

ANU BRADFORD, *THE BRUSSELS EFFECT: HOW THE EUROPEAN UNION RULES THE WORLD* (OXFORD UNIVERSITY PRESS 2020)

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I. INTRODUCTION

Some years ago, when I was working in Brussels as a consultant on European affairs, I used to travel regularly to Japan to update Japanese manufacturers on the latest developments in European Union (EU) legislation. At the time I did not suspect that, in so doing, I was contributing to what Anu Bradford in her latest book calls the "Brussels Effect". The Brussels Effect refers to the phenomenon whereby, under specific conditions, the EU influences and shapes the global regulatory environment by unilaterally adopting stringent regulatory standards for its own internal market. In order to gain and maintain access to the large European consumer market, most multinational companies are pushed to comply with EU standards and often expand such compliance across their worldwide production. Thus, in many fields, the EU has established itself as a global regulatory hegemon. The EU determines the amount of chemicals present in toys made in China, the notices about cookies that we receive while surfing on the web, the safety devices installed in cars produced in Japan and whether or not two US companies can merge. In my own experience, our Japanese clients used information on EU rules and laws to adapt their future production to EU environmental and safety standards, internalising EU regulatory preferences in their own production planning.

Anu Bradford's *The Brussels Effect: How the European Union Rules the World* is a well-structured book with a convincing narrative. It builds upon a 2012 article by the same author that introduced the concept of the Brussels Effect and

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identified its main traits.¹ The 2020 book further develops the theoretical and practical aspects of this phenomenon, showing how and why the EU has become a global regulatory hegemon. By positing the Brussels Effect, the author proposes a new reading of the role that Europe plays in the world, reframing a debate that is too often dominated either by a dismissive stance about Europe's inexorably declining power or by a normative over-reliance on the benefits and virtues of the EU's model.² In the first part of this review, I will summarise the main arguments presented in the book. In the second part, I will engage in some critical reflections prompted by these arguments.

II. UNDERSTANDING THE BRUSSELS EFFECT

Bradford positions her work at the crossroads between the internal perspective of European studies and the wider domain of international relations, drawing liberally from law, political science and economics. The breadth of her book reflects a sense of dual belonging that she acknowledges in her preface: 'As a result of my personal and professional journey from Europe to the United States, today I have the benefit of observing the EU at the same time as an insider and as an outsider'.³ This privileged perspective makes Bradford a natural contributor to the strand of legal and political science literature that looks at the kind of external power the EU exercises, the external impact of EU rules and norms and why third countries align their domestic law systems to EU law.

It is well established that the EU exports its norms and standards via unilateral, bilateral and multilateral channels, including neighbourhood policy and

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

² See respectively Douglas Webber, 'Declining Power Europe: The Evolution of the European Union's World Power in the Early 21st Century' (2016) 1 *European Review of International Studies* 31; Ian Manners, 'The European Union's Normative Power in Global Politics' in Hubert Zimmermann and Andreas Dür (eds), *Key Controversies in European Integration* (Palgrave Macmillan 2012).

³ Anu Bradford, *The Brussels Effect: How the European Union Rules the World* (Oxford University Press 2020) x.

partnerships, free trade agreements and international treaties.⁴ How and why the EU does this has been the object of a burgeoning literature. The capacity of the EU to extend internal EU rules and policies beyond borders has been captured among others by Lavanex and Schimmelfennig's concept of 'external governance'⁵ and by Zeitlin's 'extended experimentalist governance'.⁶ It has been addressed by Manner's idea of the EU's "normative power", according to which the EU exports norms in the name of universal principles.⁷ In the field of law, Scott has looked at the 'extraterritoriality and territorial extension of EU law', which arises when EU legislation requires third country law or conduct to be in accordance with EU law.⁸ Most of these accounts are centred on the EU's active efforts to shape the international regulatory environment. Bradford's Brussels Effect introduces a new perspective to this debate by focusing on market dynamics and multinational economic actors and shifting the analysis away from a Europe-centred approach. In other words, it is through the effects of the market and the choices of international economic players that Europe takes centre-stage and a system of global EU influence emerges.

The book is structured around three levels of analysis: a theoretical introduction of the Brussels effect; an empirical illustration through targeted case-studies; and a normative assessment of the regulatory power exerted by Europe through the Brussels Effect. This structure may at times appear slightly repetitive, but it allows the main argument of the book to come across clearly and embeds it in a consistent line of reasoning.

⁴ See e.g. Gerda Falkner and Patrick Müller (eds), *EU Policies in a Global Perspective: Shaping or Taking Global Regimes?* (Routledge 2014).

⁵ Sandra Lavanex and Frank Schimmelfennig, 'EU Rules beyond EU Borders: Theorising External Governance in EU Politics', (2009) 16 *Journal of European Public Policy* 791.

⁶ Jonathan Zeitlin (ed), *Extending Experimentalist Governance: The European Union and Transnational Regulation* (Oxford University Press 2015), 1ff.

⁷ Manners (n 2).

⁸ Joanne Scott, 'Extraterritoriality and Territorial Extension in EU Law' (2014) 62 *American Journal of Comparative Law* 87.

The theoretical part of the work lays out the conditions under which the Brussels Effect takes place and shows how the EU has come to play the role of global regulatory hegemon. To start with, Bradford distinguishes between two interconnected forms of the Brussels Effect. The *de facto* Brussels Effect takes place when, to gain access to the internal market, multinational companies adopt EU standards and subsequently extend them to their global production. This is a consequence of market forces: Companies trading internationally tend naturally to comply with the most stringent standards so as to avoid customizing their production in different markets. The *de jure* Brussels Effect occurs when foreign governments adopt EU-like regulation, often as a consequence of pressures by those same multinationals that, once adjusted to EU rules, advocate for the same level of regulation in their domestic markets. Thus, the *de jure* Brussels Effect is largely a consequence of the *de facto* Brussels effect, which therefore commands the primary focus of the book.

Bradford acknowledges that the Brussels Effect does not take place in all EU regulatory domains. She also argues that, while today – and most likely for years to come – the EU is in a unique position to fulfil the role of global regulator, the Brussels Effect is not *per se* specific to Europe and could apply to any other jurisdiction in the presence of specific market and regulatory features. Bradford cites five main criteria, to be exact. First, a global regulator must command a *large market* in order to incentivize foreign companies to adapt to its stringent rules. Second and third, its institutions must possess sufficient *regulatory capacity* and willingness to adopt *stringent regulatory standards*. Fourth, its regulations must target *inelastic markets*, such as consumer markets, so that companies cannot simply flee the jurisdiction to circumvent regulation. Finally, the products and production it targets must be *non-divisible* such that companies are forced to extend compliance measures across their entire global operations and not simply customize their products in different markets.

The case-studies of Part II focus on market competition, the digital economy, consumer safety and the environment. They test how the above-mentioned elements come together to determine the Brussels Effect in practice, both *de facto* and *de jure*. Bradford shows that the last criterion of non-divisibility often explains the circumstances under which the Brussels Effect takes place. In areas

such as competition policy, data protection and chemical safety, the Brussels effect is often pervasive. When it comes to food safety, however, diverging consumer preferences often make products divisible and companies thus prefer to customize their production to different markets instead of pinning it to the most stringent standard. Nevertheless, the Brussels Effect remains strong in the domain of GMO regulation.

The last part of the book is devoted to a normative assessment of whether the Brussels effect is beneficial and whether it will prove lasting. The author develops a generally positive assessment of the Brussels Effect. She acknowledges the redistributive costs for societies of the regulatory race to the top. However, she argues that the Brussels Effect amounts neither to a form of regulatory protectionism nor to regulatory imperialism. There is no coercion involved. The phenomenon is steered by the self-interest of multinational companies and there is little that foreign governments can do to prevent it. Independent of any cost-benefit analysis, the Brussels Effect is a necessary consequence of global market dynamics and it will not fade away easily. Certainly, the Brussels Effect faces challenges from external developments (such as the rise of China, the decline of international cooperation and the crisis of globalisation) and, even moreso, from within the EU: Brexit will reduce the EU market size by 15%, making the internal market less appealing to foreign companies, while widespread anti-EU sentiment and populism risk eroding the EU powers and deadlocking decision-making processes. Bradford's conclusions are however optimistic. Neither China (despite its growing markets) nor any other country currently meets the criteria needed to threaten the EU's regulatory dominance. Internally, anti-EU sentiment generally targets politically salient topics, which do not tend to implicate the technical regulatory areas in which the Brussels Effect usually takes place. As for Brexit, Bradford convincingly predicts that the UK will not get rid of EU regulation after its exit. The EU will remain the UK's number one export market and the UK will need to seek regulatory alignment to maintain access to that market. If anything, the UK will continue to be bound by EU rules without being able to influence them in their adoption phase.

III. REFLECTING UPON THE BRUSSELS EFFECT

Overall, Bradford's *The Brussels Effect* presents an unconventional but solid theory about the EU's external power, which it supports with a broad range of empirical data. Bradford moves fluidly between theory and praxis to show the different aspects of the phenomenon but is also very careful in circumscribing the limits of her theory. In my view, the single greatest contribution of the book lies in the simplicity of its argument, which is nonetheless compelling. The author succeeds in explaining how the Brussels Effect shapes a comprehensive system of global influence dominated by the EU. Through the *de facto* and *de jure* Brussels Effect, the EU's unilateral and multilateral action come together in a puzzle where all pieces easily fit with each other.

Perhaps the work's main weakness is that this core argument was already well developed in Bradford's 2012 article. In this respect, the book adds little to the basic theory of the Brussels Effect. It does, however, provide new empirical support and an assessment of current and future developments. Considering the magnitude and speed of political and social change, an update to the 2012 article was needed and the book is anything but irrelevant. It shows that the Brussels Effect is resilient to the many crises that the EU has been facing. It even argues that those crises can nurture and reinforce the Brussels Effect. In this way, the Brussels Effect emerges as a historical path-dependent model that can also adapt to face future challenges. This appears to me as a crucial point for a theory which, published in 2020, will certainly have to account for the COVID-19 crisis. Will the pandemic result in isolation and the demise of multilateralism (as countries erect new barriers and compete for vaccines and health devices) or will it strengthen cooperation and trade (since the challenge is, by its very nature, a global one that cannot be stopped at a nation's borders)? In terms of regulation, the pandemic will perhaps show the importance of high regulatory standards on health promotion. Yet its economic consequences may well amplify calls for reducing administrative burdens and pursuing a "better" regulation agenda (that is, one favouring a less regulated economic environment).

In the last part of this review I would like to focus on three main considerations. Rather than a criticism, they are reflections inspired by the book. They concern:

the role of civil society and corporate interests in European governance; the role of law inside and outside the EU; and the impact of the Brussels Effect on the EU's accountability and democratic legitimacy.

Bradford rightly includes corporate interests and civil society in her analysis. She suggests that, although foreign companies invest heavily in EU advocacy, they are rarely successful as the EU ultimately persists in issuing stringent regulations despite corporate opposition. She further argues that civil society groups are more influential in Brussels than in the US and that, as a result, EU regulation strikes a fairer balance between the various interests at stake.⁹ Although I agree that interest representation in Brussels is very much embedded in the decision-making process, I think that Bradford may be too lenient with the Brussels lobbying environment. The European Commission draws extensively on expertise from business and NGOs alike, but activists cannot compete with the resources that big firms invest in EU advocacy. Though perhaps at a lower degree, lobbying goes on behind closed doors in Brussels just as it does in the US and businesses wield formidable power, especially because of the internal market focus of much EU regulation. For instance, trade associations have been instrumental in lowering EU ambitions on many environmental issues, such as the reduction of CO₂ emission standards (ambitions which are admittedly higher than in most other countries, including the US).¹⁰ Considering this, could the Brussels Effect lead to strengthened lobbying in Brussels and thus to lower regulatory standards being adopted in the EU? In other words, could increased corporate lobbying erode the Brussels Effect from within?

On the opposite side, civil society has not remained silent. An uprise of citizens' engagement has grown in parallel with – or despite – corporate lobbying and has increasingly assumed an international character. In this regard, I wonder how recent grassroots civil society movements such as "Fridays for Future" can act as

⁹ Bradford, *The Brussels Effect* (n 3) 251

¹⁰ The automotive industry, for instance, is renowned for its lobbying efforts. See Sigrun M Wagner, 'Environmental Policies and Lobbying by Automotive Makers in Europe' in Luciano Ciravegna (ed), *Sustaining Industrial Competitiveness after the Crisis* (Palgrave Macmillan 2012).

multipliers of the Brussels Effect. Originating in Europe, such movements have engaged in a fight that has expanded beyond borders, forging preferences for high global environmental and safety standards. They have grown increasingly influential and now represent an innovative instrument for regulatory convergence. It would be interesting to examine how such movements interact with the Brussels Effect. Can a sort of "civil society Brussels Effect" be envisaged?

The book also invites an overall reflection on the role of law in the EU and beyond. Law has undoubtedly constituted a significant source of power for the EU and a driver of integration.¹¹ Cremona and Scott have highlighted that the EU's external power is itself rooted in the law: 'As an international legal actor, law is at the foundation of the EU's external power; it may have profound effects on the laws and governance arrangements of other countries, upon global governance arrangements and international and transnational norms'.¹² Significantly, they acknowledge the Brussels Effect as part of the global reach of EU law. Indeed, the Brussels Effect enables the transformative potential of legal rules to operate at a global scale. Eventually, the Brussels Effect results not only in global regulatory convergence, but also in the globalisation of a system essentially based on legal rules, whereby the importance of law in governing market relations and trade is globalised as well. Yet market players, rather than institutions and courts, are the main drivers of this phenomenon.

At the same time, however, the Brussels Effect, through the globalisation of EU law, strengthens the impression of a legal, regulatory Europe, whose main power is essentially built upon the functioning of the internal market. The normative dimension of EU external influence is treated as a secondary – at best supporting – element in achieving internal market objectives. Yet, is it enough for the EU to be a mere regulator? Should the EU not be more than its market and its rules? These questions lead me to my third and final point.

¹¹ Joseph H Weiler, 'The Transformation of Europe' (1991) 100 *Yale Law Journal* 2403.

¹² Marise Cremona and Joanne Scott, 'Introduction: EU Law Beyond EU Borders' in Marise Cremona and Joanne Scott (ed), *EU Law Beyond EU Borders: The Extraterritorial Reach of EU Law* (Oxford University Press 2019) 1.

Ultimately the image that comes out of Bradford's book is one of a technocratic Europe that advances its power and influence at the global level through law and regulation. The author does not seem to worry about this. On the contrary, she sees technocracy as a positive instrument that protects the Brussels Effect from the threats of national populisms: 'The technocratic nature of EU rule-making may further contribute to the resilience of the Brussels Effect'.¹³ However, in my opinion, endorsing a technocratic Europe risks further undermining the democratic legitimacy of EU politics and policies. This is not only problematic for EU internal decision-making, but it also eventually affects the global regulatory environment, as the EU democratic deficit is shifted to the international level through the Brussels Effect. Indeed the author admits that the Brussels Effect can undermine the democratic accountability of foreign citizens: '[...]the idea that unelected European civil servants have the ability to block global transactions by US companies can be disconcerting to those involved', as 'American citizens cannot hold European politicians accountable for decisions they disagree with'.¹⁴ Since, even in Brussels, accountability of decision-makers is a contested issue, the Brussels Effect can act as a multiplier of democratic shortcomings. Ultimately, it enhances the need to ensure sound democratic processes in the EU, especially at a time of resurgent political contestation and appeals to national sovereignty.

IV. CONCLUSION

In conclusion, Anu Bradford's *The Brussels Effect* is an enlightening read for both the academic community and the wider public, including policy-makers and public affairs professionals. The book offers a simple answer to the everlasting question: what does Europe do for you? It develops a convincing narrative about why EU regulation matters and how, in practice, it affects everyday lives not only of Europeans, but indeed of most of the people in the world. According to this narrative, EU actions and preferences ultimately shape the global business environment. Significantly, these preferences do not reflect only the choices of

¹³ Bradford, *The Brussels Effect* (n 3) 285

¹⁴ Ibid 250.

EU institutions, but also those of EU consumers, who assume an active role in setting global norms and standards.

In this way, the book challenges the conventional narrative of Europe's declining power, the extent of its multilateral action and the usual understanding of its normative power. As the author suggests, the EU is not merely a benevolent global power exporting values via multilateral and bilateral agreements. It is also – and mainly – an economic actor with a large internal market and vested interests in the globalisation of its own unilateral regulatory standards. It is a place where consumers' preferences converge and constitute global power. A new storyline could thus emerge – one which empowers European citizens, or rather EU consumers, to contribute to fair global regulation and trade.