

Book Review

Anu Bradford, *The Brussels Effect: How the European Union Rules the World* (Oxford University Press 2020), Print ISBN-13: 9780190088583, 404 pages

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In her comprehensive monograph *The Brussels Effect*, Anu Bradford critically challenges the view that the EU's power on the global stage is waning. Building on her influential article with the same title, Bradford conceptualizes, illustrates and evaluates the EU's power to export its standards through unilateral regulatory globalisation.¹ At the crossroads between law, political science, and economics, this book contributes to scholarly discourse on regulatory convergence, in particular David Vogel's 'California Effect'.²

Part I introduces the theoretical underpinnings forming a core contribution of the book. Chapter 1 considers the EU's emergence as a global power, examining how the Union's inter-institutional dynamics catalyse an ambitious internal and external regulatory agenda. Chapter 2 sets out the proposed conditions for the externalization of unilateral standards, and explains why the EU is well-placed to do so. In addition to market size, it is argued that sufficient regulatory capacity together with a political preference for stringent standards are required. The regulations themselves must aim at inelastic targets which cannot flee to another jurisdiction, such as consumer rather than capital markets. A final condition is that of indivisible production process, which incentivise producers to voluntarily apply a standard across their global operations. The producers' choice to do so may be based on legal, technical, or economic factors. Such adjustment by global corporations of their conduct is termed the 'de facto' Brussels Effect. Seeking to avoid a competitive disadvantage, corporations then have a further incentive to lobby their home jurisdictions to adopt 'EU-style' regulations, resulting in a 'de jure' Brussels Effect. Zooming out, Chapter 3 contextualises the Brussels Effect amongst alternative channels for the EU's externalization of its regulatory influence, in particular through treaties and participation in international organisations.

With a more empirical focus, Part II explores the manifestation of the Brussels Effect in various case studies. Competition law is discussed in Chapter 4, which analyses the EU's stringent regulatory standards, particularly as compared to the US. Non-divisibility of conduct is suggested as a decisive factor for the materialisation of

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¹ Anu Bradford, *The Brussels Effect* 107 *Northwestern University Law Review* 1 (2012).

² David Vogel, *Trading Up and Governing Across: Transnational Governance and Environmental Protection* 4 *Journal of European Public Policy* 556 (1997).

the Brussels Effect in this field. This will depend on context, and differs across the policy areas of merger control, abuse of dominance and cartel behaviour. Chapter 5 considers the digital economy, turning first to data regulation under the territorially expansive General Data Protection Regulation (GDPR). Particular attention is paid to key data protection cases, including *Google Spain* and the then pending *Google CNIL*.³ In the latter case, the GDPR was not ultimately found to entail a global dereferencing obligation. Of interest is the EU Court of Justice's recognition of the need to balance privacy against the freedom of expression, adding a human rights dynamic worthy of future examination. The chapter also considers hate speech online, and the success of the Brussels Effect in relation to the EU's voluntary norms. Here too later legal developments provide interesting opportunities for further analysis, this time as regards the binding Digital Services Act.⁴ Chapter 6 then analyses consumer health and safety. An emphasis is placed on the EU's stringent and often contested regulation of genetically modified organisms, which is finding increasing support in other jurisdictions. The chapter also considers the EU's precautionary regulation of chemical safety under the Registration, Evaluation, Authorisation, and Restriction of Chemicals Regulation.

Chapter 7 explores wide-ranging examples of the Brussels Effect in the field of environmental protection. Topics covered include the regulation of hazardous substances and electronic waste, and animal welfare. As regards the latter, the author notes that outside the field of animal testing where there has been a clear dispute before the CJEU, '[i]t is not always clear if foreign producers are adjusting their global practices given their exposure to the EU as a key export market or whether they are changing their practices due to growing domestic pressures' (p.218). This compelling observation may well be applicable across the board, as it is difficult to isolate the role of EU market power relative to third country domestic preferences. Turning to climate change, attention is then devoted to the EU's attempt to externalise the application of its Emissions Trading Scheme through the controversial Aviation Directive. Severe political and industry resistance led the EU to temporarily reduce the Directive's scope to flights within the European Economic Area (EEA), pending negotiations at the International Civil Aviation Organisation (ICAO). According to Bradford, notwithstanding its catalysing effect on multilateral developments, the Union's caving to international pressure illustrates a limitation of the Brussels Effect. One can question, however, whether this remains the case today, with the Commission proposal in the Fit for 55 Package to maintain the ETS for intra-EEA flights, despite pressure from industry to align fully with the ICAO carbon offsetting scheme.⁵ Indeed,

³ Case C-131/12 *Google Spain SL, Google Inc. v Agencia Espanola de Protección de Datos (AEPD), and Mario Costeja González* [2014] ECLI:EU:C:2014:317; Case C-507/17 *Google v Commission Nationale De L'informatique Et Des Libertés* [2019] ECR 772.

⁴ See *Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC*, (Communication) COM(2020) 825 final, 15 December 2020.

⁵ *Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC as regards aviation's contribution to the Union's economy-wide emission reduction target*

a controversial *expansion* of the ETS to include international shipping has now been proposed.⁶

Part III provides a rich evaluation of the desirability and future prospects of the Brussels Effect. Chapter 8 engages with key critiques of the phenomenon, including the claim that the Brussels Effect reflects EU regulatory protectionism. According to the author, there is ‘sparse evidence’ to support this; a ‘more plausible explanation’ being that ‘the EU is simply a tough regulator – whether against foreign or domestic firms’ (p.247). When evaluating the EU’s regulatory motivations it would be interesting to hear more on the inter-institutional dynamics. For example, the Commission’s intra-EU harmonisation ambitions may entail a push for higher environmental standards not always supported by the Council. Another factor is the much-criticised democratic deficit, with members of the European Parliament being indirectly chosen at a national level, and having no right of initiative. The link between EU citizens’ policy preferences and EU regulation is then sometimes tenuous.

Particularly interesting is also Bradford’s discussion on whether the Brussels Effect amounts to regulatory imperialism. Here, the author takes quite a forgiving stance, arguing that the EU’s interference with the regulatory space of other sovereigns need not undermine foreign democratic interests, and is not ‘monolithically’ viewed as ‘sovereignty infringing’ (p.252). Rather, the EU’s externalisation of its standards may be ‘benevolent’, filling consumer protection gaps in foreign systems that lack capacity and the ‘right incentives’. Arguably however, the normative issue remains that it is the EU and not the affected state unilaterally shaping the precise objectives and – importantly – the *means* of their achievement. Respect for legislative autonomy as encapsulated in the principle of sovereign equality is still an essential safeguard against fluctuating regulatory agendas in different states. It also goes some way in mitigating the dilemmas of normative relativism that may compromise the ‘benevolence’ of externalised policy.

Finally, Chapter 9 examines external and internal challenges to the future of the Brussels Effect. An intriguing discussion of the ‘Beijing Effect’ concludes that China is unlikely to replace the EU, particularly in light of the former’s export-oriented growth and more limited propensity to adopt stringent standards. While acknowledging the Brexit as a real internal threat, the author does not see the Brussels Effect fundamentally undermined. Somewhat controversially she predicts that, in fact, the UK’s dependence on the EU market will render its desired regulatory sovereignty illusory in practice.

and appropriately implementing a global market-based measure, (Communication) COM(2021) 552 final, 14 July 2021, p.3.

⁶ Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union, Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and Regulation (EU) 2015/757, (Communication) COM(2021) 551 final, 14 July 2021 p.41.

With its multi-layered contribution, this book has rightly been praised as a ‘narrative of law, politics and power’ that is both ‘compelling and highly accessible’.⁷ Not only does it provide a comprehensive reference work, it also offers a refreshingly optimistic view on the EU as a global actor.

⁷ Elaine Fahey, ‘POMFR Book review: Anu Bradford, *The Brussels Effect: how the European Union rules the world* (OUP 2020)’ *European Law Blog* (9 July 2020) <https://europeanlawblog.eu/2020/07/09/pomfr-book-review-anu-bradford-the-brussels-effect-how-the-european-union-rules-the-world-oup-2020/>.