

The Life of Laws

Brussels, Brexit, and how international
trading standards are made

FOREWORD

By the Rt Hon John Redwood, MP

The debate about the UK's membership of the European Union is about who makes our laws, who spends our money, who controls our lives. The Stay in campaign tries to narrow the debate to a few technical issues about how we trade and do business. They delight in spreading scare stories that we might not be able to trade with the other EU countries if we left. They ignore the successful trade 170 other countries around the world conducts with the EU despite not being members. They close their ears to Germany saying she wants no new tariffs or barriers on EU/UK trade, if for no other reason than she sells us so much more than we sell her.

Lee Rotherham has brought a crucial couple of insights to the debate about how the rules and regulations governing world trade and EU trade are made. He asks does the EU have all this power to make trade and product rules on its own, and how would the UK sort out its rules and product specifications outside the EU? He has found that the EU itself has to participate in a wide range of world bodies to reach global rules. These same global rules would still give the UK access to all main world markets including EU ones if we left. Even more important, the UK would regain her place on the global bodies making these worldwide rules, instead of having to accept EU representation and go along with EU consensual views of what is needed.

Outside the EU the UK would have more voice and vote over global trading rules and product standards than inside. The UK would still need to apply the agreed global rules, outside, as we do inside the EU. There is no threat to UK trade if we leave.

Two of Lee Rotherham's case studies illustrate the complications of standard setting and the varied and often unhelpful role of the EU. In the case of the search for a common European electrical plug even the EU has been unable to get to one, given the huge costs of change it would impose on the many countries that did not already use the winning design. In the case of standards for auto glass the EU has gold plated the agreed global standards to reduce the flexibility and increase the costs of European industry.

There is a huge bureaucracy worldwide in making standards. Some of it is useful work, giving consumers some assurance about safety or fitness of products. Some of it goes too far, restricting innovation and making entry into an industry more difficult for a challenger business. This work is mainly conducted on the global stage. The extraordinary thing is that the world's fifth largest economy, the UK, is not allowed its own representation on many of these bodies. We have to settle for a 1 in 28 share in the EU official present at the talks. We

then have to accept whatever level of additional compliance or detail the EU wishes to superimpose on the minimum world standards.

This is a must read for those who want to understand how we are currently governed. The expose of the detail of business rule making globally and in the EU removes the idea that outside the EU we would be cut off from influence and have to accept whatever Brussels demanded. It shows instead outside the EU we could be a force for the good on a wide range of business rules which are handed down to the EU by the international bodies, where the UK no longer has her own voice thanks to EU pre-emption.

If we do vote to leave we will not only restore our right to make our own laws in the UK. We will regain our place at the world table on a wide range of issues. Far from having less or no influence over the business standards that apply to us, we will regain both our vote and our voice.

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In the mid-1980s he was Chief Policy Advisor to Margaret Thatcher before being elected to Parliament for Wokingham. He joined the front bench in 1989 as Parliamentary Under-Secretary in the Department of Trade and Industry and became Minister for Local Government and Inner Cities after the 1992 General Election. Shortly afterwards, he served as Secretary of State for Wales. In opposition he acted as Shadow Secretary of State for Trade and Industry (1997-1999), Shadow Secretary of State for the Environment, Transport and the Regions (1999-2000) and Shadow Secretary of State for Deregulation (2004-2005). In the 1990s he campaigned widely to keep the pound, and has written extensively on the EU, economic policy, and political themes.

EXECUTIVE SUMMARY

- Globalisation has removed much key decision-making away from Westminster over trade issues.
- It has also shifted decision making from regional trade organisations, such as the EU.
- In many areas, global norms are set in international fora. These might be divided into four types -
 - Professional, for example regulating ethical standards, or generating and sharing 'agreed' data;
 - Sectoral, especially over agreeing a common minimum standard for a product;
 - Official, where state officials decide a common set of standards, for instance reporting formats shared at INTERPOL;
 - Diplomatic, especially through the UN, where the end norm is decided through negotiation between governmental representatives.
- In the case of the former two, the resulting agreements do not need the EU. BREXIT would mean these voluntary standards would still apply.
- In the case of the latter two, existing standards would also still apply. However, the EU is increasingly taking over the role of the national delegates in these fora.
- In all cases however, BREXIT does not mean a sudden bar on UK exports to the EU or anywhere else. It does require UK regulators to state that they will continue their quality controls to the same existing standards, and counterparts to indicate they are still happy with the existing level of quality controls. The agreement establishing that could be written on the back of an envelope. UK standards are internationally trusted, to the point of UK standards regulators being an international reference point of preference.
- BREXIT would also mean the UK regaining actual power in crafting legal standards at their source. While the UK joined the EEC in order to increase its national clout in trade talks, in reality the UK has ceded what amounts to an international veto for a mere QMV vote at Brussels.
- The democratic deficit associated with the system has created a new model of bureaucratic governance: a "constitutional democracy".

- A case study looking at vehicle safety glass provides just one example of how international trade laws are today made, and why EU membership is overblown.
- On review and in summary, the benefits of EU membership are confined to having a voice, numerically marginal, within EU institutions over additional red tape bolted onto these norms. This happens when the Commission attempts to widen their impact into associated areas, for instance emphasising safety glass by banning the use of plastic windscreens for off-road vehicles.
- EU members face twice as much risk of gold plating than non-EU members. Hindering gold plating by civil servants at any level under the EU legislative model is extremely difficult to achieve. Correction often follows actual implementation, and is subject to challenge by the EU institutions, causing delay and deterring remedy.
- In sum, in trade terms, the UK is not only talking to the wrong people; it is sending the wrong people to talk to the right people on its behalf.

INTRODUCTION

This publication, despite its title, is not a wildlife programme about Lib Dem politicians. In the course of this short essay, we intend to set out in greater detail than is widely understood how the laws and rules that govern our lives are made. It will not enthral. It hopefully though will enlighten. It might also frighten.

The existence of Parliament is known to all, and its general workings broadly familiar to many. The nature of the European Union and its growing role in the legislative process is also increasingly becoming felt. What is less understood is the wider context in which many laws are set. While much of the legislative programme indeed emerges directly from these two institutions (and increasingly the latter, though the exact share remains a matter of conjecture and debate), in many cases these institutions are simply packaging and repackaging decisions already made elsewhere.

That's not true in every case, and indeed perhaps a majority of red tape costs arise from what might be styled 'locally-inspired' regulations or small print details that are deliberately or cluelessly bolted on to the ratification process. Their impact, often on production issues rather than tradable product, is generally to hinder local businesses and make them less able to compete with identical but now cheaper imports. But many of the governing rules that determine what goods themselves may be traded, in what form, and how, are actually determined in a totally different location.

In terms of the 'food chain' of laws, neither Westminster nor Brussels (and certainly not Edinburgh, Cardiff or Belfast) sits at the apex in the hierarchy of law makers. Global bodies come in a range of forms and rubrics, many under the flag of the United Nations or the WTO. The list is astonishing. They form the watershed range from which flow so many of the legislative streams most people only see in full riverine flood.

The 'so-whats' to this are important. It means in particular that many of the rules governing international trade are not agreed within the EU. In turn, it means that nations beyond the EU, or deciding to leave the EU, providing they follow these international agreements are able to trade across Europe without having to be EU members.

It also generates a two-tier system of members at these bodies, between those with full rights, and those who have surrendered much or all of their powers to a surrogate representative from the European Commission or the EU's External Action Service (EEAS). Since these rules are formed by consensus, it correspondingly means that countries outside the EU have more power to shape those very rules. (Properly speaking, representatives at international meetings of this type do not tend to have a veto, but as the widest application of a standard is sought, persistent objection by a party is treated as requiring a new draft; where a state still differs it is not bound by the end text.)

As the Commission itself recognises, 90% of decisions made within the EU are now reached by QMV, and this includes reaching the common starting position for the EU's negotiators before they set off for their day's work at New York or Geneva. In effect and as a consequence, EU member states have surrendered what amounts to their trade veto both within the EU and internationally, while countries outside the EU still retain their own national veto at these international fora.

Box 1: Defining 'consensus'

consensus

general agreement, characterized by the absence of sustained opposition to substantial issues by any important part of the concerned interests and by a process that involves seeking to take into account the views of all parties concerned and to reconcile any conflicting arguments

NOTE Consensus need not imply unanimity.

ISO/IEC Guide 2:2004, definition **1.7**

Consensus is the model used for establishing agreement in many types of standardization, including British Standards. It is founded on the principle of establishing general support for a document by seeking to ensure that those likely to be affected by it are able to assent to its content, even if it does not represent the optimal position of each party.

The principle of consensus is fundamental to the PAS development model, and it is the objective of a steering group to resolve conflicting views, both amongst its own members and in the case of any that arise from public consultation. However, it should be noted that consensus does not imply unanimity, and in order to arrive at a solution that best serves the wider public interest it might not be possible to accommodate all positions that emerge.

Principles of PAS Standardization, British Standards Institution, 2012

In this context, the principal of 'pooling sovereignty' is an absurdity in the twenty first century. It may have made sense in the time of de Gaulle, when any common EEC position could be blocked by national vetoes in Brussels. But with the onward advance of European integration, the collectivisation of diplomatic power means the surrender of national rights and safeguards within the EU institutions.

That is why a diplomat from Oslo now absurdly has more power in many international meetings than a diplomat from Stockholm, and a delegate from Reykjavik can wield a veto where one from London might not. (Incidentally, since there are so few diplomats in tiny Iceland, it is also a reason why some EFTA delegates have admitted they would welcome the FCO helping attend all these important committees as a non-EU partner state.)

The nature of the process as a consequence also adds to the EU's democratic deficit. With MPs and even MEPs sitting so far down the food chain, it falls to civil servants and

particularly EU civil servants as the delegates to be the key decision makers. Oversight though is lamentable. It can also be tellingly tokenistic. The agenda items that are passed without discussion, the so-called “A Points”, can even be rubber stamped in European Council meetings by ministers from completely different departments – an Education/Youth/Culture/Sport meeting in May 2015 for example saw ministers sign off an audit on canals, agreements on fishing vessels and port state controls, a list of restricted substances in electrical equipment, and over access to public documents.¹ Since ministers are simply signing off agreements already made by others, any actual input at this stage would simply be considered a hindrance to due process. Their role is as decorative as that of a constitutional monarch. Indeed, we might call it a “constitutional democracy” since true power has seeped elsewhere.

Dominic Cummings has written authoritatively on what he has styled “Potemkin Government” as he saw it even lower down the food chain, watching UK civil servants forcing ministers to sign off EU documents. His view from within Whitehall itself all forms part of the same iceberg;

For those not in government reading this... One of the basic mechanisms of government is the ‘Cabinet write round’ system. This involves Secretaries of State being given lots of documents every night in their box from other departments. The SoS is supposed to read these documents and tick the relevant box on the attached form signalling assent, disagreement, comments etc. [...]

For entirely domestic things, this process can lead to disagreement and negotiation. An interesting aspect of our membership of the EU is that a large fraction of the documents concerning future law and administrative action come from the EU. For reasons that are opaque, the civil service continues with the write round system. It is, of course, a Potemkin system as ministers do not have a real power to oppose anything – the document in question will become law regardless of how the minister fills in the chitty. Still, the chitties are sent around so everybody can pretend they are in charge. This is a depressing process for some ministers but perhaps the Cabinet Office regards it as a Pavlovian exercise – ministers become habituated to simply tick everything without engaging their brains or ethics.

When occasionally a SoS refuses, the first step is the Private Office asks whether a mistake has been made. No? Are you sure minister? Off the chitty goes to the Cabinet Office (‘very courageous minister’). Step 2 is that the Cabinet Office emails to say – ‘Was your SoS drunk again last night, he seems to have rejected the EU Directive on XXX, better go and tell him to withdraw his objection pronto or Jeremy [Heywood] will be on it.’ This is normally enough to get SoS scuttling to retract his objection. Stage 3 is unusual – it involves the SoS not giving in at Stage 2. What happens then is that the SoS is informed by the private office that Ed

¹ *Outcome of the Council Meeting*, 3388th Council meeting Education, Youth, Culture and Sport Brussels, 18 and 19 May 2015; 8965/15.

Llewellyn has said that the Prime Minister agrees with Jeremy and insists on measure X. This flattens practically all objections. I have witnessed the very unusual Stage 4 – the SoS sends back a message asking for a meeting with Jeremy. Jeremy arrived. ‘This is EU law so there is no basis for us to object.’ Gove: ‘Why do we get sent these stupid forms to fill out then if we can’t stop these awful things, this is going to waste hundreds of millions of pounds for nothing?’ Jeremy [a chuckle]: ‘Haha, yes, so I’ll inform the Prime Minister that you agree after all, we will mention to European officials that ministers have grave concerns, I’m sure Oliver will look at it further, goodbye Michael.’ Game Over: ‘All your base belong to us’, as the old video game said...

The fairy tale that Britain still has Cabinet government involves maintaining this Potemkin process.²

If we accept that British ministers are largely powerless to halt bad laws as they proceed through the EU law making system, it becomes all the more imperative for us to draft potentially costly laws at their true source, and to duck the additional ones emerging from the EU that are simply nothing to do with facilitating trade.³

The UK needs to regain its full rights for those laws at the international coal face where all participants do have a veto; and it needs to withdraw from the EU law circus that adds burdens without adding opportunities. The UK needs to concentrate on facilitating exports, not importing red tape.

THE LEGISLATIVE FOOD CHAIN

So what are these important starting point organisations where these apex committees sit? A crucial point is that they fall into two categories of representation.

First there are the intergovernmental organisations, set up under a treaty structure, to which diplomats, government civil servants, or quasi-departmental (quango) officials are delegated. The material that is produced is, conceptually at least, managed through ministerial oversight, and by extension some (in practical terms, notional) degree of Parliamentary oversight. Agreements reached here are signed off by governments.

It is at this type of meeting where the intrusion of the European Union’s institutions have since 2008 been increasingly felt. In the past this was predominantly through member states

² See <<https://dominiccumings.wordpress.com/2015/06/30/on-the-referendum-7-transparency-for-our-potemkin-government-memo-to-ministers-and-spads-thinking-about-how-you-could-help-the-no-campaign/>>

³ The psychology of senior civil servants who support this *modus operandi* initially appears to be self-serving, given the increased role for civil servants as decision makers subject to minimal oversight and culpability for policy failures (eg various beef industry culls). However, it is also short termist given the increasing role of the EEAS and Commission through ECJ case law and EU treaty competences. Ultimately the UK civil service is consigning itself to the role of middle management, and MPs to a role analogous to that of a delegate to a Supreme Soviet in one of the Soviet Republics.

agreeing a common position in advance and negotiating in an associated manner on that basis. Then, as the EU treaties developed, QMV increasingly spread across the competences and member states were required to adopt a common position which might not necessarily be their own. In parallel, EU officials have been increasingly present, starting off in official observer roles acting as coordinators, but then with speaking rights, and then increasingly occupying a seat in their own right. An example of this has been the increasing role of the EU at the G7/G8 forum.

However, there is a second type of international meeting, where the attendees are not diplomats or ministerial delegates. These are the professional caucuses where experts, invested parties and practitioners from across the sector gather to develop common rules. In many cases, this type of meeting involves representatives from a particular manufacturing or trade sector. Others cover the work of professions.

Of course, trade groups have had hundreds of years to develop local or national standards. The work of mediaeval guilds for instance heavily focused on defining and maintaining them. The example of the medical code of ethics quite usefully demonstrates how such a system can develop without the hand of government. There has been a Hippocratic Oath in existence for some twenty five centuries. It took until the twentieth century for a programme to codify it more widely. The issue of medical ethics was revisited after the Second World War, since its application had clearly failed in Nazi healthcare systems. Allied representatives present at the UK's national medical association, the BMA, discussed relaunching an international medical organisation, l'Association Professionnelle Internationale des Médecins, which had been suspended during the war. The result in 1947 was the World Medical Association (WMA). Working groups from across the medical profession then set up a constitution and bylaws.

WMA governance was through each country supplying one representative from their medical professional organisations. The presence of financial exchange controls in many countries and the presence of the UN led to it being headquartered in New York at first; then later, as international health organisations aggregated in Geneva, it moved to a neighbouring town in France. In terms of turnover, its product clearly is not legally binding as it does not write laws. But it does generate reports that are used as legal inspiration, and its material can also be cited as judicial inspiration. For example, the medical vow that the WMA had agreed to in 1948 was (with minor amendments) then adopted by the UN the following year. A world professional organisation had by itself generated a draft model, with national governmental representatives acting only as subsequent amenders.

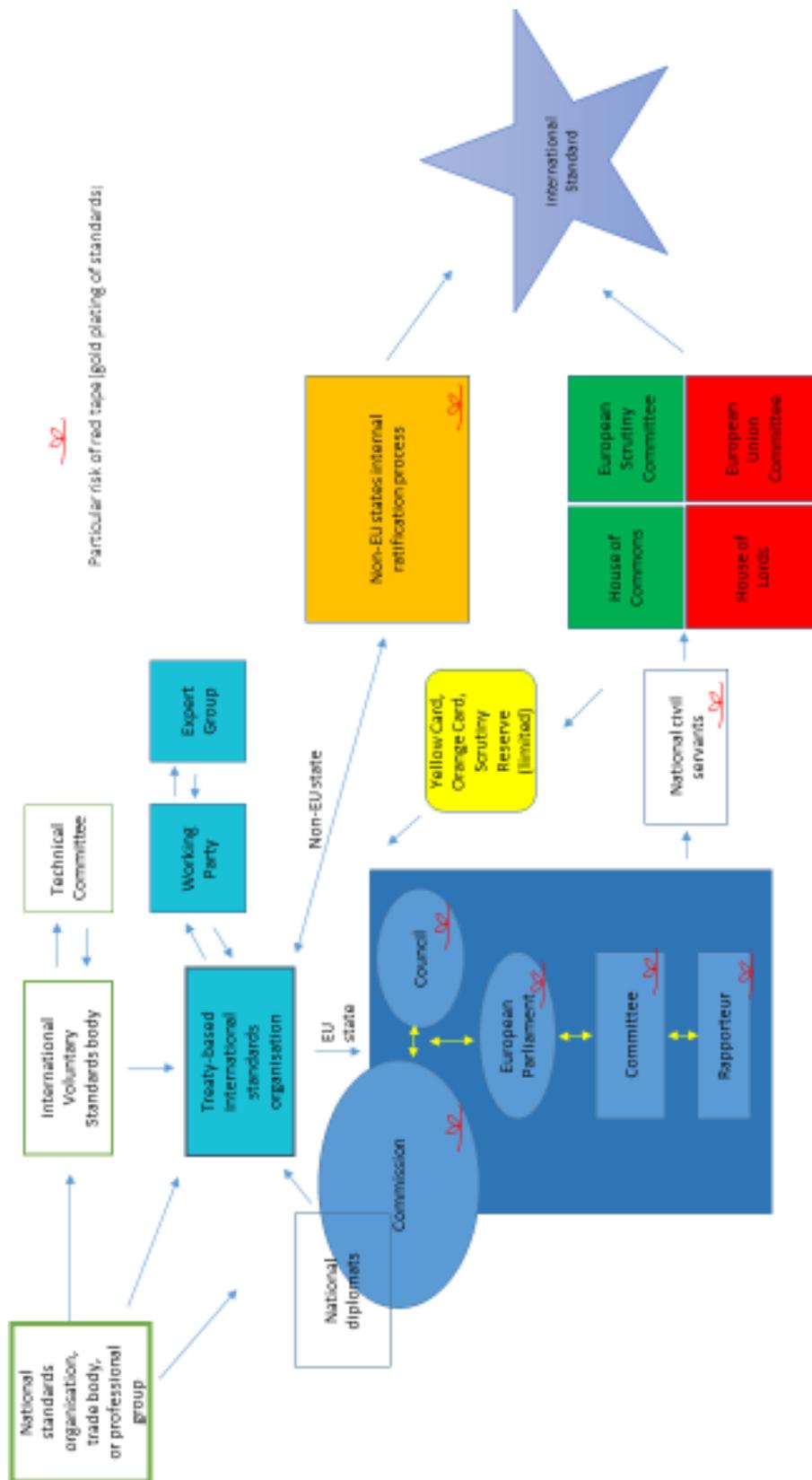
This form of 'outsourcing' of law making might more properly be described by its converse; as the subsequent outsourcing of the enforcement to lawmakers. The fact that this is happening should hardly surprise us, given the telephone directory size of the number of international trade and professional associations that are listed and variously accredited to the main global institutions. However, in the specific area of trade, on which we shall

predominantly focus in this paper, the principle becomes even more critical. In such cases, where national trade organisations in a sector are themselves able to agree what comprises a standard, then legislating merely facilitates what is already business practice. So long as the exporter is compliant with the standards already agreed internationally, it becomes irrelevant to exporters if they are in the EU or not.

At this point, and before we explore its component phases in some depth, it may be useful to set out in a chart an overview of how the legislative system interlinks. Chart 2 explores, in necessarily simplified format, the interconnecting processes by which a proposal is agreed at international level, and then becomes domestically implemented. In the case of EU member states, this process is additionally complicated by having to flow through EU structures.⁴

⁴ Since writing this paper, I have Fol'd the Commission to obtain the guidance for staff seeking to draft enacting EU legislation already agreed at international level, as per this flow chart. It transpires, after checking across several DGs, that there isn't any. This lack of strategic cohesiveness probably goes some way to explaining how 'EU red tape' and lack of competitiveness first arises.

Chart 2: A simplified overview of the processes behind the developing of global standards



We might simplify matters further by breaking it down into the following elements;

Phase 1 National representatives from Standards Development Organisations (SDOs) generate a common working standard across a trade, for instance a nominated common standard thread for a specific size of screw. These are International Voluntary Standards or IVOs (no-one is obliged to accept them if used).

Or if the standard is more thematic and does not have an affected group seeking a common norm, for instance on whether states should tax carbon emissions, an agreement may be generated more directly through governments. In practice though, government representatives are involved at the point where the prospect of legislating for a legally binding agreement starts to be considered.

Across an increasing number of international committees, an EU representative represents EU member states, or ensures that a common EU position is upheld.⁵ In negotiating terms this obviously weakens the UK Government's voting position since it has a reduced policy input into standards at source and is represented by another party.⁶

Phase 2 For EU member states, the agreement on the standard that has been reached now goes through the EU's collectivised legislative process. An EU draft standard is generated that mirrors the standard agreed by SDOs, and this in turn is ratified. If a Regulation, it nationally becomes instantly applicable through European law at this point. If a directive, it has to be transposed, allowing for further gold plating at national level.

(Non-EU states skip this process.)

Phase 3 National parliaments ratify the European standard that enforces the SDO standard. Technical agreements tend to be passed as Statutory Instruments (SIs) without much review. At best, a Parliamentary Committee might see the document and may even spend five minutes discussing it, if an MP raises it. No change to the text is possible unless it is identified as a subsequent further addition by Whitehall.

There remains still some small leeway at national level, though as we shall see this largely now lies in temporarily plugging gaps left by higher authority.

Where international standards still remain to be set, for instance over whether a new Dyson vacuum cleaner with its new technology is legal, national standards relating to the product

⁵ This evolution is covered in some detail in the TPA paper *EU Diplomats*, by this author; see <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224449/evidence-taxpayers-alliance-eu-diplomats.pdf>

⁶ As an example, the International Council for the Exploration of the Seas (ICES) is trade-led, comprised of scientists rather than diplomats even though it was established by treaty. By contrast, the North West Atlantic Fisheries Organisation (NAFO) has seen EU member states surrender their multiple seats under the CFP to a sole representative from the European Commission – an absurd development for a voting body. It also means the UK has lost its role despite being a founding member; however, Black Sea Ukraine has retained its, while France has a say because of the separate representation for St Pierre et Miquelon.

as it emerges onto the local market locally provide the technical cover.⁷ These take the form of British Standards or, exceptionally and where a standard has to be set in a hurry, a Publically Available Specification or PAS. PAS are intended to plug gaps for a baseline two years, and in turn are meanwhile used as reference points in discussing international standards on the issue. They are also shorn of much of the wider consultation aspects.

This is an area of work the European Commission has a vested interest in increasingly pre-empting as much as possible, and where its own direct relationship with, and sponsorship of, the drafting parties can be felt.

STANDARDS DEVELOPMENT ORGANISATIONS (SDOs)

Since SDOs sit at the top of the food chain, a definition is here in order. An SDO is, simply put, any organisation that is involved in the definition of standards.

Internationally, there are a huge range of bodies involved in generating standards, including both non-treaty international organisations such as the ISO (International Organization for Standardization) and IEC (International Electrotechnical Commission), as well as treaty-based bodies, a number of which are associated with the United Nations.⁸

Each nation has its own national body responsible for its standards in a given field or fields, which is associated with this international work. Trade groups and interested parties also contribute.

The process of generating standards varies by group. It is predominantly advanced through working groups generating texts, to which interested parties contribute advisory documents, and the technical proposals are then taken to broader review. This may require a formal ballot or, more likely, it requires unanimity amongst the technical standards agencies (especially where an expectation of national change is required).

Those familiar with the role of civil servants in government might be astonished to discover this. In the Venn diagram of international representation, civil servants can constitute a much smaller colour contribution to this critical phase of generating standards that govern international trade rules than one might expect.

ISO, the Geneva-based International Organization for Standards, is the largest developer of voluntary standards. It has published approaching 20,000 of them, covering manufacturing and technology. Representatives from 3,368 technical bodies from 162 countries meet to

⁷ In some cases, one set of codified national standards may be borrowed and used as another's norm. Standardisation emerging from Empire encouraged a number of European standards and authorities to have a relatively elevated degree of influence.

⁸ The full significance of these layers of rule/law making was first and invaluable drawn to wider Eurosceptic attention by Dr Richard North.

develop more, sitting in 250 technical committees, looked after by 150 staff. It does not provide certification or assess conformity – officially accredited state bodies do that. Its work is not binding on national governments or regional trade groups such as the EU. But countries that do adopt the standard have a common model that business representatives have accepted they can work with, and national customs agents know they have a model they can let in.

Box 3: Examples of global SDOs in the automobile industry

- Society of Automotive Engineers (SAE) remains involved in developing recommended standards for industry and has issued or updated about 2,000 motor vehicle standards in the past five years. Many address manufacturing processes, not auto safety or emissions. About 10% of NHTSA and EPA standards are based on work SAE has already done and, in those cases, NHTSA and EPA rules are based on the specific SAE standards.
- International Organization for Standardization (ISO) was founded in 1947 and develops voluntary international standards for many products and services. Standards are typically developed through negotiation in technical committees comprising representatives of many countries. ISO has developed nearly 20,000 standards across a range of industries. For example, a 2010 ISO standard addressed automotive crankshaft bearings.
- International Electrotechnical Commission (IEC) is a private organization founded in 1906 that develops and publishes international standards for electrical, electronic, and other related technologies. Its standards are voluntary and based on consensus among government, academic, industry, and consumer representatives. IEC standards related to motor vehicles concern charging system architecture, lithium batteries, and other aspects of electric vehicles.

Taken from *U.S. and EU [sic] Motor Vehicle Standards: Issues for Transatlantic Trade Negotiations*, Richard Lattanzio, Congressional Research Service, 2014

PLUGGING GAPS

A classic example of this system in play, or rather not in play, has been over which plug sockets should become standard. There are now some 15 different types globally, following a worldwide reluctance to follow the initial (and more dangerous) unearthed US model. Just taking practice across Europe, the UK, Malta, Cyprus and Ireland for example use triple flat pins. This is a different system from Denmark (third half prong rounded); Italy (third trident prong rounded) and Switzerland (offset trident rounded) employ two other models; while the rest of the continent uses the two prong rounded model.

To put this enduring failure into some context, standardisation has been discussed globally since the 1930s and a recommended world standard was actually agreed in the 1980s (and which has been implemented only by Brazil and South Africa).⁹

The European Commission's role in all this has been to push CENELEC, the European continental harmonisation subgroup, to ignore that work and instead try to research a distinct model that was compatible with European variants. This model turned out not to be compatible with not setting fire to the house and had to be abandoned. Why did this attempt to improve the Single Market fail?

The reason why the European Commission has not successfully forced through change to a common continental standard is because the governing body is independent of it. Because national parties still retain their independence, and because any state that had to rewire all of its sockets would face an astronomical cost, they have been able to block attempts by outsiders to force them to bear what would be a massive economic burden and a huge competitive disadvantage.

CENELEC is not an intergovernmental body but comprised of delegates from national industries.¹⁰ As CENELEC itself explains,

*CENELEC is a European regional standards organization that together with its sister organizations CEN, the European Committee for Standardization, and ETSI, the European Telecommunications Standards Institute, compose the so-called and known **European Standards Organizations (ESOs)** that are officially recognised by the European Commission and act as a European platform through which European Standards are developed.*

In the European Union, only standards developed by CEN, CENELEC and ETSI are recognised as 'European Standards'. Hence, CENELEC closely cooperates with CEN and ETSI; working jointly in the interest of European harmonization, creating both standards requested by the market and harmonized standards in support of European legislation.

CEN, CENELEC, ETSI are the regional mirror bodies to their international counterparts, i.e. ISO (the International Organization for Standardization), IEC (the International Electrotechnical Commission) and ITU-T (the International Telecommunication Union, telecommunication standardization sector) respectively.¹¹

⁹ Adoption by the latter complicated matters for Namibia, which has only partially itself now adopted the system. Brazil has a common plug system (which incidentally looks similar to, but is incompatible with, the Swiss model) but does not have a single standard voltage since this designation is federally devolved: this partial national harmonisation consequently then generated obvious safety issues...

¹⁰ Estimated at \$125bn, though this of course depends on roll out.

¹¹ <<http://www.cenelec.eu/aboutcenelec/whoweare/europeanstandardsorganizations/index.html>>

Administratively it's made up of a Presidential Committee, an Administrative Board, technical parties, and a General Assembly (AG). Absolutely central to its work is that agreements are made by consensus, meaning that national participants here retain a veto.

Beyond the ongoing failure to agree a unified plug system, it has met with a number of other successes. Its work is done in tandem and in cooperation with its global counterpart, the IEC, so that three quarters of agreements are compatible with world models and the majority of the rest that are agreed are not a current compatibility concern. This process of binary compatibility was formalised in the 1990s with the Vienna and Dresden Agreements, prioritising the international over the continental wherever possible and instituting parallel voting to allow for automatic continental concordance.

But where does this leave the regulatory system as far as the EU is concerned? The answer as we see elsewhere is: lower down the food chain. As CENELEC explains,

European Standards are a key component of the Single European Market. Though rather technical and unknown to the general public and media, they represent one of the most important issues for business. Although often perceived as boring and not particularly relevant to some organizations, managers or users, they are actually crucial in facilitating trade and hence have high visibility among manufacturers inside and outside the European territory. A standard represents a model specification, a technical solution against which a market can trade. It codifies best practice and is usually state of the art.

In essence, standards relate to products, services or systems. Now, however, standards are no longer created solely for technical reasons but have also become platforms to enable greater social inclusiveness and engagement with technology, as well as convergence and interoperability within a growing market across industries.

But the European Standard is something much more relevant than this. The CEN-CENELEC Internal Regulations, Part 2, states that the EN (European Standard) "carries with it the obligation to be implemented at national level by being given the status of a national standard and by withdrawal of any conflicting national standard".

The fact that European Standards must be transposed into a national standard in all member countries guarantees that a manufacturer has easier access to the market of all these European countries when applying European Standards. This applies whether the manufacturer is based in the CENELEC territory or not. Member countries must also withdraw any conflicting national standard: the EN prevails over any national standard.¹²

It so happens that the role of the European Commission in generating these particular standards is rather limited. CENELEC is not an intergovernmental agency, but one comprised

¹² <<http://www.cenelec.eu/standardsdevelopment/ourproducts/europeanstandards.html>>

of representatives from the 33 member states and who hail from National Electrotechnical Committees (NCs).

In the UK's case, CENELEC's member is the British Electrotechnical Committee of the British Standards Institution. What is it?

The BSI is a Royal Charter Company, particularly engaged in setting international standards in aerospace, automobiles, construction, financial services, food, healthcare, and aspects of business administration.¹³ It has a staff of over 3,000 and a turnover of over £4bn, largely generated by certification.

BSI's role is hugely important, in part due to it being a certification centre of choice and widely respected internationally. As recent examples, it has chaired the European side of the standardisation discussions over TTIP, and it has latterly negotiated a recognition deal for UK standards covering certified products entering the Chinese markets. Up to 2014 it supplied the President of ISO itself. It was also incidentally given the lead agency role in EU-funded projects to improve international standardisation programmes in Mongolia and Turkmenistan. BSI correspondingly would continue to act as a key interlocutor if the European Commission shut down shop tomorrow, even in standards programmes in which the EU itself is directly associated.

What this means for CENELEC though is that rather than the EU being the governing agency allowing trade across the Single Market, most standards are agreed across industry while input also comes from consumers or SMEs, directly and not via the intermediary of Brussels. The EU can have an input, and it can propose new standards; but it is just one voice of suggestion and not the directing agency any more than, say, the Staffordshire and West Midlands branch of the Federation of Small Businesses is. While CENELEC's moves towards the standardisation of plugs has obviously hit a (socket-free) brick wall, its work in the setting of standards for electrical products continues across a much broader field.

The CENELEC case correspondingly provides an example of where, provided the European Commission and other states continue to recognise the quality guarantees associated with this certification procedure, UK electrical goods will continue to be allowed access to markets even if the UK is no longer an EU member state.

This system is unlikely to change. Any attempts to transform the institution into something more formal and intergovernmental (as a prelude to being integrated into formal EU structures) would be seen off by non-EU participants, particularly Switzerland which is also plug non-compliant and would be one of the countries liable to face billions in standardisation costs, and thus face a massive competitive business disadvantage.¹⁴

¹³ Annual Report, 2014.

¹⁴ The last president incidentally was Norwegian (Mr Torre Trondvold).

Box 4: European Standards

European Standards (ENs) are documents that have been ratified by one of the three European Standardization Organizations (ESOs), CEN, CENELEC or ETSI; recognized as competent in the area of voluntary technical standardization as for the EU Regulation 1025/2012.

Although they deal with different fields of activity, CEN, CENELEC, and ETSI cooperate in a number of areas of common interest, such as the machinery sector or information and communication technologies (ICTs). They also share common policies on issues where there is mutual agreement.

An EN (European Standard) “carries with it the obligation to be implemented at national level by being given the status of a national standard and by withdrawal of any conflicting national standard”. Therefore, a European Standard (EN) automatically becomes a national standard in each of the 33 CEN-CENELEC member countries.

Standards are voluntary which means that there is no automatic legal obligation to apply them. However, laws and regulations may refer to standards and even make compliance with them compulsory.

What is a European Standard (EN)? (CENELEC website)

WALKING ON BROKEN GLASS

The case study of plugs and sockets reveal the limits of Commission management of the Single Market, at the same time as revealing how international trade is regulated by wider-ranging parties, and showing the means by which they ensure trade with the EU is possible without having to be an EU member. But we must turn to a different product if we are to consider how the regulatory flow does function where agreements are physically made.

Cars are a significant part of the UK export market; the industry has expressed concerns about the prospects of continuing trade after BREXIT; British and continental suppliers are significantly interconnected thanks to the ready incorporation of components.¹⁵ So this provides us with a significant area worthy of study (and this author is also sympathetic to the example as he is originally from a glass town). Given the slow motion car crash that constitutes the Eurozone economy, vehicle glass correspondingly provides us with a fitting area for review. How are the laws that govern the export of safety glass for vehicles, made in Britain and fitted onto vehicles exported from the UK, actually made?

¹⁵ Incorporation of foreign-supplied components within end product re-exports are covered through a number of agreements on Bilateral Cumulation, Diagonal Cumulation and Full Cumulation. International and EU processes on this are covered in Appendix D of the Business for Britain publication, *Change or Go* (<<http://businessforbritain.org/tag/full-report/>>) which explores how cars made in Sunderland would still be able to be exported to the EU even if they have German spark plugs in them.

AN OVERVIEW OF GLASS STANDARDS

The need for vehicles to have safe windscreens is not a concern that was invented by EEC and forced on the UK by dint of membership. We have come across the work of the BSI earlier. British Standard Specification No 857 (Safety Glass for Land Transport) was set out in 1967. It was subsequently amended in 1973 and again in 1980 to keep pace with changes in technology and vehicle design and capability. A further amendment came in 1981, as we will see below.

These standards were developed within the UK by a committee comprising members from the glass industry, academia, the AA, the Chief Fire Officers' Association, three government ministries, and motor manufacturers. It took into account existing standards in other countries to voluntarily harmonise where appropriate.

By 1981, participating states at UNECE – the UN agency covering economic standards in trade across Europe, based in Geneva – had identified the advantages of generating a more commonly applied standard. Talks generated a new common standard to be known as ECE R43. This would apply to all safety glazing in vehicles except for security glazing and glazing used in lighting, and covered laminated and tempered glass.

The principle was to establish a common test that, if met, would mean the glass was deemed legally safe for all markets in countries that signed up to the standard. The test covered not just resilience to breakage but also to exposure to the elements and scratches, while ensuring the glass could still be properly seen through. The product tests would be done in an approved official laboratory; manufacturers would test frequently while the authorities would check twice a year.

As a result, all countries could be assured that a common set of standards were being maintained in products entering their markets. In return, states which signed up to these common standards agreed to accept these imports as being legally compliant.

By the end of the decade two directives followed, incorporating the glass requirements along with other international commitments into the EU's *acquis*. Crucially, the directives also had the benefit of ensuring that states that had recently joined the Community but which may not have been UNECE compliant were themselves now also fully bound by the UNECE terms across the whole of the expanded Single Market.

By 1998, focus was shifting to intercontinental trade and the impetus shifted to reaching a global accord on glass. This led in 2009 to a Global Technical Regulation, GTR 6, which once enacted would mean global harmonisation in this area. As we have seen, enactment follows national parliaments ratifying the agreement; or in the case of EU states through allowing the EU institutions to ratify on their behalf and then individually formally signing off at the close of the process.

From this you might think that the UNECE is the go-to place for vehicle glass standards. As it happens, since 1982 much of the actual donkey work has been going on through an organisation we referenced above - ISO, the Geneva-based International Organization for Standards. Table 5 below lists the standards that have been generated by ISO in vehicle safety glass.

Table 5: ISO Standards in Glazing and Wiping Systems

ISO 3468:2014 Passenger cars -- Windscreen defrosting and demisting systems -- Test method
ISO 3469:1989 Passenger cars -- Windscreen washing systems -- Test methods
ISO 3469:1989/Amd 1:2006
ISO 3536:1999 Road vehicles -- Safety glazing materials -- Vocabulary
ISO/DIS 3536 Road vehicles -- Safety glazing materials -- Vocabulary
ISO 3537:2015 Road vehicles -- Safety glazing materials -- Mechanical tests
ISO 3538:1997 Road vehicles -- Safety glazing materials -- Test methods for optical properties
ISO 3917:1999 Road vehicles -- Safety glazing materials -- Test methods for resistance to radiation, high temperature, humidity, fire and simulated weathering
ISO/FDIS 3917 Road vehicles -- Safety glazing materials -- Test methods for resistance to radiation, high temperature, humidity, fire and simulated weathering
ISO 5740:1982 Road vehicles -- Rear view mirrors -- Test method for determining reflectance
ISO 5898:1997 Passenger cars -- Rear-window defrosting system -- Test method
ISO 6255:1997 Passenger cars -- Rear-window washing and wiping systems -- Test methods
ISO 9258:1989 Passenger cars -- Wiper systems -- Wiper blade length
ISO 9259:1991 Passenger cars -- Windscreen wiper systems -- Wiper arm-to-blade connections
ISO 9259:1991/Amd 1:2001
ISO 9619:1992 Passenger cars -- Windscreen wiping systems -- Test method
ISO 9619:1992/Amd 1:2002
ISO 9704:1990 Passenger cars -- Wiper systems -- Shaft ends and arm-holes
ISO 15082:1999 Road vehicles -- Tests for rigid plastic safety glazing materials
ISO/DIS 15082 Road vehicles -- Tests for rigid plastic safety glazing materials
ISO/FDIS 17449 Road vehicles -- Safety glazing materials -- Test methods for properties of electrically heated glazing

ISO/FDIS 23013

Road vehicles -- Determination to forced entry of safety glass constructions used in vehicle glazing
-- Test of glazing systems

The ISO as we have seen can only generate recommended models; it falls to national governments to then agree to recognise their standards in law. An example of what this means in practice emerges with the proposal on safety glazing generated by UNECE's Working Party on General Safety (GRSG) in 2007.¹⁶ As it was concerned with attempting to harmonise what had been achieved through the ISO along with those aspects within national jurisdictions that remained in part uncompliant in other aspects, it cited the following authorities as inspirations to the suggested agreement;

Europe: UNECE Regulation No. 43 on Uniform Provisions Concerning the Approval of Safety Glazing Materials and their Installation on Vehicles

EU Directive 92/22/EEC on safety glazing and glazing materials on motor vehicles and their trailers

EU Directive 89/173/EEC and 2000/1/EEC on certain components and characteristics of wheeled agricultural or forestry tractors

EU Directive 97/24/EEC and 2002 /51/EEC on certain components and characteristics of two- or three-wheel motor vehicles

USA: American National Standard for Safety Glazing Materials for Glazing Motor Vehicle Operating on Land Highways

- Safety Code (ANSI Z26.1 – 1983)

- Safety Standard (ANSI Z26.1 – 1996)

Japan: Japanese Industrial Standard J IS R3211 (1998) - Safety Glazing Materials for Road Vehicles

Japanese Industrial Standard J IS R3212 (1998) - Test method of Safety Glazing Materials for Road Vehicles

International Voluntary Standards:

ISO 3536 (1999) Road vehicles – Safety glazing materials – Vocabulary

ISO 3537 (1999) Road vehicles – Safety glazing materials – Mechanical tests

ISO 3538 (1997) Road vehicles – Safety glazing materials – Test methods for optical properties

ISO 3917 (1999) Road vehicles – Safety glazing materials –

Test method for resistance to radiation, high temperature, humidity, fire and simulated weathering (1991)

¹⁶ ECE/TRANS/WP.29/2008/48, 10 December 2007

DIN 52310 part 2 (1991) Headform impact test on safety glazing materials for road vehicles with deceleration measurement.

A measure on the type of differences that can remain despite agreements being reached in defining voluntary global standards can be judged from the following, as can the subsequent approach used to plug those gaps;

Three types of optical qualities are addressed by the gtr [Global Technical Regulation]: light transmission, optical distortion and double image. The minimum light transmittance level for glazing required for the driver's forward field of vision is 70 per cent as it is in North American and Asian regulations, and not 75 per cent as it is in European regulations. This is justified by costs/benefits analysis. The test procedure is based on the UNECE test procedure. The main difference from the other tests in the national or regional regulations examined was not the requirements, but the test procedure. This was resolved by selecting the test procedure that was most similar to real-world conditions.

Fundamentally though, what is important from a UK perspective is not what share of standards are worked out at UNECE and what at the ISO. It is that while existing national and EU regulations can have a bearing on developing new standards where there is an empty field, pushing up between divergent systems is less important than flow down from where agreements have already been reached.

THE ROLE OF NGOS AND OUTSIDE PARTIES

So with safety glass just as with many other world standards, the key players in formulating industry norms once again turn out to have hailed from the industry itself. An important part in this is the ready involvement by involved parties from the Private Sector, as well indeed as the Social Sector. ISO recognises that other players, particularly consumer groups and safety campaigners, also have an interest in technical standards. End users have an interest as much as the manufacturers. By incorporating input from other elements of Civil Society at the top level stage, the drafters similarly removed any prospect or threat of other interested parties with political influence from objecting to what could, perhaps legitimately, otherwise be seen as a corporate stitch-up.

Glass standardisation is not an exception, even if the nature of non-governmental input can vary considerably. If ISO's work incorporates these other lobbies, committees developing industrial trading standards have a much narrower focus of interests than other international working groups. ECOSOC's higher level work, for example, may be about sustained development and less obviously about technical specification. The issues there are more likely to be about, say, how much rainforest could be logged for teak, rather than ensuring that chainsaws can be sold from one country to another. That type of decision making allows for speculation, interpretation, and political debate; hence interested parties

in this line of work are consulted as lobbies rather than asked to supply a single technical draft.

The principle of third party engagement has long been recognised at the United Nations. NGOs were first involved in UN deliberations as far back as 1946, in the forum of the Economic and Social Council (ECOSOC). ECOSOC was an obvious candidate for extensive use of this kind of outreach. Article 71 of the UN Charter from the outset authorised that;

The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.

ECOSOC Resolution 1996/31 further developed and defined the formal consultative status for NGOs. International, regional and national NGOs along with non-profit and voluntary organisations can all seek to obtain one of three types of consultative status at ECOSOC. As at September 2014, there were 4,361 organisations accredited in one way or another with the UN. This aggregation is institutionalised and is a UN lobby in its own right. Those with the top level of accreditation gain such benefits as special access rights to circulate very brief papers to ECOSOC's Secretary General and to diplomats on its Council, and an increased likelihood of automatic accreditation at conferences.¹⁷ Current examples include the International Road Transport Union, the International Organisation of Employers, and the Women's Federation for World Peace International.

Which takes us back to developments in law making over glass. It so happens that the nature of the higher-level agreements covering glass safety have somewhat shifted thanks to ECOSOC, from technical trade coordination to wider issues over general vehicle safety. That means an increased role emerging for the World Health Organisation over the past decade. The role of organisations such as the Glass and Glazing Federation (GGF) or the Alliance of Automobile Manufacturers (Auto Alliance) has similarly shifted as the emphasis has moved onto aspirational levels of safety rather than trading conformity. Arguably this provides an example of where international trade negotiations are shifting over time, even higher up the international food chain to the main UN bodies rather than to the specialist entities like UNECE. If so, it suggests that trade standards will be less made by the interested trade parties and more by the national delegates (predominant there) who simply consult them.¹⁸ If that is indeed the case, then that provides a further incentive for national governments to regain powers back from the EU authorities who are the dominant party in such talks; and that can only be achieved by BREXIT.

¹⁷ See Part IV: <https://esango.un.org/civilsociety/documents/E_1996_31.pdf>

¹⁸ Such a hypothesis would be in keeping with trends within the EU, seemingly mirroring global law-making moves. However it would require a paper in its own right to confirm, qualify or refute this.

In any event, the WHO has latterly generated a group known as the United Nations Road Safety Collaboration (or just the Collaboration) bringing together a dozen UN and affiliated bodies, most of which have little obvious connection with road safety engineering such as UNICEF and the World Food Programme. The rationale is largely concerned with the high level of mortality, particularly across the Third World (1.3m deaths globally from vehicle collisions a year). 'Safer Vehicles' has been designated the third of five pillars; the work of UNECE is identified as the aspirational norm.¹⁹ Around 50 other agencies are involved as participants, including NGOs, governments, and business; but their role is more consultative.

What this means though is that work being done on safety glass is now bracketed at two levels of UN work. There is the trade conformity aspect that is still ongoing at UNECE, but there is now the strategic global safety aspect at a higher and broader UN level. Decisions at the former will generate new potential standards globally, while decisions at the latter might add regulatory costs if new requirements are generated. There is a risk that a new level of red tape machinery is being crafted, and the UK is ceding its place here to the EU.

THE WORK AT THE UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE (UNECE)

UNECE's role in world trading standards comes as an element of the UN. Its objective is to promote pan-European economic integration. This means it operates far more widely than simply engaging with the EU. It has united 56 countries across EU and non-EU Western and Eastern Europe, South-East Europe, Commonwealth of Independent States (CIS) and North America. However, all interested United Nations member States may participate in its work, meaning its standardisation effects go beyond even these three continents. Indeed, its terms of reference recognise scope for discussion of "proposals for activities that would have important effects on the economy of the world as a whole."²⁰

UNECE's most crucial role might be described as bringing together individually generated voluntary world standards and forming a coherent whole. One country might not have agreed on a plastic insert that goes with a windscreen; another might have a different level of compliance with glass strength; a third might allow increased levels of darkening of windows. Added together, no two types of windscreen let alone vehicle might be mutually export compliant. Some measure of grouping of standards at UNECE removes these problems.

¹⁹ Global Plan for the Decade of Action for Road Safety 2011-2020, WHO, 2010

²⁰ Terms of Reference and Rules of Procedure of the Economic Commission for Europe, fifth revised edition, para 4

Voting is done by majority vote and by secret ballot. However, member states that do not agree with a proposal are not bound by it. In practical terms as we saw earlier, since the objective is to standardise as widely as possible, this means that unanimity is sought, particularly amongst the significant economies as these hold a practical veto.

Over 70 international professional organizations and other non-governmental organizations take part in UNECE activities. As UNECE within the UN organisational structure falls under ECOSOC's rubric, this means that NGOs can provide privileged input.

In terms of its big picture work, UNECE has committees covering Environmental Policy, Inland Transport, Statistics, Sustainable Energy, Trade, Forests and Forest Industry, Housing and Land Management, and Economic Cooperation and Integration. That simple list of itself is deceptive.

The Inland Transport Committee (ITC) has been in operation for 60 years. Its function lies in "administering the 58 United Nations conventions, agreements and other types of legal instrument which shape the international legal framework for road, rail, inland waterway and intermodal transport, as well as dangerous goods transport and vehicle construction."²¹ But again this provides a false picture, since in the course of a given year a hundred technical amendments might be made in this regulatory area. It is only on reviewing the work load done by the Working Parties that it begins to be possible to appreciate the workload passing through here. WP.1 is the Working Party on Road Safety; WP.5. Transport Trends and Economics; WP.11 covers the transport of perishable foodstuffs; WP.15 the Transport of Dangerous Goods; and so on. As our focus is on glass, we must turn to WP.29, which works towards the Harmonisation of Vehicle Regulations. Its formal name is the World Forum for Harmonization of Vehicle Regulations, or within that context just the 'World Forum'.

WP.29 is itself divided into six permanent "working parties", each specialized in a particular range of regulatory concerns. These are the Working Party on Brakes and Running Gear (GRRF); the Working Party on General Safety (GRSG); the Working Party on Lighting and Light-signalling (GRE); the Working Party on Noise (GRB); the Working Party on Passive Safety (GRSP); and the Working Party on Pollution and Energy (GRPE).

The role of these working parties is to act as a bridge between the high level policy issues of the World Forum, and the technical work of the informal expert groups that draft specific regulatory language – a link between broad ambition and technical reality.

This takes us to the next tier of the structure. When a need for a measure of standardisation has been spotted, the Forum assigns the task to the relevant permanent working parties. At this point, an ad hoc informal group of experts is established. The draft text bounces

²¹ UNECE Annual Report 2013 (draft accessed)

between two; then a final draft is signed off and sent to the Forum for consideration and possible final approval.

There are rather a lot of these working parties. WP.29 currently counts 95, such as two wiper task forces, one on panoramic sunroof glazing, another on whiplash criteria, and others on vehicle interior air quality and retrofit emission control devices.

The draft on glass safety bounced around this system until it became a submittable draft, before finally being agreed as an ECE Regulation. If we just track what happened to the standard over the period 2004-2005, we find that at the 132nd session of WP.29 in March 2004, the formal proposal to develop a GTR on safety glazing was adopted (TRANS/WP.29/AC.3/9) with a modification to restrict the scope of the GTR to glass safety glazing. An informal working group was established under the Chairmanship of Germany, the sponsor of the GTR. At the 137th session of WP.29 in November 2005, it was further agreed that the GTR would not include installation provisions and that the informal working group could consider possible approaches to including markings in the GTR. After six meetings of the informal group, a draft GTR was submitted (TRANS/WP.29/GRSG/2005/9). The first report was submitted to WP.29 for its 136th session in June 2005 (TRANS/WP.29/2005/49). Based on comments from the United States and Canada concerning the format of the draft, the proposal was then returned to the informal group for further consideration. That text was a compromise between the previous UNECE standard and accepting marginally lower light standards as per the US system as well as the Japanese safety test standards.²² Annex A demonstrates how the divergent systems were being unified amongst key car exporting countries, with ISO standards being adjusted as an agreed block deal through a negotiated package via UNECE.

That of course has not been the end of the matter, as UNECE continues to react to technical developments and to extend harmonisation. Regulation 43 on Uniform Provisions Concerning the Approval of Safety Glazing Materials and their Installation on Vehicles now has a corpus of amendments; Supplement 8 (12 August 2004), Supplement 9 (12 June 2007), Supplement 10 (10 November 2007), Corrigendum 1 to Supplement 10 (14 November 2007), Supplement 11 (22 July 2009), Supplement 12 (24 October 2009), Supplement 13 (9 December 2010), Corrigendum 1 to Revision 2 (3 March 2011), Supplement 14 (28 October 2011), and a series of amendments (28 October 2011).

That is still not the end of it. GRSG, the Working Party on General Safety Provisions, continues to look at this standard and May 2015 saw its 108th session. Agenda item 4 covered safety glass, between a discussion on odometers and another on indirect proximity vision devices.²³ As it provides the outsider with a rare direct insight into the work of such groups, we include it in Box 6.

²² Federal Register Volume 71, Number 195, citing the US National Highway Traffic Safety Administration.

²³ Report of the Working Party on General Safety, Provisions of its 108th session (4–8 May 2015).

Box 6: Minutes from the Working Party on General Safety Provisions

Documentation: ECE/TRANS/WP.29/GRSG/2015/3

ECE/TRANS/WP.29/GRSG/2015/4

Informal document GRSG-108-15

18. The expert from CLEPA introduced ECE/TRANS/WP.29/GRSG/2015/3 proposing to define a reduced vision zone I for vehicles of categories M and N other than M1. GRSG noted a number of study reservations on the proposal with respect to the impact of the proposed provisions for some categories of vehicles. The Chair invited all experts to send their comments to the expert from CLEPA and to resume consideration of this subject at the next GRSG session on the basis of a revised document by CLEPA.

19. The expert from Hungary proposed an amendment to the UN Regulation allowing the use of thick glass panes for multiple glazed units (ECE/TRANS/WP.29/GRSG/2015/4). GRSG noted some comments. The document did not receive the full support of GRSG. It was agreed to keep ECE/TRANS/WP.29/GRSG/2015/4 on the agenda and to have a final review of the proposal at the next session of GRSG.

20. The expert from Hungary presented GRSG-108-15 proposing to clarify the requirements on the abrasion test machine. The experts from France and CLEPA preferred to wait until the forthcoming publication of the corresponding ISO standard. GRSG invited the secretariat to distribute GRSG-108-15 with an official symbol, for further consideration at the next GRSG session.

21. Referring to the discussion at the March 2015 session of WP.29 (see report ECE/TRANS/WP.29/1114, para. 59), the Chair addressed the concerns raised by AGC Glass Europe on the number of test cycles for plastic glazing and the standard deviation of the measured delta haze. GRSG reaffirmed its position and noted the unusual procedure followed by AGC Glass Europe to present its concerns. GRSG endorsed the view of the Chair to invite members of AGC Glass Europe to present, at a future session of GRSG, a concrete proposal to amend UN Regulation No. 43 including a justification and clear objectives for a possible extension of the mandate of the informal working group on plastic glazing.

WHERE THE EU FITS IN

The reader may by now be thinking that the direct role of the European Union appears to be marginal. In the case cited in Box 6, Hungarian and French views appear to have differed more than might suggest a pre-negotiated common EU front. That assumption does not quite provide a true representation of the level of EU orchestration as one steps away from differences over minutiae.

The Commission itself does have a binary input, both direct and indirect. The nature of international working groups is that they are founded upon outreach to experts. Here the

Commission enjoys a double advantage over national representatives. In the first instance, the enhanced status now legally afforded to the European Commission means it can input directly into these bodies; but it can also enjoy the influence it affords by funding proxies. In other words, the Commission supplies its opinion, while the groups to which it pays grants also do so as well.²⁴ Secondly, the critical decision making is made more centrally within UNECE rather than in the working groups. The political representation of the Commission lies closer to the point where the agreement is formally signed off, and is where coordination is more significantly felt.

The Lisbon Treaty gave the European Union a single legal personality, building upon the existing rights of the European Community including its status within the UN. As a result, the EU can sign contracts, be part of an international convention or operate as a member of an international organisation in its own right.²⁵

That process is ongoing and growing. Following Resolution A/65/276, adopted by the UN General Assembly in 2011, EU representatives are now able at the UN to present EU agreed common positions, to make interventions, present proposals and circulate EU communications as official documents. In Geneva, depending on the internal rules of each international organisation, the EU common position is expressed either through a member of the EU Delegation or a representative of one of the EU Member States intervening on behalf of the European Union. But given that the EU has primacy over member states as trade is an EU competence, and the ECJ has made its paramountcy clear, it should not surprise us to see the Commission exerting the dominant role in any trade forum.

So in short, the EU's presence is felt across the UN system as these standards are being drafted. In this instance, it means the EU is able to feed directly into the system amending proposals. As an example, at the 98th session of the GRSG (the Working Party of General Safety Provisions for vehicles), attendees accepted in principle a proposal from the European Union to develop an amendment (ECE/TRANS/WP.29/AC.3/27) concerning marking symbols. The expert attending on behalf of the European Commission agreed to take on the drafting of the text of the amendment as well as the draft technical report for consideration by GRSG at the following session.

But that input is not confined to the working group level. Indeed, EU input is largely felt at the directional level. The EU is now a Contracting Party in its own right at WP.29. Both the Commission and EU countries take part in the technical preparatory work of the Forum but it is the Commission that exercises the right to vote in the Forum on behalf of EU states. Box

²⁴ Our assessment is that this is most felt in Third Sector grant aid to campaigning lobbies. But its support and outreach to trade bodies is likely to also have some impact.

²⁵ The following is set out in SWD(2014) 178 final, the Commission Staff Working Document "Progress Report on the 2013 Activities of the World Forum for Harmonisation Of Vehicle Regulations (UNECE WP.29)"

7 shows how the EU has been exerting this more directly with a more formalised and official presence.

This in turn means that the Commission itself assumes the obligations that follow to member states. Once it agrees to a standard, it is obligated to turn it into domestic law, which it does via the EU's own legislative systems. The European Commission then 'owns' the drafting of the laws that enforce this international deal. It is to this that we shall turn next.

Box 7: the EU's Mission Statement for its Delegation at Geneva

Since January 2011, the EU has two representations in Geneva: The Permanent Delegation of the European Union to the United Nations Office and to other international organisations in Geneva and the Permanent Mission of the European Union to the World Trade Organisation. The bilateral relations with Switzerland are covered by the EU Delegation in Berne.

The EU Delegation to the UN in Geneva pursues the following main tasks :

Ensure the representation of the European Union and its active participation in the UN and its related bodies or specialised agencies established in Geneva - in particular the Human Rights Council, OHCHR, OCHA, UNHCR, UNCTAD, WHO, ILO, WIPO, UNECE, IOM and, as far as possible, ITU, WMO -, as well as in disarmament and non-proliferation related matters and with the International Committee of the Red Cross.

Foster EU co-ordination and common EU positions in these fora and promote co-operation with Member States in the UN framework.

Promote EU actions, policies and interests in all UN bodies and other International Organisations.

Enhance visibility and understanding of the European Union role and policies in the many areas related to the UN bodies and other International Organisations in Geneva.

The Role of the [EU] Delegation, website introduction.²⁶

EU ENACTMENT

Let's now review that process as it applied to ECE R43 safety glass standard at the point where it was decided that it needed to be incorporated directly into EU law. That standard was set 25 years ago and the EU's ratification systems have changed with subsequent treaties and with the growth in importance of the European Parliament across many areas.

²⁶ <http://eeas.europa.eu/delegations/un_geneva/about_us/delegation_role/index_en.htm>

But since trade was already an EU competence, the end impact is marginal in this instance, and the value of this example for EU law making processes can largely stand.

The fundamentals of the document that would end up as Safety Glass Directive 92/22/EC already existed in its fundamental form as soon as it left Geneva. The key provisions are set out up front: Member States shall type-approve any type of safety glazing listed in the annexes (ie which had been set at UNECE); Member States shall grant whole-vehicle type approval to any vehicle that complies with the fitting requirements also laid down in the annexes; and Member States will check where necessary that models are compliant. There was an added element though. The directive also added the authorisation for Member States to issue 'CE' trademarks to compliant models produced in their country, as a visible means of visibly demonstrating the fact. The CE trademark in effect would supplant national ones.

So how did it become adopted as European law? The process was as follows.²⁷

Proposal for a Directive (30/01/90). DG III of the Commission (covering Industry) drafted a text, COM/1989/653/FINAL/1. An Explanatory Memorandum justified the proposals by referring to safety requirements, widespread installation of laminated glass, consumer demand, and general manufacturing use.

Transmission to the Council (12/02/90). There is no record of any discussion at this stage.

Transmission to the European Parliament (22/02/90). The text entered the EP system.

EP Committee Opinion on the First Reading. The Committee on Transport and Tourism was assigned the draft (30/05/90) and produced an initial review, A3/1990/164 (18/06/90).

EESC Opinion (05/07/90). The European Economic and Social Committee, a consultative organ, produced its opinion, JO C/1990/225/9. This covered this and two other directives at the same time. It recommended tougher windscreen requirements for a small number of vehicles at particular work risk rather than the draft's application to all goods vehicles, where the driver's position in relation to the windscreen is changeable; keeping plastic windows legal; and an ad hoc working group to cover compliance. These changes could be adopted by amending the annexes.

The EESC significantly warned of the Commission overstepping the mark in the draft it had generated; "The Commission's move to restrict the type of glazing materials used for the manufacture of windscreens would, however, result in non-harmonized EEC and ECE technical requirements. This non-harmonization constitutes a definite disadvantage when it is not warranted by priority safety requirements," continuing, "In view of the existing legal obstacles to the simple acceptance of ECE Regulations, the Committee recommends that

²⁷ See <<http://eur-lex.europa.eu/legal-content/EN/HIS/?uri=CELEX:31992L0022&qid=1441816863081>>

special care be taken with the Directives' transitional provisions. The Commission should bear in mind that, even where EEC and ECE requirements are identical, two-fold approval will require time and money and may cause problems with regard to the marking of vehicle parts.”²⁸

EP Committee Report on First Reading (20/09/90). A designated MEP Rapporteur, in this case British MEP Christopher Beazley, produced a document (A3/1990/220) which was then amended by the committee.

EP Opinion on First Reading (10/10/90). The EP committee’s report was then taken to full plenary. In reality the large political groups had in the interim already thrashed out a deal over amendments behind the scenes, and the whistlestop series of votes is largely a formality. It is also, owing to the number of the amendments being voted on, not recorded unless specifically requested as a roll call vote. In this case it was simply recorded in the minutes, which were printed in the Official Journal (90/C 284/03). In this instance, three vehicle directives were grouped and amendments voted as a bloc.

Amendments were made. It seems that EESC observations had been taken on board, most likely thanks to industry lobbying. These variously

- affirmed the aspiration to type harmonisation of motor vehicle standards;
- exempted the plastic windows of caravans, the plastic rear windows of convertibles, and the plastic side windows of off-road vehicles;
- back referenced a 1985 Council Resolution “Concerning a New Approach to the Question of Technical Harmonization and Standardization”.²⁹ This is significant in underling the central role of voluntary international standards, non-state parties, CEN and CENELEC as the drafting hubs, and the role of directives in subsequently passing voluntary standards into law.

Commission position on EP Amendments on First Reading (10/10/90). In parallel to the above, the Commission had seen the draft amendments and provided its feedback, particularly over legal compatibility issues. In this instance the response is one of “undertaking respected”.

²⁸ To which it adds, ““A final general point: the accuracy and equivalence of the different language versions of the Directives must be ensured.”

²⁹ <[http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31985Y0604\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31985Y0604(01)&from=EN)>. This is now somewhat dated and its provisions have not always been fully pursued, such as over prioritisation: “mention should be made of one criterion that the Commission, in agreement with industry, has always regarded as essential. There must be grounds for considering that the existence of different regulations does in practice genuinely impede the free movement of goods. In some cases, however, even if these grounds are not obvious, a Directive may appear necessary to protect an essential public interest uniformly throughout the Community.” The definition of ‘public interest’, such as through Health and Safety or Public Health, allows for a wide loophole encouraging a bureaucratic drive for uniformity.

Adoption by Commission of amended proposal (08/02/91). The lead DG (in this case, DG III) discussed the implications with other relevant DGs (in this case, DG VII). In this instance, the Commission accepted them, rowing back on the red tape, and the amendments were published as COM(91) 38 final. The Commission also amended the original draft so that it became COM/1991/38/FINAL/1.

Transmission of the amended proposal to the Council (23/05/91).

Transmission of the amended proposal to the EP (04/06/91). Presumably the time lapse can be accounted for by the EP's diary.

Adoption of the Common Position by the Council (19/12/91). Council Session 1550 saw the text discussed by Ministers as a Council 'B' item and agreed, by unanimity. The six month delay after transmission suggests some discussions were first needed amongst COREPER national delegates, meeting in committee.³⁰ Council Notice 92/C 12/01 simply noted end agreement in 14 words, alongside a list of other proposals that had been agreed.

Transmission to EP of the declaration on a Common Position (14/01/92). MEPs are formally notified of the Council stance. It is received on 17/01/92.

EP Committee report on 2nd reading (22/01/92). The Rapporteur revisited the proposal. A new document was issued through the EP Committee in essence approving the text (A3/1992/43).

EP opinion on 2nd reading (12/02/92). Plenary voted on the committee's document, which was put before MEPs without debate or amendments. A quick show of hands saw it approved. The event was minuted (92/C 67/04).

Formal adoption by Council (31/03/92). The draft returned to ministers at Council Session 1564, this time as an 'A' Point that went through on the nod. *Council Directive 92/22/EEC of 31 March 1992 on safety glazing and glazing materials on motor vehicles and their trailers*, once published by the Official Journal, now became EU law and awaited national transposal. It introduced UNECE requirements to all EU member states, and added an EU conformity model to demonstrate compliance while accepting foreign systems. Most of the directive's 84 pages contained technical data.

Two details emerge from this case review. In the first instance, MEPs do have a direct feed into the system, and have an increased one today with the growth in importance of the European Parliament. But their input is circumscribed by the domain of the 'empty field', just as MPs' roles are constrained by the growth of EU responsibilities and competences. In other words, where norms are being decided higher up the food chain, the ability of MEPs to shape the legislation is significantly reduced. What they can do is expand the remit of

³⁰ Activity here is today more transparent - comparatively - in terms of tracking agendas and in following where (/if) governments are happy to declare objectives and objections.

harmonisation into areas not covered by the UNECE texts; or (as in this case) they can seek to limit the harmonisation that the Commission is proposing and which goes beyond what the UNECE minimum standards require. In other words, their central function is to roll back red tape, or to add significantly to it. This especially applies to the prospect of red tape for manufacturers on *production* – for example, by introducing business costs through Social Chapter legislation – but while being restrained under international standards regimes of being able to further hinder trade access for *products*.³¹

The same constraints apply to national civil servants within COREPER; whatever issues triggered a six month delay at Council of Ministers level (and summer holidays might account for half of it), the nature of the UNECE document was such that fundamental change to the agreement was not possible at that level either.

AN ONGOING PROCESS

That was the convoluted route across Brussels that one set of standards took. The process though is not a one off. Since the bulk of the requirements set out by directives on vehicle parts derive from UNECE Regulations that are regularly amended, their mirroring counterparts in EU legislation must be updated as well. In the case of the legislation we have just been reviewing, this happened for example in 2001 with the passage of Directive 2001/92/EC. Such a process is not unique.

The EU first acceded to the 1958 Agreement setting up WP.29 through Council Decision 97/836/EC in 1997, and to the 1998 Agreement by Council Decision 2000/125/EC in 2000. As of 31 December 2013, the EU had acceded to 114 Regulations under the 1958 Agreement and voted in favour of all 14 GTRs under the 1998 Agreement.

Compliance with UN Regulations is done through passing EU Framework Directives or Regulations as deemed appropriate, with the latter taking direct effect – a process typically used for technical changes to existing common specifications. As an example, an official notification to COMECE by the Commission in 2013 stated that safety glass Directive 92/22/EEC was set to be repealed in November 2014 and replaced with a new UNECE Regulation 43 compliant text.³²

³¹ Legally, MEPs or the Commission could gold plate and add burdens that hinder import access. But by doing so they deviate from the agreed norm, so the standard would be revisited at UNECE. It would quite possibly in any event be challenged before the Luxembourg Court. Taking just the domestic courts, the track record of UK judges interpreting breaches of UNECE's Aarhus Convention, for instance over HS2 and consultations over wind farms, can only hint at the complexities involved but do underline the legal hierarchy in play thanks to the UN treaty structure engaged.

³² Commission correspondence of 21 February 2013, DG ENTR/B.4(2013)270098

But there is today a critical measure of leeway increasingly involved: equivalence. The EU can either introduce these rules as a mandatory part of the EU type-approval system, or accept the ECE standard as equivalent - recognising such products as fit for import even if EU legislation on home-produced counterparts is tougher and makes the latter more expensive. Thus Directive 2007/46/EC permits vehicle manufacturers to adhere to either the pertinent EU Directives or the corresponding UNECE Regulations.

An EU initiative, the Competitive Automotive Regulatory System for the 21st Century, or CARS

21, has also explored harmonisation gaps. In 2006, CARS 21 called for gradually replacing a number of EU laws with UNECE counterparts, leading to over 40 directives so being subsumed. A cynic might observe that the measure of UNECE's importance is demonstrated by the rare willingness here of the Commission to cede the *acquis*.

The European Commission also continues to aspire to seeing Individual Whole Vehicle Type Approval (IWVTA, alternatively ECWVTA), wrapping up all vehicular standards - including of course safety glass - into a single set. Compliance means allowing the manufacturer to sign off on a 'certificate of conformity' allowing access across the whole EU market. As a mark of UNECE's progress, since 2007 this system itself also now has to take direct account of all UNECE's products, ensuring that the EU sum also remains compliant with the parts of WP.29's work.

Couple this with Commission ambitions on increasing its role in the future, and EU membership becomes less pressing. Identifying opportunities offered by a current programme of revision, the European Commission has also taken the leadership of the UNECE task force in charge of preparing the draft proposal. A key issue on the table is increasing the voting threshold in order to encourage participation by BRICS and ASEAN states. While this route would increase trade standardisation even further, it of course increases the individual clout of any state that is not an EU member.

EU SOCK PUPPETRY AND HOUSE EXPERTS

There is another dynamic in action that merits reflection. The Commission's influence is multiplied, and national influence reduced, by its support for proxies. These come in three forms.

Firstly, there is the **thematic proxy**. These are the campaign groups, lobbies, and pseudo representative organisations that input into laws throughout the process we have been describing. Some are accredited at international level in areas of campaign relevance. Others are held close to the bosom of the European Union itself and are co-opted into the

processes that feed proposals and drafts upwards and downwards, acting as the inspiration and moral justification for Commission activity in areas member state governments might otherwise consider their preserve. Many of these groups also engage at national level or with regional governance. Hundreds of millions of pounds subsidise this work, on which many campaigns if not organisations are heavily or even critically dependent.

The consequences of this have been amply set out in other publications and need not be explored too deeply here.³³ On the one hand, they generate a serious risk of breaching NGO integrity, since financial dependence stifles free speech. The sums involved mean they simultaneously constitute a poor return for taxpayers' money, while harming democracy by generating a cadre of unflagged spokesmen for European Commission policies (regardless of actual levels of government support for the cause they might profess). A notorious example lies in the elevated levels of EU funding supplied to environmental campaigners in support of their lobbying activities.

Thus those holding accredited rights to international organisations such as the UN include certain European groups that also lobby the EU or are even funded by them, such as the European Youth Forum, the European Women's Lobby, the European Union of Women, the European Network of Policewomen, the European Bureau for Lesser Used Languages, EUROMIL, the European Association for Mountain Areas, the European Federation of Older Students at Universities and so on.³⁴

Then there is the **sectoral professional**. Since trade groups and professional organisations directly feed into the heart of the global system, the Commission has a vested interest in communicating with these bodies on a constant basis. Similarly though, EU funding can make for suspiciously cosy bedfellows. Many organisations refuse to accept such support and some are even cautious where sponsorship of conferences is involved. But others consider proximity to the European Union institutions as a boon, particularly where they might need to lobby in secondary areas - for instance over energy policy which has a major business impact but where opportunities for consultation might be much reduced. The glass industry involves big businesses that are less susceptible to buy-ins, though not necessarily hug-ins. Other industries, for instance the legal profession, show evidence of being far more formally bought into.

Finally there is the **subject matter expert**; the academic or consultant brought in to offer highly technical advice to working groups in the hidden niches of the system. Once again, the Commission payroll can extend to these quarters. Over the past few years though these

³³ *The Hard Sell*, Open Europe, Lee Rotherham/Lorraine Mullally, 2008; *Euro Puppets: The European Commission's Remaking of Civil Society*, IEA, Christopher Snowden, 2013; *How Much Does the EU Spend on Promoting Itself?* Oliver Lewis, Business for Britain, 2015.

³⁴ Funding levels and official EU support obviously vary massively. As an example ENP has been largely backed by the Dutch Government, but received funding for an early training conference at Tampere.

individuals have become openly flagged as Commission delegates, and indeed may be despatched directly from the desks they man within the EU institutions.

Taken as a whole, while it would be too much to say that the European Commission has suborned its way deeply into the initial stages of the standards drafting process, it has generated a level of influence that would put most of its member state civil services to shame; and that this puts the latter at a relative disadvantage.

UK PARLIAMENTARY INPUT

The Cabinet Office is responsible for the management of the Government's scrutiny procedures, and for deciding, in consultation with Departments and with Committee Clerks, which EU documents should be sent for examination by Parliament.³⁵

Following deposit, the Government is required to brief Parliament on a document's content and implications. This is done by an 'explanatory memorandum' (EM) which must be made available to Parliament within 10 working days of the document's deposit (sooner in the case of a proposal involving the UK's Justice and Home Affairs opt out).

The House of Commons European Scrutiny Committee (ESC), sitting on a weekly basis, reviews the bundle of documents and recommends which should be taken for further debate by committee, or in the Chamber if the Government allows time for it to happen. Where a proposal has been debated in committee, the motion must then the next day be put to the House for wider formal approval without debate.

European Committees are those *ad hoc* Committees set up with no permanent membership. They are set up to debate a specific proposal which has been referred to them by the European Scrutiny Committee.

A parallel sift meanwhile is done in the Lords over which documents need consideration by the House of Lords European Union Committee, or more likely by one of six sub-committees. If a committee here recommends it be debated, time is found for it on the Floor of the House. This takes the form either of a non-binding "take note" debate, or the chairman asks a "question for short debate" about the issues raised in the report and the Minister responds. This provides a searchlight but no watchtower gun.

The Committees have the power under their terms of reference to agree that the Minister may support a proposal while it is still under review, an option known as a scrutiny waiver. In practical terms however, the ability of backbenchers or the Opposition Front Bench to do more than nudge the Government's position is highly marginal, unless a media storm over a

³⁵ This summary is taken in abridged form *inter alia* from a memorandum by the Cabinet Office:
<<http://europeanmemoranda.cabinetoffice.gov.uk/files/content/parliamentary-scrutiny-overview-1306.pdf>>

particular proposal can be summoned and the Government embarrassed into changing its position.³⁶

The nature of Parliamentary oversight might best be described as marginal and patchy. At least its failures are now transparent; previously the key Commons oversight committee held its meetings *in camera*. The suspicion at the time obfuscation was introduced was that the hollow nature of the committee's work was too embarrassing for the chairman and for the Government (both Labour), given its remit is to sift through around 1,100 documents a session.

In any event, thanks to changes in procedure and the establishment of a Scrutiny Reserve, both the Commons and the Lords committees must at least have had the opportunity to debate before a vote in the Council of Ministers, and by extension not have voted against. This would be useful at an early mandatory stage if Brussels itself was transparent. But by the time these agreed standards have passed through the EU confirmation system, national input though is largely superfluous. It is by then possible to add destructive extra burdens to domestic suppliers, but not to hinder imports.

Technically, either House may apply the brakes on EU legislation. However, the hurdles attached are considerable. The first difficulty is over the limited timeframe, since the system allows national parliaments to object to Commission proposals within eight weeks of their publication. Secondly, it can only be on the grounds that it breaches the principle of subsidiarity. Thirdly, 1/3 of national parliaments and their chambers have to act in concert, which demands a major mobilisation effort. Even if then successful, this 'Yellow Card' only requires the Commission to review the text, not to withdraw it.

The Commission has committed itself to sending all proposals for new legislation to all national parliaments, asking for their comments on possible breaches of the principles of subsidiarity and proportionality. Yet in the first year of operation of the new system for example, the Commission received 152 objections from different chambers of national parliaments but it did not change one of its draft law proposals. 17 of these were from the House of Lords.³⁷

That input predominantly applies to the earlier oversight and consultation phase, before MPs have had a chance to see the end product. After that phase, the supposed safeguard is the second option known as the 'Orange card' route. A simple majority of the parliaments and their chambers can require a text to be reviewed. Again though, the Commission is not obliged to change anything. If the Commission decides to maintain the proposal, a majority in the European Parliament or 55% of the Council vote may then block it. In practical terms,

³⁶ This process is difficult though far from impossible. It does depend heavily on the mood of the media, which is tidal, and the sex appeal of a story.

³⁷ EUabc.com, *the Early Warning System*

any issue contentious enough to levy this amount of opposition would already have been ditched by the Commission as a lost cause.

What unconsciously the lack of a veto inherent in both the 'Yellow Card' and the 'Orange Card' route points to is actually the political quandary attached to the ratification process of international laws. Parliament is supreme, yet simultaneously *pacta sunt servanda* (international treaties are to be upheld). So which one should take priority if MPs decide to overrule their Government when they have already committed them to a course of action? British Parliamentary processes answers this through the Ponsonby Principle; in effect, a retrospective vote against a signed agreement does not nullify the agreement, but it does remove the Government.³⁸ The Yellow and Orange card systems avoid this conundrum simply by making it voluntary as to whether the objection carries any effect. From the Commission's viewpoint, it's an added bonus it doesn't get fired if a law fails.

And so on to the example of safety glass. The archival trail is today stone cold over when exactly MPs and peers first became aware of a new UNECE agreement having been forged. Current best practice at least suggests that it would have seen the Commission's early draft, though whether to the Council or to MEPs is open to question. There are equally no pointers as to whether anyone in Westminster paid any attention; again, the track record suggests it would have featured in a large bundle of documents reviewed by a small number of Members or, exceptionally and less officially, one or two members of staff. Given the nature and size of a typical bundle, it is most likely that the text was passed over without comment by the committee.³⁹

Perhaps most telling is what happens at the close of the procedure, when domestic law tailgates the EU ratification process. This relative lack of significance is far more visible. The international agreements on windscreens, tyres and seatbelts that had been grouped at

³⁸ The conundrum is ancient, as shown by the unhappy examples of Marcus Atilius Regulus (prisoner of the Carthaginians, recommended rejection of his own surrender terms, returned voluntarily to his death) and Gaius Hostilius Mancinus (prisoner of the Numantines, peace treaty rejected by the Senate, returned in chains). Countries which separate powers more distinctly do not face this problem, as evidenced by the non-ratification by the US Congress of numerous international accords - such as the League of Nations despite President Wilson's own engagement with the model. The UK though sees the Legislature and the Administration more closely intertwined.

³⁹ This is perhaps slightly less likely now, given that email attachments rather than just hard copy are circulated (but much more because of a more critical and inquisitive membership). This example predates the time this author monitored EU texts on behalf of interested backbenchers not serving on the committee, but the amount of material being published in the Official Journal and the nature of this draft would realistically have led to no more than a ten second speed read of the text, even by a critical observer in Westminster looking for problematic material. At the time, a key giveaway pointer of a document of interest might be for example that it was released only in French, or had yet to be made more widely available beyond the committee. The most interesting documents were internal to the Commission. The tens of millions spent on the EU website has since then transformed access, providing increased transparency while still hiding items of interest by the sheer bulk.

Brussels as three directives still remained grouped, comprising a single draft Statutory Instrument.

SI 1992 No. 2161, *The Motor Vehicles (Type Approval) (Great Britain) (Amendment) (No. 2) Regulations 1992* [sic], had a tellingly swift passage. In stark contrast with the 26 months it took to wend through the Brussels system, it was 'Made' on 8 September 1992; laid before Parliament on the following day; and came into force on 1 October: barely a three week turnaround.

The text also took the opportunity to add a new element, changing the application of 'type approval' rules to modify the application from 'on road' use to that of registration; and thoughtfully ensuring that application was not additionally gold plated by specifying the regulations would have to be retrospectively applied. This provides us with an example of how additional material might be added on at Whitehall level as part of attempts to otherwise 'tidy up' domestic legislation, but at risk of gold plating.

Notably though, the section of the SI that explores the legal history of the standards cross-references Directive 92/22/EEC. What is left unstated though is the role of UNECE, even within the accompanying Explanatory Note from the Government. This is particularly peculiar in that the same text does back reference UNECE standards in its other schedules. The result, however, is that the outside observer reviewing the draft legislation would have been under the impression that the safety glass element of the legislation was being introduced merely to comply with an agreement reached by the Council of Ministers. This practice, which masks the ultimate source of proposals coming before Parliament, is not unusual and is indeed more typically applied to casual discussions about "Government proposals" to more broadly conceal decisions being made elsewhere. An MP reflecting upon the bill would thus not have been directed towards the UNECE draft to see if the version before him was gold plated.

Only in expert quarters does the deeper complexity then emerge. For example, the handful of readers on the planet who follow the Information Notices on European and National Type Approval Legislation, issued by the UK's Vehicle Certification Agency (VCA), would have been alerted by the Department for Transport in July 2014 of changes emerging to EU regulations following new UNECE norms. In the case of emissions standards,

Regulation (EU) No 582/2011 refers repeatedly to the regulations of the United Nations Economic Commission for Europe (UNECE), and in particular to UNECE Regulation No 49, regarding the technical requirements to be followed at type-approval and in-service conformity by Member States, manufacturers and technical services. Since a 06 series of amendments of UNECE Regulation No 49 has been adopted by the World Forum for Harmonization of Vehicle Regulations (WP.29), it is necessary to update the references of Euro VI to UNECE Regulation No 49.

SCOPE FOR MPs' ACTION

Where MPs might still have some leeway is over making it easier for enforcement. Helping to implement Plain English rules in the English language end versions might occasionally be a productive use of input, particularly where the British civil service have strayed from an original draft. An example cited by critics here is in *The Road Vehicles (Construction and Use) Regulations 1986*, where one section reads,

10) Save as provided in paragraph (11), the windscreens or other windows constructed in accordance with the foregoing provisions of this regulation of specified safety glass, specified safety glass (1980) or safety glazing and specified in column 3 of Table II in relation to a vehicle of a class specified in column 2 of that Table shall have a visual transmission for light of not less than the percentage specified in relation to those windows in column 4 when measured perpendicular to the surface in accordance with the procedure specified in a document specified in relation to those windows in column 5.⁴⁰

This somewhat wanders from the clarity present in earlier versions. Alternatively, clarification might be required for enforcement purposes. Kent Police for example made the following observations about the gaps in the law that emerged over the new UNECE norm;

a) In recent times there has been an increasing trend for owners of light vehicles to have the side windows and even windscreens tinted, most commonly by the application of tinted film. The practice seems to have been more prevalent in some areas of Great Britain than others. Where there has been the perception by Police forces or Examiners that the level of the problem is sufficient to warrant attention, then checks have been carried out.

b) There have been a number of problems identified which need to be addressed if activity in this area is to be effective and minimise unnecessary inconvenience to motorists. These are as follows:-

1. The regulation governing the tinting of vehicle glass was open to a different interpretation to that intended. It provided the potential for a challenge on the basis that the standard (expressed in the percentage of Visual Light Transmission (VLT) applied to the glass only and not to any film applied to it.

2. The repeatability of results did not provide sufficient confidence in the readings obtained when some makes of meter were used.

3. The absence of a national scheme/policy caused difficulties associated with the removal of prohibitions for motorists and Police staff.⁴¹

⁴⁰ Picked up in the SIDC Subaru enthusiasts' forum

⁴¹ Tinted Vehicle Glass Enforcement Guidelines, Kent Police, January 2013

The problem Kent police faced was that it was now legally unclear whether visual light transmission standards (VLT, or the amount of light that got through into the vehicle) applied not only to the glass but to any glass with film applied to it. Apparently, Kent's proximity to young drivers from Essex was generating some problems...⁴²

Kent Police's summary of events suggests that what happened next was simply that

*Following consultation with the Automotive Group of the Glass and Glazing Federation, the 2003 Road Vehicles (Construction and Use) (Amendment) No.5 R Regulations (SI 2003/3145) came into effect on 01/01/2004. This amendment provides clarification that the visual light transmission standards (VLT) apply to glass **and any film applied to it.***

In fact this summary only tells half the story. The regulation cited was introduced to change the law over permitted exhaust levels, covering Commission Directive 2003/27/EC which amended Council Directive 96/96/EC and Commission Directive 2003/26/EC which amended Directive 2000/30/EC, all of course sitting at the tail end of the UNECE process. But the fact of this regulation's passage through Parliament allowed Whitehall civil servants the opportunity for an otherwise unconnected bolt-on clause, clarifying that film did count when measuring glass transparency;

Amendment of regulation 32 (windscreens and other windows)

3. *After regulation 32(11), there shall be inserted the following paragraph—*

“(11A) Paragraphs (10) and (11) have effect in relation to any tint, film or other substance or material applied to a windscreen or window as they have effect in relation to the windscreen or window itself.”

The civil servants had clearly been challenged by enforcement officers, confronted with an emerging technology and practice and presumably having lost a case in the courts. In return they had consulted domestically. The issue may even have seen some lobbying of MPs by industry or by affected constituents. As the original UNECE draft and the Commission's implementing version had leeway on this matter, the Department for Transport clearly felt they were on sufficiently safe ground not to wait months or years for an international agreement but decided to clarify UK law (by changing it, with a bolt-on amendment to another piece of legislation) and to plug the gap.⁴³

⁴² At least two other police forces elsewhere in England appear to have been tracking Kent Police's output and shared its concerns, so we should avoid undue style criticism of Chelmsford's drivers.

⁴³ An alternative in more complicated instances would be to refer an individual case for arbitration at the Luxembourg Courts, though this is reserved for cases of significant ambiguity and minimal room for national interpretation (the ECJ's case load demonstrates there are many).

MPs of course at this point could have held a contrary view and interpreted matters differently. Evidently they did not, but the amendment was a matter for conjecture; the new law over film tinting remained a compromise reached internally to the UK.

The principal concern of the Glass and Glazing Federation was over treatment of already-glazed vehicles, especially where there was minimal impact on road safety (for instance for vehicles used off-road); and further called for a transition period for vehicles that were stopped on a public road and found to be borderline cases.

We might correspondingly conclude that national legislators, whether parliamentarians or more honestly the civil servant drafters, have a much more important role when it comes to the application of standards. This is particularly the case as gaps emerge and the enforcing of laws lags behind new trends and technologies. The role of national standards and national standards agencies then for a while also become centrally significant, some margin of national differentiation might start to begin, and the whole process of seeking international levels of conformity begins again.

LIFE OUTSIDE THE EU: DOWN UNDER

To better appreciate what BREXIT might entail, we can turn to the examples of countries that operate within this global trading systems environment but which are not EU members. This provides us with three ready models. They involve countries that are not even “European” states, but which have opted in to UNECE’s “European” standards to very differing degrees.

At one end of the scale is the Australian approach. Its value as a comparison to the UK is complicated by the division of competences between state/territory and federal level. Nevertheless, there is a single set of central guidelines, the Australian Design Rules (ADRs). Each state generally requires compliance with these locally, while commercially imported vehicles under for instance the Motor Vehicles Standards Act 1989 also have to comply.

The principle behind the ADR has been that it ensures that manufacturers are compliant with the relevant market of end use, with the manufacturer picking which one, rather than requiring uniform compliance and a single standard regardless of the intent on what consumer laws apply in the country of receipt.

Since the WTO identifies UNECE regulations as the peak international regulations for vehicle safety, and recognising the importance of UNECE, Canberra has elevated its representation there. Australia previously attended WP.29 meetings with the formal status of an invitee with interest in the subject matter under discussion. In 2000, Australia acceded to the 1958 Agreement. This gave Australia a vote on development and adoption of new UNECE

regulations. At the time of accession, Australia did not apply any UNECE regulations. Since applying regulations means Contracting Parties have voting rights on amendments to regulations, this has generated an additional spur to Australia gradually harmonising its ADRs. Between 1988 and 2007, the percentage of harmonised ADRs has increased from 60 per cent to 80 per cent and this figure continues to increase.⁴⁴ As a Contracting Party can grant approvals for products covered in these regulations, and since other countries must recognise these approvals as evidence of compliance, this means that Australian exports in those areas where they have signed up to a standard have to be treated as standard.

Nevertheless, the country has maintained a system of dual standards (or more properly, multiple relevant standards). So if we take the example once again of vehicle safety glass, we find that the Australian Transport Advisory Council in 1984, on the back of the UNECE set of standards, contacted all levels of federal government and recommended that they adopt new ADR 8.⁴⁵ What this meant was that glass used in vehicles had to comply with one of a narrow list of international standards. They could use the existing Australian standard (R1-1968 and AS2080-1977), or they could use one of the key standards for their export markets in Japan or the United States (JISR 3211-1979 and ANSIZ 26.1-1980). For compliance with the European market, they chose conformity with British standards - BSI documents BS AU178:1980, BS 857:1967 and BS 5282:1965. Together these guaranteed continued supply under existing contracts, subject to local limits over their social application such as over off-road use under national laws. However, on top of all these, the list of approved standards now added UNECE Regulation 43.

In other words, the legal shift did not generate a tyranny of supercession with businesses forced to dump excess stock and end old pattern component replenishment exports. Instead, the process was one of transition. The relevant regulatory system used would be clear from the type mark applied to the glass.

Nevertheless, from a civil service perspective that choice was viewed as messy. Canberra has since been reviewing how this system works.⁴⁶ It summarised its view of UNECE compliance in the following terms;

The Australian community has derived substantial benefits from an increasingly globalised local vehicle industry, providing a greater choice of safe vehicles. Exported vehicles and parts have also become important to the competitiveness of Australian vehicle and component manufacturers.

It has been a long term Australian Government policy to align the national standards for road vehicles in Australia, the Australian Design Rules (ADRs), with United Nations Economic

⁴⁴ As at 2011, 47 ADRs had been fully standardised and 7 had been partially so.

⁴⁵ Australian Design Rule 8, Department of Transport, February 1984.

⁴⁶ This and the following quotes are taken from the Regulation Impact Statement for The Harmonisation of the Australian Design Rules (ADR-Harmonisation), Department for Infrastructure and Transport, November 2011.

Commission for Europe (UNECE) regulations. The UNECE is acknowledged as the peak international body for automotive standards, reflected in the gradual reduction in road trauma and the continuing improvements in the crashworthiness of vehicles worldwide.

Australia has acceded to two United Nations Agreements that deal with UNECE regulations. These are the 1958 Agreement and the 1998 Agreement. Under the 1958 Agreement, a Contracting Party can apply regulations. Applying a regulation gives development and voting rights to the Contracting Party on amendments to regulations. However, when a regulation is applied, the Party must maintain alignment of its domestic standards with the regulation, at least in terms of imported vehicles. Australia has applied 29 regulations and will likely apply more in the future. The problem is that the administrative burden of maintaining alignment of the ADRs is high and is set to increase even more into the future.

The problem fundamentally has been in the way Australia legislated for these changes, which took considerable amounts of time. A saving grace lay in the country's geography. Of Australia's top three export markets for cars, only one (Saudi Arabia) used UNECE standards. The top five importers, by contrast, all are.

Canberra's study in any event came up with four possible solutions - doing nothing (Option 1); including flexible references to UNECE regulations within each relevant ADR, ie referencing obliquely 'the most recent version' (Option 2); writing a "Harmonisation ADR" (Option 3); and deleting the ADRs (Option 4). The driving force was the increasing volume of material being generated, which coupled with the primacy of agreed texts meant that the civil service was finding it hard to keep up;

Currently, 50 ADRs together reference some 65 UNECE regulations within their text as allowable alternative standards. Since 1980 there have been over 700 amendments made to these UNECE regulations, averaging 25 per year. The rate of amendments has increased in recent years, with 56 amendments in 2006, 73 in 2007 and 75 in 2008. It is likely that this rate will continue to increase.

The civil servants explained,

When an applied UNECE regulation is amended, the Australian Government must, as a minimum:

- 1. table a working paper with the Technical Liaison Group (TLG) (refer to Section 6 for further details) to seek endorsement for the proposed ADR amendment;*
- 2. negotiate the need, or otherwise, for a RIS with the OBPR;*
- 3. consolidate TLG feedback to establish a final agreed position;*
- 4. consult, where appropriate, with the Transport and Infrastructure Senior Officials' Committee and/or the Standing Council on Transport and Infrastructure (TISOC/SCOTI);*

5. provide a draft regulatory package for consideration by the Parliamentary Secretary of Infrastructure and Transport, consisting of a ministerial brief, an ADR amendment determination, an ADR compilation, an explanatory statement and a RIS (if required);

6. table the package in both Houses of Parliament within 15 sitting days of being made and if not disallowed by either House then;

7. lodge the package on the Federal Register of Legislative Instruments, including a compilation of the ADR; and

8. update the package on the departmental website and distribute it by CD to all ADR subscription holders.

This process can be lengthy. It also consumes significant governmental and business resources, especially given the rate of amendments current being carried out by WP29. Under the 1958 Agreement, there is typically a six to eight month period after the Contracting Parties vote on a UNECE amendment before the regulation comes into force. The above process must be completed within this time for Australia to meet its obligations under the 1958 Agreement. Therefore, there needs to be a more efficient means of maintaining alignment of the ADRs with applied UNECE regulations.

One can only pity the Whitehall counterparts faced with an entire additional tier of administration on top of this. The Australian Government's own solution was to cut the delay and in effect jump straight to the SI, recognising the UNECE standard as applying once the Government signs up to it, unless and until subsequently revoked.

What if UNECE generates a model that Canberra is unhappy with, for instance by generating a competitive advantage to an international competitor? Unlike their opposite numbers in Whitehall who are then confronted with fighting a forlorn rearguard action over an EU law with the European Commission and MEPs, Canberra could simply pull the plug;

If an applied UNECE regulation is amended and is not considered suitable for adoption in Australia, Australia is not obliged to accept products to that amendment series. Australia could vote against the amendment or could cease applying the regulation. In terms of voting against the amendment, Article 12, paragraph 2 of the 1958 Agreement states that:

— An amendment to a Regulation will be considered to be adopted unless, within a period of six months from its notification by the Secretary-General, more than one-third of the Contracting Parties applying the Regulation at the time of notification have informed the Secretary-General of their disagreement with the amendment. If, after this period.....the Secretary-General shall as soon as possible declare the amendment as adopted and binding upon those Contracting Parties applying the Regulation who did not declare themselves opposed to it". (ECE 2002)

However, the general expectation under the Agreement is that Contracting Parties will accept all amendments or elect to cease applying the regulation. In terms of ceasing to apply a regulation, Article 1, paragraph 6 of the 1958 Agreement states that:

— Any Contracting Party applying a Regulation may at any time notify the Secretary-General, subject to one year's notice, that its administration intends to cease applying it. (ECE 2002)

This approach still lumbers Australian parliamentaries with repealing a problematic standard after the event. That at least is an option that they can achieve far more easily than their Westminster equivalents, grappling with trying to undo a European law.

LIFE OUTSIDE THE EU: ACROSS THE POND

The 1965 US-Canada motor vehicle agreement and the development of NAFTA means we can also consider North America as a useful alternative case study. More narrowly, we can begin by turning to the United States as another specific example of how UNECE's standards can apply well beyond the continent upon which the European Commission itself sits.⁴⁷

U.S. automakers self-certify that they are meeting national vehicle standards. A federal safety agency does exist, the National Highway Traffic Safety Administration (NHTSA), but it is more concerned with setting standards rather than universally checking them. Unlike with the EU system though, the US system allows for random testing to catch post-launch standards failures. Infamously, that appears to have latterly happened with VW's reported insertion of a 'defeat device' into its diesel cars in order to fake meeting US pollution requirements. Similarly, it led to a \$300m fine to two other manufacturers caught massaging fuel economy figures. While regulatory policing is more hands-off, the price of non-compliance is set high as a deterrent.

This of course contrasts with the EU, where vehicles must obtain "type approval" from a government before a car maker can bring out a new model, while enforcement is pursued by national agencies.

This difference in approach is generating some debate over TTIP, the mooted new Trans-Atlantic trade treaty. How these talks play out will have considerable significance on the universality of access and the extent to which a non-EU state has a degree of freedom in applying a choice of standards.

A key point to bear in mind in the US case is that federal primacy in car safety was only established relatively recently, in the 1960s and 1970s. While a uniform national code

⁴⁷ See in particular *U.S. and EU Motor Vehicle Standards: Issues for Transatlantic Trade Negotiations*, Richard Lattanzio, Congressional Research Service, 2014

existed, it was voluntary. This may help to explain in part why the US declined to sign the 1958 UNECE Agreement. In part this was also due to a lack of confidence in recognising foreign standards. This was further exacerbated with the introduction of self-certification in 1967.

However, Washington did subsequently sign up to the Transatlantic Business Dialogue with the EU in 1995. This meant both agreeing to UNECE models as a common standard at WP.29.

It has though still left a level of divergence that a globally interlinked vehicle manufacturing industry is keen to smooth out. TTIP is considering four routes to address this –

- Harmonization of rules, or at least agreeing a single vehicle type;
- Comprehensive mutual recognition, recognising both sets of market standards as mutually compliant;
- Selective mutual recognition, allowing for products to be mutually recognised in just certain key areas (occupant crash protection, side impact protection, child restraint systems, and some emissions standards);
- A forward-looking rule, just looking at agreement as new technologies are developed where standards are yet to be agreed.

The US industry's preference is for equivalence and forward-looking standardisation, though some European car manufacturers that don't own US factories may well be inclined on protectionist grounds to lobby against this and maintain technical barriers against their competitors.

The EU-Canada (CETA) negotiations do not really provide much insight into which route will eventually be picked. It does though generate a third example for us to consider. Canada already legally includes 14 UNECE vehicle standards of the 17 listed as needing to be adopted, and in any event the UNECE texts provided for equivalence and consequently did not have any significant standards impact. More significant was the inclusion of a regulatory cooperation chapter in the treaty, an unusual FTA development. This generated a formal mechanism between the EU and Canadian regulatory authorities; provides for easier access to shared data, including over risk and regulatory impact assessments; and significantly is intended to "facilitate earlier access to regulatory development processes."

In a sense, CETA might be interpreted as seeing Ottawa and Brussels short cutting some of the negotiation that take place in UNECE sub committees. This is not really an innovation though, as the reality is that it is doing no more than extending the practice undertaken between EEA states, where civil servants discuss various draft proposals to ensure they are mutually compliant.

In the context of BREXIT, the problems facing the US industry though are not hugely relevant. The US opted out of UNECE and has been playing catch up. By contrast, the Canadian model demonstrates that even part-compliance with global standards means fewer opportunities for trade barriers coming from Brussels. The UK, which has been central to UNECE's development, thus starts from an excellent position in standards compliance.

CONCLUSION: WHO IS MALCOLM FENDICK?

Bismarck is famously attributed a quote about laws being like sausages: better not to see them made. That dictum might be doubly applied to EU laws about sausages. It certainly applies to laws about reinforced vehicle safety glass: the reader who has made it this far in a single sitting without extensive need of caffeine deserves particular applause.

But he or she is not the most deserving of that accolade, because as the records show that officially has already gone to someone else. The nature of the crafting of international standards being what it is, the key radial tributary is that stream that feeds into the lower EU and national terrain. UNECE's minutes themselves indicate from a UK perspective where true appreciation should lie.⁴⁸

Learning that Mr. Malcolm Fendick (United Kingdom) would take his retirement, the World Forum acknowledged his considerable contributions to WP.29 activities and thanked him for his excellent Chairmanship of AC.3 and GRRF over many years. The World Forum wished him a long and happy retirement and expressed its appreciation with a great and long ovation.

Completely off the national radar, except for a handful of colleagues at the Department of Transport, Mr Fendick was evidently magnificently playing the part of the engaged British civil servant. The Department for Transport's Chief Mechanical Engineer and variously *inter alia* Head of Cleaner Fuels and Vehicles Division and Head of Transport Environment and Taxation Division clearly was well regarded by his peers (or at least by the person who wrote the minutes). Yet who still knows of his role in the agreements that were being reached behind muted walls, and continue to be thrashed out by his successor in post?

Or we might consider the role and input of a more senior Whitehall colleague, Karen Pierce – properly speaking, Her Excellency Karen Pierce CMG, Member State Representative of Her Britannic Majesty at the Economic Commission for Europe. Between 2012 and March 2015, she was the Ambassador and Permanent Representative to the UK Mission to the UN and Other International Organisations – the catch-all senior post for international bodies hosted

⁴⁸ *Reports of the World Forum for Harmonization of Vehicle Regulations on its 147th session (10-13 March 2009), Administrative Committee of the 1958 Agreement on its Forty-First Session (10 March 2009), Executive Committee of the 1998 Agreement on its Twenty-Fifth Session (11-12 March 2009) and Administrative Committee of the 1997 Agreement on its eighth session, ECE/TRANS/WP.29/1072, 7 April 2009*

at Geneva.⁴⁹ If even the ambassadorial post gains little public attention, how little public focus will fall on its working committees?

The point is that there are platoons of Malcolm Fendicks out there, working in international organisations, settling differences in trading and business and working practices and standards. They have done so despite the existence of the European Union, albeit generating agreements in which the EU now increasingly has a direct input and where national representatives from EU states have a decreasing role. But what is agreed there can be, and is, applied in a manner that far exceeds the aspirations of the founders of the EU itself. Organisations such as UNECE prove that global trade and world cooperation is not bound and dependent on Brussels, or indeed predicated on membership of the Single Market, but has far wider aspirations and greater engagement. The EU predates this process, and was not designed to the role. It is playing catch up in the way it does best, by playing cuckoo to the powers of the nation state.

It does this with its own Messrs Fendicks. The Permanent Delegation of the EU at Geneva has a Head of Section dedicated to UNECE. His name is Daniel Aristi Gaztelumendi. Mr Aristi Gaztelumendi is a global governance veteran, having served in the EEAS mission at Botswana (which also covers the Southern African Development Community) and previously on the Spanish delegation to UNICEF. A deeper understanding of his career trajectory is hindered by our lack of Basque, though he appears to have started in the Commission in 2002 working on aid management to non-EU countries.⁵⁰ If anything, his profile is even lower than those of the national counterparts over which as EU representative he has such an important and growing role.

How many MPs know? How many journalists? How many MEPs even?

The world, for better or for worse, is being Malcolm Fendicked. Those countries lumbered with EU membership increasingly see themselves Gaztelumendied too. Those involved at the heart of the EU project, however, decline to confess it; and democracy, dangerously, has yet to catch up.

⁴⁹ Both appear to have been able to apply their relevant skill sets to their subsequent jobs. Mr Fendick appears to have moved on to private sector work within the automobile industry and also work associated with the Carbon Trust. Mrs Pierce subsequently became the UK's ambassador to Afghanistan.

⁵⁰ Open Competition COM/A/6/01 Administrators (A 7/A 6) In the Field of Management of Aid to Non-Member Countries — 02 (2002/C 281/08)

ANNEX A: Comparison between UNECE Regulation No. 43, Japan Safety Regulations for Road Vehicles and FMVSS 205, Over Laminated Windscreens

The following table, taken from UNECE's proposed standards in 2008, demonstrates how widespread albeit partial adherence to voluntary standards are then used as the basis for the ECE to propose agreed grouped standards – Type Approvals – which then gain widespread export conformity across the West.⁵¹

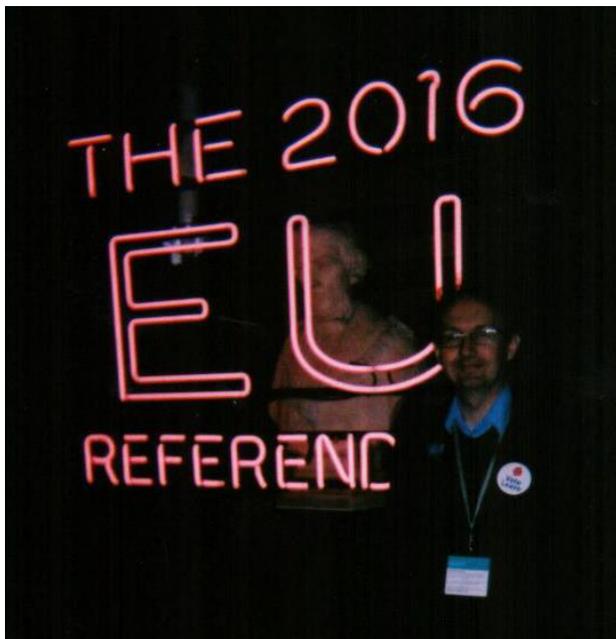
TEST	EUROPE UNECE Regulation No.43	JAPAN Safety Regulations for Road Vehicles, Article 29	USA FMVSS 205	DRAFT GLOBAL TECHNICAL REGULATION
Windscreen optics	Tests on windscreens · using defined vision areas · at the installation angle · Test method ISO 3538	Tests on windscreens · using defined vision areas · at the installation angle · Test method ISO 3538	Test of 12" squares which may be cut from the most curved part of the windscreen · no defined vision area · not tested at the installation angle · not as ISO 3538	As UNECE Regulation No. 43
Light transmission	TL ≥ 75 per cent Test method ISO 3538	TL ≥ 70 per cent Test method ISO 3538	TL ≥ 70 per cent Test method ISO 3538	TL ≥ 70 per cent i.e. as for USA, Japan and Directive 77/649/EEC Forward Field of Vision
Light stability High temperature Humidity	Test method as ISO 3917	Test method as ISO 3917	Test method as ISO 3917 but the evaluation for high temperature and humidity tests not as Europe and Japan	Test method as ISO 3917 Evaluation as Europe and Japan
Fire resistance	Burning rate <250 mm/min	Burning rate < 89 mm/min	Burning rate < 88.8 mm/min	Burning rate < 90 mm/min
Impact 227g Ball	Test method ISO 3537 Tests at + 40°C and - 20°C Varying drop heights according to thickness	Test method ISO 3537 Test at + 40°C and - 20°C Varying drop heights according to thickness	Test method ISO 3537 Test at 25°C Standard drop height	Test method ISO 3537 Test at + 40°C and - 20°C One standard drop height at each temperature
Impact 198g Dart	No test	No test	Test at 25° C. No ISO test.	No test
Penetration Resistance 2.26 kg ball	Test method: ISO 3537 Drop height 4.0 m	Test method: ISO 3537 Drop height 4.0 m	Test method: ISO 3537 Drop height 3.66 m	As UNECE Regulation No. 43
Abrasion Resistance	Test method: ISO 3537	As UNECE Regulation No. 43	As UNECE Regulation No. 43	As UNECE Regulation No. 43
Headform Impact Test	Test method: ISO 3537 Evaluation of penetration	Test method: ISO 3537 Evaluation as UNECE Regulation No. 43	No test	The headform 1.5 m drop test on windscreens is included.

⁵¹ Consideration and Vote by AC.3 Of Draft Global Technical Regulations and/or Draft Amendments To Established Global Technical Regulations; Proposal for a draft global technical regulation on safety glazing Final report on the development of the global technical regulation concerning safety glazing, Submitted by the Working Party on General Safety (GRSG), ECE/TRANS/WP.29/2008/48, 10 December 2007

	resistance and breaking pattern 4 m drop test on flat test pieces. 1.5 m drop test on windscreens	Testing as UNECE Regulation No. 43		(The ECE R43 and Japanese test at 4.0 m on flat test pieces is not included)
Colour Identification	Test to verify that traffic light colors can be recognized. Not an ISO test	As UNECE Regulation No. 43	No test	No test
Impact test 227 g Ball	· Test method: ISO 3537 · Drop heights: thickness < 3.5 mm – 2.0 m thickness > 3.5 mm - 2.5 m · Flat 300 x 300 mm test pieces or finished products	· ISO 3537 · Drop heights as ECE R43 · Flat 300 x 300 mm test pieces	· Test method: ISO 3537 · Drop height: 3.05m · Flat 305 x 305 mm test pieces	As UNECE Regulation No. 43 Standard drop height: 2.0 m
Impact test 4.99 kg shot bag	No test	No test	No ISO test. Drop height: 2.40 m · Flat 305 x 305mm test pieces.	No test
Abrasion test	No test for the glass surface If plastic coated, then: test method: ISO 3537	As ECE R43	· Test method: ISO 3537 · Carried out on bodyglass requisite for driving visibility	As UNECE Regulation No. 43
Light transmission	· Test method: ISO 3538 · In areas requisite for driving visibility: · $T_L \geq 70$ per cent In areas not requisite for driving visibility: T_L no lower limit	As UNECE Regulation No. 43	· Test method: ISO 3538 · For passenger cars the T_L limit is ≥ 70 per cent, except for rooflights For other vehicles the limits are as UNECE Regulation No. 43 · and Japan. [sic]	As UNECE Regulation No. 43
Optical quality	No test	Sidelights requisite for driving visibility	No test	As UNECE Regulation No. 43
Fragmentation	Test procedure ISO 3537 · Production parts are broken using a spring loaded centre punch or pointed hammer from 4 defined breaking points · The minimum particle count allowed is 40 (in any 5x5 cm sided square) with an upper limit of 450 for a thickness < 3.50 mm. 400 for thickness >3.5 mm · No elongated particles (splines) in excess of 7.5 cm are	ISO 3537 Requirements are similar to those specified in UNECE Regulation No. 43 Some small differences in the allowed deviations Deviation examples: · splines up to 15 cm · in case particle count < 40, then: particle count ≥ 160 in any 10 x 10 cm square is acceptable	Fragmentation test as ISO 3537, with only one defined break position (25 mm inboard of the mid-point of the longest edge) The interpretation of results is based on the weight of the largest fragment, which shall not exceed 4.25 g. This equates to the following maximum particle sizes: 3 mm thickness: 5.6 cm ²	As UNECE Regulation No. 43, with some changes: · a single centre break position is specified. · the upper particle count limit is removed. Minimum limit remains at 40. · the elongated particle limit is raised from 7.5 to 10 cm · Determination of the largest particle weight rather than of the area, e.g. for glass up to 4.5 mm thickness the weight

	<p>permitted · The maximum particle size allowed is 3 cm²</p> <p>· NB: Some deviations on the above are permitted. Example: splines [sic] up to 10 cm</p>		<p>4 mm thickness: 4.2 cm²</p> <p>5 mm thickness: 3.4 cm²</p> <p>No evaluation of the length of fragments.</p>	<p>shall not exceed 3.0 g.</p> <p>This equates to: 3.9 cm² for glass 3 mm 3.0 cm² for glass 4 mm</p> <p>Unlike UNECE Regulation No. 43 and Japan, no deviations are permitted.</p>
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About the author



Dr Lee Rotherham has been an adviser to John Major's whipless rebels, Eurosceptic MEPs, three Shadow Foreign Secretaries, the Conservative delegate to the Convention on the Future of Europe, a delegate to the Council of Europe, and government ministers. He was Head of Opposition Research for the No Campaign in the AV Referendum, and Director of Special Projects at Vote Leave, the designated pro-withdrawal campaign during the 2016 referendum. Outside of Westminster he has worked in publishing, teaching, heritage, and in Defence.

He has been very extensively published in academia and across think tanks. His publications as author or co-author include *The EU in a Nutshell*; *Ten Years On - Britain Without the European Union*; *Change or Go*; *Plan B for Europe*; *Controversies from Brussels and Closer to Home*; *Manning the Pumps*; *Hard Bargains or Weak Compromises*; *The Hard Sell*; *Bloc Tory*; *Common Ground*; *A Spotter's Guide to Sound Government Policies*; and the award-winning *Bumper Book of Government Waste* and *Brown's Wasted Billions*.

His historical works include *A Fate Worse Than Debt – A History of Britain's National Debt from Boadicea to Cameron*; *The Sassenach's Escape Manual*; and historical tour guides to Roman Britain, colonial North America, the Hundred Years War, and the Apocalypse.

Lee is a reservist in the British army, and has served on three overseas deployments.