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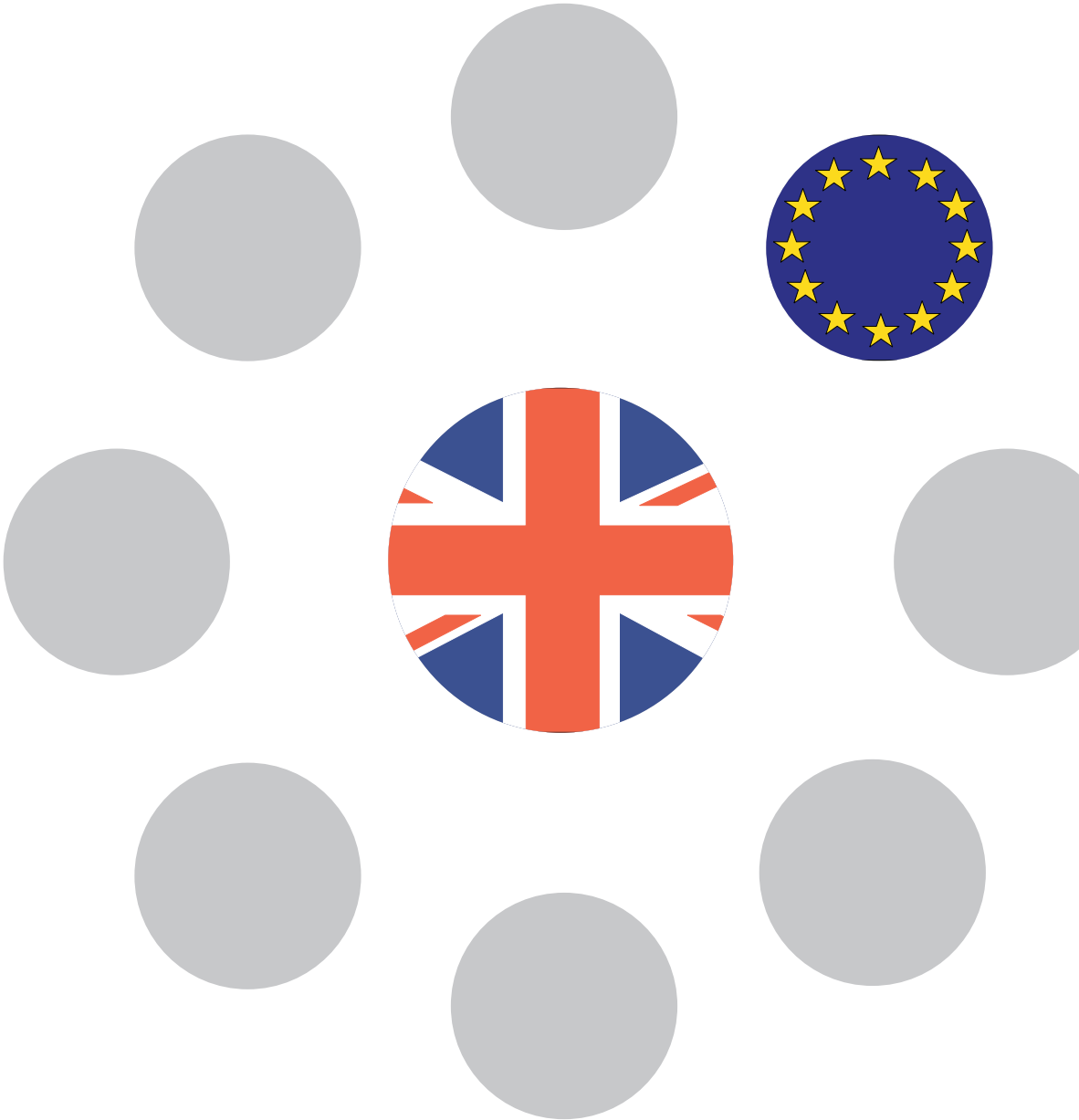
# Common rights in a single market? The EU and rights at work in the UK



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Community THE UNION FOR LIFE

FRIEDRICH EBERT STIFTUNG

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# Foreword

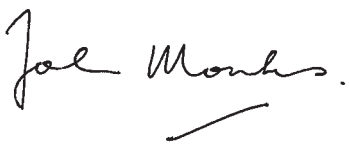
The European Union has played an absolutely essential role in strengthening rights at work in the UK. Millions of British workers have reason to be grateful for the rights the EU has bestowed upon them. From protection against discrimination and rights for working parents to paid holiday and a voice at work; the EU has made the British workplace fairer.

The concept of 'Social Europe' has been a key part in the development of the modern European Union. Jacques Delors recognised that for the internal market to operate fairly – and to guarantee popular support – member states must not be allowed to compete by degrading workers' rights, and that they needed to agree common minimum standards in this area.

But this settlement is under attack as never before. Progress towards a truly Social Europe has stalled in recent years. In the UK, leading figures on the right seem to be vying to outbid each other in their Eurosceptic fervour. The Conservatives are calling for a fundamental renegotiation of our relationship with Europe and a repatriation of powers – including over employment rights. Whereas for UKIP, which has surged in popularity in recent years, nothing but a full withdrawal is good enough.

Much of the ire of the right is driven by the role of the EU in influencing rights at work in the UK. Claims abound that British businesses are overburdened by 'red tape' from Brussels, forced on the UK without our consent. Yet these claims bear little semblance to reality given that our labour market remains one of the most lightly regulated in the developed world.

With our future in the European Union looking less certain than ever before, it is time to take a fresh look at the role the EU has played in influencing workplace rights in the UK. That is why I welcome this publication. A common market requires shared rules. If we are to avoid a race to the bottom and build a Europe that works for working people, the EU needs to retain a role in shaping rights at work.



**Lord John Monks**

**Former General Secretary of the TUC and ETUC**

# Introduction

The European Union has been in crisis for several years now. With the devastating recession that followed the crash of 2008 still rumbling on, the EU no longer appears to be the engine of growth and prosperity it once was. What's more, the tough austerity measures pushed in response to the crisis have had extensive social consequences, leading many in Europe to blame the EU for their plight. With the focus on the Eurozone crisis, the EU's social agenda has been increasingly overlooked and even undermined. There has been a massive loss of confidence in the ability of the EU to deliver a social model worth the name and many even question the usefulness of the European Union at all.

Discontent with the EU is strongly felt in the UK, particularly on the right. With the Conservatives calling for an in/out referendum and the insurgent growth of the intensely Eurosceptic UK Independence Party (UKIP), the UK's relationship with the EU is coming under increasing scrutiny.

One of the main motivations driving those calling either for a renegotiation or a withdrawal from the EU altogether, is a desire to wrest control of social protection from the EU. Eurosceptic voices argue that burdensome and ill-fitting EU red tape is choking British business and holding back growth and job creation. This was expressed with characteristic rhetorical flourish by London Mayor Boris Johnson in his recent speech on EU reform, where he railed against the *'back-breaking'* weight of EU regulations that is *'helping to fur the arteries to the point of sclerosis.'*[1]

**Nita Clarke, OBE, Director IPA**

Whilst opposing this deregulatory agenda, those on the left and in the trade union movement face a dilemma. Current EU policies with their focus on austerity and neoliberal measures are seen as undermining 'Social Europe.' But at the same time former EU achievements in social policy have been welcomed and need to be defended, which would make a more pro-European approach necessary.

Those who argue in favour of the EU-membership in the UK tend to focus on the importance of access to the single market for jobs, investment and growth, rather than engaging specifically with the role the EU plays in influencing social policy. This publication aims to address this by examining the fundamental role the EU has played in shaping rights at work in the UK. It examines both the areas of workplace rights which have been most influenced by EU action; the impact of this on working people and the economy; and the alternative options for repatriation. While it does not look in detail at specific regulations or aim to set out the optimal degree of social protection, it investigates the criticisms of, and case for, EU involvement in this area.

Although this publication examines the importance of the EU's social dimension for the UK, the reasoning behind the publication is important for all EU member states. We hope that this report can add some light to this heated debate.

**Ulrich Storck, Director,**
**Friedrich-Ebert-Stiftung London**

## Executive Summary

There has been growing debate about Britain's membership of the EU in recent years. One of the main focuses of discontent is the role the EU plays in influencing employment regulation in the UK.

Although this was not the initial intention of the Treaty of Rome and the European project, the EU has gradually expanded its role in this area, and has increasingly played a part in shaping employment regulation across the single market. The development of 'Social Europe' has been a long process, with a particular surge of activity under the European Commission Presidency of Jacques Delors. The UK has always been relatively uneasy with the involvement of the EU in this area, given both our often adversarial relationship with Europe and traditionally light-touch approach to employment regulation.

It is clear that the EU has played a fundamental role in extending and expanding rights at work in the UK. It has done so across a broad array of rights; from protection from discrimination to protection for atypical workers; from rights for working parents to regulation of working time; from health and safety to information, consultation and employee voice. In some cases, EU action has built on existing rights, in others it has conferred rights in completely new areas. The EU has had a significant influence over broad areas of social legislation, and has made a real difference to working people in the UK.

Although the EU has had a significant impact over employment regulation in the UK, the extent and nature of that influence has often been over-stated and distorted for political effect. Many areas relating to employment remain the exclusive competence of member states, with no powers for the EU to legislate. Member states have considerable opportunities to influence and shape measures coming out of Brussels, something the UK has done very successfully over the years. Where the EU does act, it normally does so to set out minimum standards, leaving national governments the flexibility to decide how to adapt measures to the peculiarities of their own labour market.

Those who oppose the role of the EU in this area tend to argue that British businesses are over-burdened with employment regulation. Instead of protecting employees, it is argued, excessive and inappropriate employment regulation undermines productivity and costs jobs. However, there is evidence of a gap between perception and reality here. Despite the claims that British businesses are over-burdened, our labour market remains one of the most open and least regulated in the developed world. Membership of the EU has not led to 'continental' levels of employment regulation. It is also clear that there is no relationship between the extent of regulation in a labour market and the success of the country's economy. And despite voicing concerns about the impact of 'EU red tape', British businesses generally recognise the need for employment regulation and, on balance, see it as a price worth paying for membership of the EU.

The alternatives offered by those who want to repatriate employment legislation are unconvincing and unattractive. Repatriation would be incredibly difficult and there is no reason to believe that we would be able to retain full access to the single market without applying the same rules. There is little evidence to suggest that such a move would lead to significant gains in productivity. And although the impact of repatriating social and employment law is unknowable, there is a risk that it could lead to a diminution of employment rights which would harm working people.

There are strong and compelling arguments for the EU to retain a role in influencing employment regulation in its member states. First, given the founding purpose of the EU is to create a common market, some common rules are essential. There are established rules that govern the free movement of capital, goods and services, and there is no reason why the same shouldn't be the case for labour. What's more, by harmonising employment regulation, the EU can avoid excessive and expensive duplication, reducing costs for employers operating across the common market.

Second, a minimum level of employment protection is required to avoid a race to the bottom across the EU. Without coordination and cooperation, the common market could lead to perverse incentives for member states to competitively outbid each other in deregulating their labour market and slashing employment protection. In such a situation, working people can only lose.

Finally, Social Europe has played an important role in legitimising the single market in the eyes of the British public. Having a quid pro quo for working people was an essential part of building and maintaining consent for the European project. It is also clear that the British public still support the role of the EU in establishing minimum levels of workplace rights and in protecting people in the region from the negative effects of globalisation, whilst allowing them to benefit from the advantages that come with it.

The EU has played a fundamental role in shaping rights at work in the UK, and this has delivered substantial benefits to working people. Despite this though, the UK retains considerable influence over employment regulation, and our labour market remains lightly regulated by international standards. Although businesses express some discontent about employment regulation, it is rightly seen as a price worth paying for access to the single market.

# 1. History and context

Membership of the European Union has contributed significantly to the development and extension of rights at work in the UK. But this of course was not part of the original intention of European cooperation and integration. The Treaty of Rome which came into force in 1958 brought together six member states in Western Europe to create the European Economic Community (later the EC and now the EU). It aimed to create a 'common market' for goods, workers, services and capital – known as the 'Four Freedoms' – across the member states. Although the Treaty of Rome was focused on economic measures, it did include a provision for equal pay between men and women. Lord Monks, the former General Secretary of the TUC and ETUC calls this *'the foundation for the subsequent growth of Social Europe.'* [2]

Beside this initial measure, there was little significant progress around social measures for some years. This changed in the early 1970s when leaders of the Member States of the EU decided they should pursue a more active agenda. The Council of Ministers adopted the Social Action Programme in 1974 which led to a number of new Directives. These included the Acquired Rights Directive in 1977 which was eventually implemented by the Transfer of Undertakings regulations (TUPE) in 1981. Also included were protections in the event of collective redundancies and insolvency, as well as Directives on equal pay and equal treatment. Following this initial surge of activity, *'the impetus for developing social policy legislation seems to have waned.'* [3]

It was not until the late 1980s that this agenda again got going. The driving force behind this was Jacques Delors who became the President of the European Commission in 1985. His vision for Europe was one in which the common market and economic growth coexisted alongside strong social protection and good living standards. Delors believed that the EU needed to act to ensure that competition did not lead to the erosion of workers' rights, and that all benefitted from European integration. This vision, which came to be known as 'Social Europe,' was hugely influential across Europe, including in the UK where the left had traditionally been either suspicious of or, in some cases, downright hostile to, the single market. In an address to the 1988 TUC Congress, Delors won over the British trade union movement with his call for a *'peoples' Europe.'* [4]

Delors' vision was accompanied by action too. The Single European Act, agreed in 1986, allowed health and safety measures to be agreed by qualified majority voting (QMV) for the first time, removing the requirement for unanimity among member states. Then came the Maastricht Treaty of 1992 which extended the use of QMV to wider array of social measures, gave the 'social partners' a greater role in social policy development, and included the 'Social Chapter'. Britain under the Major Government opted out of the Social Chapter, until the Labour Government signed up to it in 1997.

The rapid development of Social Europe has slowed in recent years however, and, outside the equality field, there has been little by way of further social measures.

The UK has always had a difficult relationship with the EU when it comes to social policy. British Governments of all political persuasions have regularly opposed further social measures and have often implemented them with great reluctance and after some delay. This is in part due to our fractious relationship with the EU – we remain the most Eurosceptic member of the EU – and in part due to our traditional aversion to employment regulation. As Lord Monks explained, for decades *'the biggest enemy of any move in the social sphere was the British Government, irrespective of who was in power.'*

### The UK and Social Europe

The role of the EU in influencing British employment and social law can be seen as *'a central feature of the antagonistic British relationship with the EU.'* [5] Many on the right see this as a prime example of the EU overstepping its role and undermining British sovereignty. They argue that its involvement in social policy

goes against the principle of subsidiarity, under which the EU should only act if it can do so more effectively than member states. As well as being wrong in principle, many also insist that European regulation is a burden that holds back job creation and growth.

Both those who want to withdraw from the EU and those who want a fundamental renegotiation and repatriation of powers seem to be motivated by a desire to lessen the role of the EU in influencing social legislation. The UK Independence Party (UKIP) who are calling for a complete withdrawal from the EU, have promised to *'turn off the flow of laws, interference and costs emanating from the EU'* and to *'put an end to most legislation regarding matters such as weekly working hours, holidays and overtime, redundancy or sick pay etc.'*[16] The Conservatives, who are advocating a renegotiation of our relationship with the EU followed by an in/out referendum in 2017 also seem to be driven by a desire to end the EU's influence in this area. Their 2010 manifesto promised to negotiate specific guarantees *'on social and employment legislation… with our European partners to return powers that we believe should reside in the UK, not the EU.'*[17]

Many on the left oppose these efforts arguing – as Delors did – that the EU must play a role in social legislation in order to protect workers in a common market. The TUC recently decried the Conservative proposals for a referendum as a *'divisive attempt to scrap vital employment rights from Europe.'*[18]

However, others on the left share a hostility towards the EU. The Rail Maritime and Transport Union for example has regularly called for a withdrawal from the EU and has backed the No2EU party that has stood in European Parliamentary elections on this platform. This is driven by a number of factors including the lack of new social initiatives; by anger over the EU's role in enforcing austerity in Europe; and by the perceived threat to organised labour posed by some judgments of the European Court of Justice such as the Viking and Laval cases.

The development of 'Social Europe' and the extension of EU derived employment protection to UK workers has been a long process that has proceeded in fits and starts. It is also a process which has aroused significant opposition in the UK. With growing questions about our relationship with the EU, particularly its role in employment protection, it is a now good time to assess the influence of the EU in this area. In the next Chapter, we will examine the main areas in which EU action has had an impact on individual and collective rights at work, before going on to review the arguments on this issue.

## 2. How has the EU affected rights at work in the UK?

Having considered the development of Social Europe over the years, it is worth examining how exactly the EU has shaped workplace rights in the UK. What is clear is that the EU has played a fundamental role in influencing employment regulation and the rights of working people in this country. In some areas this has been as a result of strengthening or broadening pre-existing rights, but in others, it has conferred new rights on workers. Below we summarise the key areas in which the EU has helped strengthen individual and collective workplace rights in the UK.

### Individual rights:

#### Rights for women and for working parents

One of the first and most important areas in which the EU has influenced British rights at work is in the area of women's rights. As explained above, the principle that women should get equal pay was enshrined in the Treaty of Rome. Although the UK had some existing legislation in this area – notably the Equal Pay Act of 1970 that predated our joining the EEC, this was strengthened following an ECJ judgement in 1982 that prompted a toughening up of the law. This has helped to narrow – although not eliminate – the gender pay gap, which remains a problem today.

The EU has also played a significant role in strengthening protection for working parents. In terms of maternity leave and pay, although there were some existing rights in place in the UK, EU intervention helped extend and expand these rights with the 1992 Pregnant Workers Directive establishing a minimum entitlement to maternity leave and pay, as well as protection from dismissal for pregnant workers. As Dr Roberta Guerrina of the University of Surrey explains, the EU was *'instrumental in shaping employment regulations relating to maternity leave and pay in the UK.'*[9]

#### Protection against discrimination

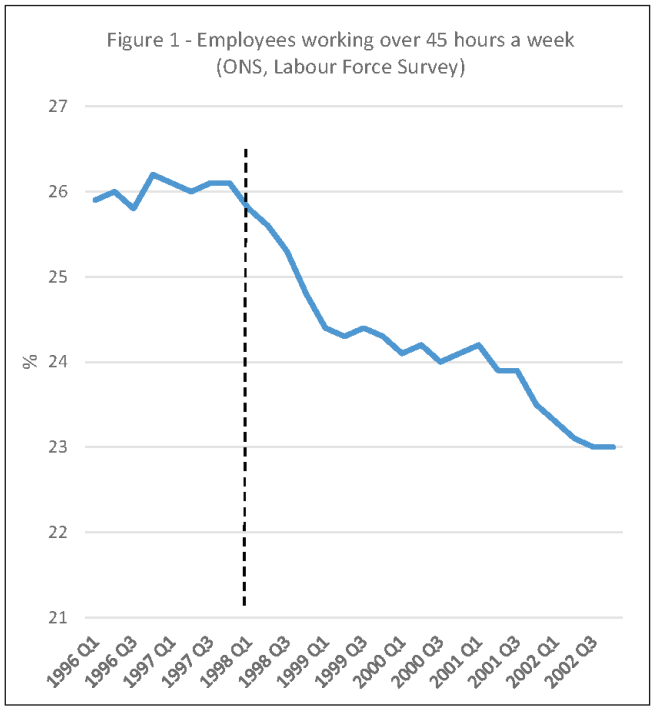
Britain had been a pioneer amongst member states in terms of protecting workers from discrimination. During the 1960s, the Labour Government of Harold Wilson legislated to protect workers from discrimination based on gender and ethnicity. In the 1990s this protection was extended to disability. However, workers were not protected from discrimination on any other grounds until EU Directives extended this. The EU Equal Treatment Directives obliged the UK to extend protection from discrimination to employees on the grounds of age, sexual orientation, religion and belief.

#### Working time and holidays

Arguably the most significant impact the EU has had on working rights – and the most controversial – has been in the area of working time and holidays. This area is particularly important as before the introduction of the Working Time Directive, workers in the UK didn't have any statutory rights around their weekly working hours or paid holidays.

The Working Time Directive for the first time introduced a right to paid holidays for all employees. Initially 20 days a year, this was later extended by the UK Government to 28 days a year with the inclusion of bank holidays. The Directive also introduced a maximum working week of 48 hours, averaged over 17 weeks, although the UK retains an opt out from this provision of the Directive.

As figure 1 shows, following the introduction of the Working Time Directive in 1998, there has been a significant and sustained decrease in the number of employees working long hours. There was a pre-existing gradual downward trend in long hours working but the decline clearly accelerated just before and immediately after the introduction of the Directive in the UK. This represents a significant benefit to working people given the evidence of the negative impact of long working hours on both health and wellbeing and on work-life balance.




The Working Time Directive remains one of the most controversial areas of EU involvement in social policy. This is driven particularly by the recent ECJ judgements which are seen by some as extending the Directive beyond its original intention. However, it is clear that it has been effective in reducing working hours and in extending and improving employee rights to paid leave.

### Rights for 'atypical' workers

The EU has played an important role in extending rights for 'atypical' workers. EU Directives have ensured that part-time, fixed-term and agency workers are entitled to equal treatment. These provide for equal treatment on issues such as pay, leave and working conditions. These rights are particularly important given the changes in the workplace. The decline in traditional full time, permanent employment and the rise in part time, fixed term and agency work means that 'atypical' work is increasingly common. Such workers are now much better protected, in large part due to the actions of the EU. The Directives on part-time and fixed-term working both resulted from agreements reached by the EU 'social partners'.

## Collective rights:

### Information and Consultation

EU Directives have been absolutely fundamental in strengthening rights for collective voice at work. Whereas trade union recognition and collective bargaining were well established in UK legislation, there were no established rights for the information and consultation of employees. This was an area where, instead of building on existing rights, the EU introduced these rights for the very first time. As Elena Crasta of the TUC explained, when it came to rights for information and consultation in the UK, *'there was just a void… it came in via EU legislation and it offered a completely new set of rights and opportunities for people in the UK.'*

Employees at large multinational companies that operate in other European member states now have the right to request a European Works Council be set up to discuss any transnational issues with managers. This right derives from the European Works Council Directive, which was agreed in 1994 and was extended to the UK in 1997 when the Labour Government signed up to the 'Social Chapter'.

The Information and Consultation Directive that was agreed in 2002 and transposed into UK law in 2005, gives employees for the first time the statutory right to be informed and consulted on a range of key issues relating to the business, to their employment and to restructuring.

The Information and Consultation of Employees (ICE) regulations have been under-used in the UK. There are a number of factors behind this including the luke-warm reception from both employers and trade unions, the lack of awareness of the rights, and the inclusion of a 'trigger' requiring at least 10% of employees to request the establishment of an information and consultation forum.

### TUPE and protection for employees facing redundancy

Another area in which the EU has played a fundamental role in improving workplace rights is in the protection for employees facing redundancy and those whose employer's business is being sold.

The Transfer of Undertakings Regulations (TUPE) were introduced in the UK in 1981 in order to implement the Acquired Rights Directive of 1977. The rights are important in order to protect employees whose work is being transferred to another employer. In such cases, the TUPE Regulations require that employees are consulted about the transfer, and that their employment and terms and conditions are protected to a certain extent. The TUC described this as an example of where the EU *'has been a real pathfinder for national policy.'*[10]

Following EU intervention through the Collective Redundancies Directive, employers are also required to consult with recognised trade unions on collective redundancies.

## Health and safety

Finally, the EU has been fundamental in extending and enshrining health and safety regulations in the UK. The controversial regulations on working time were initially included as a health and safety measure, and the EU has made a number of other interventions in this area. These include regulations on asbestos and to protect whistle-blowers who highlight health and safety issues from being dismissed.

Tom Jones of Thompsons Solicitors explains that having high-quality health and safety legislation in place has helped ensure that the number of workplace accidents has *'fallen consistently and considerably'* and as such has been a tangible and significant benefit to working people.

Having looked at the areas of social legislation which have been shaped by the EU, it is worth noting the areas where there is no EU involvement. The EU currently has no power to regulate on matters such as pay, collective bargaining, social security, dismissals and discipline for example, which are seen as the sole competencies of member states.

However, as has been shown above, the EU has played a pivotal role in extending both individual and collective rights at work in the UK across a number of areas. In some cases, EU Directives have strengthened or extended existing rights in the UK; in others, they have instituted rights in totally new areas. The EU can therefore be seen to have had a significant influence over broad areas of social legislation in the UK, and has made a real difference to the lives of working people.

# 3. Do we get a say?

One of the main arguments made by those who would repatriate control over social policy is that the EU forces ill-fitting and burdensome regulations on to the UK without our say or the involvement of the UK Parliament. Having examined the areas of social legislation which have been affected by the EU, it is worth considering the process by which the EU influences rights at work in the UK, and the extent to which we can shape this process and the outcomes.

**How does the EU affect rights at work in the UK?**

There are three key principles that govern whether and how the EU should legislate on a certain issue. The first is 'competence': do the EU Treaties give the EU the power to act? If they do, then the second principle, 'subsidiarity', comes into play. This is the idea that decisions should be taken as closely as possible to the citizen, and that the EU should only act when a matter can't effectively be dealt with by member states acting independently at the national level. The third is 'proportionality' under which the EU mustn't go beyond what is needed to address the problem identified.[11]

There are three main ways in which the EU influences social legislation in the UK:[12]

- Regulations –directly applicable across the single market, these are immediately enforceable without the need for legislation in member states.
- Directives – these are binding on member states but require them to transpose them into domestic law in order for them to be enforceable. This therefore leaves member states some flexibility as to exactly how they are implemented.
- Court of Justice of the European Union rulings – decisions of the CJEU (formerly known as the European Court of Justice) can establish case law which then has a profound impact on the way EU regulation is implemented.

**How much of our law comes from Brussels?**

There is considerable controversy over the extent of the impact of the EU on British law. Opponents of EU regulation often claim that a significant proportion of regulation comes from the EU and that British sovereignty is undermined by the forced imposition of endless Directives from Brussels. In May 2009, the then Leader of the Opposition, David Cameron claimed that almost half of all regulations affecting UK businesses come from the EU.[13]

However, as the CBI has explained, the proportion of UK legislation that is determined by EU regulation is *'significant but often overstated.'*[14] When the House of Commons Library examined this question, they found that in the period from 1997 – 2009, 6.8 per cent of primary legislation (Statutes), and 14.1 per cent of secondary legislation (Statutory Instruments) had a role in implementing our obligations as a member of the EU. And even in these cases, the degree of involvement *'varied from passing reference to explicit implementation.'*[15]

As mentioned above, although the EU has helped shape a wide range of rights at work, it does not impact on every area. There are several important areas of workplace rights that remain the sole competence of member states. This includes regulation around pay and the national minimum wage, collective bargaining, strikes, job security and employment protection, sick pay, social security and dismissals and discipline.[16] Far from the EU dictating regulation and dominating every area of social policy, as the Centre for European Reform conclude, *'the EU's member-states retain broad powers to regulate their economies.'*[17]

**How much influence do we have over EU regulation?**

It is also worth considering the extent to which the UK can – and does – influence EU social legislation.

The process of developing EU Directives and regulations allows for member states to influence the process. Under the 'codecision' process, Directives are produced by the European Parliament and the Council of the European Union working together as equal partners. This gives British MEPs in Parliament and British Government Ministers in the Council the opportunity to shape the process and its outcome.[18] As Professor Anne Davies of Oxford University explains, *'it's not as if EU employment law is imposed on the UK without its consent.'*[19]

An alternative route for EU social legislation is through the social partners. Since the Maastricht Treaty, the EU social partners, representing employers and organised labour, have had the right to be consulted on social measures and they have the option to negotiate and agree social policy legislation between themselves. This route was used for a number of Directives including on part-time and fixed term work. However, having failed to reach an agreement on agency workers, this has not been used in recent years. Again, British interests are represented though this route by the active participation of the TUC and the CBI in their respective EU social partner groupings.

Compared to most member states, the UK has traditionally had a more economically liberal attitude with an aversion to employment regulation. However, as David Yeandle of the European Employers Group explained, it has traditionally *'punched above its weight in the last 20 years in terms of influencing EU employment legislation. For example, it has got more opt outs from regulations than other member states in order to suit its different labour market.'* This influence is evident when you consider the fact that the UK managed to secure an opt out from the 'Social Chapter' in the Maastricht Treaty for a number of years before choosing to sign up, and that it still has an opt-out from the 48 hour cap on the Working Time Directive. Far from being enforced on us without our say, EU regulation is shaped by the member states with the UK having played a significant role in this process.

Apart from being able to influence how regulations are formed, member states also have considerable scope to control how they are implemented domestically. As Jude Kirton-Darling MEP explained, *'all social regulation at European level is minimum standard – it's all pretty basic. If you look at any piece of legislation, every clause says it will be implemented according to national laws and practice.'* This is particularly important given the significant diversity between the labour markets and industrial relations systems of different member states. Catherine Barnard of Cambridge University argues that the EU has always been *'very conscious'* of such differences and that Directives therefore aim to *'lay down a minima – some say minimal – standard with a lot of flexibility for member states to give effect to those rules.'*

With EU Directives normally simply setting a minimum standard, member states are free to go beyond those standards and to offer workers more protection. This practice – sometimes called 'gold-plating' – has been relatively regularly used in the UK. The gold-plating of EU Directives is highly controversial. A recent poll of CBI members found that the top priority for reform in terms of our relationship with the EU should be 'ensuring that the UK government itself does not "gold plate" EU legislation' with 46% of members identifying this as an issue.[20]

A review of implementation of EU legislation by Lord Davidson for the Government found that whereas in some cases the cost of over-implementation outweighed the benefits, in others it was beneficial to go beyond the minimum requirements of the Directive. He also found that *'inappropriate over-implementation of European legislation may not be as widespread as is sometimes claimed.'*[21] However, this remains an area of concern for some, and the Coalition has pledged to end the gold-plating of EU Directives.

Irrespective of the wisdom of gold-plating, it is essentially a domestic decision. The biggest concern of British business around EU regulation – as explained above – often seems not to be the EU legislation itself, but decisions by the British Government on how it is implemented. This is a domestic issue over which we have control, rather than a matter of regulation being forced upon us.

A complicating factor in this situation is the fact that national governments tend to claim credit for any popular consequences of EU regulation whilst disassociating themselves from any negative impacts. As David Yeandle explained, British Governments have often been *'keen to make it appear that all the benefits to individuals have come as a result of their action, rather than from Europe. And indeed if something looks bad, they tend to do it the other way around.'*

Opponents of EU involvement in social policy argue that the EU forces endless regulation on British businesses without our say and against our will. As shown in the previous chapter, the EU does have significant influence over employment law and regulation, but the extent of this influence is often exaggerated for political effect. There are many areas that remain the exclusive competence of member states. In those areas where the EU does act, it does so normally to establish minimum standards, leaving member states much flexibility to adapt measures to their own labour market. Furthermore, member states have significant scope to influence measures coming out of Brussels, something the UK has been very successful with over time.

# 4. How does regulation affect our economy?

Much of the debate around EU involvement in social legislation focuses on the costs of employment regulation. It is worth considering the claims of the impact of EU regulation, both on businesses, and on the economy as a whole.

There is evidence to show that employers are unhappy with EU employment regulation. Polling by the CBI of their members has found that one in two businesses (49 per cent) say that the attempt to create similar employment rights across the EU has had a negative impact on their business with just 22 per cent saying it has had a positive impact. One in two (52 per cent) also believe that leaving the EU would have a positive impact in terms of the overall regulatory burden on their business.[22]

Many employers and employers' organisations argue that EU-derived employment regulation has a negative impact on the performance, profitability and competitiveness of UK businesses. In their Report 'Cut EU Red Tape', the Business Taskforce, established by the Prime Minister to look at barriers to growth, argue that *'businesses have repeatedly called for relief from an endless stream of new EU regulations, rules and requirements which create unnecessary complexity and costs in their day-to-day operations.'*[23]

In his report to the Government on Employment Law, Adrian Beecroft argued that much of the existing regulation *'impedes the search for efficiency and competitiveness.'* He concluded that employment regulations *'cumulatively act to reduce the profitability (both through direct costs and increased administrative costs) of our businesses, and hence damage their growth prospects and their ability to employ more people.'*[24]

In addition to the impact on productivity, some argue that employment regulation has a significant psychological effect on businesses. Again, Beecroft argues that the very existence of employment regulation *'serves to deter sole traders from taking the giant step of employing another person, and, once they have experienced the workings of some of these regulations, to deter larger employers from taking on more staff.'*[25]

According to these arguments therefore, excessive and inappropriate employment protection coming from the EU actually costs jobs by both stifling productivity and dissuading businesses from taking on extra workers. As the Business Taskforce claims, *'the complexity and quantity of employment legislation coming from Europe is preventing job creation. This cannot continue.'*[26]

**Figure 2: Employer perceptions of the impact on their business of efforts to create similar employment rights across the EU (CBI/YouGov, 2014)**

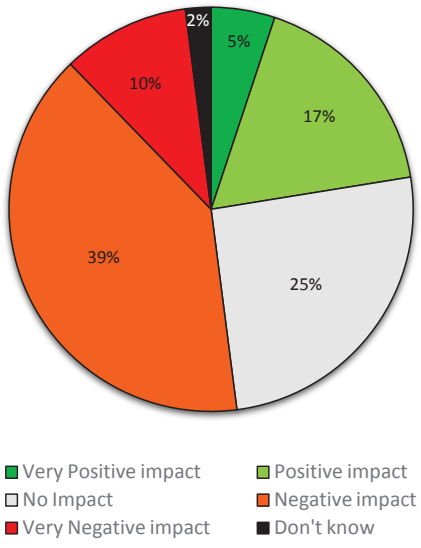
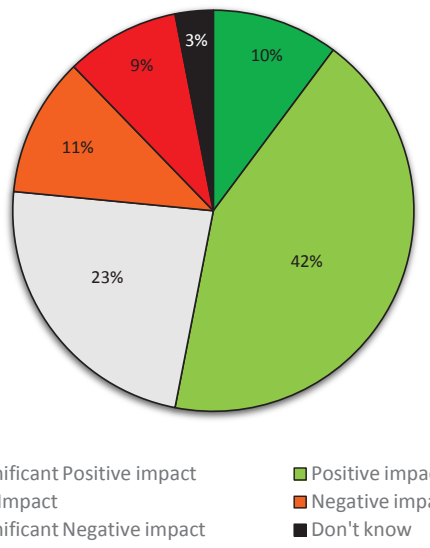



**Figure 3: Employer perceptions of the impact on the regulatory burden on their business if the UK were to leave the EU (CBI/YouGov, 2014)**



The impact is seen to be particularly significant on smaller businesses. Small and micro businesses will normally not have a professional HR function and instead, ensuring compliance with employment regulation will be the responsibility of a non-specialist, often the owner-manager. The costs of complying with employment regulation can therefore represent a greater proportional burden for smaller organisations. As David Nash of the Federation of Small Businesses explained, *'often the problem is not so much the thrust of individual regulations, which may have been introduced for entirely valid reasons, but how to apply them in practice. Applying regulation in a small business environment is very different to doing so in a large business… it poses a unique challenge for that size of business.'*

Some elements of EU derived employment protection provoke particular concern. The most commonly raised is the Working Time Directive. This is seen as being particularly challenging given the way the case law has developed following successive CJEU judgements on issues such as on-call time and the accrual of holidays. The Federation of Small Businesses argues that this means the implementation of the Directive *'has by and large moved on from the original intention of the directive.'*

Another key area for concern is the Agency Worker Directive, transposed into UK law in 2010, aimed to ensure that workers employed through agencies were treated no less favourably in pay and working time than directly employed colleagues. Although the CBI and the TUC reached an agreement with the Labour Government on how this Directive should be implemented in the UK, Neil Carberry of the CBI described this as *'an EU wide solution [which] has cost UK employers £1.9 billion per year, largely in compliance cost and red tape rather than from benefits flowing to workers.'*

There is though evidence that employer perceptions of, and attitude to, employment regulation may not reflect the real impact of regulation. Research conducted by Jordan et al for the Department for Business Industry and Skills found that many employers saw employment regulation as a burden, despite at the same time acknowledging that these regulations had very little direct effect on their working practices.

This paradox was most evident among small and micro employers, who would often acknowledge that the cost of compliance was negligible, but would at the same time describe regulation as burdensome. Jordan et al therefore conclude that there is a *'perception-reality gap'* in this area, with hostility towards employment regulation being fed by exaggeration in the media and a generalised *'anti-legislation'* view, rather than on its actual impact on businesses.[27] As Sonia McKay of the Working Lives Research Institute argues, *'employers will always argue that there's too much regulation - if you abolished all regulation tomorrow, you'd still have people saying there's too much regulation.'*

A common criticism from business of EU regulation is that it is ill-fitting for the UK's traditionally flexible labour market. The CBI claims that *'the EU has a history of passing inappropriate social legislation that applies poorly in the UK's labour market.'* Critics also argue that EU regulations are overly restrictive and fail to recognise the different circumstances in member states. According to the Fresh Start Project, EU Directives impose *'a rigid framework upon the UK's otherwise flexible labour model, in an attempt to harmonise our working practices with those of other EU countries – a "one size fits all" approach.'*[28] Similarly, the CBI has argued that with labour markets in different countries facing different challenges *'EU-wide solutions to problems in some but not all member states can have unintended consequences for the other member states.'*[29] However, as has been shown above, many EU Directives are designed to set out a minimum standard across the single market, allowing member states to implement them in a way that suits their own local circumstances.

Given the above, some argue that social issues should be dealt with exclusively at the national level and reject any involvement of the EU. Open Europe have called for the repatriation of social policy, so that *'the regulations themselves, and the benefits and costs they generate, would be under the control of Westminster, empowering MPs and voters to change them to better reflect local circumstances, and national democratic preferences.'*[30] There are differences of opinion as to how this should be done, with some arguing for a renegotiation in

order to repatriate powers in this area or opt out of such measures, while others call for a withdrawal from the EU altogether. These options are examined in more detail in chapter 6.

Neil Carberry of the CBI highlights polling of their members which shows that, given the significant divergence between member states in terms of their employment markets and industrial relations traditions *'taken as a single issue, most businesses would prefer social issues to be dealt with at national level.'* However, given the numerous benefits CBI members recognise as deriving from membership of the common market, they *'feel that retaining decision making in Brussels might be acceptable if significant reforms were made to how the EU carries out social policy.'* Polling conducted by Business for Britain shows a similar pattern with three in four employers (76 per cent) saying that the UK should be in control of employment law compared to just one in five (19 per cent) saying the EU should have responsibility for this..[31]

Some attempts have been made to quantify the 'costs' of EU regulation. Open Europe for example have used the Government's impact assessments of individual employment regulations to calculate the total cost to UK business and the public sector as £8.6 billion a year. They argue that by cutting the cost of regulation in half, this would generate 60,000 new jobs in the UK and an additional £4.3 billion in GDP.[32]

However this claim has come in for some criticism. The Centre for European Reform (CER) have described this methodology as *'crude'*, claiming in effect they just *'assign largely arbitrary, but invariably inflated costs to regulations; then imply that the UK would face none of these costs if it quit the EU. It is a method designed to produce conclusions that have been determined before the exercise has been carried out.'*[33] As we shall see in chapter 6, if Britain was to repatriate social protection or withdraw from the EU altogether, it would inevitably still need employment regulation, and this would come with some costs. CER also disputes the claim that cutting employment protection would generate new jobs and a boost to GDP. The gains, they claim, *'are likely to be limited: a bonfire of European rules would not transform Britain's economic prospects.'*[34]

Critics of EU intervention in social policy claim that British businesses, and particularly smaller enterprises, are over-burdened by regulation. These measures it is argued – intended to protect employees – actually cost jobs by undermining productivity and dissuading employers from recruiting. However, there is evidence of a gap between perception and reality here, with the aversion to regulation being out of all proportion to its actual impact. EU regulation is supposedly ill-fitting to the UK's flexible labour market, yet as we've seen there is considerable flexibility to member states and the UK remains one of the least regulated labour markets in the developed world. Finally, despite the claims of the 'cost' of EU employment regulation, we would still face much of these outside the EU and it is clear that the benefits of membership of the single market far outweigh the costs.

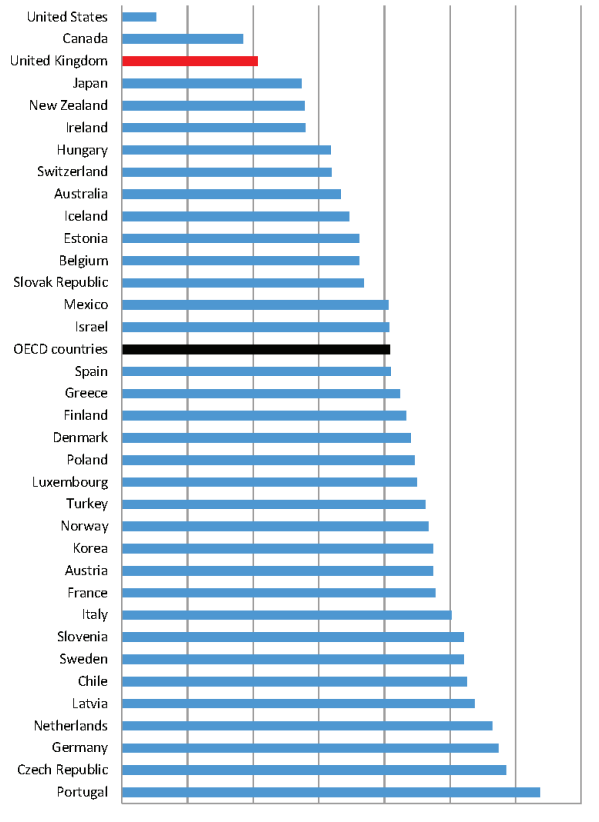
# 5. Is Britain over-regulated?

Having considered the arguments over the impact of employment regulation on our economy, it is worth looking at how we compare to other countries. Are we really over-regulated and does this have an impact on the competitiveness of our economy?

It is evidently clear that the answer to these questions is no. The British labour market is less regulated compared to our international competitors. The OECD produce annual figures for the strictness of employment protection in its member states. As the graph below shows, in terms of strictness of employment protection for individual and collective dismissals in regular contracts, out of 35 countries, the United Kingdom comes third from bottom and below every EU member state. The UK also comes third from bottom in terms of protection for workers on temporary contracts and in the bottom third (26th out of 35) in terms of additional restrictions on collective dismissals.[35] Similarly, the World Economic Forum ranks the UK labour market as 10th out of 148 in the world in terms of labour market flexibility.[36]

It is clear from figure 4 that there is significant variation across the EU between member states. It is also clear that despite being a member of the EU, the UK still has one of the least regulated labour markets in the developed world. As the Centre for European Reform concludes, *'being a member of the EU has not turned Britain into a country with 'continental' levels of regulation. Indeed, despite EU membership, the UK's product and labour markets still look more Anglo-Saxon than continental.'*[37] And as Sonia McKay of the Working Lives Research Institute claims, these indicators suggest that *'the UK's problem is that it's too lightly regulated rather than too strongly regulated.'*

Figure 4 - Strictness of employment protection – individual and collective dismissals, regular contracts (OECD, 2013)




Furthermore, it is evident that there is no significant relationship between the strength of employment protection and economic success. Looking at the OECD figures for strictness of employment protection, there is no correlation with either GDP per capita or growth. Some of Europe's most successful and prosperous economies – including those of Germany and the Scandinavian nations – also have far more heavily regulated labour markets. As the TUC concludes, *'there is certainly no incompatibility between, on the one hand, proper worker protection and rules on equality and health and safety, and a successful economy on the other.'*[38]

Despite the concerns over the impact of employment regulation highlighted above, there is also a recognition among employers of the need for some employment regulation. Research for the Department of Business Industry and Skills found that employers saw employment regulation as *'both necessary and fair as it ensured that employees' rights were protected and provided employers with a legal framework to refer to when managing staff.'*[39] As well as recognising the need for employment protection per se, there also tends to be a grudging acceptance amongst the business community of the need for some action at the EU level on this. As Neil Carberry of the CBI explained, *'in order to effectively function, any Single Market needs some commonly agreed rules to allow full access to the market on equal terms.'* Similarly, the Government's Balance of Competencies Review concludes that *'most [businesses] accept that a degree of Europe-wide regulation is essential' in order to secure access to the single market.'*[40]

What's more, even though businesses may grumble about the extent of employment regulation coming from the EU, it is clear that the vast majority see this as a price worth paying for access to the single market. The Government's Balance of Competencies review found that *'businesses value the additional access to EU markets that the Single Market brings and recognise this will bring a regulatory burden.'*[41] There is a similar message from the CBI, with their Director General describing continuing membership of the Single Market as *'fundamental to our economic future.'*[42] By their calculations, the benefit arising from EU membership is equivalent to around 4-5% of GDP. This works out as between £62bn and £78bn a year or £1,225 a year for each individual in the UK. This is reflected by the views of their members, seven in ten of whom (71 per cent) say that the membership of the EU has a positive impact on their business with just 13 per cent saying the impact is negative. As they conclude, *'given that EU markets remain competitive despite this regulation, [CBI members] conclude that it is not worth losing the wider benefits of the EU simply to regain control of those competences.'*[43]

It is clear that, far from being over-burdened with regulation from Brussels, the UK has one of the least regulated labour markets in the developed world. Despite the EU's role in setting out minimum standards, there remains significant variation between member states in terms of the level of employment protection. It is equally clear that there is no relationship between the degree of employment protection in a country and the success of their economy. Whilst some employers may grumble about the extent of EU regulation, there is widespread acknowledgement of the need for employment regulation and an acceptance that EU regulation is a price worth paying for access to the single market.

# 6. Options for repatriating employment protection

Opponents of EU involvement in social policy generally argue for one of two alternative options; renegotiation in order to repatriate control over employment protection, or withdrawal from the EU altogether. It is worth briefly considering the feasibility and potential impact of both these options.

The first option for regaining full control over employment legislation is to renegotiate the UK's relationship with the EU and to repatriate responsibility for social policy. This would be similar to – though more extensive than – the opt-out from the Social Chapter that the UK had from 1992 until 1997.

This seems to be the preferred option for the Conservative Party who promised in their last election manifesto to *'work to bring back key powers over… social and employment legislation to the UK.'*[44] Little action has been taken on this given the constraints of Coalition Government with the more pro-EU Liberal Democrats. However, it remains a focus with the Conservatives recently promising an in/out referendum in 2017, following renegotiation of the terms of our EU membership. It appears that they see that repatriating social and employment legislation would be a priority for these negotiations.

Calls for the repatriation of employment legislation have been led by Open Europe. They argue for a 'double lock' approach, under which a legally binding protocol should be attached to EU Treaties exempting the UK from employment policy, and if a dispute arises over a proposal, then the Government should be able to refer it to the European Council where they could then veto it.[45] This approach is also supported by the Fresh Start Project who argue that *'we must make complete repatriation of social and employment law a priority, and should not settle for anything less.'*[46]

However, there is doubt as to whether such a repatriation would be realistic or even possible. Such a move would require treaty change and would therefore have to be agreed unanimously by all 28 member states. This would be a lengthy, difficult and uncertain process and it would also trigger referendums across many countries to ratify the decision. As Adam Hug of the Foreign Policy Centre and Owen Tudor of TUC explain in reality, this makes the option *'extremely unlikely.'*[47]

The second and more dramatic option is to withdraw from the EU altogether. Under this approach, favoured by UKIP, the UK would regain full control over employment and social legislation and enable them to *'scrap up to 120,000 EU directives and regulations that impact on the UK economy.'*[48]

However, there is also considerable doubt as to whether the UK would be able to access the single market – that is so vital to jobs and investment in the UK – without applying the same rule. In order to maintain access to the single market, the UK would most likely have to apply the 'acquis communautaire', the accumulated legislation, legal acts and court decisions which make up the body of EU law. As the Centre for European Reform explain, *'in order to maintain access to EU markets, a Britain on the outside would have to sign up to many of the EU's rules. As a non-participant in the EU's institutions, it would have little say over the rules.'*[49]

This is equivalent to the relationship that the EU has with Norway. Not being part of the EU, it has to pay for access to the single market and accept its regulations, but lacks any influence over these rules. The alternative model is Switzerland which has a series of bilateral agreements with limited access to the single market, balanced by some regulatory compliance. However, negotiating such a deal would add significantly to regulatory complexity and, according to the TUC, would be unlikely even to be offered as the size of the UK economy would mean a much greater impact on the single market.[50]

What's more, there is also reason to doubt whether regaining full control over social policy would actually make a significant difference to the levels of employment regulation. All developed economies have a certain level of employment regulation in order to protect working people. As the Centre for European Reform argues, *'if the EU did not exist, member-states would have to make their own rules: it is misleading to imply that all the regulatory costs associated with EU legislation would simply disappear if the UK left the EU.'*[51] Obviously the levels of employment regulation we would have in place in the UK without the EU are un-knowable. However, the Government's Balance of Competencies review concluded that, as members of the EU *'the obligations are not necessarily any greater than would have been imposed nationally.'*[52]

Despite the claims of those advocating a repatriation of powers of employment regulation, such a change is unlikely to have a significant positive impact on productivity, growth and jobs. As has been shown above, the UK has one of the least regulated labour markets in the developed world, leaving little scope for deregulation. Even if we did repatriate employment protection, we would need some domestic regulation in its place.

**The impact of repatriation of employment legislation**

There is some debate about the extent to which repatriating employment legislation would impact on workers' rights in the UK. Some argue that even if we were to repatriate employment legislation or withdraw from the EU altogether, there would not be a significant erosion of workplace rights. EU Directives are transposed into UK law, and they would not immediately or easily disappear if we did choose to pull out. The Centre for European Reform for example argue that there would be *'fierce domestic opposition to any further erosion of labour and social standards.'*[51] David Yeandle of the European Employers Group agrees, saying *'it's difficult to envisage in many circumstances individual rights actually being taken away. I think changes would be limited to tinkering around the edges.'*

However, others argue that without the EU underpinning rights at work in the UK, we could see a significant erosion of employment regulation. Richard Arthur of Thompsons Solicitors identified a number of areas that he saw as at risk of either withdrawal or watering down, from the Working Time Directive and TUPE to anti-discrimination legislation – *'we work in a rights climate in this country that unless there's something compelling you to have those rights, they'll get withdrawn.'* There is evidence of the deregulatory intent of the current Government from their approach to unfair dismissal, employment tribunals and to redundancy rights where there have been substantial changes. As Lord Monks explained *'they've all been chopped back by the government, the bits they can't muck about with are the bits that came from Europe.'*

The alternatives offered by those who would repatriate employment legislation from Brussels are both unconvincing and unattractive. Repatriation is fraught with difficulties and there is no reason to believe that the UK would be able to retain full access to the single market without applying the same rules. There is little compelling evidence to suggest that repatriating control over employment protection would lead to a significant boost in productivity. And although the impact of repatriating social and employment law is inherently unknowable, there is a clear risk that it could lead to a diminution of employment rights which would harm working people.

# 7. The case for EU action on employment regulation

Having considered claims about the impact of EU derived employment regulation, it is worth examining the case for the EU maintaining a role in social policy.

### Common rules in a single market

First, and most obviously, the EU is clearly best placed to act in regulating transnational employment relationships which cross the boundaries of member states. With the posting of workers or with European Works Councils for example, it is more effective to have a coordinated set of rules rather than leaving each of the 28 member states to negotiate rules between themselves. As Catherine Barnard of Cambridge University explained, this is *'obviously something the EU could do better than member states, so that would justify EU action.'*

More broadly, there is a strong case that a single market needs common rules. If there is to be a European-wide labour market, with freedom to work and trade without restriction across the EU's 28 member states, there needs to be a certain degree of common rules in order to ensure the fair and efficient operating of the market. As Elena Crasta of the TUC explains, *'there's a clear case to have common rules of the game. If we're talking about a single market, we need common sets of rules.'*

The EU guarantees the free movement of goods, services, capital and people – the so-called 'four freedoms' set out in the Treaty of Rome in 1957. Each of these are subject to a degree of regulation at the EU level in order to ensure a common approach and to facilitate the fair and effective functioning of the single market. However, it is the regulation of labour that is by far the most controversial. As the TUC have argued, *'if there is a common framework of rules that underpins the single market for capital, goods and services then the same should apply for labour.'*[52] There is no compelling reason why labour should not be subject to similar rules as the other elements of the four freedoms.

As the Centre for European Reform argues, with all member states regulating their own employment market, there is the risk that conflicting regulations can act as a barrier to trade. The EU therefore has *'legitimate reasons to be interested in regulation,'* in order to ensure common minimum standards and a similar approach across the single market.[53]

Furthermore, there is a compelling argument that having a common approach to employment regulation at an EU level makes the operation of the single market far more efficient and can actually save employers money. As Neil Carberry of the CBI explained, having common standards can help *'lower administrative costs by reducing the compliance burden of dealing with multiple sets of rules when trading across borders.'* This was also highlighted by the Government's Balance of Competencies review which showed that in the absence of a common EU framework for employment regulation, *'UK firms could then face divergent regulatory standards with significant transaction costs if they sought to export across Europe.'*[54]

### Avoiding a 'race to the bottom'

Another important argument for having a minimum level of employment regulation enshrined at EU level is the need to prevent a race to the bottom in workplace rights.

In a European labour market, with the free movement of labour and capital, employers are free to operate and invest in any area of the EU, and member states compete for the jobs and investment that they bring. If there were no rules governing employment regulation, employers might be inclined to locate in areas with lighter employment regulation in order to minimise the costs and restrictions upon them. With employers able to 'arbitrage' between different countries with different standards of regulation, member states with stronger levels of employment protection would therefore be put at a disadvantage. Under such circumstances, governments can come under pressure to engage in a competitive process of undercutting other member states,

potentially leading to a *'race to the bottom'* in terms of labour standards. As Ulrich Storck of Friedrich-EbertStiftung London explained, having a common approach to employment protection prevents a process by which standards *'spiral down to the lowest level.'*

Conversely, having coordination between member states and a minimum level of protection set across the whole of the EU allows member states to maintain a decent level of employment protection. As the TUC explains, *'it is unlikely that such a body of law could have been introduced by any one nation acting alone.'*[55]

Similarly, some argue that having a common floor of employment protection allows for competition based on quality, rather than on price. The UK is operating in an increasingly globalised economy in which emerging markets will always be able to out-compete developed economies in terms of low wages. It makes little sense, this argument goes, for the EU to try to compete on this basis, and the EU should therefore aim to compete based on high skill, high productivity and high value-added employment.

### Maintaining public support

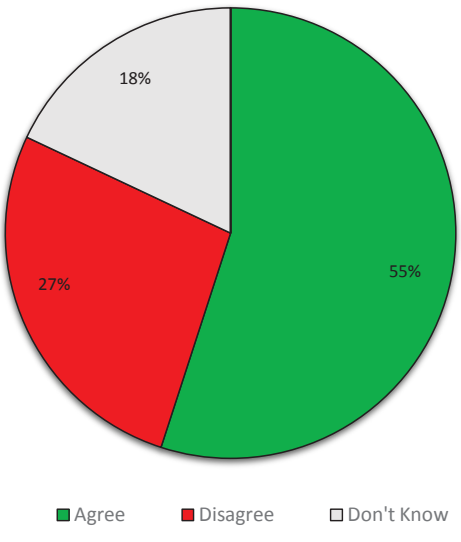
Finally, having an element of social protection at EU level can also be seen as important in retaining popular support for the EU.

The development of 'Social Europe' under Jacques Delors was seen as an essential corollary of and counterpart to the development of the single market. He described it as such in is famous speech to the 1988 TUC Congress where he won over the British trade union movement which had traditionally been relatively sceptical about the European project. The internal market, he argued *'should be designed to benefit each and every citizen of the Community. It is therefore necessary to improve workers' living and working conditions, and to provide better protection for their health and safety at work.'*[56]

The social element of the EU was, therefore, *'clearly portrayed, and seen by most protagonists, as one side of the deal between capital and labour.'*[57] It was the quid pro quo for the deepening of the single market, ensuring that working people, not just employers, would benefit from the process.

The social element of Europe was important in gaining the acceptance and support of both the trade union movement and of ordinary working people for the extension of the single market. And to this day, the British public support EU action in this area. A poll conducted by the Fabian Society in 2010 found that the majority of people (55 per cent) believe that the EU should agree minimum levels of workers' rights, with just one in four (27 per cent) disagreeing. EU involvement in this area was favoured by supporters of all three major parties.[58] These findings are backed up by the latest Eurobarometer poll which found that a majority of people in the UK (51 per cent) say that the EU helps protect its citizens and that the UK alone couldn't cope with the negative effects of globalisation (61 per cent).[59]

**Figure 5: Do you think the European Union should agree minimum levels of workers rights? (CBI/YouGov, 2014)**



There are compelling arguments for the EU to retain a role in influencing social policy in its member states. First, if the EU is to operate effectively as a common market, with freedom of capital and labour, it needs common standards of employment protection. The EU sets ground rules for capital, services and goods; there is no reason that it should not do so for labour. And by harmonising employment regulation, the EU can avoid excessive duplication and cost for employers operating across the single market.

Second, a minimum level of employment protection is required to avoid a race to the bottom. Without cooperation, the single market could lead to a perverse incentive for member states to competitively outbid each other in deregulating and slashing employment protection. In such a situation, working people can only lose out.

Third, Social Europe has been important in building and maintaining consent for European integration and the single market. The British public support the role of the EU in establishing minimum levels of workplace rights and in protecting people from the negative effects of globalisation, whilst allowing them to benefit from the positives.

# 8. Conclusion

The European Union has played a central role in shaping and extending rights at work in the UK.

Although it was not the original aim of the EU, it has gradually extended its role in this area and increasingly influenced employment rights in member states. The UK has always been relatively uneasy with EU intervention in this area, due both to our adversarial relationship with Europe and our traditionally light-touch approach to employment regulation.

The impact of the EU on rights at work in the UK has been wide-ranging and profound. It has helped bolster individual rights, collective rights and health and safety. From protection against discrimination to regulation of working time; from rights for working parents, to protection of atypical workers; from TUPE to consultation and employee voice; the EU has been pivotal in shaping workplace rights in the UK. In some areas, EU action has helped strengthen and extend existing rights, while in others it has introduced rights in completely new areas. Although it is difficult to assess what might have happened had it not been for the EU, it is clear that the EU has made a real difference for working people in the UK who are far better protected than they might otherwise have been.

The role of the EU in influencing employment rights in the UK is controversial. Critics often claim that ill-fitting employment regulation is forced on us by Brussels, without our say or consent. However, the UK has both the ability to shape and influence EU legislation, and the discretion to decide how it is implemented in the UK. There are many areas of employment regulation which remain the sole competence of member states. Where the EU does act, it normally does so to set out minimum standards, leaving national governments the flexibility to decide how to adapt measures to the peculiarities of their own labour market.

Opponents of EU intervention in this area also tend to argue that British businesses are over-burdened with employment regulation, and that this has a negative impact on productivity. Despite these concerns, it is clear that the UK's labour market remains one of the least regulated in the developed world. There is little evidence that deregulation would significantly boost productivity.

There is a strong case for the EU to retain a role in influencing employment regulation in its member states. First, given the founding purpose of the EU is to create a common market, some common rules are essential. There are established rules that govern the free movement of capital, goods and services, and there is no reason why the same shouldn't be the case for labour.

Second, coordination at the EU level is required to avoid a race to the bottom across in employment regulation. Without this, the common market could lead to perverse incentives for member states to undercut each other and deregulate their labour market. In such a situation, working people can only lose.

Finally, Social Europe has played an important role in building and maintaining consent for the EU. It is also clear that the British public still support the role of the EU in establishing minimum levels of workplace rights. And despite the concerns of some employers around impact of 'EU red tape', British businesses generally see employment regulation is a price worth paying for membership of the EU.

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# Methodology and Acknowledgements

This research is based on a literature review of 34 sources on the European Union and rights at work in the UK. We also conducted 12 in-depth semi-structured interviews with experts on employment rights from Britain and the EU:

- Jayne Arnold and David Nash – Federation of Small Businesses
- Richard Arthur and Tom Jones– Thompsons Solicitors
- Neil Carberry – Confederation of British Industry
- Prof Catherine Barnard – Cambridge University
- Elena Crasta – Trade Union Congress
- Jude Kirton Darling MEP
- Prof Sonia McKay – Working Lives Research Institute, London Metropolitan University
- Claudia Menne – European Trade Union Congress
- Lord John Monks – former General Secretary of the TUC and ETUC
- Ulrich Storck – Freidrich Ebert Stiftung London
- Renaud Thillaye – Policy Network
- David Yeandle OBE – European Employers Group

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