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Does Brexit Mean the End of Regulatory Cooperation in Financial Services and Life Sciences?

By Charles Hastie

It has been a long-standing tenet of pro-Brexit campaigners that excessive European regulation serves to stifle U.K. industry; this claim played its part in the U.K. voters' ultimate decision to withdraw from the European Union (EU). For pro-Brexit campaigners, withdrawal provides an opportunity to build a bonfire of red tape, liberate the British economy and secure a killer competitive edge in the global marketplace.

However, the early indications are that this may be a misreading, on a number of levels. It turns out that harmonization of regulation is not just a construct of the European Union, but rather an international phenomenon that goes hand in hand with the development and prosperity of a global marketplace.

By examining the impact of Brexit on two key industries, financial services and life sciences, we can see some striking similarities which may be harbingers for the future of regulatory cooperation. For both industries, it is parochial regulatory regimes that create most barriers to trade. This is why international efforts to globalize commerce are focused on harmonizing regulation among trading partners. Any attempt by the U.K. to go it alone is likely to be seen as a retrograde and protectionist step, with adverse consequences for trade.

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UK Financial Services Regulation

In the case of U.K. financial services, most of the key post-financial crisis regulatory initiatives are of international, rather than European, origin. In Pittsburgh in 2009, at the height of the crisis, the G20 group of nations came together to ensure that banking problems were dealt with in an internationally harmonized manner. For members to implement tough policies that would work, everyone had to feel they were on a level playing field. Going it alone was not an option that would succeed.

For example, as an outcome of the 2009 Pittsburgh meeting, the U.K. committed to the margining of uncleared derivatives, a requirement aimed at decreasing the risks of transactions that are made directly between two market participants and outside of the control of an exchange or clearing house. The U.K.'s commitment to this rule transcends its membership of the EU.

Meanwhile, the new chief executive officer of the U.K.'s Financial Conduct Authority (FCA), Andrew Bailey, has signaled his support for the U.K.'s ongoing membership in the EU Single Market. Politically speaking, it is unclear whether the U.K. government will be able to retain membership while also leaving the EU. However, any potential membership is predicated on regulatory harmonization across member countries, a harmonization that can only be achieved by adhering to standards on the continent. The reason for this is to *reduce* red tape and barriers to trade. An EU citizen has no need to distinguish between, say, an asset manager located in Ireland and one located in Italy, because they largely operate under the same regulations.

A local regulator has no need to distinguish either. This in turn facilitates trade between countries and thus supports one of the FCA's regulatory objectives—to promote effective competition in the interest of consumers. As Bailey put it, ''there is no doubt that our objective of ensuring healthy competition in UK financial markets is supported by cross-border trade in these financial services . . . for internationally traded services of the type we regulate the key to sustained international trade is robust global standards of regulation.''

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Pharma, Medical Devices, Life Sciences

There are many parallels with the pharma and medical devices industry. The desire for a global marketplace is reflected in a drive toward global standards. The current negotiations on the U.S.-EU Trade deal (TTIP) address, among other things, regulation of medical devices. Proposals include the harmonization of Quality Management System audits, a shared system of Unique Device Identifiers and a consistent system of data submission for manufacturers seeking to market in the EU and U.S.

In the latest development, the EU has called for better alignment of its regulations with the U.S., with the European Commission saying it hopes to ''cut red tape and costs'' to facilitate universal production and oversight of medical devices across the two continents.

Meanwhile, in May 2016, the World Health Organization released a proposed Global Model Regulatory Framework for Medical Devices, recommending regulatory convergence and encouraging member states to adopt internationally harmonized principles and technical guidance.[1]

The pharma industry seems to be fretting about Brexit in precisely the same terms as the banking industry. As with financial services regulation, most pharmaceutical regulation in the U.K. derives from the EU. A post-Brexit revocation of EU regulation is an option, but one that is opposed by the industry. The Association of the British Pharmaceutical Industry, the BioIndustry Association and Association of British Healthcare Industries have all come out in favor of the existing EU regulatory framework[2].

Some similarities between the banking and life sciences industries are almost uncanny. The Financial Times reports that Europe's banking watchdog, the European Banking Authority, is set to leave its London base for Europe in response to the Brexit vote[3]. Meanwhile a number of EU member states have staked their claim to host the European Medicines Agency (EMA), which currently resides—along with 600 employees—in the U.K. The EMA is also strongly expected to leave.

This feels like the bonfire of something, but it isn't regulation. On the contrary, it seems that the U.K.'s chances of surviving in the global marketplace may well depend on the extent it chooses to keep current regulations and stay in harmony with its international trading partners.

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[1] See http://www.who.int/medicines/areas/quality_safety/quality_assurance/ModelregulatoryFramework-MedDev-QAS16-664.pdf.

[2] See http://www.abpi.org.uk/media-centre/newsreleases/2016/Pages/UK-pharmaceutical-industry-to-support-the-UK-remaining-in-Europe.aspx.

[3] http://www.ft.com/cms/s/0/826adc94-3de0-11e6-8716-a4a71e8140b0.html#axzz4H6sweurg.

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