward a programme of measures to be implemented under the auspices of the Charter, using existing treaty competences, but many of these proposals were not new. By the end of 1992 the Council had adopted 15 of the 47 measures proposed by the Commission; the more controversial measures, such as those relating to the length of the working week and industrial democracy had not achieved the necessary unanimity.

The Maastricht Treaty

The inter-governmental conference that prepared the Maastricht Treaty in 1991 was unable to reach agreement on including the Social Charter in the body of the new treaty because of British objections. The log-jam was overcome at the December 1991 European Council when Helmut Kohl proposed putting the Social Charter into a separate protocol to the treaty which would be binding only on those Member States who endorsed it. By this means the UK had an automatic opt-out from legislation under the Social Protocol.

The enthusiasm for employment and social legislation, a feature of the Delors Commission, was not replicated under his successors. Only two pieces of legislation – those relating to

works councils and to a right to unpaid parental leave – were enacted under the scope of the Maastricht Treaty's Social Protocol. The UK was of course not bound by these measures but after the 1997 general election the incoming Labour Government decided to sign up to the protocol and to existing legislation. As a result of the change in position, the Amsterdam Treaty incorporated the Social Protocol in the EU treaties with the support of the UK.

The 1994 European Works Council Directive was controversial because it required businesses employing at least 1,000 staff within the EU, and with at least 150 employees in each of two or more Member States, to establish a works council. But Article 13 of the original directive (and similar provisions in more recent legislation) said that no works council was required in companies who had already established information and consultation procedures with their workforce.

Current EU Social Policy Competences

Although social policy is a shared competence – *i.e.* between the Member States and the EU – this competence is qualified by restricting it to the areas specified in the treaties.

Social Security

Article 48 of the Treaty on the Functioning of the European Union provides for social security provision necessary to enable the free movement of workers, both employed and self-employed. Such EU legislation is agreed by QMV but there is a procedure (usually referred to as the "emergency brake") to enable a Member State who has a major problem with a proposed piece of legislation to refer the matter to the European Council. (A forthcoming Senior European Experts paper will consider social security and the EU in more detail).

Employment

The free movement of workers within the EU has been a principle of the Community since its foundation in 1957. The treaties provide for legislation to enable this but also place some restrictions on it, to protect public security and in respect of public service employment. Member State nationals have the right to set up a business in another Member State and the treaties provide for the mutual recognition of qualifications across the EU.

A key aim of the EU is the raising of the level of employment; to this end Member States have agreed to co-ordinate their policies. The treaties lay down a procedure for co-ordinating this but the treaties prohibit the adopting of measures that harmonise the laws of Member States in this field.

Social Policy

The former Social Protocol appears in the Treaty on the Functioning of the European Union as Article 153. Legislation under this Article is agreed by unanimity where it concerns:

- social security and social protection;
- protection of workers where their employment is terminated;
- representation and defence of the interests of workers and employers;
- conditions of employment of third-country nationals legally residing in the EU.

Legislation is adopted by QMV where it concerns:

- health and safety at work;
- working conditions;
- information and consultation of workers;
- integration of workers excluded from the labour market;
- equality of men and women in the labour market and work place.

In all cases, legislation must take account of the conditions and existing rules in the Member States and should avoid "imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings". This reinforces the more general statements in the opening Article of this section of the Treaty (Art. 151) which refers to the need for measures in this area to take account of "the diverse forms of national practice" and "the need to maintain the competitiveness of the Union's economy".

Costs and Benefits

Measuring the impact of social policy legislation is very difficult. The act of regulating may result in unpredictable changes in market behaviour. Companies often adapt to regulation and manage the costs it imposes by making changes elsewhere in their businesses. Impact varies from sector to sector and even employer to employer. And of course if the EU did not regulate, Member States might choose to do so anyway.

Regulation does have costs and in periods of recession or low growth, companies are likely to be particularly concerned about this. An important question for the EU is whether the Commission and the Parliament have done enough to ensure that the impact is less serious for small and medium-sized enterprises and that it does not adversely affect the competitiveness of the EU.

EU-wide regulation has benefits as well as costs. Companies working cross border do not have to deal with different sets of rules if the EU has adopted a harmonised measure. Those businesses seeking to enter new markets in the EU do not have to adjust to working to a different set of rules every time they expand into a new Member State.

For ordinary people EU regulation may also bring important benefits. The rules on unpaid parental leave, for example, have proved popular in the United Kingdom and are defended by politicians otherwise critical of the EU.

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The Senior European Experts Group is an independent body consisting of former high-ranking British diplomats and civil servants, including several former UK ambassadors to the EU, and former officials of the institutions of the EU.

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