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The Way Forward for the European Regulatory System*

**EMERGING INFLUENCES ON THE EVOLUTION  
OF THE EUROPEAN REGULATORY SYSTEM**

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1. Just when we all thought that a stable picture of the European regulatory system might be in sight and the single market close to completion ..... This paper argues that several factors of change are evident which might well alter in important ways the contours of the west European regulatory system that has grown up in the European Union over the past decade. ~~These factors, in no intended order of significance, are:~~

- i. the intrusion of citizens' resistance to certain kinds of European regulation;
- ii. the imbalance in the European integration process between forces of economic integration and forces of social differentiation;
- iii. the need to accommodate the accession of central and eastern Europe within the single market;
- iv. possible changes in the prevailing political constellation (ideas and governing elites); and
- v. a contestation of the orthodox Community method and institutional framework for devising and implementing European legislation.

2. The paper argues that these factors, ~~both each~~ individually and all in combination, may limit the relative autonomy of the regulatory system that was kickstarted by the 1992 programme. The regulatory process is likely to become more prone to influences from the political and the social domains, as well as susceptible to more active external influences (both EU enlargement and WTO developments). The probability is then that a less insulated regulatory process will become more variegated, more uneven and less predictable in its content and its impacts.

### Citizens' resistance

3. It should not be a surprise that points of resistance to European regulation from citizens are relevant to the process. Note here the use of the term 'citizens', not 'consumers'. The impact of consumers and consumerism on European regulation is also important, and is already, to an extent, accommodated within the process. We have argued elsewhere (Wallace and Young 1997;

Young 1997) that consumer ideas and consumer preferences are inserted more strongly into the regulatory process than is generally recognised, partly by consumer groups themselves, but more pertinently by producers who are also consumers, by the services of the Commission, and by governments which on specific issues argue the consumer side of the case.

4. The point about citizens is different and connotes essentially two different points. The first is that there have always in the EU debate been particular regulatory issues on which citizens' views have a particular impact – food standards, and animal and plant health are the clearest cases. The second is the persistence of strong differences of taste between countries which generate political, not just consumer, demands for differentiated regulation.

5. First, then, food, animal health, and the infamous phytosanitary .... These have throughout the development of the single market been the most stubbornly difficult and slowest areas of collective legislation. The dreadful arguments about BSE, which erupted in 1996, are only the most dramatic example and have already caused changes of procedure in the UK and in the European Commission, as efforts are made to separate producer from consumer concerns. But, as the BSE story reveals, the heat and passion generated over this case is more than a story of consumer concern; it also reaches deep into the differing political cultures of the member states and has been met by a form of direct action with large economic impacts on, in this instance, the beef market. It was direct citizens' protests in the UK on the transport of live animals that provoked a reconsideration of European regulation. Similarly the recent EU/US arguments about hormone-fed beef and genetically modified soya have revealed an intensity of public concern with suggestions that food is being tampered with. There is enough evidence here to suggest that the need to respond to public concerns is somehow or other going to have to be reflected in the regulatory process. In a period of anxiety about whether or not the EU itself can be seen to carry

legitimacy, we should expect senior policy-makers to be under pressure to find convincing ways of responding.

6. Secondly, differences of taste have been included already in the basic treaties governing the EU. The Single European Act (SEA) contained the famous provision (Article 100a.4 and 5) admitting that member states might plead special local reasons (building on Article 36) so as not to apply a harmonisation measure. The initial test case was about Danish beer bottles, a precedent given stronger status in the 'Danish Decision' from Edinburgh 1992. In the Acts of Accession for Austria, Finland, and Sweden various similar reservations were accepted to encompass differences of taste that were in each case argued to be politically potent: Austrian transit; Swedish snuff; Nordic alcohol restrictions; environmental and worker safety; and so forth. The entrenching of subsidiarity in the Treaty on European Union (TEU) is another version of the same preoccupation.

7. At one level it is easy to dismiss such cases as limited examples of national eccentricity and to argue that they have relatively limited externalities for other member states. However, surely there is more to the phenomenon than that. It should be seen in the context of 'Brussels' being blamed by public opinion in many member states for 'imposing' intrusive regulation that seems at odds with local practice and preference. Tempting though it may be to shrug off popular concerns about straight or crooked cucumbers, pasteurised or unpasteurised cheese, or even prawn-flavoured crisps, it is on issues such as these that part of the public image of the EU is defined. Hence we should expect national politicians to be under pressure to protect such differences of taste by exceptions, derogations and suchlike to European regulations.

**Pressures for social differentiation**

8. In earlier periods there was an implicit division of labour and (more or less) a synergy between a European-level development of certain economic rules and a country-level development of social rules and provision, facilitated also by the retention of some economic powers at the country level. Several factors have thrown this synergy into question. The moves towards economic and monetary union (EMU) have altered the division of labour and focused some of the demands for social cushions in different ways. The pressures of international competition have made the retention of social generosity harder to underpin and intensified competition within the EU between different alleged 'social models', as well as in relation to third countries. The rigour of European rules and the greater facility of the EU in generating rules than in providing distributive policies also channels pressures to meet social demands more to national level policy than it sustains claims for European-level social measures. And all of these factors take on sharper contours if one envisages an EU significantly enlarged eastwards.

9. We should perhaps therefore expect less a shift towards European-level social policy and rather moves within individual member states to retain a freedom of manoeuvre to maintain forms of social differentiation. Recent experience in the Netherlands is instructive here in pointing up a model of domestic social adjustment in a context of accepted and intensive European-level economic regulation. What remains to be seen is what toeholds of social regulation at the European level can be retained in circumstances in which it on the issues of social concern (rather than broad economic policy) that national politicians will be most able to project an individual profile to their electorates.

#### **Accommodating eastern enlargement**

10. The experience so far has been to adopt regulation not by a race to the bottom but by working to relatively high product and process regulation. To extend comparably high standards across eastern Europe in the short-to-medium term is simply unrealistic and for the candidate countries undesirable (Smith et al., 1996).

The sensible policy would be to insist hardest on product standards being applied early by the CEECs, in order to free up trade, but to introduce high process standards only more gradually. Whether and how this is to be done depends on how eastern enlargement is managed and on what is determined as necessary pre-accession adjustment and what could be left to post-accession transitional arrangements. If it is agreed that post-accession transitions are acceptable, the implication is that there will be a dual regulatory regime for some time in an enlarged EU. But this would also be a regime in which new member states would be full participants in the setting and revising of regulatory arrangements after their accession. We should surely expect this bifurcation to alter some of the dynamics of (pan-) European regulation. The alternative of maintaining a high threshold for pre-accession adjustment would have a serious delaying impact on the eastern enlargement. While a wholly plausible scenario, not least since some west European producers are currently benefiting from lower process standards to the east (especially environmental and social), the political consequences of such a delay are not trivial, nor the economic consequences for the candidates.

#### **A changing political constellation**

11. The late 1980s and early 1990s witnessed a form of policy convergence among EU member states on shared precepts of market liberalisation and a recast boundary between public and private sectors in the economy. It might be tempting to conclude that this convergence has embedded a kind of settled and durable consensus that can continue to provide a shared foundation for the future development of European market regulation and also for the establishment of EMU. One might add that here the UK might also be a pioneer, as it was in trail-blazing for neo-liberalism in the 1980s, in so far as Tony Blair's 'new Labour' amounts to an endorsement by the erstwhile left of similar market philosophies. But it is far too soon to view this as a trend either for the UK, or, more importantly, in the continental heartland of the EU. Germany and France will be more important

testbeds for the durability of market-prioritising policies as the baseline for both national and European policies. As both the electoral pressures in both countries show, and as some of the commentary on the consequential dilemmas shows (Streeck, 1996), nothing can be taken for granted on this front.

12. The impact of changes in the political constellation of underlying doctrines and governing elites may well show itself more sharply on issues other than the regulatory. The plans for EMU are already generating tensions; and the revision of the 'financial perspective' (ie the EU's budgetary arrangements) due in 1998/9 will be a tough test. At a minimum negotiations on these issues will distract time and energy from the regulatory agenda of the EU. But if the negotiations prove highly contentious they could erode the consensus that enabled the single market to be consolidated.

#### **A contested Community method**

13. All those concerned with consolidating the single market agree, first, that its 'completion' requires serious additional efforts and, second, that its success depends on more stringent forms of implementation than have yet been put in place (Sutherland Report 1994). The vehicles for achieving these further goals are generally argued to require a reassertion of the 'Community method', in the sense of enabling the Commission and the European Court of Justice (ECJ) to fulfil their classic functions, as well as an improvement in the partnership between European and national implementers. In addition there is a debate about drawing on national experience (in Germany for competition policy, in the US for models of independent regulatory agencies) to devise new regulatory mechanisms for the EU.

14. Yet there is a gap between this cool-headed analysis of what is needed to facilitate effective market regulation and the broader discussion of institutional reforms. In the current

proposals that would make the EU institutional model more complex, despite the formal protestations that a simplification of the model would be helpful. The draft texts on 'reinforced cooperation' (or 'flexibility') are an extreme case of adding complexity and, potentially, of undermining the Community model. Suggestions from some quarters that the ECJ's powers might be circumscribed are another case in point. The potential annexing of the Schengen Agreements to the 'Treaty of Amsterdam' could introduce further legal uncertainties into the European legal system. The reluctance of member governments to consider reforms that would help the Commission to be more effective (size of the College, and risk of its explicit 'nationalisation') or usefully add relevant complementary powers (notably as regards an enlarged scope for Article 113) are all testimony to the difficulties of sharpening up the delivery of collective regulation.

#### **Straws in the wind**

15. None of the points outlined above is intended as a prediction and each of them touches areas of current uncertainty about the trajectories of change in the European regulatory process. But there are enough straws in the wind to lead us to contemplate potentially significant changes emerging in the context and content of EU regulation. The strength of the EU system depends essentially on its capacity to adapt to new and changed demands and a varying membership. The next few years are likely to produce systemic changes large enough to require major adaptation in the model. Although much of the discussion is focused on changes in the distributional capacities of the EU and in the viability of EMU, we should recognise that the regulatory system will necessarily be affected as well.