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Regulatory Cooperation

By Vicky Ford, *MEP for the East of England and Chairman of the Internal Market and Consumer Protection committee in the European Parliament*

Fundamental to the Single Market debate is the thorny issue of regulatory equivalence. If we are to maintain relatively barrier-free trade then continental producers will demand their UK competitors also have to comply with any EU rules and product standards. It will clearly not be politically acceptable if the UK has no say on those rules, with only a rubber-stamping role like that of Norway.

"Taking back control" of regulations was given by many people as their reason for voting Leave and often there **is** too much micro managing through EU regulation. My own in-box has been full of complaints on issues like restrictions on glyphosate weed killer, prohibiting car insurance offers for women and the exorbitant costs of putting a CE mark on each welded joint. All areas where British public opinion does not support a one-size-fits-all EU approach.

Some may ask why we need any regulations or product standards at all - I suggest they try explaining that approach to an irate Volkswagen owner.

There are areas where international trade requires agreement on international regulations. Even Lord Dyson, a vocal Brexiteer is now calling for common European standards to be adopted for many of the products he manufactures.

Ten percent of everything we produce in the UK is exported elsewhere in the EU and the vast majority of those who make these products say they do not wish to face multiple regulatory regimes. They also want predictable regulatory decision making, where those affected by a change in the rules have a chance to be consulted before the changes are made.

Existing Models

Some trade experts point to the "regulatory cooperation" model of the EU/Canada trade agreement, but this would not be up to the job for UK/EU. It would not give a British car maker or insurance company the confidence that they will be consulted on a new market rule let alone have their issues taken into a consideration.

Others suggest we should move more of our regulatory cooperation up to a global level. Relying on the Basel committee for more detail on their decisions for banking regulation, on IOSCO for securities transaction, on the UNECE for more global harmonisation on car regulation, more ISO standards on digital, and so forth. Where global rule making works well it is helpful but it is not sufficient in itself, to fill all the gaps in takes time, and it only covers the minority of products or services and has no enforcement mechanisms.

Furthermore, global regulatory cooperation tends to be driven by the bottom-up not top-down. It is easier to get a global agreement on the fine detail if you've ironed it out at a lower level first. For example when we in the UK wanted new global rules on how to resolve a cross border bank failure in aftermath the Royal Bank of Scotland, we agreed the broad principles at the G20 but we then nailed down the nitty-gritty with our EU neighbours first and used that detail to springboard back to the global level.

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Instead of Canada-style, or going global we might look down-under. The Australian and New Zealand authorities have long-standing arrangements in working together in analysing situations, coordinating impact assessments and recognising each other's regulations where similar.

Mutual Benefits

Finding a new approach to regulatory cooperation between the UK and the rest of Europe does have many mutual benefits. In many areas, the EU needs UK expertise. For example, the UK's MHRA is the most significant contributor of expert advice to the European Medicines Agency. The European Banking Authority, European Markets and Securities Authority and many others also rely heavily on UK expert contributions.

There is a strong case for the myriad of British experts who take part in specialist stakeholder groups, standard setting bodies and trade associations to keep their seats and continue to contribute. Keeping these seats is not automatic it will need to be agreed as will maintaining a UK role on European co-operation networks with other jurisdictions such as the Transatlantic Financial Markets Regulatory Dialogue and it must allow time for discussions before any sanctions are imposed.

New Approach

A new strategy is needed for a cooperation relationship that enables the EU and UK to work together on the rules and regulations affecting our cross-border businesses but also respects the right of each other to regulate separately. It needs to be an arrangement where minor divergences in regulation do not risk closing the door for British companies wanting to access European markets, and vice versa.

A bespoke UK/EU relationship on regulatory cooperation might focus on key sectors where there is true international need for a cross border consensus. We should seek a more objective-based solution, drawing on the Aus/NZ experiences, which recognises that the same regulatory aims can be achieved by means of different pathways and leaves room for divergences. This need not be seen as a new concept for the EU: it used to the principle by which members used to reach agreements.

Dispute Resolution

A new approach will be needed to address the issue of how to resolve disputes clearly, recourse to the ECJ would not be acceptable, nor would non-public arbitration. But just because the existing models do not fit does not mean that negotiators across the channel have closed their minds to other alternative suggestions, and we should imagine a new forum.

The EFTA court model may provide inspiration. Each country nominates its own judge but unlike the ECJ there is no Advocate General and no General Court. Furthermore the advisory opinions the court issues are not formally binding making them fundamentally different to the ECJ's preliminary rulings.