Regulating for Globalization

Trade, Labor and EU Law Perspectives

EU Labour Regulations: to keep or not to keep in the UK? That is the question

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As EU-UK negotiations continue on Brexit, a well-known theme re-emerges, the impact of labour regulations on economic growth. As highlighted by David Mangan, UK government policy of 'lightening' the burden of employment law on business is a continuing endeavour and is not prevented by EU membership. It has also been argued that the flexibility of the UK labour market (recently entitled the 'British way') can be labelled as a success story given the low unemployment rate (currently 4.2% compared to the EU average of 7.3%).

However, Brexit may give the green light to a further erosion of protective labour laws in the UK. A recent example came with a group of senior politicians, supported by a section of the business sector, arguing that EU employment legislation should be either revised or removed from the statute books once the UK is out of the EU or even be part of the exit negotiations, not only because of the burden on employers but also because it would benefit workers. The prime target is (and has been) the working time regulations which transposed the working time Directive. Whilst trade unions reacted promptly and negatively to the suggestions put by Ministers, such proposal would certainly contradicts the promise made by the Prime Minister, Theresa May that EU labour rights would be protected post Brexit to ensure certainty for businesses and workers. At her party conference in October 2016 where she set out her vision of Britain after Brexit, she explained that such protection would continue through a new law that would simply copy and paste EU law and the current national law transposing EU law. In other words, EU employment law (such as working time, rules on atypical workers, transfer of undertakings or consultation) would continue its existence post Brexit. What was originally the Great Repeal Bill, now the European Union Withdrawal Bill, will repeal the European Communities Act 1972 which constitutes the basis for the application and transposition of EU law, but will 'convert' and 'preserves' EU law.

While the view of a fraction of ministers within the government is unlikely to change the current course of direction, it is symptomatic of the constant pull between economic growth and the role of labour regulations, especially of a transnational nature. Historically, UK governments and EU social policy have clashed in terms of directions (the UK opted out of the social chapter of the Maastricht Treaty in 1992) and content (the 1989 Charter of Fundamental Rights was signed by all Member States but the UK which branded it socialism by the back door). The political and legal battles over the adoption of the Working Time Directive was also illustrative of the extent to which the UK government was prepared to go to prevent new social standards to be applied. It challenged the legal basis of the Directive, arguing that the measure was not a health and safety matter (for which only qualified majority was required) but a working condition issue (for which a unanimous

vote was necessary). The refusal to follow EU lead on workers' protection was primarily linked to the political and economic ethos of liberalisation and freeing the market from state interference. Those decisions belonged to Conservative governments but the Labour party, when in power, also opposed social measures, such as the 2002 Information and Consultation Directive on the basis that it was not necessary under the principle of subsidiarity but additionally because it was opposed by business. Tony Blair's new Labour and its Third Way promoted a more consensual and partnership approach where business interests were given a higher priority than with past Labour philosophy. The opt out of the 2000 EU Charter of Fundamental Rights was further testimony of the ambivalence of the UK towards social rights.

The EU social policy developments in the beginning of the millennium took a different trajectory which was allegedly more in line with the flexibility of the labour market advocated by the UK. From flexicurity agenda to imposition of labour law reforms to national countries post 2008 crisis, some questioned whether the European Social Model was still alive.

The convergence of the EU and UK towards a more smartly regulated labour market could have experienced some turbulence in light of the recent push for social rights and decent work to be at the forefront at the EU agenda under the European Commission President Jean-Claude Junker. As Frank Hendrickx highlights the new Social Pillar may give a renewed dynamic to EU social policy. However, even if Britain had remained in the EU, the direct influence of the Social Pillar would have been limited as it is only applicable to the Euro-zone. While social rights declaration never found favour in the UK, the current Labour opposition is calling for the integration of the 2000 EU Charter in UK law under the Withdrawal Bill to guarantee some of the EU rights in UK law. While this is unlikely to happen, the push for EU labour law to remain on the statute book is essential to avoid a further dilution of workers' rights. This would be achieved by keeping the acquis, as promised by Theresa May, but also by following the current direction of EU higher social standards in the future.

To keep or not to keep EU labour regulations? The question will remain on the agenda of the UK governments to come….

This entry was posted on Tuesday, January 16th, 2018 at 2:05 pm and is filed under Brexit, EU law is the body of law, consisting of primary and secondary legislation, that relates to the European Union. Primary legislation most importantly refers to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). Secondary EU legislation, such as Directives and Regulations, is based on the principles and objectives as laid down in the Treaties (TEU and TFEU).“>EU Law, Regulating, Social Pillar, UK
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