Editorial

The European Social Model: both a national and an EU topic

CONTRIBUTOR Zef Even

Although the term 'European Social Model' is often used, it lacks a definition. According to the Lisbon summit the Model is based on "good economic performance, a high level of social protection and education and social dialogue". Article 3 of the Treaty on European Union sets out components that are often linked to the European Social Model. These components include rights at work and proper working conditions, social protection, social dialogue and inclusive labour markets. The European Social Model is frequently seen as an answer to globalisation, but is in the meantime threatened by globalisation: can we afford our expensive European Social Model? This question is asked in particular in crisis situations.

The European Social Model should not be confused with an 'EU Social Model': the model regards countries belonging to the EU but is no means purely an EU affair. In fact, most components attributed to the European Social Model referred to above are primarily arranged by the Member States. To be precise, there is pursuant to Article 4 of the Treaty on the functioning of the European Union a shared competence on social policy. Both Member States and the EU have responsibilities in this field. The EU may on occasion step in, taking measures to promote the European Social Model. The EU bodies have, however, not always been regarded as a champion in promoting the interests of the European Social Model. In the past the EU has sometimes been regarded as a threat to Member States' social models, which allegedly led voters in France and the Netherlands to reject the European constitution in 2005.

In current times, the EU plays an active role in enhancing the European Social Model. An EU minimum wage is contemplated, a draft proposal for a Directive on improving working conditions in platform work has been introduced, and the same goes for the proposal to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms. There is no escaping from these EU rules by applying different definitions of employment agreement in Member States, as the EU tends to work more and more with an EU definition of workers. See for instance paragraph 8 of the recitals of the 2019 Directive on transparent and predictable working conditions in the European Union. The ECJ may at times – as it did in the AFMB case, C- 610/18 – even decide which party should in fact be considered the 'employer', piercing through the underlying employment agreements.

Whether or not you find this increased level of EU protection a good development is a personal, political question. To be honest, in general I agree. There is one thing that worries me, though, which is in line with my last editorial (in EELC's previous issue): when should EU involvement be considered and when should issues be addressed at a national level? I'm not entirely convinced that the principle of subsidiarity is always met: the Union shall, after all, pursuant to Article 5.3 of the Treaty on European Union act only "if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level". Is this really the case with regard to all of the aforementioned proposals? My worry is about EU citizens' trust in and support of EU legislation. We should be careful not to push too far and to force an EU point of view on sometimes unwilling employers and employees in (some) Member States.

I'm curious whether we would be able to agree on guidelines when EU legislation (which includes the European Social Dialogue) is called for with regard to legislation on the European Social Model, and when national solutions should be preferred. Agreeing on such guidelines in my view makes sense on issues involving both EU and national competency. Those material guidelines could support the formal procedures on applying the principle of subsidiarity as set out in the Protocol on the application of the principles of subsidiarity and proportionality.

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Perhaps these are thoughts that should be further contemplated under the Christmas tree. And perhaps these thoughts least interest you, and you just want to know what happens in courts of other Member States on the always interesting topic of employment law. In both cases, enjoy this fun-packed new edition of EELC, which includes cases such as whether football referees are employees or not, whether someone must inform managers in order to take their leave and whether everything is allowed to reduce the gender pay gap.

Zef Even
Editor-in-chief

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