

Banking on Norway-lite

Blog post by Partner Stephen Adams, 30 June 2016

My colleague Gregor Irwin has just published a great blog on the ‘room in the middle’ between the views of the supporters of Brexit in the UK and the emerging views in the rest of Europe on what might constitute an acceptable trade-off between rights in the single market and the UK’s expressed intent to take back policy control from Brussels. Gregor’s view is that one possible compromise is ‘partial participation in the single market’ and UK involvement in some horizontal EU programmes all priced against a set of UK policy concessions that allow the EU27 to feel that the UK is not cherry-picking just the bits of being ‘in’ Europe it likes.

There is probably a version of this that might work on both sides. It would require a degree of UK acceptance of EU rules and probably a financial contribution and a deal on migration that accepted privileged rights for EEA nationals but gave a bit of scope to the UK to limit flows - a turbo-charged version of the February deal. That looks good for UK goods trade and good for areas like science and higher education. What might it mean for the UK’s biggest export: financial services?

The essence of participation in the single market is a common regulatory system, linked to guaranteed market access and operational rights. The EU already has a small number of weaker proxies for this in the form of mutual recognition regimes with CCPs and - in principle - for investment management that provide access and operational rights for businesses whose home states maintain standards judged equivalent to the EU. The latter were UK ideas, legislated at UK insistence and have not yet been used. They may not survive the politics of the next couple of years. The UK would almost certainly seek access to them if they do.

The question is whether there is something beyond this kind of model that might work for both sides that allowed banks and financial firms in the UK to trade into the single EU market without being based there - the essential advantage of the single market and its passporting regime.

With the UK outside of the single rulebook, let alone the banking union, this looks very problematic, especially for retail services, simply for reasons of regulatory prerogatives over conduct and prudential supervision. The simple reality of most global trade in banking services is that you have to be there to sell there - the EU suspended that general rule with its single rulebook and cross border rights. Leave the EEA/EU and this general reality of ‘prudentialism’ reasserts itself.

To apply for banking and financial services, Gregor’s partial participation would probably require - alongside other things - the PRA and the UK Treasury to hand back control over banking rules to the EU, but this time without any control over how the rules were made. That looks hard to stomach. It would be the definition of perversity to leave the EU to ‘regain control’ and then maintain access by giving up even the qualified control the UK had as a member.

We keep coming back to the basic point, which is that because of the single rulebook, being in the EU and the EEA creates cross border privileges for banks that look hard to fully or even partially recreate outside it. They come at a price in, among other things, binding regulatory convergence, with varying degrees of control over how that regulatory convergence works but not a lot of obvious scope to have just the parts you like. If you don't want to pay the latter, the former may simply not be on the table.