

Regulators' Forum

Brexit poses a number of key challenges to domestic regulators. These relate to three central questions. One is to understand the regulatory 'stock' that is shaped by EU provisions and how this stock can be reviewed and changed domestically and (in the future) at the EU level. There are questions about co-ordination across government, i.e. agencies and central government departments as well as devolved administrations, and then there are questions about planning for future events. The following provides an initial contribution to the discussion.

EU membership has left a considerable footprint on different regulators - some more than others and in different ways. For some, this footprint relates to the formal provisions that govern regulatory requirements for businesses, for others, it involves cross-boundary information-sharing platforms, while for others again, it is about the potential implications of Brexit on staff moral and levels among regulatory and regulated organisations alike. It also has implications on current debates at the EU level and the ability of UK regulators to shape policy debates to the same extent as prior to the referendum. Brexit has also started to affect regulatory enforcement: Brexit-related changes in business behaviours need to be understood and can inform regulatory practices.

Future standards are a major issue. Regardless of the implications of an 'appeal bill', there are questions as to how to inform future changes at the European level where in the past regulators have been very pro-active and successful in shaping EU provisions. There are also questions about compliance - transposition remains a legal requirement and is likely to be monitored by the EU institutions. The threat of infringement procedures has therefore not gone away.

In view of the current discussion about Brexit, and the absence of a clear understanding of what the final arrangements might look like, it is likely that regulators will have to take a wait and see approach. Playing through different scenarios is not straightforward as too many questions remain open.

Such an immediate future requires capacity at the centre of government. One capacity requirement is to give departmental direction as to how to prepare for Brexit and to ensure that areas of potential overlap across regulatory institutions will be considered. The other capacity is to be able to plan ahead - it is not clear how preoccupied with Brexit matters different departments will be. There are also issues of how regulators and central government departments are dealing with devolution.

At the same time, Brexit can also be seen as an opportunity to inform ministerial departments about how to contribute to their domestic policy goals and how to update regulatory and other standards that otherwise might not have been possible as such proposals would not have enjoyed the support of other member states. Another opportunity is to address existing weaknesses in frameworks that are in place due to EU provisions. Such debates might prove tricky. Businesses that are interested in dealing with the European Union are likely to demand the maintenance of the status quo, if not the shadowing of evolving EU-level standards. At the same time, other

businesses might be opposed - and such tensions might become more problematic if there was a central government drive to 'reduce' the regulatory burden. EU frameworks have also supported organisational independence from direct political interference. Post-Brexit there might be a growing temptation to exploit Brexit in order to exert ministerial authority to alter regulation in biased ways. However, this overall discussion depends on the broader interest of government in pursuing a distinct regulatory agenda.

However, for regulators it is not just the direct implications of dealing with formal regulation; there are also potential issues with regard to regulatory capacity in terms of attracting international staff, and in dealing with potential staff implications for regulated organisations. In some sectors, austerity had already generated de-motivation and the Brexit vote has accelerated the decline in public service motivation. The financial viability of certain regulated organisations might also be affected given the decline of the British Pound and exchange rate volatility. This might have implications for overall regulatory quality, and might lead to implications for understandings of what regulators might expect in terms of quality. Methodologies might not have to change, but there might be a growing need to account for and tolerate diversifying performances.

In general, studies suggest that business dislikes 'uncertainty' - it is not just uncertainty in terms of the standards that might be changing, but also that relationships are likely to change. Regulators too require a degree of predictability in terms of a government 'big picture'. In coming years, therefore, regulation is likely to become more unpredictable.

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