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# EU Regulation: The Good and the Not so Good



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## Introduction

The extent to which European Union (EU) regulation helps or hinders British businesses has been the subject of considerable debate. Much of that debate has focused on the question of *how much* regulation the EU has adopted, and not the *quality* of it. A previous Senior European Experts paper looked at the volume of EU legislation and its impact on the UK; this paper looks at the quality of EU regulation and at international comparisons of UK business regulation.

## Why the EU regulates

EU regulation removes pre-existing national barriers to trade between its 28 Member States and prevents new ones. To achieve this the Member States have agreed that the EU should regulate certain areas of economic activity.<sup>1</sup> At the heart of EU regulatory policy is the Single Market – the tariff and non-tariff barrier free area of 500 million people, covering €13 trillion, which is the world's largest economy.<sup>2</sup>

The Single Market's regulatory policies are designed to facilitate the free movement of goods, capital, services and labour.<sup>3</sup> By removing or reducing barriers to cross-border trade and investment, the EU supports economic growth. Before the Single Market developed, trade between European countries was restricted by extensive barriers, many of them related to product rules and national restrictions. For example, British made chocolate could not be exported to Belgium because of product restrictions there, German rules on the purity of beer excluded UK beers from its market and most UK financial services firms could not operate in other EU Member States without being separately authorised in each. The Single Market regulations have replaced these kind of national rules with a single set of EU-wide rules, creating a level-playing field for business.

Employment regulations protect employees in a market where there is free movement of labour. For example in terms of pension or other social security entitlement. In addition, the EU legislates in support of broader employment goals, such as greater equality between men and women.

EU regulation on the environment reflects public pressure for higher standards right across Europe and the fact that pollution does not stay within national borders. Regulations on

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<sup>1</sup> The competences of the EU are set in Articles 2-6 of the Treaty on the Functioning of the European Union (formerly known as the Treaty of Rome): see *Consolidated Version of the Treaty on the Functioning of the European Union*, arts. 2-6, 2012 OJ C 326/47, pp. 50-53 (hereinafter TFEU)

<sup>2</sup> See CIA, 'The World Factbook: European Union', 17 May 2016; nominal GDP (official exchange rate)

<sup>3</sup> TFEU, art. 26, p. 59

plant health and invasive species are designed to protect the natural environment; the Habitat Directive protects wildlife. Having one set of environmental rules also provides clarity for business across the Single Market.

### **“Good” and “not so good” regulations defined**

Defining “good” and “not so good” regulations is not straightforward. In part this is because it involves value judgements. For example, a businessman wanting to maximise his profits may see regulations requiring paid holidays for staff as an unfair imposition which increases his costs; but to his employees such regulations could significantly improve the quality of their lives. Whether that regulation is “good” or “bad” depends on the value you place on paid holidays at work.

EU regulations, and proposals for regulations, need to be judged by more objective criteria, for example:

- Necessity – is it really necessary to regulate, for example, for the Single Market?
- Level – is this something that cannot be done at Member State level? Will it work? Regulation must be effective, otherwise it is pointless and possibly counter-productive
- Proportionate – is the scale of regulation proportionate to the problem identified?
- Cost – what will the cost of this regulation be to those affected by it and is this cost proportionate?
- Small businesses – does it take account of the special circumstances of small and medium-sized businesses?

The EU, like the UK government and parliament, uses impact assessments to assess whether proposed regulations meet these kinds of tests. If done well, impact assessments should prevent unnecessary, disproportionate and costly regulation. Studies of EU impact assessments show that they have improved over time and are now far more likely to identify and quantify the costs and benefits of the proposed regulation. They are also now more likely to seek to place a monetary value on the benefits and to consider whether another form of action, such as self-regulation would be more effective.<sup>4</sup>

But other checks and balances are needed to ensure good regulation too, including effective oversight by Ministers from the Member States (who must approve legislation in the Council), and by national parliaments and the European Parliament. The European Commission proposes regulations which then proceed by the normal democratic process for debate in the Council and the European Parliament before becoming law. Since the Lisbon Treaty there has been a system by which national parliamentary chambers can object to proposed EU legislation on the grounds of subsidiarity or proportionality and, if enough of them do so, ask the Commission to modify it or withdraw it. A new procedure enabling a group of national parliaments to block proposals for legislation (55 per cent of

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<sup>4</sup> See Oliver Fritsch, Claudio M. Radaelli, Lorna Schrefler & Andrea Renda, *Regulatory Quality in the European Commission and the UK: Old questions and new findings*, Centre for European Policy Studies, Working Document No. 362, 26 January 2012, pp. 7-10

national chambers) was part of the Prime Minister's February 2016 package and will be introduced if the UK votes to Remain on 23 June.

### **Modernising EU regulation: the Juncker Commission**

The EU has had a rolling programme for reducing, modifying and repealing regulations since 2006, known as REFIT, this has led to the withdrawal of almost 400 legislative proposals and the repeal of many others.<sup>5</sup>

The European Council's strategic guidelines for the EU from 2014-2019 emphasised the importance of the EU only acting in areas "where it makes a real difference" and that it should "refrain from taking action when Member States can better achieve the same objectives".<sup>6</sup> In line with this the Commission's work programme for 2015 and 2016 was much smaller than in the past, with around 100 proposals for legislation being withdrawn and all new proposals subjected to a more rigorous system of appraisal.<sup>7</sup>

### **Examples of good and not so good EU regulation**

#### Good – the single administrative document

Prior to 1988 hauliers had to carry large numbers of documents with them in order to get through border checks. These included customs forms for each country they were entering and documents specific to the load they were carrying. At that time a lorry driver taking a load from Manchester to Milan had to carry over 80 separate documents. The introduction of the single administrative document by the EU in 1988 ended all that bureaucracy; today road hauliers only need to carry the single administrative document, their passport and their driving licence.

#### Good – product definitions

In order to remove national rules the EU adopted a large number of regulations in the late 1980s and early 1990 to enable products to be defined for the purposes of the Single Market. Although this meant creating new rules, in the process significant numbers of national rules were scrapped and opportunities to trade across borders made far easier. UK chocolate manufacturers and brewers were amongst the beneficiaries.

#### Good – the de-regulation of civil aviation and telecommunications

Some of the best regulation is that which removes existing regulations. In the case of civil aviation the market in Europe was highly restricted up to the 1980s, with most Member States imposing restrictions on routes, fares and access to airspace for foreign carriers. The de-regulation of air travel in the EU has been of great benefit to consumers; it has dramatically lowered fares; doubled the number of routes within the EU; created competition on routes where there was none before; and opened up new markets to tourism and investment.<sup>8</sup> Without it, as the CEO of Easy Jet said recently, the company would not exist.

<sup>5</sup> See European Commission, 'REFIT – making EU law lighter, simpler and less costly', 17 December 2015

<sup>6</sup> European Council, *European Council meeting (26 and 27 June 2014) – Conclusions*, ST 79 2014 INIT, 27 June 2014, Annex I, p. 15

<sup>7</sup> See European Commission, *Better regulation for better results – An EU agenda*, COM (2015) 215 final, 19 May 2015

<sup>8</sup> European Low Fares Airline Association, *Liberalisation of European Air Transport: The Benefits of Low Fare Airlines to Consumers, Airports, Regions and the Environment*, 1 November 2004; see also HM Government, *HM Treasury analysis: the long-term economic impact of EU membership and the alternatives*, Cm 9250, 18 April 2016, p. 57

Telecommunications was another tightly regulated market until the EU ended state monopolies and opened up services to competition. Prices for consumers dropped 10 per cent in two years after deregulation.<sup>9</sup> Further reductions have been achieved in mobile communications, with mobile phone roaming charges to be abolished altogether in 2017.

#### Good – passporting for financial services

“Passporting” is a major advantage of EU membership as it enables UK financial services providers to benefit from a range of passports allowing them to do business with or sell services to clients in the rest of the EU. It offers financial services businesses authorised in the UK, of whatever national origin, the ability to offer services remotely in the 27 other EU Member States, without seeking separate authorisation from those Member States’ regulatory authorities; and businesses from other Member States to offer services on the same terms in the UK. The passporting system has been critical to maintaining the strength of London as the EU’s financial centre.<sup>10</sup>

#### Good – car safety

All countries require cars and other vehicles to be built to standards which increase safety and protect the public. In the EU there is a common set of such technical requirements, applying across the Union. British manufacturers thus have to comply with a single set of requirements rather than 28 national ones: a major benefit for our car industry and all in this country whose prosperity depends upon it.

#### Bad – the shape of fruit and veg

The United Nations Economic Committee for Europe (UNECE) had laid down standards for fruit and vegetables which were intended to facilitate trade and replace national rules. The EU adopted these standards in 1988. The effect of the rules was that misshapen fruit and vegetables, and those that did not meet the standards laid down in the regulations, were not sold, even though they had been harvested.<sup>11</sup> These regulations became notorious and were widely criticised; by 2008 consumer attitudes to misshapen fruit and vegetables had changed and the EU repealed the main regulations and allowed Member State governments to decide whether to apply the remaining standards.<sup>12</sup> The EU can be criticised for having been too willing to accept the arguments of retailers that such rules were needed in the first place and too slow to respond to changes in customer attitudes.

#### Bad – proposed regulation on olive oil containers

In May 2013 the EU Agriculture Commissioner proposed to his Commission colleagues a new regulation to tackle fraud and quality issues in the provision of olive oil in restaurants. He said that instead of jugs and dipping bowls being placed on tables, sealed containers would have to be used instead. There was an outcry in several Member States at what was seen as an example of ludicrous over-regulation and a few days later the Commissioner announced that it would not be pursued. While there have been scandals over the sale of

<sup>9</sup> Cited in European Central Bank, *Price effects of regulatory reform in selected network industries*, 21 March 2001, p. 17

<sup>10</sup> See HM Government, *Review of the Balance of Competences between the United Kingdom and the European Union: The Single Market: Financial Services and the Free Movement of Capital*, 22 July 2014, pp. 39, 61, 114

<sup>11</sup> Katrin Milzow, ‘The EU’s market standards for fruit and vegetables: the end of a myth?’, Fondation Pierre du Bois, Current Affairs in Perspective Paper No. 9, 9 November 2009

<sup>12</sup> See European Commission, *The return of the bendy cucumber: ‘wonky’ fruit and vegetables back on sale from 1st July*, IP/09/1059, 30 June 2009

sub-standard or indeed falsely labelled olive oil (in the most infamous case in Spain in 1981 rapeseed oil intended for industrial use was relabelled and sold as olive oil; 1,000 people died and 24,000 were injured) the solution proposed by the Commissioner appeared disproportionate and a protectionist measure likely to increase the profits of producers.<sup>13</sup>

### Bad – fish discards

The problem of fishermen catching the “wrong” fish and having to discard them (i.e. throw dead fish back into the sea) is shared across the world’s fishing grounds. Most countries operate quota systems for fish stocks in their waters and have policies to deal with the practice of discards.<sup>14</sup> The EU’s Common Fisheries Policy (CFP) included quotas and discards. The scale of discards became a political issue as public opinion turned against the waste involved. Major reform of the CFP from 2012 onwards includes a timetable for the complete scrapping of the discard system by the end of 2016.<sup>15</sup>

### **“Gold-plating”**

Many complaints about EU regulations relate to occasions when the British Government or local government, in implementing an EU framework directive, made it more rigorous than required. One recent example of this phenomenon was Cardiff City Council’s decision, when implementing EU recycling targets, to include a prohibition on disposing of tea bags in general waste. This was not required by the EU regulation.

### **UK business regulation compared**

One of the arguments of those campaigning for the UK to leave the EU is that the UK economy is held back by the burden of EU regulation.<sup>16</sup> As explained above, much EU regulation has had the effect of opening up markets in Europe, to the advantage of British companies (which is one reason why the majority of them support the UK remaining in the EU). But is there any substance in the claim that EU regulation places a disproportionate burden on the UK economy, when compared to those of our rivals?

The UK compares well with other countries (both inside and outside the EU) in league tables published by the OECD on product market regulation, on barriers to trade and investment, on state control and on barriers to entrepreneurship. The UK’s position in the OECD league table of 34 major industrialised countries (which includes Australia, Japan and the USA as well as non-EU countries in Europe such as Norway and Switzerland) for the most recent data is:

<i>Product market regulation :</i>	2nd
<i>State control :</i>	2nd
<i>Barriers to trade and investment :</i>	4th
<i>Barriers to entrepreneurship :</i>	9th

<sup>13</sup> See Emilio Gelpí *et al.*, ‘The Spanish Toxic Oil Syndrome 20 Years after Its Onset: A Multidisciplinary Review of Scientific Knowledge’, *Environmental Health Perspectives*, 110(5), 2002, pp. 457-464

<sup>14</sup> See, for example, Kieran Kelleher, *Discards in the World’s Marine Fisheries: An Update*, UN Food & Agriculture Organisation, FAO Fisheries Technical Paper 470, 18 May 2005

<sup>15</sup> European Commission, *CFP reform – the discard ban*, 17 January 2012

<sup>16</sup> See, for example, ‘EU red tape is suffocating UK economy and Brexit can set us free’, Allister Heath, *Daily Telegraph*, 29 April 2016

In the first two cases it is another EU country that comes top (the Netherlands), in the third and fourth other EU Member States do better than the UK. Despite being outside the EU, Norway and Switzerland do worse than the UK in each of these categories.<sup>17</sup>

Other surveys by the World Bank and the World Economic Forum come to similar findings. In the World Bank's *Ease of Doing Business Index* the UK is sixth in the world - above the USA – and it has been second amongst the EU Member States for the past five years.<sup>18</sup> According to the World Economic Forum, the UK is tenth out of 140 countries when ranked for competitiveness.<sup>19</sup>

The contention that the UK economy is held back by EU red tape is not supported by the evidence from these international assessments. Nor is it supported by basic economic data; if the UK is being held back by EU regulations, why is Germany, for example, exporting so much more to India and China than the UK? The fact that the UK is outperformed in various international league tables by other EU Member States suggests that there is more that the UK can do domestically, while remaining in the EU, to improve its comparative economic performance.

**May 2016**

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<sup>17</sup> Isabell Koske *et al.*, *The 2013 update of the OECD's database on product market regulation*, OECD, Economics Department Working Papers No. 1200, 31 March 2015, p. 29

<sup>18</sup> Cited in HM Government, *supra* n. 10, p. 58

<sup>19</sup> *Ibid.*



## Senior European Experts

The Senior European Experts Group is an independent body consisting of former high-ranking British diplomats and civil servants, including several former UK ambassadors to the EU, and former officials of the institutions of the EU.

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