

Why Brexit spells trouble for workers' rights

By Dr Paul Behrens, Reader in Law at the University of Edinburgh

When you try to figure out what the EU has ever done for workers' rights, the internet can be a confusing place. Opinions vary widely, depending on political persuasion, and the resulting picture has a Dickensian tinge to it: it is the best of Unions, it is the worst of Unions.

Some writers are surprisingly flexible: the EU is bad because it is too powerful and meddles in our affairs. The EU is bad because it has no power and cannot enforce workers' rights.

Yet getting to the truth of the matter is important: workers' rights are not just something written on banners at union demonstrations. They benefit all of us. The case of hospital workers comes to mind: if you are rushed to hospital in the middle of the night, it is helpful if you are seen by a doctor who benefits from the right to proper resting periods; who is therefore alert and focused when dealing with your case. (Your doctor, too, would prefer not to be on shift for 20 hours). But these are exactly the kind of rights that the EU gets interested in.

Meet Dr Jaeger. In 2003, Norbert Jaeger worked in a hospital run by the city of Kiel, Germany. Under EU law (the famous [Working Time Directive](#)), he was entitled to a minimum resting time of 11 consecutive hours in every 24 hour period. An ordinary working day of eight hours in a hospital is stressful enough: it is full of heartbreak and grief, of expectations of relatives and the impatience of in-patients. And there is that constant need to stay focused, when a moment of inattention can be fatal.

From time to time, however, Dr Jaeger had 'on-call duty' on top of his ordinary shift: he had to be ready and on location in case he were needed. When he was not needed, he was allowed to get some rest ([meaning](#) he pulled out a cupboard bed in his office and lay down in the safe knowledge that he would soon enough be woken up by a call from a nurse). All in all, his time on duty could amount to 16 hours.

Over the weekend, up to 25 hours: from 8.30am on Saturday to 9.30am on Sunday.

Eventually, Dr Jaeger took his employers to court. Kiel did not give in: after all, the doctor was allowed to rest after his ordinary shift, so whatever minutes of sleep he could snatch up could surely not count as working time. The European Court of Justice (ECJ) had none of it: quite rightly, it [found](#) that ‘on-call duty’, in its entirety, was ‘working time’.

A happy ending then – but the case is worrying too. It shows that individual States – even Germany, with a track record of good employment laws and (back then) a Social Democratic government – cannot be trusted to protect the rights of all workers all the time. Even worse, there had been warning shots: the ECJ had already given a very similar ruling in a [case](#) brought by Spanish healthcare workers.

Germany had seen no need to change its laws: without the ECJ, German doctors would not have received the rights to which they were entitled.

There are other ways in which the EU protects workers’ rights. The same directive provides for weekly rest periods, limits the maximum length of night work and prescribes a minimum amount of four weeks of paid annual leave. EU law also recognises the right to take unpaid parental leave and protects against discrimination on grounds of sexual orientation and gender reassignment. It also provides for equal payment of men and women.

That last one is interesting. After all, the point is often made that Britain had an [Equal Pay Act](#) even before it joined the European Communities. That is true; the road to that law was rocky, and the work of those fighting for it should not be forgotten. One of the milestones was the [1968 strike](#) of women sewing machinists at Ford in London (immortalised in [‘Made in Dagenham’](#)) who sought a grading appropriate to their work level (category C, as semi-skilled workers).

But one point is often omitted: while the strike resulted in a pay rise, the aim of having their work recognised as equal to that of men in similar positions, was not achieved. That came only after Britain had

joined the European Communities, and it needed European involvement: an ECJ [judgment](#) in 1982 found that Britain had not done enough to implement the principle of 'equal pay for equal work' (part of Community law since 1957).

Following that, the UK [changed](#) its law; armed with the new legislation, the women of Dagenham were able to take up the baton again. (The matter was eventually resolved in arbitration, where it was found that their work had indeed been undervalued).

The efforts of the European Communities – and today, the European Union – did not stop there. The EU is aware that it is not enough to protect workers against the denial of their rights; there have to be measures to create work in the first place and to support those companies – especially small or medium-sized enterprises (SMEs) – that provide jobs. In 2014, the European Commission therefore announced an ambitious programme – the '[Investment Plan for Europe](#)' – to help in these areas.

Under this plan, the EU works together with banks and other financial institutions to support companies: SMEs can apply for loans by the financial partners, which, if the application is successful, are guaranteed by the EU.

The beneficiaries come from all walks of life. There is [Sambrook's](#), a brewery in London that opened its doors in 2008, [Handiscover](#), a Swedish company that runs an accommodation booking website for people with physical disabilities and [Toko Bopp](#), an Indonesian store in the Netherlands. In Italy, a [company](#) making wooden garden furniture has benefitted from an EU-backed loan, as has a [company](#) in the Czech republic that produces re-usable bags, a [florist](#) in Northern Germany, a [bakery](#) on the island of Muhu (Estonia), a Greek [exporter](#) of Kalamata olives and a French biotech [company](#) that develops cancer treatments.

The results of the European Investment Plan are impressive. More than 1 million small businesses have already [benefitted](#) from the programme; it is [estimated](#) that, by 2022, the programme will have increased the GDP of the EU by 1.8% and added 1.7 million jobs. (The [website](#) of the European Fund for Strategic Investments has more information for companies interested in assistance by the EU).

There is a fair bit, then, that the European Union has done for employment, for workers rights and for small and medium-sized companies, and a fair bit that the UK, after Brexit, has to live up to.

And all of that must be done in the face of pressure: pressure to create a seductive environment for foreign businesses, pressure to work within the means of the budget, the most incredible [pressure](#) on the NHS in times of rising patient numbers and an ever increasing shortage of doctors and nurses.

To predict that, in times like these, workers' rights will be the first casualty of Brexit, is hardly doommongering. It is an assessment that carries the irritating scent of the obvious.