Observatoire des multinationales
social, écologique, politique

spinwatch
Public Interest Investigations

CEO

LOBBY CONTROL

Brexit,
finance sector lobbying and regulatory cooperation

IMPRESSUM

June 2019

Published by
Corporate Europe Observatory
LobbyControl
Observatoire des Multinationales
Spinwatch

Written by
Olivier Petitjean, Observatoire des Multinationales
Kenneth Haar, Corporate Europe Observatory
Tamasin Cave, Spinwatch
Max Bank, LobbyControl

With thanks to
Vicky Cann, Pascoe Sabido and Miriam Vieth

Design and layout
Holger M. Müller – print & web

Facilitated by
ENCO
EUROPEAN NETWORK OF CORPORATE OBSERVATORIES

Supported by the
Schöpflin Stiftung

TABLE OF CONTENT

"TTIP PLUS PLUS" FOR THE FINANCIAL INDUSTRY? – THE HIDDEN DANGER BEHIND THE BREXIT DRAMA

While public attention is focused on the terms of the Brexit withdrawal agreement, the financial industry, in the City and beyond, has been quietly lobbying to push a post-Brexit arrangement tailored to its interests: ‚regulatory cooperation".

This would see the EU and the UK coordinating extensively on how to supervise and regulate financial services now and in the future, with industry lobbyists having a large say on regulations and working with technocrats through opaque forums that are beyond public scrutiny.

If adopted, not only will it benefit financial sector interests in the City of London, but it will impact the future of financial sector regulation in Europe and, potentially the world.

Both the TTIP (EU-US) project and CETA (EU-Canada) include provisions for regulatory cooperation, and a version of it was implemented between the UK and the US to regulate (or effectively, not regulate) the risky London operations of AIG, which contributed to the 2008 financial crisis.

Although the City might not get the automatic market access to the EU that it was seeking to preserve post-Brexit, its ‚regulatory cooperation' approach seems to be supported by all parties – the UK and the EU. We need to remain alert to the danger that the financial industry will indeed get what it wants in the end – a more secretive, malleable, and less democratic regulatory system.

1. INTRODUCTION

There are few bigger Brexit battlegrounds than in the City.[1] Britain's leaving the EU poses immense challenges to the UK's financial services sector, not least because it threatens the industry's access to the European single market and so London's position as the financial hub of Europe. As a consequence, substantial effort has been put into securing an agreement with the EU27 that maintains some form of mutual market access for the financial sector by lobbyists, by the UK government, and by some EU member states. Market access is largely dependent on the rules and regulations in place. The moment one country diverges from a shared rulebook, by either strengthening regulation, or through deregulating, it affects market access. Brexit negotiators are to a great extent, therefore, concerned with agreement on rules and how to manage any future divergence.

The EU will not allow the UK and the City to diverge from its rules and still access its single market without limitations. It is also highly improbable that the UK will become a long-term 'rule-taker' and simply adopt the EU's rules (and future regulations) for governing financial services without a say in their creation. An approach to dealing with this issue has emerged, however, that appears to provide a solution. So-called 'regulatory cooperation'. This would see both sides coordinating extensively on how to supervise and regulate financial services now and in the future. It is an approach supported by the financial services industry, the UK government and the EU.

'Regulatory cooperation' sounds sensible, positive even. Experience shows us, however, that where it has been adopted in the past, decision-making can become dominated by industry lobbyists working with technocrats through opaque forums that are beyond public scrutiny, as we will show below. As a consequence, the process of regulating financial services can become captured by vested interests, leading to deregulation with little regard for the broader public interest.

Unsurprisingly, the financial sector is lobbying hard for such cooperative arrangements to be part of any future trade deal between the EU and UK. If adopted, not only will it benefit financial sector interests in the City, but it will impact the future of financial sector regulation in Europe and beyond. This report on Brexit lobbying by the financial services industry, its campaign for regulatory cooperation, and the reaction of UK and EU negotiators, is intended to contribute to a much-needed public debate on trade arrangements for financial services. At the time of writing the EU-UK trade talks are halted by the crisis over the Withdrawal Agreement. But it is not a crisis that will be allowed to continue indefinitely. Most likely, we will see negotiations take off and at that time, it is important to know what the stakes are. Evidence suggests that future talks on financial markets will indeed have regulatory cooperation at its core and that as a consequence there are risks to the public interest.

2. REGULATORY COOPERATION

WHAT IS REGULATORY COOPERATION?

Trade agreements in the past have typically focused on reducing tariffs, or taxes on imports, or exports between countries. As these have gradually been eliminated, however, a key objective of 21st century trade deals is the convergence of rules and regulations in order to remove non-tariff barriers to trade.

The business community has for decades lobbied to do away with any rule or regulation that could represent an obstacle to trade. These 'trade irritants', as they are often called, could be highly technical standards that involve, for example, food safety standards, permissible substances in products, or the certification of the quality of services.

This is often done through bans on certain obstacles to trade or through mutually agreed principles to secure steady liberalisation. All too often there are contradictions between trade agreements and rules and regulation adopted in the public interest, and often trade agreements prevail. This has contributed substantially to controversies around trade agreements.[2]

This risk of political obstacles that could prevent a trade deal, and the dynamic nature of financial regulation, presents a challenge to negotiators and financial corporations with a challenge ahead of the EU-UK trade talks. Mutual market access is often about whether the other side is prepared to ease regulations and given the low appetite in the public to give eg. banks a freer rein, political skirmishes could ensue.

Regulatory cooperation is now seen as a key mechanism of trade deals to help bring about this convergence, or 'regulatory coherence', in a way that is covert and long term, and hence sidesteps political standoffs around the negotiation and adoption of an agreement.

The straightforward way to deal with any potential divergence in rules is to agree on common standards – dubbed harmonisation, or to simply accept the other side's standards and approaches as equivalent – the 'mutual recognition' model. But differences run deep between trade blocks, and not everything can be settled during negotiations.

What regulatory cooperation offers is a set of procedures that allows the two parties to work out their differences over time and behind closed doors after a deal has been ratified and public attention for it has ceased.

But this is not only about working behind closed doors. Regulatory cooperation is also a power grab by trade bureaucrats, as parliaments won't be in charge of controlling the process. Instead it will be ministry officials only. This increases the already existing democratic deficit of the EU – and potentially of the UK, too.

EU SUPPORT FOR REGULATORY COOPERATION

Regulatory cooperation has been at the heart of most recent trade agreements, and has been included in all major EU trade talks: the currently abandoned Transatlantic Trade and Investment Partnership (TTIP) with the US which might be taken up in 2019 again; the Comprehensive Economic and Trade Agreement (CETA) with Canada; and the Japan-EU Free Trade Agreement (JEFTA) ratified in December 2018.[3]

The EU's model for regulatory cooperation includes certain principles and procedures, such as: an 'early warning mechanism' to alert trade partners to rule changes being considered; ongoing dialogue between regulators; the creation of new bodies to oversee cooperation; and the opening up of discussions on regulatory changes to industry and other stakeholders.[4]

The combined effect of these changes is potentially significant and constitutes a new way of legislating. The future impact is, though, unknown at this stage. Past experience points in one direction: regulatory cooperation can lead to much greater involvement by corporate lobbyists in setting regulatory agendas; a weakening of democratic decision-making; and, in some cases, significant harm to the public interest.[5]

HOW REGULATORY COOPERATION CONTRIBUTED TO THE 2008 FINANCIAL CRISIS

In 2002, when the EU brought in new rules for multinational financial companies operating in Europe, it sent shivers down the spines of Wall Street's CEOs. The idea that American financial firms were to be supervised by EU authorities and abide by certain EU rules, which they saw as punitive and expensive, was unacceptable, and they pushed back through US financial authorities.[6]

Under the guise of informal regulatory cooperation, dialogues were launched between America and the EU to resolve the issue of who should oversee the overseas operations of these multinational finance firms. This process, which was widely welcomed by the US government, regulators and industry, resulted in an agreement that recognised US regulation as essentially equivalent to EU supervision. A 'mutual recognition' of rules was achieved, in other words, through this regulatory cooperation process.[7]

The change allowed US financial corporations to operate in the EU without significant monitoring by European authorities. When the financial crisis arrived, however, it quickly became clear that US supervisors actually knew very little about the financial health of the European arms of some US corporations. This was particularly serious in the case of Lehman Brothers and the insurance giant AIG and affected how US authorities were able to deal with the emerging crisis.

Take the demise of AIG in September 2008. AIG was a major trader in risky financial products called credit default swaps, which were sold by an arm of the firm called AIG Financial Products. This was based in London, but came under the supervision of a US regulator called the Office of Thrift Supervision, as per the 'mutual recognition' deal.[8]

When the financial crisis hit, AIG was unable to honour its massive obligations to holders of these credit default swaps, which led to its collapse. When later asked by investigators, a director of the Office of Thrift Supervision admitted that he did not know what his institution's responsibilities were vis-à-vis the AIG branch in London. The US authorities were unaware of the real state of AIG's books and AIG management wouldn't admit to it until it was much too late.

In the end, AIG was bailed out by the US government to the tune of $182 billion and its demise contributed to a financial crisis that proved disastrous to millions of people.[9]

The agreement on who was to supervise companies like AIG, arrived at through regulatory cooperation between the EU and US, allowed it to happen.

TTIP, FINANCIAL SERVICES AND REGULATORY COOPERATION – THE EU AT THE FOREFRONT OF LIBERALISATION

It is a common perception that the US is by far the most persistent force for global liberalisation of financial markets, but some recent events indicate that the EU sometimes pursues more far reaching agendas than the US. That came to the fore at the TTIP negotiations where the EU was eager to open negotiations on regulatory cooperation on financial services. The background were some measures adopted by the US, which ran against the interests of European banks, including Deutsche Bank, and the EU wanted regulatory cooperation in place to deal with such conflicts.[10]

The US government, however, refused to open negotiations in the area in order to protect advances made in the framework of the so-called Dodd Frank Act. Though pressure from the EU and from the financial sector on both sides of the Atlantic would continue through the whole negotiations process, the US stood firm.

In 2016, the TTIP negotiations were put on ice due to a series of conflicts that had arisen during the negotiations, but the prospect of regulatory cooperation between the two sides is still on the agenda of many corporate lobby groups[11] [12] as well as on the agenda of the EU-Commission, which has submitted a mandate on regulatory cooperation to the Council in January 2019.[13]

3. THE CITY'S BREXIT PROPOSAL ON REGULATORY COOPERATION

The key representative body for the UK-based financial services sector is the International Regulatory Strategy Group (IRSG). It is a powerful lobby group, run jointly by the industry body, TheCityUK, and the City of London Corporation, and whose membership reads like a who's-who in global finance. Among the members are Goldman Sachs, Blackrock, Morgan Stanley, BNP Paribas and Allianz Global Investors.[14]

IRSG has led on Brexit for the sector and produced detailed plans for how it wants it to play out, which it has presented to the UK and EU. One of the key issues it is focused on is obviously the future trading relationship between the UK and EU post-Brexit. In 2017, it produced a 'blueprint' for a free trade agreement (FTA) between the EU and UK.[15]

The proposals were devised by the body's 'regulatory coherence' group, led by investment giant Blackrock with support from, among others: the bank lobby group, UK Finance; financial services representatives in tax havens like Guernsey; and US financial firms, such as Goldman Sachs, JP Morgan and AIG.[16]

The IRSG's 'bold and ambitious' blueprint proposed a bespoke free trade agreement between the EU and the UK that includes financial services, in which market access would be based on 'mutual recognition' of each other's regulatory regimes.[17] It proposed that market access would be maintained through 'close regulatory cooperation' between both parties. In other words, there would be uninterrupted full access at the beginning, and potential or real divergences in the future would then be handled in the context of regulatory cooperation.

Central to this cooperation is a proposed joint committee charged with 'promoting regulatory alignment and addressing questions of divergence.' This 'Forum for Regulatory Alignment', IRSG proposes, should be involved in monitoring supervision and enforcement at a macro level, and explicitly participate in the development of new laws and regulations.[18]

In the context of an EU-UK FTA, IRSG's proposals for regulatory cooperation are designed to ensure that any future rule-making, by either party, does not negatively impact market access. However, they are also likely to lead to an erosion of the power of national regulators, and limit the options of either the EU, or the UK to regulate the sector in the future.

Should one of the parties, for example, decide to introduce a measure deemed in the public interest, such as a Financial Transaction Tax, or increased transparency requirements, it could be seen as a way of undermining the 'regulatory alignment' considered necessary to maintain market access. It could be blocked under the IRSG's proposals.

Its plans could also potentially lead to a roll-back of measures taken explicitly to make financial markets more safe. Known as prudential carve-outs, these are currently used in specific situations where a member state, or the EU, reserves the right to limit its obligations under a trade agreement (or indeed under the Single Market rules themselves) to safeguard financial markets, for instance to prevent a meltdown. It could be about suspending trade in financial products that are deemed too risky, or it could be about stopping hedge funds from speculating in price movements or imposing limits to speculation. IRSG proposes that a future agreement should limit the options available today and the use of prudential carve-outs should be "subject to strict parameters".[19]

The bankers' lobby group, UK Finance – which is a member of the IRSG and contrary to its name, is made up of international financial services firms, such as Goldman Sachs, HSBC, and Morgan Stanley – has made explicit the City's desire to prevent further regulation of the sector. In a separate proposal it advocates that any EU-UK FTA should include a mechanism that would guarantee existing 'levels of liberalisation'. In other words, financial companies should not in the future be subject to any regulation that does not exist at the time of the FTA being signed. As well as this 'standstill clause', it proposes that an FTA should also include a 'ratchet clause' that would additionally lock in any future liberalisation agreed by the EU and UK.[20]

While the desire to restrict the regulatory role of governments and the EU is obvious in these proposal by UK Finance, it also underpins IRSG's plans for greater regulatory cooperation. IRSG's blueprint would negatively impact democratic oversight of the sector in three key ways: by bypassing elected representatives; through increased influence of commercial lobbyists; and through the introduction of a dispute mechanism that would allow companies to sue national governments.

BYPASSING ELECTED REPRESENTATIVES

IRSG proposes that a regulatory cooperation committee, or Forum for Regulatory Alignment, should be 'the vehicle through which the EU and UK formally co-operate and make representations to one another regarding the development of new laws.'[21] It envisages that the Forum would be involved in such discussions at a very early stage and would act as an 'early warning system' on any initiatives that might impede market access. Also, the whole process would be carried out by ministry bureaucrats only, not by parlamentarians.

In practice, this could result in proposals being discussed within the Forum – and, therefore, potentially taken off the table – before they have been presented to elected politicians. This has serious consequences for democratic oversight of a key sector.

INCREASED INFLUENCE OF CORPORATE LOBBYISTS

While the IRSG provides little detail about the institutional design of the Forum, its proposals envisage a structure with many layers, containing an undefined number of expert groups – mainly consisting of business lobbyists - with responsibility for different areas.[22]

Such a structure opens the door to financial sector lobbyists, and indeed IRSG is quick to note that the real experts are often found in industry. Private companies, it says, 'may have technical data and market evidence to help judge the impact of amendments' and 'might also suggest technical solutions that achieve the legislative objective of the amendment without undermining compliance with the EU and UK regulatory outcomes.'[23] IRSG goes further and says the regulatory cooperation committee should be 'obliged to consult with market participants from the UK, EU and other countries outside the EU (where appropriate) and with global standard setters...' In other words, should either the EU, or UK consider regulatory changes, lobbyists should be given a platform to push back.[24]

CORPORATE CLAIMS FOR COMPENSATION

If there is disagreement about a proposed law or measure that might limit market access, IRSG says that the matter should be referred to an 'expert body' to rule on the dispute. However, it goes further and proposes that an EU-UK FTA includes an Investor-State Dispute Settlement (ISDS), a mechanism which caused huge outcry when it was proposed under the TTIP agreement.[25]

Under an ISDS, a private company is able to bring a claim against a national government for an alleged breach of their obligations under a trade deal. [26] IRSG doesn't make clear the circumstances under which this might happen under a new EU-UK deal, but there is a history of ISDS being used by companies to claim compensation for loss of profits, or to secure a reversal of a government proposal that could be judged to limit profits.

Such investment protection agreements for financial services are rare, with the EU-Canada deal (CETA) providing the only example in the EU context. IRSG, however, claims such mechanisms are quite popular both in the EU and UK.

All in all, the IRSG proposal for regulatory cooperation endangers both democratic decision-making and regulation in the public interest in a sector, which has already shown in the financial crisis can make the world economy collapse if it is not regulated properly.

4. THE CITY'S BREXIT LOBBYING IN THE UK AND EU

The financial services industry has long been one of the most powerful voices in UK politics. Even in the wake of the financial crisis of 2008, it has enjoyed privileged access to decision-makers and influence over public policy.

Brexit, however, came as a major shock to the sector. It began as a bet that backfired. The City alongside multinational corporations had wanted to see the EU reformed and for the UK to be granted a special deal that would give them a stronger say in issues relating to, for example, financial regulation. The best way of securing reform, they figured, was to back up negotiations with the EU with the threat of a referendum. Instead of a strong hand in the negotiations, however, what they got was Brexit.

This was not what the majority in the City wanted. Membership of the EU gives them access to a hugely important, single market the rules of which they had co-written. They enjoy 'passporting rights', which allow a company licensed in one country to operate in all other EU member states. The financial services sector has also greatly benefited from open borders and being able to draw from a global talent pool, a situation that is also threatened by Brexit.

In their attempts to shape the government's approach to Brexit, however, they would be in for a bumpy ride. They have had to manoeuver in a divisive political setting that split the ruling party while at the same time having to deal with opposition in the EU27 against a comprehensive deal on finance.

The City's initial Brexit demand was for it to retain as much market access to the EU as possible. TheCityUK asked for 'passporting' to be retained – ie. unrestricted access for UK based companies – effectively asking for single market membership for the sector.[27]« Full access » to the single market, the British Bankers' Association said, for banks operating in the UK.[28] Its lobbying campaign began with the well-worn tactic of threatening relocation should its demands not be met. The bank lobby group, the British Bankers' Association said that banks were 'quivering over the relocate button'.[29] The chair of Lloyd's of London said it would be a 'shame' if it was forced to relocate. 'Lloyds has been going slightly longer even than Morgan Stanley, 328 years, and we want to try and keep it going,' he implausibly said.[30] Ministers, however, were sceptical of their threats, probably rightly so given that it has been a lobbying tactic employed by the City for years to secure favourable policies.

Some skirmishes in the City over the best course of action also hampered efforts to sway government. Despite the best efforts of the triad of TheCityUK, The City of London Corporation and IRSG, not everyone was singing from the same hymn sheet when it came to petitioning government. 'Hard Brexit' supporting hedge funds, in particular, many of them political donors to the governing Conservative Party, countered their message with one of Britain, leaving the EU immediately and going it alone in a global market. The hard Brexiteers in the City remained a small minority but it created complications for the mainstream voices.[31]

But if the City of London sincerely believed they could retain all the privileges they had in the Single Market and practically stay in, they miscalculated. This was confirmed at the Conservative Party conference in October 2016, when the Prime Minister committed the UK to Brexit', effectively ignoring the City's first ideas to practically retain full access to the single market.. When Theresa May delivered her Lancaster House speech the following January, in which she confirmed that the UK would leave the single market, the penny finally dropped.[32] The City shifted its position and came up with proposals that were more in synch with government and political reality in the UK.

Led by IRSG, the City proposed that the UK negotiate a bespoke trade deal with the EU, that included financial services (and related professional services). The deal would be for mutual market access based on 'mutual recognition' of each other's regulatory regimes and close cooperation between EU and UK regulators through a Forum for Regulatory Alignment. This was the City's Brexit blueprint described in the previous section.

FRENCH, GERMAN, US FINANCIAL PLAYERS BEHIND ‚THE CITY'

Up until now, the public debate around the consequences of Brexit for the financial industry has mostly been framed in ‚nationalistic' terms. Who would get most of the spoils of the City if and when it loses its passporting rights to the Eurozone? How many traders would have to relocate from London, and to which European capitals: Dublin, Frankfurt, Paris, Amsterdam, or Luxembourg?

There are some elements of truth in this narrative. Some jobs have been shifted from the UK to various European capitals by financial corporations, but at this stage this is by no means a large scale exodus. On the other hand, the threat or the prospect of financial jobs relocation has been wielded by the financial industry as a lobbying bargaining chip both at national and EU level. In countries such as France or the Netherlands, tax cuts and other business-friendly ‚reforms' were introduced in order to attract business from the City, while the Brexit situation has been used as an argument to freeze or relax financial regulations, including the proposed EU-wide tax on financial transactions. Conversely, the City has also been trying to use the threat of financial job losses as a lobbying argument to get its way in Britain.

But of course this doesn't mean that the financial industry – whether it be based on the continent, in the UK or in the US and elsewhere – is not also, or even primarily, interested in getting as much as they can from the Brexit negotiations, and that they don't see it as an opportunity to advance some of their old policy demands. While large continental players such as Deutsche Bank or Société Générale may push for a relaxation of regulations in their home countries and in the EU, they also simultaneously contribute to the City's own lobbying efforts, as evidenced by their active involvement in the ‚regulatory coherence workstream' of the International Regulatory Strategy Group (IRSG) alongside many UK and US financial institutions.

In effect, when one talks about ‚the City', it is not really so much about a "British" financial industry rather than about a congregation of financial corporations from all over the globe, and notably from the US. The prominent players behind the lobbying described in this report are US-based multinationals such as Goldman Sachs and BlackRock. The push for regulatory cooperation is a concerted effort to serve the interests of the financial industry as a whole, whether it is nominally based in the UK, in Europe, or anywhere else in the world.

All it had to do was convince politicians and officials in Westminster and Brussels to back its plan.

In the UK, the IRSG Council secured regular meetings with the Treasury, DExEU, the Foreign and Commonwealth Office and the Bank of England. These meetings allowed the IRSG to spell out its proposals in detail and to receive information about the development of the negotiations.[33]

In parliament too, MP's and Lords were lobbied to support the IRSG's proposals. Some readily offered their assistance, like Bob Neill MP who worked closely with the City of London's 'Remembrancer's Office' to write amendments to the Withdrawal Bill 'informed by the work of' IRSG.[34] Similarly, in the House of Lords, Lord Carrington tabled an amendment based on the work of the IRSG on EU-UK regulatory cooperation,[35] which was supported the chair of the EU Financial Affairs Sub-Committee, Baroness Falkner.[36]

The City also took its proposals to Europe, concentrating their efforts on lobbying EU member states. According to the City's Special Representative to the EU, Jeremy Browne, such an approach was key. "I have been told that a decent Brexit outcome will be negotiated in Brussels – won in capitals," he said in one of many reports on his European visits.[37] During a six month tour in 2017, Browne was averaging two appointments a week with individual member states. Additionally, former UK finance secretary Mark Hoban put the IRSG model at the heart of his lobbying efforts and called for 'cheerleaders' to come forward to back the plans.[38]

Much of the legwork was being done by the finance lobby groups themselves. The City of London Corporation massively increased its Brussels lobbying spend from €100,000 in 2014 to €1.750.000 at the beginning of 2018.[39] The Lord Mayor, Charles Bowman, pushed the proposals during visits to Portugal and Spain, for instance, in March 2018, supported by Britain's embassies.

IRSG used existing cross-border 'dialogues' with the financial services industry of countries such as Germany, France, Italy and Ireland, to lobby for the proposals.[40] UKFinance launched a new body called the European Banking Policy Network in Berlin in May 2017 to encourage European financial sector groups to lobby their own governments to support the plan.[41] Others, such as the American Chamber of Commerce to the EU[42], also weighed in behind it, as did companies such as Citigroup. The head of its government affairs team, Alan Houmann, talked of how Citigroup is saying the same things to Brussels and across Europe about why the IRSG's plan deserved their backing.[43]

BREXIT, A LOBBYING BONANZA WITH UNPRECEDENTED SECRECY

As soon as the result of the 2016 referendum was known, some were quick to smell a business opportunity. Lobbying outlets, law firms, auditing and management consultancies and the like all set up dedicated teams to offer "Brexit services" to governments and companies alike, in the UK, in Brussels and throughout the rest of Europe. Lobbying activities around Brexit, including conferences, policy papers and meetings with officials and politicians, rapidly set off.

By far the larger share of this lobbying came from business interests. Research by Corporate Europe Observatory and Global Justice has shown the extent to which corporate interests have dominated Brexit-related lobbying on both sides of the Channel. Between October 2016 and June 2017, 91% of UK Trade Ministers' lobbying meeting and 71% of UK Brexit Ministers' have been with business, as was the case of 72% of the lobbying meetings of the EU Brexit taskforce between October 2016 and November 2017.[44]

On both sides of the Channel, finance stands out as the sector which has had the most lobbying meetings. Nearly 20% of all lobbying meetings held by UK ministers in charge of Brexit were with financial players such as Goldman Sachs or their trade groups. Similarly, from the beginning of 2017 till March 2018 the EU's Brexit Taskforce had no less than 67 meetings with financial corporations or lobby associations – more often than not the very same that had had lobbying meetings with the UK ministers and officials.[45]

While financial sector lobbyists have been granted enormous access to key officials, freedom of information requests relating to their discussions are being obstructed by both the UK and EU. In part this mirrors the secrecy of previous trade negotiations, themselves the cause of much public concern. While the negotiations on the Transatlantic Trade and Investment Partnership (TTIP) between the US and the EU were not transparent, at least reports of minutes between negotiators and the EU were released on request, albeit always after a lengthy tug-of-war and in a harshly edited fashion. Back then edits were in the main about negotiators keeping their cards close to their chest, not about what positions lobbyists were pushing at meetings. This includes meetings with the financial sector. In contrast, in these early stages of talks over a future EU/UK trading relationship, financial sector lobbyists will have been helping to shape positions and push their agendas with officials on both sides, but with no public scrutiny. While transparency rules do allow for exemption of information that would undermine international relations, they do not provide for the kind of blanket rejections we have seen in regards to Brexit.[46]

5. THE RESPONSE FROM THE UK AND EU

The reception to the City's proposals was markedly warmer in the UK than the EU,[47] particularly after Theresa May lost her majority in the summer of 2017 and the government found itself in need of allies.

By early 2018, the UK's then Brexit Secretary David Davis was calling for a 'Canada plus plus plus' trade deal – a reference to the FTA between the EU and Canada, but with financial services included – in other words something akin to the bespoke deal the City was calling for.[48] The City's plans were now reportedly being used by the UK government as the 'basis of its talks' with Brussels,[49] with the City stating its readiness to help government negotiate.

In March 2018, Theresa May enthusiastically endorsed IRSG's 'mutual recognition' model in her Mansion House speech[50] to the City. Philip Hammond then demanded, as per the plan, that financial services be included in any future trade deal.[51] By the Spring, Hammond was calling a Brexit deal on financial services his "most immediate priority".[52] The UK government appeared sold on the idea.

One key problem was that the idea of an FTA based on 'mutual recognition' didn't seem to fly at all in Brussels. Despite City figures like Hoban expressing optimism that the EU was recognising the benefits of such a deal, EU politicians and officials had made their opposition to it known.

Stefaan De Rynck, an adviser to Europe's chief negotiator Michel Barnier, said it appeared like 'cherrypicking'. His attitude to 'mutual recognition was cool : due to risk of financial meltdowns, common rules would have to go hand in hand with supervision.[53] The French finance minister, Bruno le Maire, also weighed in. Despite pressure from the german financial lobby groups[54] , the government in Berlin made clear a Canadian-style FTA that included financial services was a no-go, without the UK making budget commitments.[55]

Barnier, who had repeatedly said the UK could not expect a bespoke deal, warned in April 2017 that he would not listen to "pleading" from Theresa May for a special trade deal on financial services. 'There is no place [for financial services],' he said. 'There is not a single trade agreement that is open to financial services. It doesn't exist.'[56] It has been pointed out, however, that Barnier has supported such an idea before: he wrote the chapter on financial services which was included in the Transatlantic Trade and Investment Partnership[57] and must be aware of the chapter in the CETA agreement with Canada on financial services. . Also, in part as a result of financial sector lobbying in the EU27, the EU opened the door ajar in March 2018 to an agreement that would indeed include financial services. : „The EU has come a long way from its stance before Christmas when we were told a deal encompassing financial services was impossible. Now it is actively seeking ways to include financial services in the deal," Miles Celic, chief executive of TheCityUK, said to Bloomberg.[58]

In May, however, Ivan Rogers, Britain's former ambassador in Brussels and an ex-Treasury official, declared the joint industry-UK government proposal dead.[59] This was confirmed in July 2018 when the UK government finally published its proposals for the negotiations in a White Paper.[60] On 12 July, the FT led with the headline: 'May ditches hopes of keeping City in tight tie-up with EU'. The UK government, it reported, had abandoned all hope of a bespoke trade deal for financial services based on 'mutual recognition'.[61] The City's ambitious plan would not fly due to EU resistance.

Instead, the UK has been offered a deal on financial services that would allow the City some access to the EU market if regulations remain aligned, or 'equivalent'. This is the same deal offered to any other 'third country' and considered highly inappropriate for a financial services sector the size of the UK's. It offers patchy access with the EU maintaining control. "It feels like we have been thrown under the bus," a senior banker told Reuters of where the City finds itself today[62].

6. REGULATORY COOPERATION STILL ON THE AGENDA

While the City's lobbying for a more extensive and equitable access deal has clearly failed, IRSG's proposals for keeping the two parties aligned in future – its mechanisms for regulatory cooperation –are, however, still alive. The UK government's White Paper of July 2018 includes ideas for regulatory cooperation that are almost identical to those put forward by the IRSG. It includes, for example, a proposal for a 'Joint Committee' that would be at the core of future cooperation. This committee would assume all the functions of the Forum for Regulatory Alignment proposed by the IRSG.[63] The body would be in charge of monitoring compliance and would be the first stop when conflicts or disagreements arise.

The UK government also proposes that the Joint Committee would provide a forum for the two sides to "understand and comment on each other's proposals at an early stage', it says, through both political and technical dialogue.[64] Additionally, the White Paper includes arrangements for industry to participate in such discussions, in order to provide businesses with 'certainty'.[65] Lobbyists would be welcome under the government's plans.

Finally, decisions on matters where the two sides cannot agree whether a new measure distorts the alignment necessary for mutual market access, the final decision could be left to 'an independent arbitration panel', the White Paper proposes. This is also in line with the IRSG's plan.[66] The UK government's proposals are more detailed than those put forward by the IRSG. but they follow the same blueprint on regulatory cooperation.[67] There is also little doubt that the EU supports regulatory cooperation as the preferred solution to the problem posed by future rule-making.

The guidelines for the negotiations adopted by the European Council in March 2018, advocate 'a framework for voluntary regulatory cooperation'.[68] The following month, Barnier told an audience of bankers that under any agreement, the EU and the UK must be 'ready to exchange our ideas for future rules in the context of a close and voluntary regulatory cooperation'.[69] In late July, he confirmed, following a meeting with the then UK Brexit Secretary, Dominic Raab, that the EU and UK had agreed to have 'close regulatory cooperation'.[70]

When the draft Brexit agreement was published in November 2018, it contained few mentions of financial services. Catherine McGuiness of the City of London Corporation and one of its leading lobbyists noted, however, that it offered a 'foundation' for the sector. 'In particular,' she said, 'the commitment to close regulatory and supervisory cooperation is a positive move'.[71] With the UK government, the EU and the industry all lined up behind greater regulatory cooperation, we can assume that it will play a role in future EU-UK trade relations when or if they take off.

7. CONCLUSION

The financial services industry, long-seen as among the most powerful lobbyists in the UK, appears to have been blindsided by Brexit and the disruption it brought to British politics. Their preferred option - to practically stay inside the Single Market - is not an option in a Brexit context.

The City was never likely to win the first round of Brexit. As one industry commentator noted in 2017, there was too much 'noise' and political 'heat' surrounding the negotiations for the City's lobbying to be effective. Lobbyists operate in the knowledge that their influence increases when their activities go largely unnoticed by the public and are unimpeded by political debate.

Through Brexit, though, it has been able to advance it ideas on regulatory cooperation, which would see regulatory processes reshaped in ways that would benefit business: by taking it out of democratically-accountable, political forums and handing it over to opaque bureaucracies; by opening the process up even more to corporate lobbyists; by granting corporations new rights to sue governments. In one instance, it has even been suggested that liberalisation of financial markets should be locked-in by an agreement.

At the time of writing, the next stage of negotiations aren't certain due to the possibility of the UK leaving the EU without a deal. However, if agreement can be reached, and a transition period secured, then life is likely to be easier for financial sector lobbyists. Fewer eyes will be trained on the trade negotiations, which will be more technical and are very likely to be less transparent.

If, though, we want an EU-UK that doesn't just serve the interests of the finance sector, but protects the public interest, we will need to remain alert to the possibility that the City will get what it wants – a more secretive, malleable, and less democratic regulatory system in the end.

1 U.K. «Financial Services industry: shaping the new trajectory», Politico, Oct 2018, https://www.politico.eu/event/uk-financial-services/, Last checked 1 April 2019

2 «Lowest Common Denominator », CIEL, https://www.ciel.org/wp-content/uploads/2015/06/LCD_TTIP_Jan2015.pdf, Last checked 1 April 2019.

3 EU trade Commissioner Malmström said during the EU-Japan summit in May 2015 that « regulatory cooperation is the future of trade policy. » https://audiovisual.ec.europa.eu/en/video/I-103816, Last checked 1 April 2019.

4 « A dangerous regulatory duet », Corporate Europe Observatory & LobbyControl, p. 8, https://corporateeurope.org/sites/default/files/attachments/regulatoryduet_en021.pdf, Last checked 1 April 2019.

5 Ibid, p. 20-27. Last checked 1 April 2019.

6 Ibid, p. 26. Last checked 1 April 2019.

7 « Testimony of Governor Susan Schmidt Bies », The Federal Reserve Board, 13 May 2004, https://www.federalreserve.gov/boarddocs/testimony/2004/20040513/, Last checked 1 April 2019.

8 « A dangerous regulatory duet », Corporate Europe Observatory & LobbyControl, p. 8, https://corporateeurope.org/sites/default/files/attachments/regulatoryduet_en021.pdf, Last checked 1 April 2019.

9 « Financial Crisis Inquiry Report », Financial Crisis Inquiry Commission, January 2011, p. 350. Last checked 1 April 2019

10 « Leaked document shows EU is going for a trade deal that will weaken financial regulation », Corporate Europe Observatory, 1 July 2014, https://corporateeurope.org/financial-lobby/2014/07/leaked-document-shows-eu-going-trade-deal-will-weaken-financial-regulation, Last checked 1 April 2019.

11 « Position Paper – A new agenda for transatlantic economic cooperation: recommendations from the US business community in Europe », AmCham EU, 13 Nov 2018, http://www.amchameu.eu/position-papers/new-agenda-transatlantic-economic-cooperation-recommendations-us-business-community, Last checked 1 April 2019.

12 « IRSG Report – Global Regulatory Coherence within Financial Services », IRSG, 25 Sep 2018, https://www.irsg.co.uk/resources-and-commentary/irsg-report-global-regulatory-coherence-within-financial-services/ , Last checked 1 April 2019.

13 « EU-U.S. Trade Talks: European Commission presents draft negotiating mandates », European Commission Press Release Database, 18 Jan 2019, http://europa.eu/rapid/press-release_IP-19-502_en.htm , Last checked 1 April 2019.

14 « Council », IRSG, https://www.irsg.co.uk/about-us/council/; Last checked 1 April 2019.

15 « A New Basis for Access to EU/UK Financial Services Post-Brexit », IRSG, 29 Sep 2017, https://www.irsg.co.uk/resources-and-commentary/a-new-basis-for-access-to-eu-uk-financial-services-post-brexit/, Last checked 1 April 2019.

16 « Regulatory Coherence », IRSG, https://www.irsg.co.uk/our-work/workstreams/regulatory-coherence/, Last checked 1 April 2019.

17 « Exclusive – Bankers may get notes to help push industry line on Brexit », Reuters, 15 Dec 2017, https://uk.reuters.com/article/uk-britain-eu-banks-exclusive/exclusive-bankers-may-get-notes-to-help-push-industry-line-on-brexit-idUKKBN1E910Y, Last checked 1 April 2019.

18 « A New Basis for Access to EU/UK Financial Services Post-Brexit », IRSG, 26 Sep 2017, https://www.irsg.co.uk/resources-and-commentary/a-new-basis-for-access-to-eu-uk-financial-services-post-brexit/, Last checked 1 April 2019.

19 bid, p. 23. Last checked 1 April 2019.

20 « Supporting Europe's economies and citizens. A modern approach to financial services in an EU-UK trade agreement », UKFinance, September 2017, page 72, https://www.ukfinance.org.uk/system/files/EU-UK-Trade-Agreement-report-ONLINE-UPDATED.pdf, Last checked 1 April 2019.

21 « A New Basis for Access to EU/UK Financial Services Post-Brexit », IRSG, p. 63, 26 Sep 2017, https://www.irsg.co.uk/resources-and-commentary/a-new-basis-for-access-to-eu-uk-financial-services-post-brexit/, Last checked 1 April 2019.

22 Ibid, page 64. Last checked 1 April 2019.

23 Ibid, page 65. Last checked 1 April 2019.
24 Ibid, page 65. Last checked 1 April 2019.
25 Ibid, page 84f. Last checked 1 April 2019.
26 Ibid, page 83. Last checked 1 April 2019.
27 « Brexit and the industry », TheCityUK, Sept 2016. https://www.thecityuk.com/research/brexit-and-the-industry/
28 « UKs financial sector goes from strength to strength », CityAM, 1 Nov 2016. http://www.cityam.com/252623/uks-financial-services-sector-goes-strength-strength-city
29 « Brexit: leading banks set to pull out of UK early next year », The Guardian, 22 Oct 2016, https://www.theguardian.com/politics/2016/oct/22/leading-banks-set-to-pull-out-of-brexit-uk, Last checked 1 April 2019.
30 « Morgan Stanley boss: jobs will move if single market access is lost », Financial News, 11 Oct 2016, https://www.fnlondon.com/articles/morgan-stanley-robert-rooney-jobs-will-go-if-single-market-access-is-lost-20161011, Last checked 1 April 2019.
31 « Why are hedge funds supporting Brexit? », The Guardian, 6 Nov 2015, https://www.theguardian.com/business/2015/nov/06/why-are-hedge-funds-supporting-brexit, Last checked 1 April 2019.
32 In her Lancaster House speech, Theresa May said « What I am proposing cannot mean membership of the Single Market. », « Theresa May's Brexit speech in full », Brexit Central, 17 Jan 2017, https://brexitcentral.com/theresa-mays-speech-lancaster-house/, Last checked 1 April 2019.
33 « Britain is about to set out its post-Brexit vision for the City of London », BusinessInsider, 16 Feb 2018, https://nordic.businessinsider.com/government-mutual-recognition-finance-regulations-eu-brexit-2018-2?r=UK&IR=T, Last checked 1 April 2019.
34 « Report to the Public Relations and Economic Development Sub-Committee », City Remembrancer, 26 Feb 2018, European Union (Withdrawal) Bill (8.) http://democracy.cityoflondon.gov.uk/ieListDocuments.aspx?Cid=1072&MId=19930, Last checked 1 April 2019.
35 « Report from the City Remembrancer to the Public Relations & Economic Development Sub-Committee », The City of London Corporation, 24 Apr 2018. http://democracy.cityoflondon.gov.uk/ieListDocuments.aspx?Cid=1072&MId=19932, Last checked 1 April 2019.
36 « Debate on amendment 115A », House of Lords, Debate in Committee, 12 Mar 2018, https://www.theyworkforyou.com/lords/?id=2018-03-12b.1391.1&s=speaker%3A16901#g1493.0 Last checked 1 April 2019.
37 Report of Special Representative for the City to the EU, Jeremy Browne, 7 March-19 May 2017.
38 « City of London stepd up Brexit diplomacy as financial services white paper is shelved », City A.M., 23 Jan 2018, http://www.cityam.com/262193/city-london-steps-up-brexit-diplomacy-financial-services, Last checked 2 April 2019.
39 Lobbyfacts.eu : https://lobbyfacts.eu/representative/9c3540d613b149b1823c575f44cf2fef/city-of-london-corporation; Last checked 2 April 2019.
40 « Bilateral dialogues », IRSG, https://www.irsg.co.uk/our-work/bilateral-dialogues/, Last checked 2 April 2019.
41 « Berlin Launch of EBPN », ebp network, May 2017 http://www.bankingpolicy.eu/events/ Last checked 2 April 2019.
42 « Delivering an ambitious new EU-UK trade and investment relationship », AmCham EU, 10 July 2018, http://www.amchameu.eu/system/files/position_papers/final_-_future_eu-uk_trade_and_investment_relationship_-_amcham_eu_1.pdf, Last checked 2 April 2019.
43 « Citi and Deutsche Bank policy chiefs plead for Brexit support », FN London, 25 May 2018, https://www.fnlondon.com/articles/citi-and-deutsche-policy-chiefs-plead-for-brexit-support-20180525, Last checked 2 April 2019.
44 « Big Business Brexit: Corporate interests still dominate Brexit and trade lobbying », Corporate Europe Observatory, 13 Dec 2017, https://corporateeurope.org/en/power-lobbies/2017/12/big-business-brexit-corporate-interests-still-dominate-brexit-and-trade, Last checked 2 April 2019.
45 Ibid. Last checked 2 April 2019.
46 « Brexit trade deal: finance lobby allowed to work in secret », Corporate Europe Observatory, 25 Oct 2018, https://corporateeurope.org/power-lobbies/2018/10/brexit-trade-deal-finance-lobby-allowed-work-secret, Last checked 2 April 2019.
47 « UK promises to prioritise financial services in Brexit deal », Financial Times, 11 Jan 2018, https://www.ft.com/content/573c49dc-f701-11e7-8715-e94187b3017e, Last checked 2 April 2019.
48 « Brexit: David Davis wants 'Canada plus plus plus' trade deal », BBC news, 10 Dec 2017, https://www.bbc.co.uk/news/uk-politics-42298971, Last checked 2 April 2019.
49 « City of London steps up Brexit diplomacy as financial services white paper is shelved », City A.M., 23 Jan 2018, https://www.cityam.com/262193/city-london-steps-up-brexit-diplomacy-financial-services, Last checked 2 April 2019.
50 « Prime Minister Theresa May's speech on our future economic partnership with the European Union », GOV.UK, 2 Mar 2018, https://www.gov.uk/government/speeches/pm-speech-on-our-future-economic-partnership-with-the-european-union; Last checked 2 April 2019.
51 « Hammond insits financial services should be part of FTA », ICAEW economia, 7 Mar 2018, https://economia.icaew.com/news/march-2018/hammond-defends-financial-services-should-be-part-of-fta, Last checked 2 April 2019.
52 « Financial services deal the priority for Hammond », ICAEW economia, 23 May 2018, https://economia.icaew.com/en/news/may-2018/financial-services-deal-the-priority-for-hammond, Last checked 2 April 2019.
53 « Barnier's aide cast doubt on key plank of May's Brexit plan », 6 March 2018.
54 « Anforderungen an Übergangsphase und Handelsabkommen in Bezug auf den Brexit », bankenverband, 19 Mar 2018, https://bankenverband.de/media/files/2018-03-19_Brexit_Anforderungen_EU_DE.pdf, Last checked 2 April 2019.
55 « There's Still Hope for U.K. Financial Services in Brexit Deal », Bloomberg, 14 Jan 2018, https://www.bloomberg.com/news/articles/2018-01-14/u-k-gets-financial-services-hope-as-eu27-hone-brexit-demands, Last checked 2 April 2019. Compare also « The EU's plans for ties with Brexit Britain - annotated », Financial Times, 7 Mar 2018, https://ig.ft.com/draft-brexit-guidelines-tusk-annotated/, Last checked 2 April 2019.
56 « BoE and Treasury at loggerheads over 'Plan B' for City Brexit », Financial Times, 28 May 2018, https://www.ft.com/content/d8d3943e-625c-11e8-a39d-4df188287fff, Last checked 2 April 2019.
57 « Equivalence Will Not Work Post-Brexit », MarketsMedia, 22 Mar 2018, https://www.marketsmedia.com/equivalence-will-not-work-post-brexit/, Last checked 2 April 2019.
58 « EU Digs In Over Banks' Post-Brexit Access But Divisions Emerge », Bloomberg, 20 Mar 2018, https://www.bloomberg.com/news/articles/2018-03-20/eu-offers-u-k-improved-equivalence-for-financial-services, Last checked 2 April 2019.
59 « BoE and Treasury at loggerheads over 'Plan B' for City Brexit », Financial Times, 28 May 2018, https://www.ft.com/content/d8d3943e-625c-11e8-a39d-4df188287fff, Last checked 2 April 2019.
60 « The Future Relationship between the United Kingdom and the European Union », HM Government, July 2018, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/786626/The_Future_Relationship_between_the_United_Kingdom_and_the_European_Union_120319.pdf, Last checked 2 April 2019.
61 « Theresa May ditches hopes of keeping City in tight tie-up with EU », Financial Times, 11 July 2018 https://www.ft.com/content/795f9eae-84f2-11e8-96dd-fa565ec55929, Last checked 2 April 2019.
62 « Brexit Britain's financial sector faces 'slow puncture' », Reuters, 11 Dec 2018, https://uk.reuters.com/article/uk-britain-eu-city-insight/brexit-britains-financial-sector-faces-slow-puncture-idUKKBN1OA1SN, Last checked 2 April 2019.
63 « The future relationship between the United Kingdom and the European Union », HM Government, July 2018, page 88 ff. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/786626/The_Future_Relationship_between_the_United_Kingdom_and_the_European_Union_120319.pdf, Last checked 2 April 2019.
64 Ibid. page 31. Last checked 2 April 2019.
65 Ibid. page 31. Last checked 2 April 2019.
66 Ibid. page 93. Last checked 2 April 2019.
67 Ibid. page 90. Last checked 2 April 2019.
68 « European Council (Art. 50) guidelines on the framework for the future EU-UK relationship », European Council, 23 Mar 2018, http://www.consilium.europa.eu/en/press/press-releases/2018/03/23/european-council-art-50-guidelines-on-the-framework-for-the-future-eu-uk-relationship-23-march-2018/, Last checked 2 April 2019.
69 « Speech by Michel Barnier at the Eurofi High-level Seminar 2018 », European Commission, 26 Apr 2018. http://europa.eu/rapid/press-release_SPEECH-18-3569_en.htm, Last checked 2 April 2019.
70 « Statement by Michel Barnier at the press conference following his meeting with Dominic Raab, UK Secretary of State for Exiting the EU », European Commission, 26 July 2018, http://europa.eu/rapid/press-release_SPEECH-18-4704_en.htm, Last checked 2 April 2019.
71 « City Corporation response to Brexit withdrawal agreement and future relationship declaration », City of London, 14 Nov 2018, https://news.cityoflondon.gov.uk/city-corporation-response-to-brexit-withdrawal-agreement-and-future-relationship-declaration/ Last checked 2 April 2019.

Observatoire des multinationales
social, écologique, politique

spinwatch
Public Interest Investigations

CEO

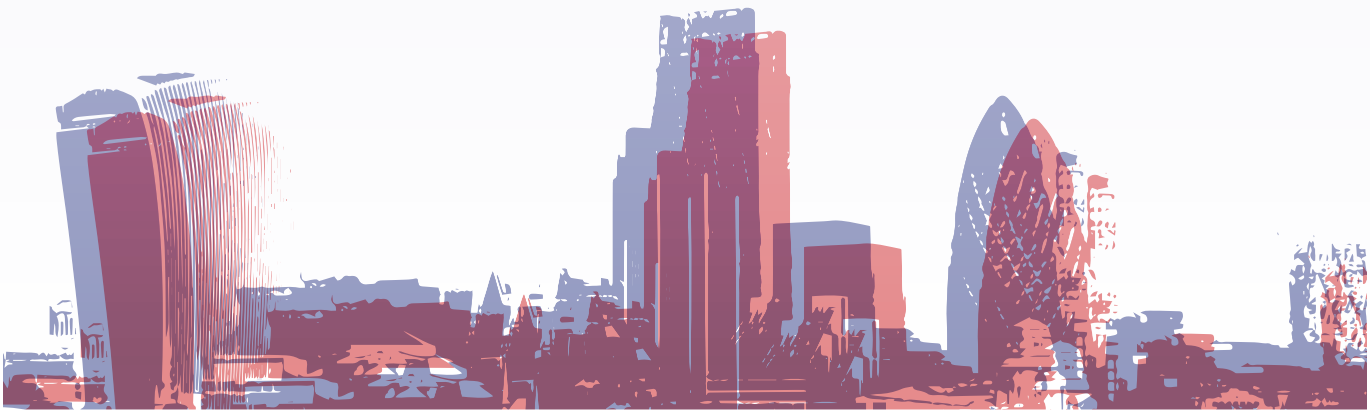
LOBBY CONTROL

Facilitated by

ENCO
EUROPEAN NETWORK OF CORPORATE OBSERVATORIES

Supported by the

Schöpflin Stiftung



Brexit, finance sector lobbying and regulatory cooperation