

# Bulletin

Institute for  
Employment  
Research

## THE SINGLE EUROPEAN MARKET THE SOCIAL DIMENSION

It is now over twenty years since the UK joined the European Community. In that time considerable progress has been made by the Member States in agreeing a broad framework and timetable for European integration. As a consequence, it is much less possible now to view the operation of the UK labour market in isolation from rule-making emanating from the Commission of the European Communities. This Bulletin outlines progress under the development of one particular set of EC rules: the Social Dimension. It draws especially on a project funded by the ESRC and co-ordinated jointly by Robert Lindley, director of IER, and Graham Moffat, senior lecturer in the School of Law at Warwick.

### The Social Dimension

The Single European Act (1986) and the Treaty on European Union (1991) are likely to accelerate the process of economic and political integration in the European Community. The level of economic and political adjustment required by this process was always likely to stir political opposition; especially where a threat to the nation-state or increased powers for the Commission of the European Communities (CEC) were anticipated. Inevitably the economic and political arguments surrounding the integration process have become intertwined and conflated with the debate about the economic recession now affecting most of the EC.

It is no accident, however, that the Single European Act and the Treaty on European Union should have attempted to achieve so much in a relatively short time. Competitive pressures from the Pacific Rim and North America have exposed the weaknesses of the EC's domestic economies.

Consequently, the role for the 'social dimension' in what is essentially an economic issue has become contentious. Whilst there is a consensus that the EC labour market should have a high skill/high wage base, dissent arises over the means of achieving it. In Bulletin 10 the divergence of opinion relating to the social dimension of the Single European Market was illustrated with reference to four scenarios: efficiency; cost-cutting; economic and social cohesion; and quality. This Bulletin explores the progress of the social dimension to date in greater detail.

### The Employment Implications of EC Integration

Completion of the Single European Market is intended to bring European production and services more into line with the underlying terms and conditions of global economic development. This involves the creation of a domestic EC-wide market to assist European industry to compete effectively with North America and the Pacific Basin.

Overall, there is substantial interest in what the consequences of economic integration are for the distribution of employment amongst members of the European Community. There is also a recognition that qualitative considerations are important. Whilst the impact upon the aggregate levels and industrial structures of employment in member states is a natural starting point, concern is being expressed about the nature of the jobs likely to be created and the degree to which completion will favour the location of key operations in certain countries rather than others. Occupations associated with the dynamics of economic change – strategic management, business services, research, design and development – are especially important. Countries able to attract concentrations of these activities are particularly likely to prosper.

Alongside the concern that some regions might lose out, there is the fear that certain groups of the labour force may be disadvantaged by a process which gives primacy to market forces and short-term preoccupations over the values of equity and community. Moreover, whilst capital is more mobile than labour, financial capital is more mobile than industrial capital. Combine the rigours of the SEM with those of free capital movement and there arises a situation in which financial markets have apparently been handed much greater power to impose their judgements of performances and priorities upon the workings of the other constituents of the EC economy.

If the move towards European Monetary Union (EMU) progresses, the majority of EC countries will need to pursue restrictive budgetary policies just to meet the conditions of entry, so the scope for general or targeted expansionary measures to reduce unemployment will be limited. Moreover, the EC's strongest economy, Germany, appears to be too hampered by the problems of unification to compensate for low growth in weaker economies.

Together, these aspects of integration increase uncertainty about both the aggregate outcome for the EC and the distribution of costs and benefits between regions and social groups. The changing boundaries between organisations and markets create a highly dynamic situation, the outcome of which is difficult to predict.

## The Rationale for the Social Dimension

### *Social Policy and the Social Dimension*

Two usages of the term 'social policy' are particularly common. In the first case, European social policy, essentially corresponds to those areas of economic policy which relate to human resources; this form arises in discussions of the 'social dimension' of the SEM, especially the Social Charter and its derivative, the Social Chapter of the Treaty on European Union. Secondly, social policy can imply regional policy, part of which deals not only with human resources but also with investment in physical capital and industrial development. This form arises in discussions of 'social cohesion' in the context of EMU. In each case, however, a third usage is to be found. This extends the coverage of policy to include areas where, through the legal process (notably the European Court) an evolution takes place in interpretations of the original intentions lying behind the law and the applicability of the law to present-day issues brought before the Court. This has had particular importance in the field of social policy which is concerned with equal opportunities for women.

Overall, the term social policy has become a residual category which covers those parts of EC policy which raise issues relating either to the development and deployment of human resources or to equity between individuals or groups identified by social and/or spatial characteristics.

At the same time, the terms social dimension, social cohesion and social policy have, in a sense, become so elastic that they help to distort the discussion of European economic integration in a way which has allowed market liberals to claim that the 'social dimension' will undermine progress towards achieving the central over-riding objective: greater competitiveness of the EC economy. From this perspective, the social dimension can be seen as inhibiting the process of economic integration, which is based on promoting EC-wide product market competition. Not only does it appear to compromise the integration-competition agenda by introducing more 'politics' but it also threatens to place 'social obligations' on employers which, it is claimed, many may not be able to afford. The fact that labour market reform and training policy are treated as being 'social' measures makes them seem somewhat suspect in the contribution they can make to economic objectives.

There is also the view that the social dimension may not be in the long-term interests of those it is intended to protect, pricing the disadvantaged out of the labour market or regulating European industry to an uncompetitive oblivion through the general impact of high social costs.

### *The Social Dimension in Member States*

Whether or not labour market policies are deemed to be economic policies or whether they must suffer the guilt by association which comes with being grouped under the epithet 'social', all EC governments are active in the field. Their principal objectives have been to: promote long-term efficiency; promote long-term equity; and mitigate short-term social hardship.

These objectives have been pursued within major constraints upon the markets for labour and training which arise from regulations governing, especially:

- compulsory education;
- state and occupational pensions;
- recruitment and redundancy;
- health and safety;
- equal opportunities;
- social security and related benefits;
- minimum wages;
- access to and provision of education and training.

To an extent the 'free' operation of the 'market' is already compromised. From this perspective, policies across Europe differ only by degree. 'Convergence' has occurred and values inherent in the labour market systems of different countries are similar.

Though the constraints imposed on the free operation of markets may be very common across Europe they are not found to the same degree or in the same form. The rights and responsibilities accepted by or imposed upon

employers and individuals/households, or assumed by the state or regional authority, are clearly seen in different lights. The scenarios previously identified (see Bulletin 10) are therefore intended to help clarify and explain these different perceptions.

### **New Member States**

The European Economic Area (EEA) will create, more or less, a single market which incorporates all EC and EFTA member states. The refusal of the Swiss electorate to give their assent to the EEA Treaty has delayed rather than damaged the implementation of the EEA Treaty between the other EFTA countries and the EC. For Sweden, Austria and Finland, and possibly Norway, ratification of the EEA Treaty is a prelude to their full membership of the EC. Entry of these countries raises some interesting issues with respect to the social dimension.

First, all are prosperous countries and are likely to be net contributors to the EC's budget. Indeed, their accession to the EC may provide the Commission with the much needed financial means to pursue its present goals in the social arena.

Second, all have highly regulated labour markets based upon a high level of social protection. On the face of it, where qualified majority voting (QMV) applies in Council, they are likely to combine with other northern Member States to provide an unassailable majority in favour of regulatory measures in the social sphere.

A caveat needs to be added to the above outline description. All Scandinavian countries are presently experiencing an economic recession which has made significant in-roads into standards of living and restrained government expenditure. During the 1980s the Social Democrat parties, which created and guarded the welfare state, lost control of government in most Scandinavian countries to parties with a greater commitment to market oriented policies. Scandinavian governments' support for policies which reinforce labour market regulation at the EC-level cannot, therefore, be taken for granted.

For Austria and Finland the collapse of communism in Eastern Europe has removed the strategic importance these economies enjoyed as trade buffer zones between the former Soviet bloc and the West. This has compounded the economic pressures these countries now face.

Accession to the EEC of Poland, Hungary and the Czech and Slovak Republics has yet to be decided. The wider strategic aims of maintaining political stability on the borders of the EC are likely to be as important as those relating to the cost for these countries of membership. At present, however, their membership does not appear to be a priority for the EC.

The EC is being extremely cautious with respect to

broadening its membership. Budgetary matters, at present, dominate the issue. It is no surprise, therefore, that those countries given the go-ahead to prepare for admission – Sweden, Austria and Finland – are unlikely to be a burden on the EC's budget; in fact they will be significant net contributors. Indeed, the Edinburgh Summit in 1992 successfully linked arguments relating to the EC's enlargement to the solution of budget problem. At the time of writing, the balance still appears to be in favour of deepening rather than widening the EC.

### **Progress in the Social Dimension**

The progress (as at February 1993) of selected elements of the social dimension is charted in the accompanying Table. There is a separate story to be told for each measure relating to the manifold pressures which have led to their subsequent revision and re-drafting. However, common themes relating to the social dimension's progress to date may be identified in order to shed light on its future prospects. A number of themes can be identified as having shaped the progress of the social dimension:

- political will;
- legal ingenuity;
- the lobbying process; and
- economic recession.

### **Political Will**

Resistance to the social dimension as a set of legally binding regulations has been led by the UK government. Whereas some governments have argued against specific provisions in the social dimension, none have been as absolutist in their rejection of it as the UK. Has this situation changed? To date there is only indicative evidence. Little progress was made in the social sphere during the UK Presidency. However, it has been rumoured that the UK Government is willing to reach a compromise over the Working Time Directive, whereas previously it was implacably opposed to it. At present progress with this directive has been halted by a disagreement between the French and German governments rather than by the UK government.

At a wider level, as the economic problems facing the Community escalate, and given the ambitious aims of the Treaty on European Union, a question arises as to the extent to which decisions in the social sphere will become increasingly subject to political compromises in other areas.

### **Legal Ingenuity**

The aforementioned state of affairs has been avoided to date through a form of legal ingenuity. Liberal use of Article 118A and the UK's opt-out from the Social Chapter in the Treaty on European Union are the obvious examples. This has provided a means to further the progress of the

**PROGRESS OF THE SOCIAL DIMENSION  
SELECTED ELEMENTS**

(February 1993)

Title	Comments
<b>EMPLOYMENT AND REMUNERATION</b>	
Proposal for Council Directive on certain employment relationships with regard to working conditions	Last discussed in Council 1990. DE unaware Denmark's intentions when Presidency transfers in January 1993
Proposal for a Council Directive on employment relationships with regard to distortions of competition transfers	Last discussed in Council 1990. DE unaware of Denmark's intentions when Presidency in January 1993
Proposal for a Council Directive on supplementing the measures to encourage improvements in the safety and health at work of temporary workers	Adopted by Council June 1991-Dir 91/383/EEC Implementation by Member States by December 1992  UK regulations: Reg.13, Management of Health & Safety at Work (Regulations in force from 1/1/93) Opinion of the introduction of an ESC Opinion on 27 May 1992. Commission equitable wage considering amendments to text
Opinion of the introduction of an equitable wage	ESC opinion on 27 May 1992. Commission considering amendments to text
<b>IMPROVEMENT OF LIVING WORKING CONDITIONS</b>	
Council Directive on form of proof of an employment relationship	Council adopted October 1991. Dir.91/533.EEC Implementation by June 1993. See <i>Trade Union Reform and Employment Rights Bill</i> (TUR & ER) Clause 23 and Schedule 4
Council Directive concerning certain of the organisation of working time aspects.	No common position yet agreed. Some continuing disagreement on reference periods, derogations from maximum working week and role of collective bargaining.
Draft Directive on European Works Councils	Revised proposal discussed in Council December 1991. No further progress
Directive amending EC Directive 75/129/EEC on collective dismissal	Implementation by UK government under clause 27 TUR & ER Bill
<b>FREE MOVEMENT</b>	
Proposal for a Council Regulation amending regulation (EEC) No. 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulation (EEC) No. 574/72 laying down the procedure implementing Regulation (EEC) No. 1408/71	

Title	Comments
<p>Proposal for a Council Directive concerning the posting of workers in the parties framework of the provision of services</p>	<p>No common position yet agreed. Working parties discussing</p>
<p>Communication from the Commission on supplementary social security schemes: the role of occupational pension schemes and the social protection of workers and their implications for freedom of movement</p>	<p>Communication approved by Council. No agreement at December 1992 Social Affairs Council on UK proposal for a formal resolution. Department of Social Security has issued consultation document.</p>
<p><b>SOCIAL PROTECTION</b></p>	
<p>Proposal for a Council recommendation on the convergence of social protection objectives and policies</p>	<p>Council adopted June 1992</p>
<p>Recommendation by the Council on common criteria concerning sufficient resources and social assistance in the social protection system</p>	<p>Council adopted June 1992. Implementation by Member States by June 1997.</p>
<p><b>EQUAL TREATMENT FOR MEN AND WOMEN</b></p>	
<p>Proposal for a Council Directive concerning measures to encourage improvements in the health and safety of pregnant workers, women workers who have recently given birth and women who are breast feeding</p>	<p>Adopted 19/10/92. Implementation by 19/10/94. See TUR and ER Bill (1992) Clauses 20-22.</p>
<p>Barber Protocol</p>	<p>Ratification contingent on progress of Treaty on European Union.</p>
<p><b>VOCATIONAL TRAINING</b></p>	
<p>Proposal for a Council Directive on the implementation of minimum health and safety requirements at temporary and mobile sites</p>	<p>Adopted 24/6/92. Dir. 92/157/EEC. Consultation period ends 29/1/93/ Implementation by 31/12/93.</p>

social dimension despite the deep seated reservations of at least one Member State. The ability of legal ingenuity to overcome political divisions must be doubted in the long-term. Too general a view of Article 118A's scope raises the prospect of a challenge to the legal base of a proposed directive. It is unlikely, however, that any government would pursue a public challenge through the European Court of Justice unless other avenues had been exhausted first. Assuming the ratification of the Treaty on European Union, it is far from certain that the CEC and eleven of the Member States will seek to make extensive use of the greater scope for QMV on social measures.

At a wider level the issue of subsidiarity, despite its re-drafting at the Edinburgh Summit, also provides the opportunity for a challenge to the right of the CEC to proceed with elements of the social dimension.

### *Employers and the Social Dimension*

Unlike British employers' associations who see many costs but few benefits from the social dimension, employers' associations in other Member States appear much more willing to accept, in principle, its application. However, a key feature distinguishes UK employers from their European counterparts. UK employers are often in a position of resisting regulations which have never, in one form or another, been part of UK statutes. In contrast, employers in other member states, if they wish to oppose proposed EC regulation, may be opposing what is, to a large extent, already part of domestic regulation.

The extent to which employers' opposition to the social dimension is mobilised in other Member States will be ultimately decided by employers' own perceptions of the costs and benefits of specific measures in the social dimension. In turn, the form any opposition takes will be determined by the structure of the lobbying system in particular Member States.

### *Economic Recession*

Underlying the above has been the pro-longed weakening of demand in most EC economies. This has focused governmental attention on those out of work rather than the conditions of those who are in work. The argument that increased labour market regulation increases unemployment, regardless of its ideological or scientific basis, helps create a climate increasingly hostile to such measures despite any merits they may possess.

### **The UK Presidency**

#### *The UK's Priorities*

The passage of the UK's presidency from June to December 1992 took place against a backdrop of increasing

economic turmoil. Political argument over the future direction of the EC became linked to the Danish refusal to ratify the Treaty on European Union, the onset of recession in most Member States, and the volatility and partial dissolution of the Exchange Rate Mechanism (ERM). Failure to reach agreement at the Edinburgh Summit would have certainly sent the wrong signal to the financial markets.

The aims of the UK Presidency were laid before Parliament by Douglas Hurd shortly before its commencement and again just before the Edinburgh Summit. On 23 November 1992 Mr. Hurd listed six key elements, with the exception of foreign affairs and defence matters, in what he described as an 'ambitious plan':

- agreement over GATT;
- the completion of the Single European Market;
- defining further the concept of subsidiarity;
- the future financing of the Community;
- enlargement of the Community;
- the Danish proposals on the Treaty on European Union.

The hesitancy with which the UK government has sought ratification of the Treaty on European Union in the House of Commons and its caution with respect to what it thought practicable during its Presidency, has drawn criticism from several Member States. This was noticeable among those who wished to push ahead with the objectives of the Treaty on European Union or tackle the spectre of rising unemployment more directly.

Arguably, the British Presidency concerned itself solely with those issues necessary to the continued functioning of the EC (the budget, the Single European Market and the Danish issue), the resolution of potentially damaging political disputes facing the EC in the short-term (GATT, subsidiarity) and the EC's future development (enlargement). Such a cautionary approach did, however, provide the means for the twelve Member States to reach agreement on all matters put before them at the Edinburgh Summit. At the same time the Presidency did not achieve all its aims. In relation to subsidiarity the UK government wanted to limit the intrusiveness of the EC. To this end it compiled a list of community proposals and draft legislation which it wanted withdrawn, including several from the Social Action Programme (SAP). However, it failed in its attempt.

### *The Social Dimension*

Consideration of social affairs was conspicuously absent from the government's priorities. In fact, the progress of the Social Dimension would appear to have been more or less halted during the presidency. Only one Social Affairs Council was held instead of the usual two, and there was no Social Affairs Standing Committee where the European Trade Union Federation (ETUC) and Union of Industrial

and Employers' Confederations of Europe (UNICE) could meet the Council. During the period, however, the directive on the protection of pregnant women, and the 'bore holes' directive were adopted. In contrast, UK attempts to gain agreement on a pension regulation and in establishing a European Health and Safety Agency were frustrated.

Implementation and enforcement of EC legislation across Europe has been a long-standing concern of the UK Government. In the area of health and safety, where the UK has one of the best records in the EC, there has been consternation at the failure of other EC Member States to enforce EC directives and, in many cases, even to implement them. There is naturally concern at the competitive implications of a differential approach to implementation. With respect to the measures which constitute the Single European Market, the UK government pursued its determination to ensure that EC legislation was given effect across the EC. Recently in the House of Commons, however, Mr. Hurd provided a new slant on the argument when he stated that the government was concerned that "officials in Whitehall take decisions made in Brussels and carry them out in excessive detail".<sup>1</sup> Whether or not this heralds a shift in the UK Government's attitude towards implementation, and what its implications are for measures in the social dimension to which the government is opposed, remains to be seen.

Given the prospect of low economic growth in the EC it is difficult to predict whether: (a) the hiatus in the progress of the social dimension is transient reflecting the UK's priorities during its presidency, or (b), a more permanent relegation of its importance in the face of more pressing economic problems. Measures to which the UK government remains opposed, such as the Working Time Directive, have not been dropped, however, and may still be pursued with enthusiasm during the Danish and Belgian presidencies in 1993.

## Conclusion

At the end of the UK presidency the future of the social dimension, at least as reflected in the Social Action Programme (SAP) measures, remained uncertain both at European and Member State levels. During its presidency the UK government appeared to adopt a twin track approach of conciliation on some individual measures accompanied by inertia towards the SAP in general. It remains to be seen how far this somewhat negative approach will have advanced the prospects of a more widespread acceptance among other Member States of the UK government's position on regulation of the labour market. A concern is that, as in 1986, a UK presidency may unwittingly generate a reaction which stimulates an activist period in social affairs.

At Community level a key player in implementing the social dimension is the CEC. Here two further factors need to be taken into account in assessing its future. First, the

approach and priorities of the newly appointed Commissioner for Social Affairs have yet to be spelled out. Secondly, the continuing ambiguity in the meaning of subsidiarity and the legal problems posed by the Protocol on Social Policy and the Social Chapter Agreement approved at Maastricht all contribute to an air of uncertainty about social affairs. Important though these considerations are, they are likely to remain secondary to the influence that the recession exercises over the willingness of Member States to proceed with any measures intended to increase regulation in labour markets.

At the domestic level, the focus will continue to shift to the implementation of initiatives adopted at Council level. Here it remains to be seen whether the UK government will seek to adopt an approach to implementation which places reliance on broadly framed standards in preference to detailed rules. As always, though, the impact of social measures will depend significantly on the availability and competence of institutions to enforce them. In this connection, recent developments of individual remedies against Member States, notably by the European Court in *Francovich*,<sup>2</sup> may limit the UK government's freedom of manoeuvre in choosing how strictly to implement SAP initiatives.

Ironically, though, this judicial development may mark a step towards achieving one of the UK government's stated aims of its presidency, that of encouraging more widespread, consistent and effective implementation of community law in other Member States.

## Further Information

This report has drawn on research from an on-going study of the Single European Market and its implications for employment policy. The study is funded by the Economic and Social Research Council as part of its Evolution of Rules in the Single European Market Initiative (Study No. W113 251018). The study is being conducted jointly by the Institute for Employment Research and the School of Law, both based at the University of Warwick.

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1. Hansard, 23 November 1992, column 761.

2. Relating to an individual bringing an action against the Italian Government for failing to implement an EC directive on insolvency (*Francovich v. Italian Republic*, 1992, IRLR 84).

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2. Relating to an individual bringing an action against the Italian Government for failing to implement an EC directive on insolvency (*Francovich v. Italian Republic*, 1992, IRLR 84).



The following papers, resulting from the study so far, are available:

Lindley, R.M. (1992). 'Occupational Change within the Single European Market'. Seminrio Europeu 'Profissoes do Future', Porto, June. (Keynote speech to European Conference organised by Portuguese Government to mark the Portuguese Presidency of the EC.)

\_\_\_\_\_ (1992). 'Rights and Responsibilities: Contrasting Expectations of European Employment Policies'. Seminaire sur L'Europe Sociale, Ministre du Travail, de l'Emploi et de la Formation Professionnelle, Paris, October.

\_\_\_\_\_ (1992). 'European Integration and the Labour

Market'. UK Presidency Conference on the European Labour Market, Glasgow, November.

Luckhaus, L. (1992). 'The Role of the 'Economic' and the 'Social' in Social Security and Community Law'. Paper presented at the Third Warwick-Giessen Coloquium, in Giessen, Germany, 1992.

\_\_\_\_\_ (1992). 'Intentions and Avoidance of Community Law'. Industrial Law Journal, December.

Whelan, C.J. (1992). 'International Corporate Finance and the Challenge of Creative Compliance' in J. Fingleton (ed.). The Internationalisation of Capital Markets and the Regulatory Response (Graham and Trotman, 1992).

### The Local Development and Human Resources Initiative

This Initiative is a response to the growing demand for analysis of spatial aspects of labour markets, "best practice" local labour market information systems and the evaluation of training and other labour market programmes. The Initiative consists of a number of elements:

- |                                   |  |
|-----------------------------------|--|
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