

Open Europe debate: “Kicking us while we’re down? The end of the opt-out from EU working time rules and what it could mean for Britain”

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Alistair Tebbit, Head of EU and Employment Policy for the Institute of Directors:

“Let’s be blunt. The Institute of Directors and to my knowledge every leading business group in the UK is against any move to remove the ability of employees to decide to work more than 48 hours a week. If the UK’s opt-out is abolished as the European Parliament and many member states appear to want, we estimate that as many as 3 million people in the UK who work in excess of 48 hours a week regularly or even occasionally will find that they can no longer work those hours.

“Any idea that this would not have a negative impact on the UK economy in our view is absurd. In a recent poll of our members a third said that if the cap on hours was set at a level below 60 hours a week that their businesses would be damaged.

“If you look at it from the perspective of a Director of a small business...If some of your employees are doing more than 48 hours a week and the opt-out goes you will have to cut back on their hours. You will then be faced with a choice...you could take on more staff...or given the big costs of taking on new staff you may just decide that its easier and cheaper to no longer do that work and therefore scale back your business operation. Either way the result in our view is negative.

“Our prime question which we like to have answered by decision makers at EU level is why are they even considering taking a step that would lead to these sort of scenarios.

“In our view it would be extremely foolish at any time to place new restrictions on the hours that people can work. With increasing global competition, the UK and other EU member states need to be raising productivity levels. Not cutting them back with new employment regulation. That was true a year ago, two years ago. We think it’s still true today. What we find even harder to understand is why new restrictions are being considered now...we are in the middle of a deep economic downturn, which shows signs of being possibly as bad as the Great Depression.

“Given that business of all sizes are at risk any unnecessary addition of new cost could be the difference between a company surviving the downturn or failing. With terrible implications that has for job losses and human cost. It’s very striking that the EU talks almost endlessly about how it’s going to bring forward measures to help small business during the recession and yet here we see a proposal being debated...which ultimately will add cost to business.

“Why does this issue matter to the UK?...What makes us different in the UK is that we are almost a special case. It’s crucial to politicians and commentators to understand that there is much greater variety in terms of working hours and practices in the UK than there is in most countries in Europe...particularly ‘old’ Europe. We have significant numbers working long hours but on the other hand we have a lot of people working part-time. This is rather different to other member states in the EU such as France and Spain where the bulk of the population works between 30 and 35 hours per week.

“Because of our much greater diversity there would be a big impact...we estimate that there are over 3 million people in the UK working either occasionally or regularly doing 48 hours or more.

“Who are these people?...All the evidence that you see in the labour force surveys suggests that these people are professionals they are managers they are skilled workers. Do we really want to be telling people like that what kind of hours they should be working? We don’t think so. These are not vulnerable workers they are people who have some ability to control their own destiny in the workforce and we urge the Government to fight with every effort that they can muster to allow those people to choose the hours that they work. We urge the Government to allow employers to ask those people to work the hours that they work.

“We urge EU politicians who may come from countries where there is a different kind of labour model to respect the UK’s labour market model and allow it to continue to function as it is without any additional restrictions.”

Paul Sellers, Trades Union Congress Policy Officer responsible for working time law:

“This is a health and safety issue...if you regularly work more than 48 hours a week then that greatly increases your chances of getting heart disease, stress related illness. You are also more likely to contract diabetes.

“All health and safety analysis of risk, such as dust, noise, dangerous chemicals and vibrations, assume a 48 hour working week. If you work more than 48 hours, the risk is exponentially increased. It’s a huge risk.

“There are serious questions about the extent to which the opt-out is a free choice...Government’s own studies identify substantial pressure from employers to work longer hours and to opt-out. But even if we could guarantee that every opt-out was a genuine free choice that wouldn’t really remove the health and safety and the moral imperative.

“The right to work long hours must be moderated by the duty to work safely.

“The long hours van driver who falls asleep at the wheel and veers across the road into another motorist or a pedestrian doesn’t give them any choice...So

the state has a right to ensure that its citizens don't harm themselves or others.

"Turning to the issue of whether ending the opt-out will really cause major difficulties to UK business...well actually all the signs are that they will be able to manage despite all their protestations to the contrary.

"We've already seen when the minimum wage was introduced that there was an important difference between don't want to and can't. These things can be managed when push comes to shove. And even if the opt-out were to go the Working Time Directive will still allow employers a great deal of flexibility.

"Do we really want our workers to be working more than 48 hours...are they going to be productive? Common sense tells us too many hours makes your tired, it leads to a slow down and a lack of concentration, more mistakes. We already no some sectors can live without the opt-out. The HGV sector has no opt-out and life goes on. That's because there is very little relationship between working long hours and business success. However, there are some good signs that moving away from long hours and improving productivity go hand in hand.

"We are in a recession. We're all focussed on that. But ordinary people find it quite hard to understand why business is saying 'we need long hours, we're in a recession' when we all know hours are going to fall in the coming period.

"In any case...we all know that if the opt-out does go that the changes won't even start until spring 2012. And it is likely to be phased out so that could carry on until 2015-16 or even longer.

"The Republic of Ireland actually phased in the 48 hour limit through a series of reducing steps. No limit in 1997, 56 hours in 1998, 52 in 1999 and 48 hours in 2000. What happened next? The Celtic Tiger roared.

"We ought to turn our attention to the issues that are facing business today. I'm absolutely convinced that there is enough brain power amongst UK business leaders to take us forward and actually it's [Working Time Directive] a very soft target."

David Yeandle OBE, Head of Employment Policy at the Engineering Employers Federation:

"Firstly, I don't think we should be too pessimistic about what might happen next week. I don't think it's by any means a racing certainty that when the European Parliament comes to debate this issue next Wednesday that they will support the whole raft of amendments that have been tabled to the agreement that was reached by the Employment Council on the Working Time Directive text, which would have retained the individual opt-out.

"I think there are really quite significant signs that not only the French Presidency...and indeed a number of other member states are now beginning

to put quite a lot of pressure on MEPs to support the agreement earlier this year on both working time and temporary agency working. That compromise deal that was done on those two directives is by no means perfect from an employer's perspective but I think that it is a deal that, on balance, one that we can live with.

"I think that there is a realistic chance that a number of MEPs who might perhaps of been supporting the amendments tabled by the Employment and Social Affairs Committee will not do so...We may well have some diplomatic absences, when the Parliament votes because it has to have an absolute majority of MEPs. So it's quite a big ask to get these amendments through.

"Secondly, let's be frank. It is, from our members' point of view, an important issue. We believe it is important to retain the individual opt-out. It's an important element of the flexible labour market which has enabled us to have high levels of employment and to be reasonably successful over the last ten years or so.

"It seems to us quite appropriate that employers and employees should be allowed to agree to work hours that suit them and to reflect the fluctuating workload.

"But I do agree entirely with Paul that it's very important that individuals should have proper protection. Individuals should not be forced to do this. They should have proper protection and indeed the new terms of the directive provide more than adequate protection in my view. Particularly the idea that we came up with as an organisation and I'm pleased to say has now been incorporated...individuals having signed the individual opt-out can have a 'cooling off' period...within which they can withdraw from the opt-out without suffering any penalty.

"Another thing I want to say is that I think that there's a bit of a mystique going on around here. I think it's really unfortunate that the UK employment community, and indeed the UK Government, has been heavily criticised by other member states about the way in which they have sought to get around some of the difficulties that there are in implementing this very prescriptive directive in a very flexible way in the labour market.

"The UK Government and British employers have come under a lot of criticism for using the individual opt-out. What has not happened is that a lot of other countries have found all sorts of different ways of getting round the same problem and yet we have had very little criticism of that.

"For example, a number of countries, particularly some of the southern European countries, look a working hours on a per contract basis rather than per employee basis. So, it's quite acceptable for people to have two different contracts with two different employers, working quite long hours, which in total would come to much more than 48. That is seen as perfectly ok.

“In a number of countries, trade unions and employers have reached agreements, which effectively mean that a significant proportion of the workforce are treated as autonomous workers and therefore excluded from the directives provisions. And yet we in the UK have taken the quite proper view that autonomous workers must be a very small percentage of the workforce...people who really do have total control.

“I think the UK Government by playing it fair, playing it straight and using the legislation as it’s strictly written has been almost victimised by going down this route.

“Of course this is a health and safety directive but of course we do [already] have health and safety legislation. Whether or not we have a working time directive whatsoever, employers have an obligation under health and safety legislation to make sure they look after and protect their people. Hours of work...are one of the issues that employers need to take into account under health and safety legislation in the UK already.”

David Coats, Associate Director of Policy at The Work Foundation:

“There is a profound ideological principle at stake here. At the root of the argument against the opt-out is the belief that regulation is by definition bad. That light touch regulation is best. That flexible markets as we have in the UK and to some extent the US are the only sort of labour markets that create lots of jobs and decent jobs that pay people decent salaries. Now unfortunately, none of those things are true.

“There are other countries in the EU that have employment records over the last decade or so that are just as good as the UK’s. They have employment rates that are as good as or slightly better than the UK. They have strong welfare states, higher taxes, stronger unions, more generous welfare benefits and stronger labour market regulation. And they have all done well. The Nordics, the Dutch, the Austrians to some extent, they all have employment records as good as the UK.

“14 of the EU 15, for most of the last decade, have been perfectly happy to work within the confines of this directive, albeit with some collectively bargained derogations but they’re nowhere near as extensive as David has suggested. So to believe that this is some terrible imposition from Brussels that is going to wreak death, destruction and havoc on the UK economy when it is at its weakest is simply false. There is no evidence to support that.

“Even without the opt-out we would have the second least regulated labour market in the OECD. So why employers are complaining, one might reasonably question.

“Let me say a word about the origins of this directive. It is rooted in the idea that a limit on working time is a health and safety measure. But I think we need to understand the relationship between working hours and health outcomes...

“...What’s important here is the extent to which you have control, the extent to which you have autonomous decision making powers. The extent to which really you control not just you’re working time but many other aspects of you’re working environment.

“...The real argument here is do we want to expose people to risks that will make it more likely that they will fall ill, that shorten their lives, shorten their life expectancy, limit their life chances. I don’t think we should.

“The doctrine of the ‘unripe time’, you know that recession is the worst possible moment to think about regulating working hours. Well much of the innovation in Germany around the organising of working time, which led to significant improvements in productivity and enabled German manufacturing to respond to the 1990s recovery when it came, were negotiated in the early 1990s when the German economy was in deep recession.

“Somebody mentioned the Great Depression...I’d draw to your attention that FDR’s New Deal in its early stages was about recapitalising the banks, price stability, getting people back into work and getting people back into decent jobs. So in the depths of the recession in the US, what did FDR do? He introduced a Federal minimum wage, limits on working time and rights for union to organise and establish collective agreements with employers. In the ‘worst possible moment’ it was about jobs yes, but decent jobs. About jobs yes, but labour standards.

“There is a difference between how effectively someone is working over the course of an hour and what they produce over an average working day. Which country has the highest output per hour worked in the EU 15? It’s Belgium.

“Now would be a good time to impose a limit on working hours because overtime where people are being paid hourly will be collapsing as the economy slows down and now is the best possible moment to start thinking about how you can improve output per hour worked. How you can work more efficiently and effectively. It’s a health and safety measure, it could be a boost to productivity and the arguments against are largely ideological.”