

pro-manchester Brussels briefing 2007

Political context

EU Reform Treaty: EU leaders signed the EU Reform Treaty at the Informal Summit of Heads of States in Lisbon on 18 October. This ended two years of deadlock after the failed ratification of the draft EU Constitution Treaty in 2005. However, there are continuing fears concerning ratification, as some countries are considering holding a referendum on the text.

Internal market for gas and electricity: The European Commission published its Third Energy Package on 19 September. The package proposes to liberalise the energy market through full unbundling, which seeks to separate the ownership of gas pipelines and electricity grids from energy supply and production activities, thus boosting competition within the market. This has met with criticism from member states where a few energy companies dominate ('national champions', to use the French term), notably France and Germany.

Climate and renewable energy package: The European Commission's forthcoming package on climate change and renewable energy will outline how the 27 member states should contribute to the EU's new binding objectives of sourcing 20% of its energy needs from renewables and cutting greenhouse gases by one fifth by 2020. The package, initially due on 5 December, has been delayed until at least mid-January. The official reason is that the Commission wants to carry out "far-reaching consultations" with member states before they present the package.

EU Presidency: The current Portuguese Presidency of the EU has focused heavily on the reform of the treaties, culminating in the signing of the Reform or Lisbon Treaty. It has invested in an agenda for modernisation, working towards promoting jobs and growth through the new cycle of the Lisbon Strategy, set to be approved in the spring of 2008. The Portuguese Presidency ends on 31 December and will be followed by Slovenia, which will be the first former Soviet bloc country to perform this role. The Slovenian Presidency will be followed by the French in July 2008 and it is clear that the French are trying to impose their agenda on the Slovenians.

Enlargement: Enlargement of the EU is unofficially on hold, with some considering that the accession of Bulgaria and Romania at the start of the year came too soon. However, the EU looks set to sign an initial deal with all of the Western Balkan countries by the end of 2008 which would pave the way for them to eventually join the union. The countries involved are Albania, Bosnia-Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Montenegro and Serbia. Numerous hurdles still remain, such as electoral and judicial reform. Turkey has also sustained its progress and remains on track for EU membership.

Flexicurity: Flexicurity, the combination of flexibility and security in the workforce, has been greatly debated. The Common Principles of Flexicurity are set to be decided upon at the European Council on 5 December, attended by the EU heads of state, which will then be incorporated into the Lisbon Strategy at the Lisbon Summit in March.

2009 European Parliament elections: the next European elections take place in June 2009. The UK uses a regional PR system for the European elections. The North West of England currently has nine MEPs (three Labour, three Conservative, two Liberal Democrats and one UKIP), but may lose one seat as a consequence of an overall cut in the number of seats in the European Parliament from 785 to 750 for the legislature period 2009-2014.

Key current issues likely to be addressed

Services Directive implementation

The Services Directive was agreed at EU level in December 2006, following lengthy discussions among policy makers and one of the most intensive and emotive lobbying campaigns ever seen at EU level. The directive aims to improve cross-border provision of services in the EU by ensuring that member states are not applying unjustified and disproportionate rules to service providers from other member states (with certain caveats such as ensuring public security).

The directive must now be implemented nationally by 2010. There are some concerns that implementation may not be uniform across the EU, lessening the final impact of the directive. The UK Government has been engaging stakeholders throughout the implementation process. However, the picture is not the same in many member states.

European Private Company Statute (SEP)

The European Public Companies Statute, or Societas Europaea, entered into force in 2004, allowing existing public limited companies from different EU Member States to merge, and to form holding companies and joint subsidiaries, whilst avoiding the constraints of operating under up to 25 different legal systems. Several European business organisations, notably Eurochambres and BusinessEurope, have for some years been pressing the European Commission to develop a new statute available to private companies.

The proponents of the SEP argue that it could help SMEs take advantage of the opportunities of the European single market by reducing the duplication of administrative requirements in each member state. The SEP would be a European legal form, not linked to national company law. The aim would be to create a simple, flexible, legal form, which would facilitate partnerships between SMEs from different member states, or the economic activity of a single SME in more than one member state.

Opinions on the new statute vary. While some observers support the idea, others feel it is unnecessary and can see no obvious benefits. The Commission is nonetheless due to put forward a proposal in 2008 and the European Parliament has already expressed its support for the initiative. The Societas Europaea took several decades to negotiate, so don't hold your breath.

Simplification of accounting, auditing and company law requirements

The European Commission adopted a communication in July that aims to simplify the business environment for EU companies in the areas of company law, accounting and auditing. These simplification proposals form part of the commission's overall response to the target set by the European Council in March of reducing administrative burdens on business by 25%; European company law, accounting and auditing were identified as one of the priority areas in this process.

The communication reflects on the range of existing EU directives on company law and questions whether all costs derived from EU rules in this area are outweighed by the benefits. The desire to repeal European directives that add no value to domestic rules runs throughout. Measures relating specifically to SMEs include:

- The exemption of micro entities (<10 employees, €500,000 balance sheet total and €1,000,000 turnover) from accounting directives, leaving member states to set requirements on financial reporting
- To extend transition periods for SMEs crossing compliance thresholds from two to five year
- To exempt small entities from the requirement to publish their accounts

The measures proposed in the communication would remove or reduce a range of administrative requirements that are considered outdated or excessive.

External stakeholders were given until mid-October to respond to the communication through a public consultation. The Commission will be following up on the communication and consultation with concrete proposals during 2008.

European Small Business Act

The broad debate on a European Small Business Act has evolved from a narrower discussion on increasing SME access to public contracts, which has been led by the French Government and business representatives. Nicolas Sarkozy then called for a European Act for Small Businesses during the summer and his ministers and officials have subsequently championed this idea at EU level. Although apparently as confused as many stakeholders by the word 'act' in an EU context, the Commission has yielded to French demands and confirmed that it will present a non-legislative communication in late 2008...during the French Presidency of the EU.

The aim of the act would be to develop a wide range of proposals to help SMEs such as enhanced SME access to public contracts, better regulation and better consultation. Sarkozy is also pushing for a review of the SME definition so that it is more in-line with the USA's, which includes businesses with larger turnovers and up to 500 employees, as opposed to 250 in the EU. Certain initiatives led by the Internal Market Directorate-General of the European Commission may also be brought within the parameters of the act, notably the forthcoming proposal for a European Private Company Statute (see above).

The commission is already seeking member state government's views and will launch a public consultation in early 2008 as part of the drafting process.

Better Regulation

Discussions on how to make legislation as effective and efficient as possible are as unrelenting at European level as they are domestically. Five or six years ago, the Commission was portrayed as the villain of the piece, accused of drafting legislation with minimal consultation or consideration of stakeholders' views and, as a result, stifling businesses through excessive administrative and compliance costs, disproportionate to policy objectives.

This has changed and, while far from flawless, the Commission is now more transparent when formulating legislation, more self-analytical in seeking to simplify existing law and more pragmatic in withdrawing pending proposals that no longer serve a purpose. The Commission also set a target in November last year, subsequently ratified by the member states, to reduce administrative burdens in existing EU regulations by 25% over five years. However, the Commission's cost-benefit analysis (or impact assessment) procedures, while improving are still criticized. Its current push to reduce administrative burdens also seems to be stalling a little due to internal wrangles.

Meanwhile, the other two main institutions, the Council and the European Parliament, continue to pay scant regard to their own commitments in the landmark December 2003 Interinstitutional Agreement on Better Lawmaking (although MEPs will deny this). This intransigence was perhaps best illustrated when the member states in February ratified the Commission's administrative burden reduction target of 25% for EU regulations, but refused to set a similar target at national level, as had been envisaged.

The Commission will be presenting its annual Better Regulation Strategic Review in January. They are always keen for specific examples of existing areas where regulatory simplification would be welcomed and for comments on proposals currently in the pipeline.

Lisbon Strategy for Jobs & Growth

In March 2000, the European Council in Lisbon set out a ten-year strategy to make Europe "the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion" by 2010. The ongoing strategy is a response to challenges faced by Europe in 2000, such as competition from the US and Asia and significant demographic changes. It aims to strengthen the EU's economy, driving job creation alongside social and environmental policies that ensure sustainable development and social inclusion.

The Lisbon Strategy touches upon almost all areas of EU economic, social and environmental policy and therefore the open method of co-ordination (voluntary co-operation and sharing of best practice between member states, co-ordinated by the Commission) was introduced in response to the fact that Lisbon covered a number

of areas in which the EU has no constitutional competence. Indeed, the subsequent lack of progress reflects national governments' reluctance to introduce potentially unpopular reforms, notably in the three main continental economies of Germany, France and Italy.

EU leaders meet every spring to discuss progress on the Lisbon Strategy and economic reform in particular. The 2005 summit, half-way through the initial 10 year process, concluded that the central theme of the Lisbon Strategy should be stronger jobs and growth, with the aim of making Europe an attractive place in which to invest and work. Ministers endorsed this approach, and re-launched the strategy along three main strands: knowledge and innovation, making the EU an attractive area in which to invest and work, and generating growth and employment to promote social cohesion.

More recently, the Commission presented its communication on the Lisbon Strategy and European Employment Strategy integrated guidelines to the European Parliament and Council in October. These will feed in to the new integrated guidelines for the next programming period from 2008 – 2013, to be agreed at the 2008 European Spring Council. Heads of state will also assess how well the renewed Lisbon Strategy from 2005 – 2007 has worked.

The next period will concentrate on the following priority policy areas, with the onus on member state implementation: Research, Development and innovation; the right business environment; investment in people and employability; energy and climate change.

Review of consumer legislation

The Commission has recently carried out a review of consumer legislation and the overall EU framework in which this is developed, via a public consultation, the results of which were published in October. The aim is to create consistency across the EU internal market in terms of general rules on consumer protection (e.g. definitions, right of withdrawal, unfair contractual terms). The Commission's 2008 work programme foresees a legislative proposal harmonizing certain rules across the EU in areas where there are substantial barriers to trade or a lack of confidence amongst consumers to buy cross-border.

In connection with this, the commission is also looking into the merits of setting up a system of collective consumer redress at EU level. Many business organisations are not in favour due to concerns that such a system could develop into a US style punitive 'class actions' system. Around half of the member states already have such national systems. The Commission insists that legislative measures may not necessarily be used in this context, but they have not been ruled out. The situation will be assessed over the coming months, with a public consultation during the first half of 2008.

Flexicurity, working time and agency work

The topic of flexicurity is presently at the top of the EU agenda. This combination of flexibility and security, epitomised by the Danish model, is seen as a way forward in terms of modernizing member states' social systems without endangering workers' security. This will be very much an initiative for member states, eventually becoming part of their commitments under the Lisbon Strategy for growth and jobs.

The Commission is keen to point out that the Danish model is not directly applicable across the EU, but that different aspects of flexicurity exist in many member states and it is a matter of looking at which ones work well and why. Issues which are part of the debate include active labour market policies, lifelong learning and modernization of social security systems.

In this context, the Portuguese Presidency is still endeavoring to find a solution to the outstanding review of the Working Time Directive and the proposed Agency Work Directive. Both dossiers will be discussed by national ministers at a 5 December Employment Council meeting. Meanwhile, the Commission has launched infringement proceedings against several member states, including the UK, for failing to implement correctly the existing Working Time Directive from 1993. These alleged infringements refer specifically to on-call work, which is considered as normal working time under the terms of the directive. In relation to the Agency Work Directive, the main area of discussion at the moment is the length of the grace period for derogating agency workers from equal treatment provisions.

Illegal Immigration

The European Commission published its proposal on sanctions against employers of illegal immigrants on 16 May, with the aim of targeting employment as an incentive for illegal immigration. Under this proposal, employers would be obliged to check the residence permits of all employees, which must then be presented to the relevant national authority. If employers completed this procedure, they would not be sanctioned for forgeries. Employers would also be subject to fines, the costs of deportation, temporary exclusion from public contracts, or closure. Member states would be obliged to inspect 10% of companies every year to ensure compliance with the legislation. This has been criticised as it does not take into account the likelihood of a company to employ illegal immigrants and is thus seen as arbitrary.

The first discussions took place in the European Parliament's Committee for Civil Liberties, Justice and Home Affairs in September and the report is expected to be published at the end of December.

Legal Migration

The European Commission released two proposals on legal migration on 23 October 2007, aiming to make Europe more attractive to highly skilled migrants and increasing the protection of lawfully residing and working migrants.

The first proposal, a directive for the purpose of admission of highly qualified migrants to the EU, would ultimately create an EU 'Blue Card'. It aims to establish

more attractive entry and residence conditions through fast-track procedures. Provisions are also included to facilitate access to the labour market. The proposal, however, does not create the right to admission, rather is demand driven, thus respecting member states' jurisdiction to decide on the number of persons admitted.

The second proposal aims to create a single application procedure for a residence and work permit and a common set of rights for third-country workers legally residing in a member state. The proposal does not harmonise admission conditions for labour immigrants, which remain under the jurisdiction of member states.