

# The illusion of managed divergence

Blog post by Chief Economist Gregor Irwin, 26 February 2018

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The Institute for Government's model of managed divergence for the UK and EU economies has been influential in shaping the UK government's position. It's an ingenious attempt to address some of the thorniest economic and political challenges presented by Brexit. But while it may provide a basis for the UK cabinet ministers to bridge their differences, it is unlikely to be acceptable to the EU, now or in the future.

The model is actually one of four set out by the IfG in [a paper](#) published in December 2017. The other three, are variants of the familiar Norway and Canada models, based on membership of the European Economic Area and a free trade agreement respectively, plus a variant of a less familiar Ukraine model, based on a "deep and comprehensive" FTA, which involves participation in parts of the single market.

This immediately points to one of the distinctive - and problematic - features of the managed divergence model, which is that, unlike the others, it is entirely new, without precedent and with no existing legal framework that can be taken and adapted to the circumstances of the UK. This is a problem for the EU, not only because of the practical constraints involved in getting a new framework formally agreed, but also because, for political reasons, the EU does not want to be seen to be creating a bespoke arrangement for a departing member state.

The ingenuity of the managed divergence model (or EU-UK regulatory partnership, as the IfG calls it) comes from three of its features.

First, it recognises the unique starting point for the negotiation, which is one of complete alignment with the EU. Every other model on offer is intended to bring about convergence. But the UK and EU are instead in the process of diverging, to an extent that remains to be determined. As the title suggests, the model is about managing that process.

Second, the approach is flexible. It allows for regulations to be treated in different ways by being put into three tiers: a core tier, where the UK would essentially adopt the same regulations as the EU automatically; a mid-tier, where UK regulations would seek to achieve the same objectives as the EU, but by different means; and an outer tier, where the UK could adopt its own approach, without consequences for market access.

Some problems come with this flexibility, however. For example: how to allocate regulations to the tiers (by negotiation); how to decide whether regulations are sufficiently aligned, given their tier status (tasked to an independent committee of experts); and agreeing the consequences for market access where they are not (inevitably also by negotiation). And this, in turn, leads to a serious drawback for business, which the IfG identifies - the durability of market access is inherently uncertain.

Third, the IfG does a good job of identifying the minimum necessary governance structure to make the model operable. For the core tier, the UK could dock into some of the existing EEA

arrangements, including the EFTA court, which side-steps the need for direct ECJ oversight. The mid-tier would need a dispute settlement process, along with independent adjudication. And there would need to be a process for resolving disputes over which regulations belong in which tiers.

For all its ingenuity, however, the model has some deep flaws, which means it is unlikely either to be acceptable to the EU or workable in practice.

The negotiation over tiers would be difficult. The EU would want to load as much as possible into the core tier, whereas the UK would want maximum flexibility from the offset. To compound matters, the EU would insist on the UK sticking close to its horizontal regulations covering state aid, labour markets, health and safety, the environment, and so on. The relationship between horizontal regulation and vertical market access is also inherently unclear and a potential source of conflict, should the UK opt to diverge from some horizontal regulations in future.

The model would also likely come under stress where the divergence in regulation comes about because of changes in the EU approach, that the UK does not want to follow. It would be politically difficult for the UK to adopt controversial EU rules, particularly when the UK has had no say in shaping them.

In conclusion, the model does a better job of meeting the political needs of the UK than the EU, which is why the UK government has seized upon it. It gives the UK more control than any of the other models mentioned above, but without an immediate rupture in market access. But that control is also another why it is likely to be problematic for the EU, as it essentially creates a governance framework for the UK to cherry pick the sectors where market access will continue. That reason alone is enough to ensure that it will be dismissed in Brussels.