Stuck in the middle with EU

How global regulators are killing the value of EU membership

By Roland Smith

BRIEFING PAPER

EXECUTIVE SUMMARY

- One major argument for Britain remaining in the EU is that outside the bloc it would still be subject to single market standards, rules and regulations, but without a seat at the EU negotiating table, it would have no say over these.

- In fact, an increasing number of EU regulations are made at the global level and not by the EU bureaucracy, which mainly performs a 'wholesaler' role, enforcing rules without creating them anew. The UK often does not have a full voice at the global level because of the EU's need for a 'common position'.

- The UK does not need the EU to perform the wholesaler role for the majority of Single Market regulation that now falls within the ambit of global organisations and through Brexit, can also shorten the chain of accountability between UK government and global market governance.

- Outside the EU, Britain would have a much louder 'say' on regulation, standards and rules that affected it—our voice is often muffled, distorted, and ignored when heard via the EU, which is increasingly becoming just another player in a multilateral world. The UK can be a powerful player in its own right.

- Less than 8% of genuinely EU-originated law reaches countries like Norway, who are in the European Economic Area, which has free trade with the EU without the increasing political union.

INTRODUCTION

In the modern world, trading is increasingly organised at the global level. It involves bodies ranging from private sector rule-making organisations such as the ISO, to various quasi-governmental institutions under the United Nations and the World Trade Organisation.

This has had a growing effect on the logic (or lack of it) for remaining in the EU and it also informs the debate on what Out looks like.

The activities of such global bodies are known collectively as 'global governance' (as opposed to 'global government'). There is no single body in play, nor even a

ADAM SMITH INSTITUTE – THE FREE MARKET THINKTANK
23 Great Smith Street,
London, SW1P 3DJ
+44 (0)20 7222 4995
www.adamsmith.org

coherent group of institutions. Instead the different functions are carried out by a range of organisations which have little in common.

The proliferation and reach of global organisations in recent times reflects the advantages they offer to the global trading system. Together they are the real-world manifestation of the word 'globalisation'.

These bodies have three specific advantages that the Bruegel think-tank once listed as follows.[1]

1. They ensure more security and predictability than ad-hoc arrangements. Global rules provide core principles and legally enforceable commitments for all parties. The bodies also offer a forum for settling disputes.

2. Global institutions give a voice to all countries big and small and are accountable to these countries. Critics may complain with some justification about the lack full accountability but global institutions do ensure a degree of fairness and ownership which other solutions lack. In other words, they provide a certain stability to economic integration which would be lacking in a multipolar world where integration is driven by private stand-alone initiatives only.

3. Such institutions can be viewed as global 'public goods'. This is because every time something new needs to be done, they don't have to start from scratch. This cuts negotiation costs and avoids the long and painful process of defining a collective global response. Well-designed and well governed institutions, therefore, are an asset for all participants in the global economy.

But despite their importance, global bodies are largely invisible to the general public and rarely mentioned in the popular media. Indeed, politicians and the media already have difficulty getting to grips with EU institutions and activities. Adding in the activities of opaque global institutions presents an even bigger challenge and consequently few discuss it. However it's fair to say that where they become known, they are viewed with suspicion.

GLOBALISATION AND THE SINGLE MARKET

The EU is a sub-regional entity, which is to say it does not represent all nations in its geographic area — the old and correct adage often stated by Leavers that the EU is not Europe. Nonetheless, the European Union plays a role in the globalisation process. The Union takes its mandate from Article 220 of the Treaty of the Functioning of the EU which requires the EU to "establish all appropriate forms of cooperation" with the organs of the United Nations, UN agencies, the Council of Europe, the Organisation for Security and Cooperation in Europe and the OECD. The Article also requires that the Union should maintain such relations

---

1 Bruegel, December 2006, http://www.bruegel.org/publications/publication-detail/publication/37-global-governance-an-agenda-for-europe/,

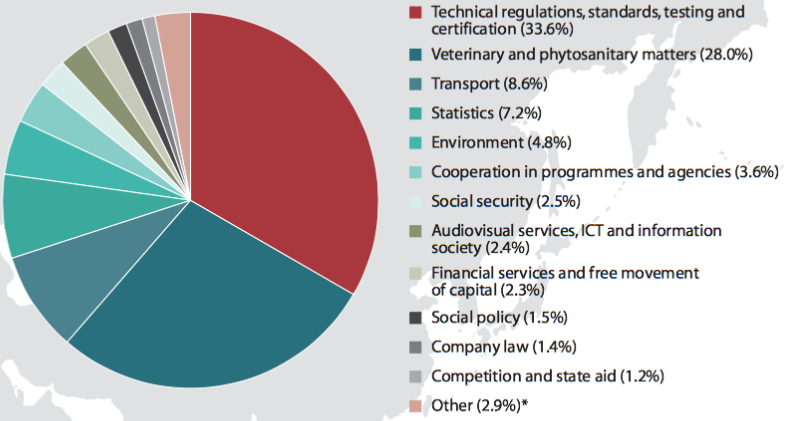
as are appropriate with other international organisations. It therefore has relations with organisations such as the International Maritime Organisation (IMO), the International Civil Aviation Organisation (ICAO) and the International Labour Organisation (ILO), and many others.

And yet despite the activity of the EU at global level, there is a perverse effect arising from globalisation. As more and more issues are addressed at global level, the EU is steadily losing control over its own regulatory agenda. For example, more than 80 percent of the EEA acquis (and therefore the EU's Single Market legislation) falls within the ambit of existing international organisations and is thus potentially amenable to global regulation (see pie chart below).[2]

Legal Acts in the EEA Agreement by Policy Areas

The figure below gives a snapshot of the size of the various policy areas in the EEA Agreement, represented by the number of "active" EU legal acts (in force) in the Agreement's annexes and protocols. The total number (4 179) is lower than the number of all acts that have been part of or incorporated into the Agreement since 1992 (7 464), as several old acts have been replaced by new ones or repealed. Acts taken over by simplified procedure (847 since 2000), mainly veterinary acts of short-lived nature, are not included here.

Breakdown by policy areas of EU legal acts in the EEA Agreement: December 2010 (shares of the 4 179 incorporated acts in force) Fig. 10



* Other: Consumer protection and product liability (0.7%), energy (0.6%), intellectual property rights (0.6%), procurement (0.6%), recognition of professional qualifications (0.3%), and free movement of workers (0.2%).

Source: EFTA

In terms of detail, over 33 percent of the EEA acquis comprises "technical regulations, standards, testing and certification". The vast majority of that originated at the global level. Another 28 percent of the EEA acquis comes into a category defined as "veterinary and phytosanitary matters" meaning animal and plant health in the context of international food trading. This is another area where the hidden hand of globalisation pervades almost everything.

Given that Single Market law applying to Norway, Iceland and Liechtenstein is itself only about 21% of all EU law, one can begin to see that 8% or less of genuine EU-originated law reaches these countries.[3]

---

2 EFTA, The European Economic Area and the Single Market 20 years on, http://www.efta.int/sites/default/files/publications/bulletins/EFTA-Bulletin-2012.pdf

3 Full calculations at http://eureferendum.com/blogview.aspx?blogno=85798

They participate fully in the Single Market and they have a veto — a right of reservation. That could explain why their people seem happy, free, wealthy and consistently tell pollsters they want to stay out of the EU. There is a lesson here for an exiting UK wanting a liberal and open trade-based relationship.

THE CODEX ALIMENTARIUS

One of the reasons why the hidden hand of global governance is so rarely noticed comes from a lack of EU transparency in declaring the international origin of EU standards. Thus, in September 2013 an EU programme on food labeling that stopped the use of the Union flag on packs of meat (and caused much media outrage) was actually implementing a standard from the global body, the 'Codex Alimentarius' (Latin for 'food code'). The EU copied portions of the exact text into their Regulation, thus giving it the identity of EU law which the media then pounced on.[4] Tracing back further, the Codex standard relied for its authority on the WTO Agreement on Rules of Origin.[5] Yet neither was specifically identified as such in the EU regulation text.

A similar dynamic was in play during the furore over new "EU rules" banning "thousands of favourite British garden plants and flowers" from sale.[6,7] Unknown to the media, the EU was simply implementing standards initiated by the OECD, alongside UNECE and several other bodies.[8]

A further example came when someone in Manchester sold jams made from home-grown apples. Because her products did not conform to British regulations that were implementing EU law, she was prevented from labeling them as jam. This became a classic EU "red tape" story, which was heavily exploited by the media.[9]And yet the originator of the standard was not the EU but the Codex. The EU simply put its own badge on it.[10]

A national (or EU) standard that provides a greater level of protection than Codex is deemed to be a "trade barrier" unless the WTO decides that the stricter national standard is based on proper risk assessment. This must demonstrate that the Codex instrument does not provide sufficient protection or that the country

4 Regulation (EU) No 1169/2011, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0018:0063:EN:PDF and http://www.fao.org/docrep/005/y2770e/y2770e02.htm,

5 http://www.wto.org/english/docs_e/legal_e/22-roo_e.htm

6 Mail on Sunday, 16 September 2013, http://www.mailonsunday.co.uk/news/article-2420839/European-Commission-bid-ban-gardeners-buying-British-plants.html

7 European Commission, COM(2013) 262 final, 6 May 2013, Proposal for a regulation on the production and making available on the market of plant reproductive material (plant reproductive material law), http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0262:FIN:EN:PDF,

8 http://www.oecd.org/tad/code/seeds.htm

9 The Daily Telegraph, 22 February 2012, http://www.telegraph.co.uk/foodanddrink/foodanddrinknews/9099121/Couple-left-in-a-jam-by-EU-regulations.html , and Daily Mail, 23 February 2012, http://www.dailymail.co.uk/news/article-2104836/Clippys-Apple-Preserves-Clippy-McKennas-spread-doesnt-qualify-jam.html

10 Codex Standard for Jams (Fruit Preserves) and Jellies – Stan 79-1981, since updated to Stan 296-2009: http://www.fao.org/input/download/standards/11254/CXS_296e.pdf

maintaining the stricter standard has other valid scientific justification.[11] Therefore most technical food standards have been initiated by Codex and handed down for processing into EU law for adoption by Member States. Britain, despite being a member of Codex, implements its standards via the EU. Outside the EU, Britain would implement them directly, without using the EU as the middle-man. But apart from that, nothing much would change. By and large, we would still be applying the same standards and would end up with the same laws. This is where the expected 'bonfire of regulations' on exit becomes something of a chimera.

Codex is by no means unique. The parent organisation, the Codex Commission (CAC), comes under the aegis of the UN Food and Agriculture Organisation (FAO), and is one of "three sisters" recognised by the WTO's Sanitary and Phytosanitary (SPS) Agreement. The other two are the International Plant Protection Convention (IPPC) and the Office International des Epizooties (OIE), the international organisation for animal health. Respectively, they generate the international regulatory framework for the protection of plants from pests and standards which ensure a safe and fair trade in animals and animal products world-wide.[12] And, as noted above, these "three sisters" account for a full 28 percent of the Single Market acquis.

THE CODEX IN ACTION

Rarely is it possible to see this global system in action but the Fish and Fisheries Product Committee of the Codex Alimentarius provides some insight. This is chaired by Bjorn Knudtsen, a Norwegian, because when it comes to the Codex international rules on food designed to ensure public safety and fair trading, Norway is at the "top table". This contradicts the claim that like Norway we would be governed "by fax" from Brussels if the UK left the EU, Norway is not governed in this way, even though, paradoxically, most of the final law covering fish and fisheries products does then come from Brussels. The paradox is explained by the way Codex works. Mr Knudtsen's 170-strong committee, with 50–60 countries most interested in seafood, was established in 1963 and creates the rules which the WTO accept as the basis for trade.[13] Increasingly, member states and trading blocs — such as the EU — adopt Codex standards as the basis for their own regulations, and are gradually undergoing a process where existing regulations are being changed so that they match Codex standards. Standards are generated by the participating countries for adoption by the Codex. Often the EU (and other trading blocs) promote their regulations, trying to get them accepted as the Codex standard, but the dominant driver is the science. This determines the nature of the standards adopted to protect public health and ensure fair trading practices.

---

11 Codex Standard for Jams (Fruit Preserves) and Jellies – Stan 79-1981, since updated to Stan 296-2009: http://www.fao.org/input/download/standards/11254/CXS_296e.pdf

12 http://www.oie.int/about-us/

13 http://www.fao.org/fao-who-codexalimentarius/download/report/930/REP16_FFPe.pdfpre

A recognised disadvantage of the system, however, is its slowness. A draft regulation can take 6–8 years to go through the system until it is finally approved. Votes are usually avoided until consensus has been apparently achieved. If there is not complete agreement, the preference is to rework the draft until all parties do agree. And, at any point, a member state can veto a provision through an informal process or, formally, by calling for a vote. When it comes to framing those rules, Norway is fully involved from the outset.

Codex and international bodies like it form 'world governance'. Global trade requires global rules, they produce them, and hand them back to individual nations and to blocs such as the EU.

The EU takes the Codex standards and in turn uses them as the basis of its own rules for their members and for EEA members. And yet at no point in the development of rules affecting fish and fisheries products is Norway a passive receiver of rules from Brussels. To assert that it is without "influence" is wrong. Norway is involved at every step of the process from inception to the final formulation of the rules. Brussels simply adds the EEA rubber-stamp before passing it on. The route is Oslo, Brussels and then back to Oslo, the substantive issues having been agreed long before the standard formally reaches the EU.

The Remain lobby only look back one step in the chain presumably because it suits their narrative.

THE WORLD TRADE ORGANISATION

Those unfamiliar with the process of globalisation sometimes believe that the adoption by the EU of Codex standards and standards from similar organisations is voluntary. That is not the case or, more accurately, it is no longer the case and that is where globalisation has moved to another level with the corresponding impact on the need or not for EU membership.

What gives international organisations their power is the WTO Technical Barriers to Trade (TBT) Agreement. Article 2.4 of that agreement requires the parties use relevant international standards in preference to their own.[14] This is not optional—the Agreement uses the word "shall". The SPS (sanitary and phytosanitary) Agreement, adopted at the same time says that—apart from defined exemptions—"Members shall base their sanitary or phytosanitary measures on international standards".[15]

Many of the standards-setting organisations, such as Codex, come under the aegis of the United Nations and work in association with the WTO. There are also many informal bodies which contribute to the standards-setting process. They are

14 WTO, Agreement on Technical Barriers to Trade, Art 2.4, http://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm; and WTO, Technical Information on Technical barriers to trade, http://www.wto.org/english/tratop_e/tbt_e/tbt_info_e.htm,

15 https://www.wto.org/english/docs_e/legal_e/15-sps.pdf

supplemented by national and international trade associations and standards organisations managing standards-setting at a global level.

The collective output of these bodies is not statute law, but is the root of an expanding body of "soft" law, often termed "quasi-legislation". Requiring two bodies (at least) for its implementation, such law has been termed "dual-international quasi-legislation", abbreviated to "diqule". To take effect, it must be turned into legislation and embedded in an enforcement and penalty framework. Rather than initiating its own legislation, processing of standards originating at global level is becoming the main activity of the EU. The TBT Agreement makes global bodies the originators of law—the "manufacturers" so to speak, while the EU is the wholesaler and distributor. It explains why EU supporters have been able to say over the years that the EU organisation is actually smaller than one might expect. It's because a lot of the heavy lifting around rule-making is done elsewhere.

This has very significant implications for a post-exit Britain. For example, as part of an EFTA/EEA position engaging at Single Market level only, Britain will still be implementing law "done at Brussels" but much of that will have been created above the EU where the UK will be able to influence directly. By contrast, as an EU member, there is often little unconstrained communication between member states and the global standards bodies without submission to the EU's common position.

THE ROLE OF THE ISO

The standards for products and (increasingly) services not only define the EU/EEA Single Market but also underpin the entire global trading system, not least the WTO multilateral trading regime. Major generators of these Single Market rules are the national standards organisations which act singly and in concert to devise and approve standards for a huge range of products and devices. As with other global bodies, the negotiations between these bodies give rise to harmonised international standards above the EU which are then absorbed back into into EU and national law.

For example the International Organisation for Standardisation (ISO) claims responsibility for international standards which "ensure that products and services are safe, reliable and of good quality", helping companies "to access new markets, level the playing field for developing countries and facilitate free and fair global trade".[16] The ISO is based in Geneva, Switzerland and is not a formal treaty body but a voluntary organisation (described as a "Transnational Private Regulator") made up from members from the majority of countries in the world and thousands of technical bodies.[17] Since its establishment in 1946, it has promulgated 19,500 standards covering almost all aspects of technology and business. It produces what are known formally as International Standards which in turn drive European

---

16 http://www.iso.org/iso/home.html,

17 For a discussion of this concept, see: http://aei.pitt.edu/36811/1/ceps_1.pdf and http://sna.gov.it/fileadmin/files/ricerca_progetti/Ricerca_1_Cafaggi_Pistor.pdf

Standards devised by the three recognised European Standardisation Organisations (ESOs): the European Committee for Standardisation (CEN), the equivalent in the electrical and electronic sphere, CENELEC, and the European Telecommunications Standards Institute (ETSI). Collectively, these ESOs are "a key component of the Single European Market". They are involved in a "successful partnership" with the European Commission and the EFTA. They support European legislation in helping the implementation of the European Commission directives.[18] Once again, as an integral part of what is termed the standards community, countries like Norway thus have a significant role developing Single Market rules, equal with any other EU Member State. The UK, with its own British Standards Institute, also takes part in the development and approval of Single Market rules, work which would continue unchanged if the UK decoupled itself from the political elements of the EU and focused on trade issues through the EEA.

An example is the EU's Construction Products Regulation, which brought in a requirement for CE marking of steel construction. Recital 18 of the Regulation identified the basis of the standards as the CEN codes, ostensibly developed for application in EU member states. Of crucial concern though, these CEN codes were not formulated in isolation at an EU-level, but in association with the ISO, giving them global application. This was not accidental. The cooperation arose from the Vienna Agreement of 1991, where the EU through CEN formally recognised the primacy of International Standards as set out by the ISO, and agreed to co-ordinate its standards with those of the ISO.[19]

In hierarchical terms, the ISO is therefore superior to the European bodies. Where standards are adopted as an integral part of any legislation, and equivalent ISO standards exist, the EU is obliged to adopt the ISO version. Over time, this challenges the EU's legislative monopoly. It no longer has complete control over the standards-making process. Indeed the EU has been updating its own standards to meet all relevant ISO standards. It is a law taker not a law maker — in a less modern world, one might even suggest that such laws get faxed to the EU. Of course there is an advantage in all of this: Conformity with ISO standards gives EEA products and services access not only to the European but to the global market.

But what it also means is that in the context of Brexit, "isolation" is near-impossible in a globalised world. Britain will simply operate at the new global top table as opposed to the EU's shrinking one.

INTERNATIONAL REGULATORY COOPERATION (IRC)

Although the various elements of international cooperation tend to be diffuse, the OECD has sought to bring a degree of coherence to the subject by defining eleven separate mechanisms in what it classifies as International Regulatory Co-operation

---

18 http://www.cen.eu/cen/products/en/pages/default.aspx

19 Agreement on technical co-operation between ISO And CEN (Vienna Agreement), http://boss.cen.eu/ref/Vienna_Agreement.pdf

(IRC). These mechanisms range from the formal and comprehensive to the informal and partial.[20]

The UK government is fully aware of the extent of IRC. UK development agency DfID describes it as "the range of institutional and procedural frameworks within which national governments, sub-national governments, and the wider public can work together to build more integrated systems for rule making and implementation, subject to the constraints of democratic values such as accountability, openness, and sovereignty".[21] In particular, it notes that, for large or more advanced economies (or regional blocs), harmonisation might prove difficult as both parties have usually already developed a complex set of advanced standards and regulations. When large trading partners seek a reduction in their bilateral regulatory barriers to trade, it thus concludes, mutual recognition of existing standards may be an easier and better way forward. However, whenever possible, using global standards is the best option.

The OECD mechanisms are even recognised by the US government, with President Obama on 1 May 2012 having signed an Executive Order, promoting international regulatory cooperation.[22] As an aside, the rise of Donald Trump is in part a reaction to the effect of globalisation on America. As an official Trump-supporting website notes:

> "Trump is an anti-globalist conservative, a nationalist who seeks to put America first. This is why our media elites despise him. He does not care for the New World Order based on free trade, open borders and globalization. Instead, he champions patriotism and populism—the very things our transnational ruling class fears."[23]

For the UK, the Single Market may be the ultimate example of regulatory cooperation, but it is not the only one. By adopting all and any of the OECD IRC mechanisms, the UK has much greater flexibility to achieve its desired ends, than by working through the EU.

MARITIME MATTERS

Unless a different agreement is made, a direct consequence of the UK's newly-found freedom after Brexit would be separation from the EU's global activities. As it stands, the Whitehall position is that the UK gains from working within the EU at global level. The belief is that a single body acting on behalf of all 28 Member States carries greater weight than if those states acted individually. In particular, this is said to apply to those challenges which have an impact globally, for example

---

20 http://www.keepeek.com/Digital-Asset-Management/oecd/governance/international-regulatory-co-operation_9789264200463-en#page1

21 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32467/12-533-regulatory-cooperation.pdf

22 https://www.whitehouse.gov/sites/default/files/omb/inforeg/eo_13609/eo13609_05012012.pdf

23 http://www.donaldjtrump.com/media/the-elites-problem-with-donald-trump-hes-not-for-sale

climate change, and which are addressed through universal membership bodies such as the UN Framework Convention on Climate Change (UNFCCC). On the basis that continued co-operation on the international stage could be advantageous to the UK (and the EU), there is an argument that the UK should seek some continued cooperative arrangements with the EU, to allow the two bodies to work as a single entity in certain fields. Climate change might be one such example.

However, there is also a view that the EU does not perform a useful role at global level despite its constant attempts to do so in its constant quest for statehood. For example, the UK Chamber of Shipping feels that there is no advantage in the EU having a greater say in the IMO under the present circumstances or in the foreseeable future. Lloyd's Register says that the EU is not a "flag"; the Commission does not have international treaty obligations to treaty parties in the maritime world, unlike the UK is a "flag" and does have international treaty obligations. Thus, while the European Commission may take decisions "for the good of the Union", the practical consequences fall on the flag states. Those states, rather than the EU, should make the decisions. Furthermore, the Commission's attempts to forge common positions in IMO negotiations have often been counterproductive, making it harder to achieve desirable outcomes.[24]

At this point, the Government's February 2014 Review of the Balance of Competences is worth quoting at length to demonstrate how the EU neuters Britain's economic interests in maritime matters:

> "The revised International Convention for the Prevention of Pollution From Ships 1973 as modified (MARPOL) Annex VI entered into force on 1 July 2010. Regulation 13 of MARPOL Annex VI introduces three Tiers of mono-nitrogen oxides (NOx) emission standards from ships. The Tier III standards provide for 80 per cent reduction of NOx emissions by 1 January 2016. The superyacht (vessels commonly over 24min length) industry has been addressing the challenges of Tier III NOx emission standard since 2010. However, it is considered that sub SOLAS (International Convention for Safety of Life at Sea) Yachts of over 24 meters and less than 500gt cannot be built to be Tier III compliant as the existing technology is not yet suitable for installation on these vessels due to constraints on space, design restrictions and significant cost impact.
>
> As such the industry faces the loss of the most commercially vibrant market sector with significant threat to revenue and jobs. The UK has been actively involved in a correspondence group set up by IMO to discuss this issue, which ultimately led to the UK (the Maritime & Coastguard Agency [MCA], BMF and UK boatyards), working alongside other European industry members via ICOMIA and SYBAss (Superyacht Builders Association), to undertake a full technical, economic and social study to

---

24 Review of competences, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278966/boc-transport.pdfimo

support a proposal that the deadline for implementing the Tier III NOx emission standard in yachts of less than 500gt be postponed by three years.

The EU has 'observer status' at IMO and was kept informed of this work and the UK's intention to submit a paper to IMO's Marine Environment Protection Committee (MEPC65). In fact, the UK's paper had the support of a number of Member States, so the Commission was also aware of its importance to a significant number of Member States. However, it was not until the penultimate pre-MEPC65 meeting of the Commission and Member States that the matter became of interest to the Commission as an air pollution issue, rather than an economic one.

It was at this point that the Commission claimed competency and set about requiring the UK and other Member States to withdraw all support for the proposal. From this point on the Commission refused to consider the merits of the industry's proposal and Member States were threatened with infraction proceedings if they did not adhere to the Commission's competency. Both the MCA and the UK's permanent representative to the Commission worked hard to push the UK's position, but to no avail.

The only opportunity the Commission offered to contest this decision was if the Council of Ministers voted that Member States would retain competency on this matter, knowing full well that this issue could not be brought before the Council within the timeframe prior to the MEPC65 meeting.

Owing to this decision by the Commission, the UK and its partners had to find an alternative IMO member (from outside the EU) to submit the paper on its behalf. While the UK was able to secure the support of other IMO members to undertake this submission, the Commission's position still meant that the UK and other member states were unable to support or vote on the proposal at MEPC65. The Commission had, in effect, rendered 27 votes at IMO redundant."[25]

The action of the EU in finding a reason to impose itself over member states, and trying to subordinate them in negotiations is in the EU's 'DNA'. The UK would be better off in the international arena as an independent player seeking to restrain EU influence on such bodies unless it is tactically appropriate to allow it to play a part. However, this would also not preclude the UK forming ad-hoc alliances with the EU. For how to work the global system, the UK can again look to Norway, which, as the earlier Codex example illustrates, is a skilled exponent of the global system. It is able to exert considerable influence on its own account. In some respects, the Norwegians have far more power over the regulatory agenda than the UK. On global councils, they have equivalence with the EU.

---

25 Review of competences, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278733/consultation-response-balance-competences-uk-eu.pdf

The global origin of much of EU law is nowhere more evident than in the financial sector, where most of the provisions covering financial services start their lives outside Brussels.

The EU's measures on the adequacy of banking capital, known as the CR IV Package, are derived from the Basel III agreement crafted by the Basel Committee on Banking Supervision (BCBS) under the auspices of the Bank of International Settlements.[26,27] The new regulation also applies to the EEA but, outside the EU/EEA, the essence of the CR IV package would still apply to Britain as a party to the Basel III agreement. It would adopt it directly, rather than via the EU. The "Solvency II" package on capital requirements also has a global dimension. Specifically, Directive 2009/138/EC implements recommendations from the International Association of Insurance Supervisors, the International Accounting Standards Board, the International Actuarial Association and nine other agencies alongside the World Bank and the IMF

This is acknowledged in a House of Lords report on the post-crisis EU financial regulatory framework. With only a few exceptions, it is likely that the UK would have implemented the vast bulk of the EU financial sector regulatory framework had it acted unilaterally, "not least because it was closely engaged in the development of the international standards from which much EU legislation derives".[28]

One exception that stands out above all others is the Alternative Investment Fund Managers Directive (AIFMD) which is largely of EU origin.[29] This is seen as a building block of "Fortress Europe" — a more protective European market sheltered from competition. A recent survey had 68 percent of respondents believing that AIFMD will lead to fewer non-EU managers operating in the EU. Some 72 percent viewed the Directive as a business threat.[30]

As an EEA member after Brexit, Britain would probably have to retain its provisions, although not without a fight. It's one of the reasons why continued EEA membership for the UK after Brexit can only be an interim solution before a more permanent settlement can be reached for Eurozone, Non-eurozone and EEA countries. Of course one could argue that staying in the EU allows Britain to influence (i.e. stop) such legislation, except that the very existence of the AIFMD demonstrates Britain's lack of influence inside the EU in an area of national economic interest. Indeed in December 2014, a Europe Economics report for Business for

---

26 http://www.eba.europa.eu/regulation-and-policy/implementing-basel-iii-europe

27 http://www.bis.org/bcbs/basel3.htm,

28 House of Lords, European Union Committee 5th Report of Session 2014–15 "The post-crisis EU financial regulatory framework: do the pieces fit?" http://www.publications.parliament.uk/pa/ld201415/ldselect/ldeucom/103/103.pdf,

29 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:174:0001:01:EN:PDF

30 http://www.deloitte.com/assets/Dcom-UnitedKingdom/Local%20Assets/Documents/Industries/Financial%20Services/uk-fs-aifmd-survey-responding-new-reality.pdf

Britain concluded that 50% of EU measures for wholesale financial services would not have been introduced if Britain had been independent of the EU.[31]

At a technical level, it is the G20 working through the Financial Stability Board (FSB), which is in effect the "standards setters' standards setter" at global level. Founded in April 2009 in the wake of the global financial crisis, the FSB has a mandate "to coordinate at the international level the work of national financial authorities and international standard setting bodies and to develop and promote the implementation of effective regulatory, supervisory and other financial sector policies".[32]

Accounting standards, which are an important element in the Single Market are also an important part of the globalisation of financial services. An independent UK would not be disadvantaged by such standards as they are not generated by EU institutions—they are standards from the International Financial Reporting Standards (IFRS).

Such global dimensions mean that leaving the EU, per se, would not prompt any significant change in the way financial services are regulated. Furthermore, much the same costs would be incurred. A step back to an EEA position after a Leave vote would add on the benefit of protecting so-called passporting rights at the point of exit.

With the global financial services powerhouse of London, Britain needs to have its full voice in all global forums, unencumbered by the EU. The reasons HSBC recently gave for remaining in the UK after an anguished decision over whether to leave London for Hong Kong (notably not in Europe), apply to every bank that warns about Britain leaving the EU. Stuart Gulliver, HSBC's chief executive, said HSBC's current location "delivers the best of both worlds to our stakeholders." He added that Britain's "internationally recognised" regulatory framework and legal system, as well as its workforce, meant the UK should remain HSBC's home.[33]

So for financial services firms, there is no advantage to leaving London; it is a top global city that will remain a global hub in or out of the EU. As for Britain's "internationally recognised" regulatory framework, Britain has adopted global regulatory conventions made at the real top table and would continue to do so in or out of the EU.

ENTER UNECE

Of great relevance here is the UNECE—the United Nations Economic Commission for Europe, based in Geneva. The UNECE Transport Division hosts the World Forum for the Harmonisation of Vehicle Regulations (known as WP.29),

---

31 http://forbritain.org/EUfinancereg2.pdf

32 http://www.financialstabilityboard.org/members/links.htm

33 http://www.hsbc.com/news-and-insight/2016/hsbc-decides-to-remain-headquartered-in-the-uk

that establishes a legal regulatory framework for road vehicles and all related matters.[34]

This is the basic legislation which permits vehicles to be used on the roads, without which they cannot be traded — internally or across borders — and which permits the sale of safety-critical spare parts. There are currently 57 signatories, including the EU but also non-EU countries such as the major vehicle manufacturing countries of Japan and South Korea. Importantly, the EU has transferred regulatory authority on vehicle standards to UNECE, stating that "only UNECE documents determine the applicable law".[35] The EU has therefore stepped back from the role of originating standards for vehicle manufacturers in the territories of EEA member states. The role of UNECE is also recognised by the UK government. In a rare acknowledgement of the role of international bodies, it advises readers in its review of competences between the UK and the EU, in the transport sector, that:

"In many instances, EU action needs to be seen in the context of international arrangements at the UN Economic Commission for Europe (UNECE). For example, a 1958 UNECE agreement has been effective as the main international framework for the harmonisation of vehicle technical standards at the international level and recent regulatory developments at the EU level have seen Directives replaced with a number of UNECE Regulations."[36]

A key point here is that Norway is a full member of UNECE and takes an active part in the WP.29. As an independent nation, it represents itself in the committees and votes on its own behalf. That's despite having no indigenous motor manufacturing industry.

And that makes for an interesting and contrasting situation. The UK, as a member of the EU with its seat at the EU table, isn't allowed to vote on technical standards for motor vehicles where the decisions are actually made. We get a seat in Brussels, but no seat in Geneva where it really matters. On the other hand, Norway, which isn't a member of the EU, but is a member of the Single Market through the EEA, does get a vote in Geneva even though it doesn't have a car industry. It has more say in deciding on the standards to which our cars will be built than we do. To mangle a former British prime minister's phrase, we are "in Europe but run by Norway".

Yet standards harmonisation via UNECE is not confined to vehicles. In the agricultural sector, the EU has made great play of abolishing 26 of the 36 specific marketing standards for fruit and vegetables, including the notorious "straight cucumber

---

34 http://www.unece.org/trans/main/welcwp29.html,

35 European Commission website: Reference documents - Application of UNECE Regulations: http://ec.europa.eu/growth/sectors/automotive/technical-harmonisation/international/index_en.htm

36 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278966/boc-transport.pdf

directive".[37] However, replacement regulations need to conform to relevant UN-ECE standards.[38] In other words, the EU has not abandoned detailed marketing standards at all, it has simply acknowledged UNECE as the official standard-setting body… and UNECE has its own cucumber specification.[39] For cucumbers to be traded freely throughout the EU — or imported into the customs union — they must conform to this standard.

Looking at all its activities in the round, UNECE is a body with considerable regulatory breadth. It is not unreasonable to suggest that it could be expanded to take over from the EU in running the Single Market in future. Working within the aegis of the WTO's TBT Agreement, UNECE could be equipped to coordinate the production of Single Market instruments for the whole of continental Europe not just the EU/EEA, and then administer the market. In such a scenario, it would replace the EU as the dominant body and involve all European countries in the decision-making process, not just EU Member States. At that point, the secondary status of the EEA states would cease to apply.

Such a scenario would conform with the Foreign Affairs Committee's idea of "radical institutional change" to give decision-making rights in the Single Market to all its participating states, on an equal footing.[40] By this means, the EU-centric "Europe of concentric circles" would be avoided, and with it any idea of first class and second class members. Each body, such as EFTA and the EU, has equal standing, creating at last a community of equals. The UK's exit from the EU could well force this process that would result in a networked and agile Europe rather than the technocrat-led, sclerotic and unbalanced Europe that we have today.

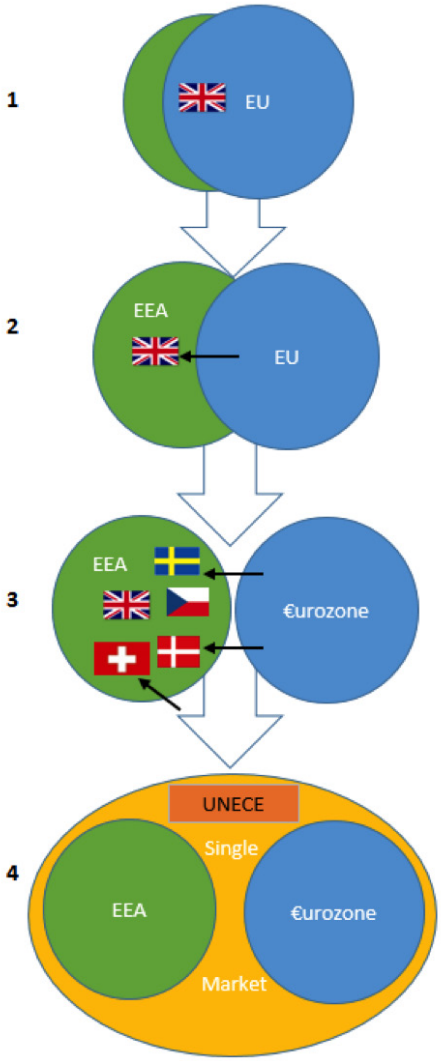
---

37 The Daily Telegraph, Bent banana and curved cucumber rules dropped, 24 July 2008, http://www.telegraph.co.uk/news/worldnews/europe/2453204/Bent-banana-and-curved-cucumber-rules-dropped-by-EU.html

38 http://www.unece.org/trade/agr/standard/fresh/ffv-standardse.html,

39 http://www.unece.org/fileadmin/DAM/trade/agr/standard/fresh/FFV-Std/English/15Cucumbers_2010.pdf

40 HoC, The future of the European Union, http://www.publications.parliament.uk/pa/cm201314/cmselect/cmfaff/87/87.pdf



What is currently absent from the UNECE structure is a formal court, with nothing comparable with the European Court of Justice or the EFTA Court. But then again as international arbitration is a developing field and forms the basis of the controversial Investor-State Dispute Settlement mechanisms adopted for TTIP, one would expect the parties to agree a form of dispute settlement specifically to deal with any enhanced UNECE agreement.

There are clearly obstacles to such a roadmap being achieved, not least because it requires the EU to relinquish some control. But a chain reaction starting with Brexit could well lead to such an outcome in the long term.

CONCLUSION

In the coming referendum campaign we will hear much of what the EU supposedly does for us, yet the reality is that from disability rights to car standards and bank solvency, a myriad of global organisations now drive most of what we implement as law. The EU lacks the resources to regulate to this extent so it outsources and copies global agreements verbatim. We do not need the EU to do that for us and in all

instances we are better off having an independent right of veto and parliamentary scrutiny.

There is little likelihood of us leaving the Single Market in the first instance — a UK government after a Leave vote will be seeking an evolutionary Leave proposition starting with an EEA position. But what we gain is our full voice where it matters and an ability to forge our own trade deals in future, albeit using the established principle of continuity (after secession) to safeguard those third country trade agreements the EU already has in place on our behalf.

Contrast that with what we are being asked to remain in. The offer on the table is to stay in the EU as we have always known it. That means obeying all these global rules and regulations with a muffled voice in how they are made, and often no independent right of veto. Not only are we constrained at the top tables of global governance where Norway, Australia and others have their full voice, we are also barely heard at the top table of the EU since the Eurozone members have primacy over policy and we cannot even get a reasonable renegotiation outcome when threatening to exit.

David Cameron's and George Osborne's attempts at reforming the EU have failed on almost every level such that they barely mention the renegotiation outcome during the referendum campaign. The EU cannot be reformed, it will resist any attempt to be reformed, and it cannot serve the best interests of its members or even Europe. The EU is now about the preservation of the EU political body that serves to advance the supranation-building agenda of its architects.

The rhetoric about the UK being isolated and going it alone sound out of place when you consider the global landscape. Other countries around the world "obey all the rules of the club" (the global one) yet they are not obliged to surrender their independent voice at the top table or neutralise their democracy to the same extent the UK has as an EU member. And their chain of accountability is shorter, with just one step from national level to global level.

What we can also say is that if the EU didn't exist, we would not now be in a rush to invent it. And if it did exist, we wouldn't join it. We would be looking to formalise and democratise the UK's global governance involvement, bringing the UK's full voice to it as an open, global trading nation.

The EU is not about trade, it is not about cooperation, it doesn't sit comfortably with multilateralism and probably never will — it is the product of a bygone age when everything was different and people still stressed about Germany invading its neighbours. All that the EU does is with the intent of affording itself more power and more control. It is here where nuisance turns to malevolence and becomes an affront to democracy.

The global single market is overtaking the EU, and since we are not in the Euro and have no need for political integration, it is time to leave and take our place as a truly global citizen.[41]

41 For more, see "The Market Solution" published by Bretwalda Books.