

# The Fallacy of Easy Mutual Recognition of Standards

Mrs May and Mr Davis are opening a Pandora's Box of complexity, confusion and chaos by advocating the Mutual Recognition of Standards to achieve 'frictionless' trade post Brexit. They appear not even to know the basics, being unwilling or unable to clarify what they mean by 'standards', and consequently fail to acknowledge the many subtleties and 'show-stopping' problems involved.

Mrs May, in her Our Future Partnership speech at the Mansion House on 2<sup>nd</sup> March 2018, went no further than to express banal generalities about 'standards':

*"The UK will need to make a strong commitment that its regulatory standards will remain as high as the EU's. That commitment, in practice, will mean that UK and EU regulatory standards will remain substantially similar in the future."*

*Many of these regulatory standards are themselves underpinned by international standards set by non-EU bodies of which we will remain a member – such as the UN Economic Commission for Europe, which sets vehicle safety standards."*

Mr Davis, in his Foundations of the Future Economic Partnership Speech in Vienna 20<sup>th</sup> February 2018, was similarly vague about mutual recognition and standards:

*"Such mutual recognition will naturally require close, even-handed cooperation between these authorities and a common set of principles to guide them."*

*And the certainty that Britain's plan – its blueprint for life outside of the European Union – is a race to the top in global standards."*

*And not a regression from the high standards we have now.”*

When they talk about standards, what do they mean? Parameters (for safety, performance, environmental impact etc.) and levels of performance against them? Highly prescriptive laws and regulations covering whatever bureaucrats can think of? Standards published by the International Standards Organisation (ISO) or the European Centre for Standardisation (CEN) or the British Standards Institute (BSI)? Organisations that have statutory duties (under UK and/or EU law) to assess conformity or enforce compliance? All of these? – or something completely different?

Whilst clarity and precision are prerequisites for any published standard or specification, Mrs May appears to believe she has already been clear in setting out what she wants relating to mutual recognition of standards. In her statement to the Commons 5<sup>th</sup> March 2018 Mrs May concluded:

*“My message to our friends in Europe is clear. You asked us to set out what we want in more detail. We have done that.”*

Unfortunately for Mrs May and Mr Davis, they are not being at all clear what they want and show no indication of even trying to understand the subject of mutual recognition of standards, which they are so convinced they can get the EU to adopt. Furthermore, the arrangements they appear to be seeking conflicts with how the EU uses ‘standards’ and shows their ignorance of how the EU and Single Market functions. Mutual recognition, where it exists at all, is being superseded by harmonised standards, processes, procedures, regulation and market surveillance, within a centralised legal and bureaucratic framework. Mutual recognition is the laborious, slow exception, not the fast rule.

The European Union (EU) is seeking to move towards the legally mandated use, without deviation, of harmonised requirements and published European Specifications and Standards, for

instance through its *New Approach Directives* (which cover many products). These *Directives* (which are EU law) contain 'essential requirements' covering safety, reliability and availability, health, environmental protection, technical compatibility and accessibility. In turn, these may mandate requirements contained in a dated version of a 'European specification' which can be a common technical specification, a European technical approval or a national standard transposing a European standard. A common technical specification is one which has been laid down in accordance with a procedure recognised by the Member States which has been published in the *Official Journal of the European Union*.

A *Directive* will normally only refer to a part (i.e., specific clauses) of a wider 'European specification'. European Standards can contain national deviations or special national conditions, but these are then disallowed in the *Directive* as part of the goal of achieving harmonised requirements.

Derogations (or variations) against requirements in *Directives* are discouraged requiring the granting of unique or special permission by the relevant authority which increasingly is an arm of the European Commission. Generally national standards (or rules) can be used only where permitted by a *Directive* or in the absence of an applicable European specification.

There are published International, European and British standards for materials, components and finished products, processes, systems, management subjects etc. There are also more fundamental ones such as Basic Safety Publications which are intended for use by technical committees in the preparation of standards. Organisations from the UK participate in drafting committees in the ISO, CEN and BSI *et al* to produce published standards. This involvement will be unaffected by Brexit.

There is also considerable interchange between international standards (ISO, IEC, EN), often with common text or even

numbering and cross referencing of requirements. Also standards first produced by national bodies (such as BSI) can end up being adopted internationally as ISO or European Standards, with some re-drafting. Generally, International Standards (from ISO, IEC, CEN, CENELEC etc.) are well refined whilst specified requirements in *Directives* can contain grammatical errors and be mixed with information, thus making them more difficult to follow.

Harmonising standards to produce a single internationally accepted standard and requirements at European or global level makes considerable sense for quality, safety, technical or functional compatibility, production and testing etc. Often, for historical and economic reasons, this is far from being immediately practicable. Perhaps the simplest illustration is paper sizes where the ISO series (which originated in Germany) is not followed in North America leading to endless document reformatting.

Rocking the 'Standards Boat', as Mrs May and Mr Davis propose, is a minefield and not for the unwary or ignorant. The above explanation is merely the tip of the iceberg since standards, to be of any use at all, need to be supplemented and implemented within an appropriate legal, regulatory and surveillance framework, which, like it or not, the EU has developed in considerable detail. They are not going to change. Consequently to get their Brexit strategy right and 'deliver a wide range of benefits to enhance competitiveness and performance' (available from the BSI or ISO), Mrs May and Mr Davis should practise what they preach and race to the top, under independent conformity assessment, by rapidly adopting ISO 44001:2017 (formerly BS 11000) *Collaborative Business Relationships*