

Department of Political Science

Major in Politics, Philosophy, and Economics

Chair of European Union Law

THE EUROPEAN UNION'S ROLE IN THE  
SUPPLY CHAIN MODEL: *How the Brussels effect  
can help the safeguards of environmental and  
labor rights outside the Union.*

Prof. Robert Schuetze

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RELATORE

Bianca Pàstina (094282)

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CANDIDATO

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## **ABBREVIATIONS**

ART.	Article
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
ECJ	European Court of Justice
EEA	European Economic Area
EEC	European Economic Community
EEE	Electrical and Electronical Equipment
ETS	Emission Trading System
EU	European Union
GDP	Gross Domestic Product
GDPR	General Data Protection Regulation
GHG	Greenhouse Gas
GMO	Genetically Modified Organism
ICAO	International Civil Aviation Organisation
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
IO	International Organisation
K-ETS	Korean Emission Trading System
MNE	Multinational Enterprise
MS	Member State
NGO	Non-governmental Organisation
OECD	Organisation for Economic Co-operation and Development
PPP	Purchasing Power Parity
REACH	Registration, Evaluation, Authorisation, and restriction of Chemicals
RoHS	Restriction of Hazardous Substances Directive
SEA	Single European Act
SPD	Sozialdemokratische Partei Deutschlands
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations

UNFCCC	United Nations Framework Convention on Climate Change
US, USA	United States of America
WEEE	Waste of Electrical and Electronic Equipment
WTO	World Trade Organisation
WWII	Second World War

## ***ABSTRACT***

The paper analyses the role of the European Union in the safeguard of environmental and labour rights outside of it. It will assert how, since its creation, it has been able to influence third countries to implement policies in these areas, thanks to what has been coined as the Brussels effect by Professor Anu Bradford. She supports the thesis that European regulatory power is shaping the policies of other countries thanks to its own proper characteristics. This research has two main aims: first, to understand if the European Union is truly the only source of global standards, and secondly if the Brussels effect can apply also to the field of labour laws. This will be done with the aid of concrete cases and references to treaties, regulations and directives that constitute the EU's legal framework. The answers to this exploration will be found throughout the whole thesis, which will deal primarily with a theoretical framework and will afterwards apply this model to areas of law regarding the supply chain, i.e., environmental protection and labour law.

### **Keywords:**

Brussels Effect; European Union; regulatory power; environmental protection; supply chain; labour rights; multinationals

## ***INTRODUCTION***

In the last decades, the phenomenon of globalization has brought about extraordinary amounts of trade and investment across international borders, leading to the creation of complex supply chains that involve multiple actors, from producers and manufacturers to retailers and consumers. The increase in the demand for new goods paved the way for an intensification of the supply, which led producers to break down the supply chain in different countries, with the main part of the production taking place in developing countries. In the last years, the social and environmental impact of these global supply chains has come under the spotlight. Indeed, awareness has been raised about how the pursuit of profit and competitiveness is sustained by the exploitation of workers, poor working conditions, and environmental degradation, especially in countries where labour and environmental regulations are often weak, and difficult to enforce.

To answer these concerns, many international institutions such as the International Labour Organization (ILO) and the United Nations (UN) have established standards and guidelines to promote decent work and sustainable development. Furthermore, civil society groups and non-governmental organizations (NGOs) have advocated for stronger regulations and the oversight of supply chains, to ensure that workers' rights are protected, and environmental standards upheld. As will later be analysed, most of them have not truly been effective in defeating the issue, particularly in developing countries, where Western producers take advantage of the current social and political situation.

The European Union has been a key player in this debate, given its position as a major trading bloc and regulatory power. Contrary to what many believe, its global role has not declined over the past decades. Actually, its regulatory ability has made it the main standards setter worldwide. The EU was able to implement various policies and regulations to ensure that its member states adhered to high environmental and labour standards. These policies have further served as a guide for other countries and regions in the development of their own regulations. As a matter fact, its stringent standards influenced many global companies to comply with them, and foreign jurisdictions to emanate similar laws. This was the case after the promulgation of the European ETS, which was followed by the Korean ETS.

An important question thus arises. Why are third countries and their firms conforming with the EU high standards, in areas like the environment, and not with more lenient ones which should be more convenient for them? According to Professor

Bradford<sup>1</sup>, it is due to the so-called Brussels Effect, namely the influence the EU exercises over these actors thanks to its leadership in the definition of economic norms, streaming from its irresistible wealthy market. Thanks to its big market, regulatory capability, and stringent standards, the EU still maintains a significant role worldwide.

Her research was highly inspired by David Vogel, who first approached a similar subject but in relation to California's environmental law<sup>2</sup>. He coined this term to describe the impact of California's regulations and policies on the rest of the United States and even beyond. He argues that, thanks to its large and influential market, combined with its progressive and innovative policies, the State of California has created a situation in which companies must comply with its regulations in order to do business in the state. This in turn has led multinationals to adopt similar policies in other parts of the country and even globally. Hence, California's policies started setting standards for other jurisdictions to follow. For example, its strict environmental regulations regarding air quality and greenhouse gases emissions have influenced federal and international players to adopt similar regulations in other states and countries. California's policies on consumer protection, labour rights, and data privacy have also had a ripple effect on other jurisdictions, as companies sought to comply with its rules, to access its lucrative market. This also explains why, in the last decades, there has been a race to the top rather than a race to the bottom, being the latter defined by the Delaware effect, namely a business-friendly regime with more flexible corporate governance structures which should, in theory, incentivize more firms to comply with their criteria.

The analysis of this dissertation aims at exploring if the Brussels effect can occur in the supply chain model by regulating environmental and labour standards. It will be divided into three main chapters.

In the First chapter, attention will be given to the emergence of the Brussels effect. After a theoretical explanation of this model, the focus will be shifted to the characteristics that determine its rise rather than the one of the “Washington” or the “Beijing effect.” In fact, the EU has been able to achieve the Brussels effect through a combination of factors, including its large market size, the regulatory power of its institutions, and its willingness to use trade as a tool to promote its values and standards.

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<sup>1</sup> See generally, Anu Bradford, *The Brussels Effect: How the European Union rules the world*, Oxford University Press (2020).

<sup>2</sup> See generally, David Vogel, *Trading up and governing across: transnational governance and environmental protection*, Journal of European Public Policy (1997)

The Second and Third Chapters will be devoted to more substantial areas of EU law, by referring to the two fundamental treaties of the EU (TEU and TFEU) and different regulations and directives endorsed by the EU.

The field of environmental protection will be the main topic of the Second Chapter. The key role of the Union in this field has been addressed multiple times by the main European figures, such as president of the commission Ursula Von Der Leyen. As a matter of fact, this topic was tackled by her in all of her State of the Union speeches, highlighting the importance of the Union's role in this field. To better understand the central position of the EU, the chapter will be divided into two different Subparts. The first one will bring forward the history of environmental policies in the EU since its formation the Treaty of Rome (1957) until today, while the second will deal with two regulations implemented in the last two decades, the RoHS and the ETS. With the help of these last two, it will be possible to investigate the regulatory influence that the Union has on third countries' legislations, such as South Korea. In this Chapter, it will be argued, with reference to the constitutive treaties of the Union and its regulatory mechanism, that in the last decades, the EU has been able to influence other actors about environmental protection.

The Third Chapter will deal with the application of the Brussels effect to the area of labour law. The promotion of labour standards has been a key priority for the EU in its external policies. It has cooperated with the ILO to promote decent work and sustainable development and has included labour provisions in many of its trade agreements, including social conditionality clauses in them. This was further strengthened by the treaty of Lisbon in 2009, which constitutionalized the EU's commitment to human rights obligations, both within its internal and external actions. Indeed, thanks to its regulatory framework, the EU has been able to mobilize different instruments of governance from a social perspective, aimed at the promotion of a highly competitive social market economy.

This Chapter will be split into three main Sections. The first one will deal with a general history of labour standards in the Union, focusing on how significance it gained throughout the years. Reference will be made to the evolution from limited protection given in the Treaty of Rome of 1957, to the constitutionalising of the Charter of Fundamental Rights of the European Union. Secondly, prominence will be given to the predicament of labour rights in developing countries. To make this clearer, the case of Bangladesh will be mentioned alongside some international conventions on the protection of workers in the supply chain. The third Section will investigate a new proposal from the European Commission on the ban of products made with forced



labour. In this way, it will be possible to resonate on the effects it may bring about worldwide.

A conclusion will summarize the contents of the chapters and will give a closing remark on the influence of the European Union in the domain of the protection of the environment and the workers in the supply chain.

## **CHAPTER 1: THE UNILATERAL POWER OF THE EU TO INFLUENCE POLICIES WORLDWIDE.**

Since the establishment of the European Economic Community (EEC) in 1957 and of its evolution into the European Union (EU) in 1993 with the Treaty of Maastricht, the EU has been influencing the everyday lives of people all around the world. The creation of the single market allowed for the free movement of goods, services, capital, and people within it. This helped drive its economic growth and worldwide competitiveness. Indeed, as it will be better analysed later, European regulations and standards, such as the General Data Protection Regulation (GDPR)<sup>3</sup>, have a significant impact on countries both inside and outside of it. This aspect remains a particularly important one of the EU's unity and global influence.

Moreover, opposite to what some people may believe, European power is not declining; actually, it continues to be robust, relevant, and mostly unaffected by crises. This steadiness is due to its unilateral ability to regulate and transform global markets. Being born as an economic alliance, the European Union constitutes nowadays one of the biggest consumers markets in the world, with an estimated population of more or less 448 million people across its Member States<sup>4</sup>. Truly, its combined GDP reaches over \$17 trillion, being the second largest economy after the United States<sup>5</sup>. It is also the biggest trading bloc and responsible for approximately 16 % of global trade<sup>6</sup>. In this way, Brussels has become a major force in the global economy, regardless of the many problems it went through in the last years. Thus, to enter this wealthy market, companies will have to comply with stringent standards. As it will be seen later, it is actually cheaper for industries to comply with such regulations globally, instead of dividing their production into different batches with respect to each different region. Consequently, the Union's regulatory power still persists, even when many traditional tools of influence have become less deployable.

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<sup>3</sup> The General Data Protection Regulation, adopted in 2016 regulates the protection of personal data and privacy rights of its citizens.

<sup>4</sup>Data taken from The World Bank Website (2022).

<https://data.worldbank.org/indicator/SP.POP.TOTL?locations=EU>

<sup>5</sup> Data taken from the World Bank website (2021).

<https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=EU>

<sup>6</sup>*The European Commission on the EU position in world trade*, Official Website of the European Union.

[https://policy.trade.ec.europa.eu/EU-trade-relationships-country-and-region/EU-position-world-trade\\_en](https://policy.trade.ec.europa.eu/EU-trade-relationships-country-and-region/EU-position-world-trade_en)

This Chapter will be devoted to the explication of the phenomenon that, in 2012, was named by Columbia Professor and expert Anu Bradford<sup>7</sup> the “Brussels effect”, as a reference to the city that hosts three of the main institutions of the EU enumerated in Art. 13 of the TEU<sup>8</sup>: the European Commission, the Council of the European Union, and the European Parliament. She wanted to capture the origins of the EU’s power that stems from its Brussels-based institutions with reference to the California Effect studied by David Vogel who investigated how some advanced and stricter environmental regulatory standards, originally adopted by the American state of California, eventually led other states to embrace them as well<sup>9</sup>.

This analysis will be divided in different subparts. In the first one, a distinction between extraterritoriality and territorial extension will be made based on different papers by the expert Joanne Scott<sup>10</sup>. This will facilitate the comprehension of the basic elements of the Brussels Effect. Secondly, a more precise examination of the latter will take place. This will be accomplished with reference to its main characteristics and the key institutions generating EU regulations. It will help in answering the question of why Europe, and no other apparently more powerful states, has and still shapes the policies of many non – European states in different areas.

Finally, in the next chapters, following an investigation into European environmental and labour rights protection, its application to these areas will be put under examination.

### **The universal influence of EU law.**

Before going any further, it is important to tackle one of the crucial issues regarding the Brussels effect. As it has been explained, it refers to the EU’s unilateral ability to regulate global markets by setting more stringent standards in some fields such as data and environmental protection. However, since the territoriality principle of international law asserts that exclusive jurisdiction is given to sovereign states over legal persons on

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<sup>7</sup> See generally, Anu Bradford, *The Brussels Effect: How the European Union rules the world*, Oxford University Press (2020).

<sup>8</sup> “The Union’s institutions shall be the European Parliament, the European Council, the Council, the European Commission (hereinafter referred to as ‘the Commission’), the Court of Justice of the European Union, the European Central Bank, the Court of Auditors.”

<sup>9</sup> See generally, David Vogel, *Trading up: Consumer and Environmental regulation in a Global Economy*, Harvard University Press (1995).

<sup>10</sup> See generally, Joanne Scott, *Extraterritoriality and Territorial Extension in EU Law*, *The American Journal of Comparative Law*, winter 2014, vol. 62, no. 1. (Winter 2014), pp. 87-125.  
<https://ael.eui.eu/wp-content/uploads/sites/28/2016/04/EU-03-Scott-Scott-1.pdf>

its own territory<sup>11</sup>, how can the EU extend the reach of its regulatory powers outside of its region?

To answer this question, Joanne Scott identifies different techniques which have their roots in the distinction amid extraterritoriality and territorial extension of EU law<sup>12</sup>. Both are used to trigger the application of EU regulations outside the Union. In fact, the first system relies on conduct and nationality of the legal person. It is based on the fact that a sovereign state has authority over the behaviour of its nationals overseas. For the EU, it is common to exercise jurisdiction over the foreign conduct of its own population, but very rarely to do so over foreign conduct of non- EU nationals.

Nonetheless, a new wave has emerged regarding the latter matter. Indeed, following the 2008 financial crisis, the EU has put into place an extraterritorial anti evasion clause to regulate financial services, by rendering its law applicable abroad, as far as the legal subjects involved in the action are deemed to have taken serious steps to evade it<sup>13</sup>.

On the other hand, to gain regulatory leverage over conduct, the EU has been applying territorial extension more often in the past years. According to this principle, the EU can apply its regulations if there is a territorial connection with it. This concerned for instance the directive 2008/101 of the EU aimed at aviation control. Undoubtedly, when a plane from outside the Union lands in it, establishing a concrete link with it, the European Union will have the power to regulate its activity worldwide<sup>14</sup>. In this sense it is possible to speak about direct and indirect effects. If in the case of extraterritoriality, the EU emanates legislations precisely aimed at regulating its nationals abroad, in the second case it can have many indirect outcomes on different areas such as product and merger control. In this way, European activities shifted from being centred upon their territories to shaping the focus and the content of third countries' laws. Therefore, it is not anymore about trying to export its own norms abroad, but more on the realisation of contingent unilateral policies to pursuit internationally agreed upon objectives.

After having analysed these methods, it is essential to recognize that the characteristics of the Brussels effect imply the principle of territorial extensions. Moreover, it is about the regulatory power of the EU and of its market on the rest of the

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<sup>11</sup> *International law: Jurisdiction*, Encyclopaedia Britannica.  
<https://www.britannica.com/topic/international-law/Jurisdiction>

<sup>12</sup> *Id* at 8.

<sup>13</sup> See, for instance, Title III, Art 4(1)(a) (iv-v) of Reg. (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties, and trade repositories.

world. It can be declined in two different forms according to the jurisprudence terminology: *de facto* and *de jure*. These two expressions concern two different practices of the law. More precisely, the first one relates to a predicament that it is true in practice, but that it is not officially regulated by law. Oppositely, the second one identifies one that is recognised by a juridical principle<sup>15</sup>.

Translating this vocabulary to the Brussels effect, Professor Bradford distinguishes between the EU's unilateral ability to regulate global markets by setting stringent standards in areas like competition policy, food safety and environmental protection, and the adoption of EU- style regulations by foreign governments.

The first one is based on the dominance of market forces. Being the European Union one of the largest and wealthiest consumer markets with a GDP per capita (PPP<sup>16</sup>) of \$49.000<sup>17</sup>, most companies will be willing to adapt to its more stringent standards, rather than not being able to sell their products in it. Nonetheless, these firms usually decide to follow these regulations across other markets as well, since it is cheaper for them. Take as an example the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) regulation<sup>18</sup>. In it, the use of chemicals is restricted to enhance the protection of human health and the environment. Subsequently, these controls are applied to all chemical substances in our day-to- day lives. Indeed, they comprise limits on the use of pesticides and GMOs in farming processes. However, since it is more costly and technologically almost impossible, due to phenomena such as cross contamination, to divide the production into two fields one of which following the European regulations and one not, most companies will choose to comply with the more rigorous European standard to remain competitive.

Secondly, the *de jure* Brussels effects refers to other governances imitating the EU in drafting their laws. According to Professor Bradford, this builds directly on the *de*

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<sup>14</sup> See Art. 25(a) of Dir. 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community.

<sup>15</sup> *De facto: legal concept*, Encyclopaedia Britannica, (2023)

<https://www.britannica.com/topic/de-facto>

<sup>16</sup> According to the OECD website: "Purchasing power parities (PPPs) are the rates of currency conversion that try to equalise the purchasing power of different currencies, by eliminating the differences in price levels between countries ." In this context, it means that the numbers are adjusted to it.

[https://data.oecd.org/conversion/purchasing-power-parities-ppp.htm#:~:text=Purchasing%20power%20parities%20\(PPPs\)%20are,in%20price%20levels%20between%20countries.](https://data.oecd.org/conversion/purchasing-power-parities-ppp.htm#:~:text=Purchasing%20power%20parities%20(PPPs)%20are,in%20price%20levels%20between%20countries.)

<sup>17</sup> Data taken from the World Bank website (2021)

<https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD?locations=EU>

<sup>18</sup> See Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency

facto effect: indeed, after multinational companies have adapted to the global standards of the EU, governments will be pushed by the different lobbies to pass EU- style regulations in their home country. In this way, these industries will not have a disadvantage when competing with other ones that have decided not to enter the European market. Regarding this last point, previously introduced, GDPR regulation<sup>19</sup>, could be cited. In fact, its entry into force in 2018 changed the rules of the game for many MNEs. Since it applied to all the firms processing the personal data of people residing in the EU regardless of its location or of where the data processing took place, its territorial reach was vast. Thus, American companies like Facebook, Apple, and Twitter had to follow the new guidelines promoted by the EU. They all had to adapt to the European regulations and subsequently called US governors to apply a comprehensive federal EU style privacy law to adopt a stricter legal framework for the protection of users' data. Although some changes are on their way, this initiative has not yet seen the light of day.

In 2018, the state of California passed a Consumer Privacy Act which had many provisions that bore resemblance to the GDPR<sup>20</sup>. In this illustration, something quite important is observable. First, the de facto effect usually precedes the de jure one, influencing governments to draft legislations that comply with the European more rigorous standards. Secondly, the de jure effect is reaching its last frontier, namely the United States. Once they adhere to European criteria, the Union will acquire even more regulatory power than the one that it has today.

### **What makes the European Union a source of global standards?**

According to Professor Bradford, the Brussels effect, to occur, must fulfil five main characteristics. This is the reasons why this particular phenomenon came to exist instead of, for instance, the “Washington Effect” or the “Beijing Effect.” The aim of this Section is the examination of these five elements to give a more comprehensive view of how and why Europe has become a standards setter worldwide. Thanks to the combination of market size, regulatory capacity, stringent standards, inelastic targets and non- divisibility, the EU has been able to acquire and exercise unilateral regulatory power on the global market.

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<sup>19</sup> See Reg. (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

<sup>20</sup> See 1798.140. (Definitions) of the California Consumer Privacy Act of 2018 and Art.4 (Definitions) of the General Data Protection Regulation of 2016.

## Market size.

As seen in the previous Sections, the European consumer market constitutes one of the biggest and wealthiest ones worldwide. Being born as a project of economic integration between central European powers, it has now become a “key economic engine”<sup>21</sup> that accounts for about 20% of the global GDP and 16% of global trade<sup>22</sup>, growing into the world’s biggest trading bloc and leading destination for foreign direct investment. Indeed, according to Professor Danmro<sup>23</sup>, the identity of the EU is significantly linked to its history and objective of a Single market. It is this last distinctive trait that has portrayed the European Union since its creation. Being a large and prosperous market, it should come as no surprise that the EU has an enormous gravitational effect on producers internationally. Thanks to this feature, the EU has been able to externalize its stringent economic and social market-related policies and behaviour.

The concept of market size is not to be understood as an absolute one, but rather as a relative perception. Its strength depends on how attractive its consumer pool is to other existing alternatives: the larger the market of the importing country relative to the one of the exporting one, the more likely companies will adjust to the standards of the importing one. Market power is also heightened when firms give a high meaning to their accession to it; this is computed through an analysis amid the pull of a determinate market and the adjustment costs, detected in the initial set up and the recurring compliance costs, associated to such admission. If the benefits outweigh the costs, then there will be a high incentive to comply with the more stringent regulations.

Several other states could qualify to become a regulatory power if the latter was characterised only by having a vast market size and a high GDP. This could be the case, for example, of the US, China, and Japan, which have correspondently a GDP composed of \$23 trillion, \$18 trillion, and \$5 trillion<sup>24</sup>. However, inquiring into GDP per capita, a better indicator of the true potential of markets and their customers, the EU stands has the largest economy, reaching a GDP per capita of \$48.767, and a consumer market composed of 447 million people<sup>25</sup> of which a high proportion is composed of affluent

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<sup>21</sup> Chad Damro, *Market Power Europe*, EUSA Biennial Conference (2011).

<https://eustudies.org/assets/files/papers/EUSA-11%20Damro%20MPE%20Paper-Submitted.pdf>

<sup>22</sup> Data taken from World Bank website (2021).

<https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=1W-EU>

<sup>23</sup> Id. 19

<sup>24</sup> Data taken from World Bank website (2021).

<https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=CN-JP-US>

<sup>25</sup> Id. 15.

consumers relying on producers' ability to supply them with goods and services. It is also the largest trader of manufactured goods and services, being the top trading partner for eighty countries, including the US, China, and Russia<sup>26</sup>. Owing to this, it has come to be crucial for the US economy in some fields such as social media platforms like Facebook, with more consumers in the EU than in the US<sup>27</sup>. When compared, the US is the top trading partner for only a bit more than twenty countries<sup>28</sup>. Additionally, even though the American GDP per capita stands for \$70.248, its population and thus its buyers are less than the European ones, accounting for 332 million people<sup>29</sup>. China on the other hand has an exceptionally large consumer market, 1.412 billion people, but an extremely low GDP per capita, \$12.566, being, consequently, less attractive for foreign companies<sup>30</sup>.

It is, therefore, this distinctly high value of market access to the EU that justifies the costs that many firms are willing to incur to keep selling their products in it. This appeal has been growing in the last years thanks also to the admission of new countries into the EU. As a result, its consumer pool has increased a lot. It increased even more thanks to the numerous association agreements that extended its regulations to neighbouring countries such as Turkey and Morocco<sup>31</sup>. Nevertheless, concerning market size, there are some limits on how much the EU can expand and keep this influence; if on one hand, more people mean having a larger consumers' base, on the other it will bring about bigger heterogeneity, hence making the process of decision-making more complicated.

Finally, if the EU is not an inevitable destination market, its power becomes more limited in those areas. An example can be raised by the Takeda pharmaceutical company in Japan<sup>32</sup>. Once it decided that the adaptation costs to enter the European market were too high, it chose to discontinue the making of a product which is still being sold in the US. Subsequently, the EU has little to no leverage over targets of regulations that are not subject to its market access, making it difficult for it to export some

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<sup>26</sup> Id. 4.

<sup>27</sup> Jim Edwards, *Facebook's user base is declining in Europe, and that ought to terrify its American bosses*, The Insider (2018).

<https://www.businessinsider.com/facebook-revenue-and-user-growth-declining-in-Europe-2018-10?r=US&IR=T>

<sup>28</sup> Id.4

<sup>29</sup> Data taken from World Bank website (2021)

<https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=US>

<sup>30</sup> Data taken from World Bank website (2021).

<https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=CN>

<sup>31</sup> For Morocco see the Euro- Mediterranean Agreement (1996), for Turkey see the Ankara Agreement (1963).

<sup>32</sup> Kevin Grogan, *Takeda gives up on getting European OK for sleep drug*, Pharma Times (2011)

[https://www.pharmatimes.com/news/takeda\\_gives\\_up\\_on\\_getting\\_EUropean\\_ok\\_for\\_sleep\\_drug\\_980275](https://www.pharmatimes.com/news/takeda_gives_up_on_getting_EUropean_ok_for_sleep_drug_980275)



areas of law such as the protection of human rights.

### **Regulatory capacity.**

As seen previously, market size alone cannot explain the ability of the European Union to project its regulatory standards onto other international players; not all states with a large market are able to become sources of global standards. Indeed, the latter is a conscious choice pursued by them and it is not inherent to the dimensions of their market. Hence, the example reported above of China, the US, and Japan comes to mind: even though they are the biggest economies in the world, they have not been able to export their norms to third countries. In fact, to do so, states must embark in the construction of working institutions on which they can bestow regulatory capacity, to translate their market power into concrete regulatory influence. For instance, even though Asian economies are rapidly growing, it will still be a long time before they have the necessary capacity to enforce norms, since they are lacking an effective and independent bureaucratic establishment.

The efficiency and impartiality of these institutions are particularly important for the effectiveness of this last point; that is why many resources and personnel must be allocated to them. For the European Union, this meant the development of extensive regulatory capacity, following the adoption of the 1986 Single European Act, aimed at guaranteeing economic freedom in a fragmented Europe. To complete the Single market by 1992, member states had to vest the main EU institutions with broad powers to formulate and enforce market regulations. Consequently, the EU acquired significant regulatory expertise and the authority to sanction its member states in case of non-compliance, which constitutes another important feature of its, above mentioned, ability. This is reflected in the competences of today's Union, which expanded in the last years, coming to include environmental and health issues, and in Art. 114 and 352 of the TFEU<sup>33</sup>, giving the EU the legal basis for general capability to act in determined occurrences. This was accomplished remarkably thanks to the bureaucratic growth of all the key institutions, namely the Commission, the Council, the European Parliament, and the European Court of Justice (ECJ). Indeed, with the signature of the subsequent treaties of Maastricht (1992), of Nice (2001) and finally of Lisbon (2007), these

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<sup>33</sup> These articles establish the internal market competence (Art.114) and the residual competence (Art.352) of the European Union

institutional structures were each time reformed to expand their functions and powers. For instance, the European Parliament, thanks to the introduction of a co-decision procedure, went from a simple advisory organ to one of the main actors involved in the law-making process, according to Art. 294 and 289 of the TFEU<sup>34</sup>. Moreover, in the Council, voting rules were changed for many procedures to better comply with the diversities created by the enlargement process, going from a unanimous voting to a majoritarian system, hence making it easier for it to pass legislation. Finally, a process of judicial integration, through the rulings of the ECJ (see case *Flaminio Costa v E. N. E.* L<sup>35</sup> and case *Van Gend en Loos v Nederlandse Administratie der Belastingen*<sup>36</sup>) established some key principles of EU law (supremacy of EU law<sup>37</sup> and its direct effect<sup>38</sup>).

The quality of these institutions is recognized worldwide. One of the main ones, the European Commission, in the proposition of a new regulation, is helped by a very skilled bureaucracy, composed of a cosmopolitan, educated elite with significant technical expertise. This is also reflected in the establishment by the Commission of different, highly experienced, European regulatory agencies such as the European Environmental Agency and the Federal Agency for Medicines and Health Products. This confers upon the European Union an aura of objectivity and neutrality that heightens its authority.

The latter is a particularly important trait of the EU regulatory capacity; its authority is even more reinforced by its extensive sanctioning ability which encourages external compliance with its regulations. It could impose some fines on companies failing to obey its rules; as an image, if in violation of the GDPR, a company could get a punishment of up to 4% of its global turnover<sup>39</sup>. It is important to remember that, in extreme cases, it could deny access to its very profitable market by banning a certain product. This was the case with many chemical components of cosmetic ingredients

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<sup>34</sup> These articles establish the ordinary and special legislative procedures for Union's acts.

<sup>35</sup> See Judgment of the Court of 15 July 1964. - *Flaminio Costa v E.N.E.L.* - Reference for a preliminary ruling: *Giudice conciliatore di Milano* - Italy. - Case 6/64.

<sup>36</sup> See Judgment of the Court of 5 February 1963. - *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration.* - Reference for a preliminary ruling: *Tariefcommissie - Pays-Bas.* - Case 26-62.

<sup>37</sup> It determines how the conflict between a national and a European norm will be resolved in favour of the latter.

<sup>38</sup> It enables individuals to immediately invoke a European provision before a national or European court, independent of whether national law test exist.

<sup>39</sup> See Art. 83(5) of GDPR (Id.17)

such as Zinc Pyrithione, used in antidandruff shampoo and banned by the EU since March 2022<sup>40</sup>.

Nevertheless, this power can vary across different policy areas, depending on the degree of competences given to the Union by its Member States; if in a field like competition law, the Union is the sole regulator, in others like taxation, member states are autonomous to legislate as they like, diminishing its regulatory ability and influence.

### **Stringent standards.**

To become a market power able to influence other ones globally with its regulation, all the five characteristics above mentioned are necessary. Hence, to a large market and a significant regulatory capacity, it is essential to add the jurisdiction's propensity to promulgate stringent regulatory standards and a mechanism that ensures compliance. This is mostly pushed by the population's requests and demands for higher standards as usually happens in countries with prominent levels of income in which a good standard of life can be found, seen that they can proceed with them even if they require a higher cost. That is another reason emerging markets are unlikely to exert rule-making influence: their citizens are more concerned about the economic rather than the social consequences of the regulations.

Nonetheless, even wealthy economies differ in their predispositions to regulatory interference. This often depends on the population's propensity to the acceptance of government intervention and on changes in its risk perceptions. Regarding these last points, it is possible to see the difference between the EU and the USA. As a matter of fact, if ,until the end of the 1980s, the USA was the main global norms setters with the launching of many acts such as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), with the raise of the EU and the alteration of its citizens' risk perception, triggered by public campaigns such as the one following the diffusion of the mad cow disease, the roles were reversed. The EU started adopting more stringent standards, adapting to the requests of its citizens and their precautionary risk culture. This can also be explained by Europeans' greater faith in governments' actions and in their positive outcomes, oppositely to the American culture of a free-market oriented version of capitalism. Without a doubt, Europeans are culturally more prone to request an intervention of the government on economic and social policies,

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<sup>40</sup> See Annex III, entry 101 of Reg. 1223/2009/EC of the European Parliament and of the Council as regards the use in cosmetic products of certain substances classified as carcinogenic, mutagenic, or toxic for

while Americans give more weight to a free market and the protection of individual rights. This divergence can also be found in the main Articles of the respective constituting treaties: if in Art. 3 of the TEU<sup>41</sup>, a prominent position is given to the Union's commitment to a social market economy and sustainable development, in the American Bill of Rights, representing the first ten amendments to the USA constitution, the freedom of individuals is highlighted<sup>42</sup>. Historically, this difference led to many dissimilarities between the two, such as the creation in Europe, after WWII, of many welfare states based on the assumption that market forces alone could not guarantee basic social rights like equal pay or access to a healthcare system, contrasted with the lack of social measures in the USA. This cultural difference gave rise to two distinct systems of market economy: on one hand a coordinated market economy, while on the other one a more liberal one. Today this makes the European Union an excellent example of a global standard setter.

Furthermore, its stringent standards are dictated by its more precautionary approach to environmental and consumer protection. The EU tends to act before it is too late, through a mechanism of *ex ante* regulations<sup>43</sup>, aimed at identifying dangers beforehand and shaping actors' behaviour and responses through regulatory intervention. Such characteristic makes it so that its regulatory actions tend to be more stringent in contrast with others worldwide.

Lastly, there are some policy areas in which the EU has failed to become a global standard setter, since its regulatory propensity is completely absent. The first example that comes to mind is corporate tax harmonization. The European Union has not yet been able to agree on a unified system regarding corporate taxation across its Member States, given that all tax harmonisation is subject to a fiscal veto<sup>44</sup>. Consequently, in Ireland corporate tax rate is at 12.5 %, while in Italy is almost the double, at 24%<sup>45</sup>. As long as the situation remains the same, the EU will not be able to impose any global standard in this area.

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reproduction.

<sup>41</sup> Art. 3(3) of the TEU: "*The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.*"

<sup>42</sup> See first ten amendments to the United States' Constitution (1791).

<sup>43</sup> From Latin, *ex ante* means before the event and here applies to regulations that seek to prevent harmful conduct from occurring.

<sup>44</sup> See European Parliament resolution of 6 July 2022 on national vetoes to undermine the global tax deal.

<sup>45</sup> Ireland and Italy corporate tax rate, from Trading Economics website (2022) <https://tradingeconomics.com/ireland/corporate-tax->

### **Inelastic targets.**

As seen previously, the European market is very appetible to global producers, its consumer market one of the biggest and most valuable in the whole world. Indeed, to be able to sell their products in it, firms must comply with its norms, subsequently making the EU a global standard setter. This is a consequence of an intrinsic characteristic of this customer market: as a matter of fact, it must be made of immobile units that cannot be moved to different jurisdictions. Thus, it is the location of the consumers that determines the application of the specific regulation to the targeted product. Producers cannot choose which set of rules to apply but have to comply with the EU's consumer protections standards, since they cannot be transferred in a jurisdiction where there are lesser safeguards. It does not matter where the production takes place but where the final product is sold and the consequences for that specific market. This is one of the principal features of the Brussels Effect and why it took place in a market like the European one. Targets like data protection, food safety and market competition are all considered immobile, and are hence obliged to comply with stricter European standards. Truly, an opposite image, an elastic regulatory target can be identified in capital; since it is transferable, it can easily be relocated to another state in which there are less stringent regulations, such as tax heavens<sup>46</sup>, and so it will easily escape them, leading to a race to the bottom for the lowest possible solution.

### **Non- divisibility.**

The Brussels effect is triggered when a multinational firm decides to apply a new European standard to its products or conduct. By doing so, it is voluntarily opting to extend the requirements of the most stringent regulator to its global operations. This is further incentivised whenever the criteria applicable are non-divisible across different markets. Indeed, thanks to globalization, the everlasting demand for newer things, and the economic savings from it, standardization of production has become the main manufacturing strategy, leading to the application of a uniform standard to govern the corporation's global conduct. Since complying with the most stringent standard allows

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[rate#:~:text=Corporate%20Tax%20Rate%20in%20Ireland%20is%20expected%20to%20reach%2012.50,accounting%20to%20our%20econometric%20models.](#)

<sup>46</sup> It is a country that offers foreign businesses and individuals minimal or no tax liability for their bank deposits in a stable environment.

companies to maintain a single production process, which is less costly than tailoring for each different market, they will likely prefer to conform to the leading standards. In this case, it is also the most demanding one, which is additionally imposed by a jurisdiction that represents an important market slice. This too limits the variety of production available on the market.

There are several types of non-divisibility, such as legal, technical, and economic. Legal requirements and remedies are drivers of uniform standards and manifest as a spill-over effect that follows from corporation compliance with the laws of the most stringent jurisdiction. For example, in the area of global mergers, since they cannot be made on a jurisdiction-by-jurisdiction basis, if the EU prohibits an anticompetitive merger, the transaction will be either banned worldwide or it will have to abandon the wealthy European market. Similarly, company-wide policies display the legal guidelines prevailing in the most demanding jurisdiction, with a global compliance manual to ensure they do not accidentally spill into practices sanctioned in more stringent markets and exposing themselves to legal liability. This is often seen in the deployment of standardized contracts which manifests both legal and economic forces of non-divisibility, making the monitoring process easier and reducing compliance failures and inefficiencies.

Technical non-divisibility concerns the technical complexity of breaking up the firm's production or service among different markets. This is often the reason behind the conformation to more stringent data regulations. For instance, Google adjusted its global operations to GDPR's criteria for data regulations due to the fact that it is difficult to determine with certainty whether a particular user is a European data subject or not. Another example is regulations on food safety and GMOs<sup>47</sup>. Truly, farmers are deterred from using GMOs if they also want to produce non-GMO varieties for Europe, because of high risks associated with cross-pollination, which could happen during growing, storage, or transportation. This same logic applies to pesticides and other chemicals used in the same industry.

Economic non-divisibility is the most common reason manufacturers decide for a global standard. Indeed, since it can become costly to produce assorted products for different markets, producers will choose to comply straight with the highest standard. Thus, thanks to scale economies associated with a single global production process, the EU has come to be the regulatory standard setter that it is today. The benefits of scale economies explain the preference for uniform production. In manufacturing a

standardized product variety, a firm economizes a lot, allowing it to buy production inputs in bulk, leading to lower procurement costs per unit. It is also associated with simplifications in manufacturing or services' provision, leading to additional costs' savings and safer products. It similarly improves product quality, given that the company can concentrate its resources on producing a single product and redefining it. The reduction of complexity, of mistakes' costs, of complications involved in the accurate prediction of demand for each market, and the facilitation of the preservation of the global brand and its reputation, arise from this uniform branding and advertising strategy. There are also high savings in distribution, inventory, and packaging, and a reduction of search costs associated with product choice in a new market.

### **The limits of the Brussels effect.**

All the above-mentioned conditions must be present to have the Brussels Effect. They complement each other but may vary in their relative significance across policy areas. The first three conditions are usually relative and not in absolute terms, depending on the size and wealth of the market respectively to other available ones. Thus, the European market is preferred by firms as long as it is considered to be the best one compared to others. On the other hand, the last two characteristics can be seen in absolute terms, since they are inherent to the goods produced and cannot change with time or in relation to other markets.

Difficulties in applying the Brussels Effect are apparent when these conditions are not respected: if, for instance, the Chinese market was to become wealthier and bigger than the European one, the EU's ability to influence regulatory standards globally may be challenged. Nonetheless, as seen above, all five elements must be present in order to become a regulatory standard setter. Thus, it is very unlikely that China will catch up on Europe in the short run, at least in this area.

Another challenge to the EU's power is the divisibility of products. Since they remain divisible in many areas, the EU is not able to exert its influence on them. Whenever the costs of manufacturing a different product for each market in some industry or category remain trivial and the benefits of such customization are significant, the globalization of EU standards is unlikely to happen. If this is the case, firms will make their production divisible, when doable, and take advantage of the lower standards outside the EU. As it will be better analysed in Chapter 3, labour markets can be made

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<sup>47</sup> See, for instance, Directive 2009/41/EC on contained use of genetically modified micro-organisms.

divisible; they are as such, as long as scale economies do not require the producer to concentrate production into a specific location. Adhering to one global minimum wage across jurisdictions would be exceedingly difficult, seen that a MNEs can maintain different standards without difficulty. Thus, it is problematic to regulate them through the Brussels effect. What the EU can do is export its regulatory model through bilateral trade agreements or use its weight in international organizations to transmit its rules to foreign jurisdictions via them. This projection is made mostly through regulators' technocratic and sector-specific, rather than traditional diplomacy, with the help of technical experts, the commission's active engagement, and a closer regulatory alignment through cooperation and dialogue.

In conclusion, even though the European Union is still nowadays the main global standards setter worldwide, some challenges are on their way. Notwithstanding, the EU still remains an influential superpower, currently shaping the world in its image. In the next chapter a more profound inquiry will develop this phenomenon in practical study cases; the focus will be on environmental regulations, first inside the Union and then on their effects outside of it. By examining how the Brussels effect applies to environmental regulations, it will later be possible to understand if it could work also with regard to the above-mentioned labour law, or if the only way for the EU to export such standards is through other means like bilateral trade agreements.



## **CHAPTER 2: THE EUROPEAN UNION AS THE MAIN PROMOTER OF ENVIRONMENTAL PROTECTION.**

One of today's burning issues both inside and outside the European Union is environmental protection. According to a report from the World Meteorological Organisation, over the past 30 years temperatures in Europe, have been increasing at more than twice the global average, giving rise to extremely damaging meteorological phenomena such as heat waves, floods, and tornados<sup>48</sup>. In June 2021, a terrible flooding destroyed Germany, claiming at least 184 deaths<sup>49</sup>. This brought about many preoccupations to the vast majority of European political forces and its citizens.

After having thoroughly analysed how the EU can set global standards in different policy areas, it should not come as a surprise that it was able to do so also with regard to environmental protection and climate change. In fact, since the Single European Act of 1986, the Union has inscribed, in its fundamental treaties, the protection of the environment as one of its main goals<sup>50</sup>. Nowadays, this area is protected by Art.3 of the TEU, in which it is cited as one of its main principles and values<sup>51</sup>, and by Art. 11, 191-193 of the TFEU, where sustainable development is promoted and regulated<sup>52</sup>. Additionally, many agencies, such as the European Environment Agency<sup>53</sup>, were created to support the Commission in its regulatory agenda. As it will be later analysed, to reach this level of awareness and progress, many years had to go by and many changes had to happen; different climate crisis and pressures coming from the civil society, prompted the EU to establish and encourage new sustainable regulations within its Member States. After the Maastricht Treaty (1993), the EU realised the transnational characteristic of climate change and thus started trying to endorse multilateral measures with Third States, in an effort to export its concerns elsewhere<sup>54</sup>.

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<sup>48</sup> *Temperatures in Europe increase more than twice global average*, World Meteorological Organization, (2022) <https://public.wmo.int/en/media/press-release/temperatures-Europe-increase-more-twice-global-average>

<sup>49</sup> Elizabeth Schumacher, *Germany greenlights billions for flood victims*, DW, (2021) <https://www.dw.com/en/germany-greenlights-billions-for-flood-victims/a-59051543#:~:text=More%20than%20180%20people%20in,collapse%20or%20be%20rendered%20unusable.>

<sup>50</sup> See Title VII of the Single European Act, (1986)

<sup>51</sup> See Art.3(3,5), Title I, of the Treaty of the European Union (2007)

<sup>52</sup> See Art.191-193, Title XX, of the Treaty on the Functioning of the European Union (2007)

<sup>53</sup> This agency was created in 1990 with the EEC directive 1290/1990

<sup>54</sup> See Art.130r (1), Title XVI, of the Maastricht Treaty (1992)

Due to its world-wide reach, environmental protection became one of the principal areas in which the Brussels Effect is visible. As a result of its multilateral environmental cooperation with other countries and its global influence, the EU was able, in the last two decades, to shape environmental policies all around the world in areas like the regulation of hazardous waste, the protection of animal welfare and the mitigation of climate change through an emission trading system. Nonetheless, these fields only represent a small fraction of the total European environmental policy, which is composed of a set of over 1100 policies, regulations, and practices<sup>55</sup> that are evolving and enriching the Union's legal framework every day.

This Chapter will consequently be dedicated to the explanation of how the EU, through the Brussels effect was able to guide other jurisdictions to follow on its environmental path. This will be done with the help of different Sections and Subsections. The First Section will be devoted to the evolution of environmental policies in the European Union, through the revision of its main treaties and the examination of the main actions it took to fight these serious challenges. It will be divided into three subsections to facilitate the comprehension of such development. The Second Section will analyse more deeply the main environmental regulations and areas that can be applied to the supply chain, namely the directives on the Regulation of Hazardous Substances, the Waste from Electrical and Electronical Equipment, and the Emission Trade System. Finally, the Third Section will be reserved to the investigation of the Brussels effect in the directives before mentioned; it will be conducted focusing on both the De facto and the De jure aspects of it.

### **Environmental evolution in the EU.**

Already at the end of the 18<sup>th</sup> and the beginning of the 19<sup>th</sup> century, because of the new inventions of the industrial revolution, Europe was becoming one of the main polluted regions of the world. Truly, with the development of factories and industrial cities like Manchester, the everyday life of the individual changed completely. Consumerism and the use of mass goods such as cars, fuelled by oil and its derivatives, gave rise to elevated levels of pollution in the air. Nonetheless, it is only with the birth of modern environmental movements in 1960s, that some actions started to take place in Europe. For an easier depiction of the historical progression of environmental policies, it

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<sup>55</sup> See generally, Anu Bradford, *The Brussels Effect: How the European Union rules the world*, Oxford University Press (2020).

is possible to identify distinct phases: (i) indifference phase, (ii) interest phase, (iii) urgency phase<sup>56</sup>.

### **Indifference phase**

This part covers since the beginning of the EEC, with the signature of the Treaty of Rome by Belgium, France, Western Germany, Italy, Luxembourg, and the Netherlands, until the Single European Act of 1986, with the revision of the previous treaty. It is characterized by a passive approach to the environmental question: the, not yet completely formed EU, is still navigating how to harmonize the main policy areas of its Member States, while its main environmental policies were developed due to external factors such as deadly disasters, the pressure of the public opinion, and external actions taken by third states. Indeed, between the 1970s and 1980s many environmental disasters had terrible consequences for the European region: the phenomenon of acid rains became widespread and made the public understand the transboundary nature of the problem, seen that acid pollutants emitted in one country were carried through winds and deposited as acid rain into another one. Moreover, because of the rise of modern environmental movements in the 1960s, and the realization of the globality of this challenge, alertness was raised throughout European States. Hence, in 1972 at the Stockholm conference organised by the United Nations and in which the European Commission participated, for the first time in history, environmental issues were put at the forefront of international concerns with the motto “Only one earth”<sup>57</sup>, and the creation of the United Nations Environmental Programme. This marked the start of a dialogue between industrialized and developing countries on the link between economic growth, the pollution of the air, water and oceans, and the well-being of people around the world<sup>58</sup>. At the European level, this was followed by the Paris Declaration, in which the EU Council, with a future enlargement in mind, emphasized the need of a harmonized EU environmental policy, aimed at both the protection of the environment and at the abolition of any trade obstacles between Member States, and called for a concrete action plan to tackle this issue. Therefore, just one year after, in 1973, the

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<sup>56</sup> Giovanni Tonolo, Webinar: *L'evoluzione delle politiche ambientali Europee*, European University Institute Europea Direct Venezia, (2021)

<https://www.youtube.com/watch?v=EU2fyV4Zo40&t=745s>

<sup>57</sup> Andreas Grieger, *Only One Earth: Stockholm and the Beginning of Modern Environmental Diplomacy*, “Environment & Society Portal, Arcadia (2012), no. 10. Rachel Carson Centre for Environment and Society. <https://doi.org/10.5282/rcc/3867>

Commission created the first European Action Programme which lasted until 1976 and embodied one of the first steps towards a more sustainable future, with a multi-year declaration of intent towards the institution of an environmental legal framework. However, these measures were still implemented with ex post regulations, aimed more at the management of an already happened fact rather than at a precautionary stance and did not have a concrete legal basis in the founding treaty. This was changed in 1986 with the Single European Act which introduced a new Title (VII) completely dedicated to the protection of the environment, making it a European goal. It is, indeed, this particular Act that can be considered as a threshold for the next phase.

### **Interest stage**

This phase is characterized by an underlying economic interest in completing the European Single Market. Nonetheless, pollution and environmental problems are now seen as an obstacle to further economic integration, a free market, and harmonization between the Members States. Indeed, in the 1980s different European countries had different legislations, each with a specific level of protection of the environment that generated obstacles to the creation of a common market.

The 1986 Single European Act marked a turning point for both the EEC per se and for its environmental issues; it was the first attempt made by Member States to amend the arrangements made in the Treaty of Rome (1957). Having in mind the realization of a fully functioning single market between its member states by 1993, it brought about many institutional changes: voting modalities in the Council went from unanimity to majority voting, expanding its supranational decision making, and the legislative powers of the European Parliament were enhanced with the cooperation procedure. In this way, the EEC acquired more competences and could harmonize different areas in which obstacles could come up. Finally, it made the protection of the environment a European goal by adjudicating to it the title above mentioned, investing it with the necessary competence to undertake measures aimed at it, and giving it a clear and unambiguous legal basis. These policies were now supported by the European institutions' willingness to use environmental regulations as a mean for further economic integration: by implementing common standards, intra-European trade firms could operate in the Single Market without having to face different regulatory regimes.

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<sup>58</sup> *United Nations Conference on the Human Environment, 5-16 June 1972, Stockholm*, United Nations Website <https://www.un.org/en/conferences/environment/stockholm1972>

Environmental measures were now coming from inside the Union rather than from outside pressures. There was widespread consciousness that something had to be provided to individuals and firms in order to create a harmonious market and protect the Earth. This general awareness led to a “green tide,” namely the increase in the support for green parties, which went from 2.7% to 7.7%, in the elections to the European Parliament in 1989, making them a credible political force and supporting the Parliament’s stronger environmental protection policies<sup>59</sup>. The European population was now asking for some changes throughout its directly elected representatives, manifesting their needs with their voting rights. The Commission’s regulatory agenda on environmental issues was intensifying and different organisms such as the European Environment Agency, in 1990, were created to help it monitoring environmental actions.

A further decisive moment was the signature, in 1993, of the Maastricht Treaty, which, riding the wave of the 1992 Rio Summit<sup>60</sup> and the key role played by the EU(ex. EEC) in it , redefined the goals of the economic communitarian politics for the endorsement of a sustainable economic growth and the addition of the notion of sustainable development, i.e. meeting the needs of the present whilst ensuring future generations can meet their own needs<sup>61</sup>. If, as seen before, up to this point most of the environmental directives found their basis on either public health protection or the harmonisation of environmental rules to avoid market distortion <sup>62</sup>, with this Treaty, the EU embraced the goal of sustainable development as a community policy , with a high level of protection of the environment, based on the introduction of the precautionary principle, i.e. an approach to risk management, where, if it is possible that a given policy or action might cause harm to the public or the environment and if there is still no scientific agreement on the issue, the policy or action in question should not be carried out<sup>63</sup>. Furthermore, a new aspect emerged: in Art. 130r, the promotion of measures at international level to deal with regional or worldwide environmental problems was envisaged<sup>64</sup>. This laid down the foundations for the exportation by the EU of its main

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<sup>59</sup> John Curtice *The 1989 European Election: Protest or Green Tide?* Department of Government, University of Strathclyde, Glasgow G1 1XQ, Scotland (1989)

<sup>60</sup> The United Nations Conference on Environment and Development (UNCED)

<sup>61</sup> Definition from the United Nations Brundtland Commission (1987)

<sup>62</sup> Talib E. Butt *Literature review of baseline study for risk analysis — The landfill leachate case*, Environment International, Volume 63, Pages 149-162(2014)

<https://doi.org/10.1016/j.envint.2013.09.015>

<sup>63</sup> Definition taken from official website of the European Union

<https://eur-lex.europa.eu/EN/legalcontent/glossary/precautionaryprinciple.html#:~:text=The%20precautionary%20principle%20is%20an,should%20not%20be%20carried%20out.>

<sup>64</sup> Id.7

policies through international accords, such as the 1997 Kyoto Protocol<sup>65</sup> and many others. Thanks to these factors, the EU started its escalation to become an environmental leader, surpassing the USA in this area.

In 1999, with the Amsterdam Treaty, it became compulsory to integrate environmental protection into all EU policies. Nonetheless, full harmonization was not reached, and it is still debated nowadays as it can be regarded in Art. 193 of the TFEU, according to which European legislation shall not prevent any Member State from maintaining or introducing more stringent measures, laying down minimum standards and permitting national opt-ups<sup>66</sup>. This last point was highlighted in the accession agreements of Austria, Finland, Norway, and Sweden in 1995, which requested an environmental warranty for their national legislations<sup>67</sup>.

### **Urgency phase**

Today the environmental crisis can be seen everywhere. Since the beginning of the 2000s, the public debate on climate change has been growing thanks to the appeal for science and ecological mobilisation. It is for this reason that in 2009, in the Lisbon Treaty, which is still nowadays regulating the functioning of the Union, the first reference to fighting climate change was made in Art. 191(1) of the TFEU, and it was recognised as a specific goal of the EU. Indeed, it highlighted the necessity of taking action against the rising of temperatures worldwide, with the adoption of new norms and international agreements. In addition, environmental protection was classified as a shared competence between the EU and its members states in Art. 4(2) of the TFEU, highlighting the necessity of unified action. More stringent norms were passed, thanks to the adoption of new legislative procedures<sup>68</sup>, boosting the Union's responsibility in promoting global environmental standard. This role was displayed in many international fora, such as the 2015 Paris Agreement in which it engaged in keeping the rise of the global temperatures well below 2°C, alongside the 195 members of the UNFCCC.

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<sup>65</sup> According to the United Nations Climate Change's website: "*It operationalizes the United Nations Framework Convention on Climate Change by committing industrialized countries and economies in transition to limit and reduce greenhouse gases (GHG) emissions in accordance with agreed individual targets.*"

[https://unfccc.int/kyoto\\_protocol](https://unfccc.int/kyoto_protocol)

<sup>66</sup> See Art. 193, Title XX of the Treaty on the Functioning of the European Union.

<sup>67</sup> See the ACT concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded. (1994)

<sup>68</sup> See Art 289,294 of the TFEU (2007) which establish the ordinary and special legislative procedures for Union's acts.

In the last years, this topic has made its way into many public debates and mass mobilizations by the civil society, such as the Friday for Future initiative, or the proliferation of projects coming from European NGOs, like the “Greening the Treaty” initiative, aimed at proposing environmentally friendly treaty amendments when they are being revisited<sup>69</sup>. The increasing role of the civil society in fighting these problems is also reflected in a survey conducted in September of 2021 by the Eurobarometer<sup>70</sup>, which showed that at least eight in ten Europeans think that various environmental objectives are very or “fairly important” to them personally<sup>71</sup>. This social pressure led governments to adopt new agendas, such as the 8<sup>th</sup> Environmental Action Program between 2021-30 which focuses on accelerating the transition to climate neutrality, to clean and efficient energies, and to a circular economy, going along the 2020 European Green Deal, aimed at making the EU climate neutral in 2030, and the proposal of a European Climate Law to reduce greenhouse gases by 55% within 2030.

### **The de facto and de jure Brussels effect applied to the most important environmental regulations concerning multinationals.**

As seen in the previous Section, the EU has a pro-environmental stance towards its policies. This inclination can be regarded in different directives it passed to oversee the behaviour of multinationals selling their products in the Union. It can be reconducted to the several reasons explored above, such as the institutions’ efforts to use them as a tool for further market integration. It is indeed the influence of its market that helps the implementation of additional norms: it is too costly for international firms to avoid not selling in the EU and forgo the profits it could get from its prosperous market. This is made easier thanks to the characteristics analysed in Chapter 1 and the recognition of environmental protection as a constitutional obligation for European institutions. Hence, multinational industries will adapt to the stringent standards promulgated. In this way, the EU can gain extensive unilateral authority on environmental criteria on

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<sup>69</sup> Graham Coop, *Virtual Seminar: Greening the Treaty? The road to modernising the Energy Charter Treaty*, Volterra Fietta (2020)

<https://www.voltterrafietta.com/virtual-seminar-greening-the-treaty-the-road-to-modernising-the-energy-charter-treaty-on-26-november-2020/>

<sup>70</sup> Collection of cross-country public opinion surveys conducted regularly on behalf of the EU Institutions since 1974.

<sup>71</sup> *Special Eurobarometer 517 Report Future of Europe*, European Parliament, and European Commission (2021) <https://europa.eu/eurobarometer/surveys/detail/2554>

multinationals and even impact the legal framework of other countries, through other channels such as multilateral, regional, and bilateral negotiations.

The aim of this Section is the analysis of the Restriction of Hazardous Substance Directive and the European Emission Trading System, with regard to both the De facto and the De jure Brussels effect, to see how the EU has been able to exercise its global regulatory power in this area.

### **Restriction of Hazardous Substance Directive**

In the last years, the production of electrical and electronic equipment has become one of the biggest markets both in Europe and beyond. During and after the pandemic, it grew even more due to the need of new appliances for remote working. As a matter of fact, in March 2023 it generated US\$208.50bn<sup>72</sup> alone, and it is expected to grow each year by 2.01%. However, every year more than 10kgs of electronic waste is collected per person, culminating in 2020 with 45.9 % of the electronics put on the market<sup>73</sup>.

Since in the process of collection and disposal of such waste, some hazardous substance, like mercury, lead and cadmium may leak, putting at risk the health of European citizens and the environment, in 2002, the EU adopted the Restriction of Hazardous Substances Directive<sup>74</sup>, banning the use of ten substances including lead, polybrominated biphenyls, and mercury, and complemented it with the Directive on WEEE<sup>75</sup> (Waste of Electrical and Electronic Equipment), aimed at removing e-waste from landfills and redirecting it to recycling. Being two directives, the modalities of their implementations into national legislations are left to each MSs. In the same way, it is the role of each of them to guarantee the conformity of different firms through enforcement bodies and penalties for non-compliance. They mutually apply to all products placed on the EU market, irrespective of whether they are produced in the EU or not; what matters is thus the inelasticity of the target, namely the European consumer market. This is also highlighted in Art. 9 of the RoHS which deals directly with importers and their behaviour. According to Art. 9(a): “Member States shall ensure that:

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<sup>72</sup> Data taken from *Consumer Electronics Europe*, Statista website, (2023)  
<https://www.statista.com/outlook/cmo/consumer-electronics/europe>

<sup>73</sup> Measured as the weight of WEEE collected relative to the average weight of electronic equipment put on the market in the three preceding years, i.e., 2017-2019, Data taken from *Waste statistics - electrical and electronic equipment*, Eurostat, (2020)  
[https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Waste\\_statistics\\_-\\_electrical\\_and\\_electronic\\_equipment](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Waste_statistics_-_electrical_and_electronic_equipment)

<sup>74</sup> See Directive 2002/95/EC of the European Parliament and of the Council

<sup>75</sup> See Directive 2012/19/EU of the European Parliament and of the Council



(a) importers place only EEE that complies with this Directive on the Union market”<sup>76</sup>, therefore excluding all non-complaint EEE from its internal market.

Consequently, the Brussels effect comes into place and shapes the global change in the design of electronic products: since multinationals do not want to miss out on the wealthy European market, they decide to conform with the EU’s stringent standards and to make their entire line compliant with the RoHS and the WEEE, being it too costly to split production lines for different markets around the world. They became de facto standards for global material policy in many electronic firms. For instance, the American multinational computer technology corporation, Oracle, has made public statements about its compliance with the RoHS, asserting that “Oracle products comply with EU RoHS Directive 2011/65/EU and delegated Directive 2015/853 which restricts the use of certain hazardous substances”<sup>77</sup>.

Furthermore, thanks to the important level of globalization of the electronic industry, the RoHS is applied regardless of the costs of adjustments and even when the EU is not the biggest target market. This was the case of the American M/A-Com’s research and development group. Its senior principal engineer, Dick Anderson, said that the company spent approximately \$1 million to comply with the new European standards, even though the European market only covers 20% of their total revenue, since they expected: “U.S. customers to choose M/A- Com’s components over those from rivals that have been slower to clean up.”<sup>78</sup>. A similar reasoning was followed also by other big tech companies, such as Dell and Apple, which have been advertising their conformity with the RoHS and the WEEE on their websites and started a domino effect between large and small tech firms around the world. As a matter of fact, since consumers will have easier access to a wider variety of safer and more sustainable products, it will be exceedingly difficult for small producers not to follow in their steps. In 2006, Pamela Gordon, president of Technology Forecasters, consulting firm in Alameda, California, estimated that U.S. electronics companies would spend a total of \$3.5 billion in adjustment costs<sup>79</sup>.

The enactment of the RoHS and the WEEE directives in the EU gave rise to legislative changes abroad, leading to the emergence of the de jure Brussels effect as

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<sup>76</sup> See Art. 9(a) of the Directive 2011/65/EU of The European Parliament and of The Council

<sup>77</sup> Oracle, *Oracle Global Position on RoHS (Restriction of Hazardous Substances)*, (2023)

<https://www.oracle.com/a/ocom/docs/corporate/citizenship/rohs-position.pdf>

<sup>78</sup> Hiawatha Bray, *EU prompts electronics industry to curb toxins - Technology - International Herald Tribune*, The New York Times, (2006)

<https://www.nytimes.com/2006/06/01/technology/01iht-toxins.1864617.html>

<sup>79</sup> Id. 31

well. However, it is important to notice that the EU was not the first player in regulating electronic waste: for instance, in 1970 Japan adopted the Waste Disposal and Public Cleansing Law to regulate the discarding of various kinds of waste, including the electronic one<sup>80</sup>. It required producers to “reduce the amount of waste by recycling or re-use of waste... it shall assess the handling or processing difficulty of the waste generated when the products, their containers or whatever they manufacture, process and seller the like are discarded”<sup>81</sup>. Even though it is possible to see many similarities between the two, like the above-mentioned responsibility of manufacturers, both European norms exceed the Japanese one in their scope since they apply to all business selling their products in the EU.

In the subsequent years, many foreign legislators took action to follow in the Union’s steps, by promulgating similar norms. This was explained by the de facto effect and its consequences, and it was pushed even more by global companies that had already complied with the European standards, and thus had the incentive to advocate for its lawful implementation in order not to have any disadvantages in their internal competition market. As a result, in South Korea, the Act on the Resource Circulation of Electrical and Electronic Equipment and Vehicles was passed in 2007, closely imitating the RoHS and the WEEE, while in China, in 2016, the Administrative Measure on the Control of Pollution Caused by Electronic Information Products was enacted. The latter is most commonly known as the China RoHS II, recalling even the second revision of the RoHS.

Likewise, in the USA there were different attempts to introduce binding federal legislations that were unsuccessful since hazardous waste management was delegated to the states through the Resource Conservation and Recovery Act in 1974. Nonetheless, the EU inspired some states to adopt domestic legislation intricately linked with the WEEE and the RoHS. As an image, California promulgated the California RoHS, directly shaped around the EU’s one. According to the Californian Department of Toxic Substances Control, California’s Legislature modelled the California RoHS Law after the European Union’s (EU’s) Directive 2002/95/EC<sup>82</sup>. In it, California banned the “an electronic device from being sold or offered for sale in this state if the electronic device is prohibited from being sold or offered for sale in the European Union on and after its

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<sup>80</sup> See Law No. 137 (1970)

<sup>81</sup> See Art. 3(2), of Law No. 137 (1970)

<sup>82</sup> *Restrictions on the use of Certain Hazardous Substances (RoHS) in Electronic Devices*, Department of Toxic Substances Control of California  
<https://dtsc.ca.gov/restrictions-on-the-use-of-certain-hazardous-substances-rohs-in-electronic-devices/>

date of manufacture, to the extent that Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003, and as amended thereafter by the Commission of European Communities, prohibits that sale due to the presence of certain heavy metals.”<sup>83</sup>. California even went further by stating that future amendments to the EU directive will be incorporated into California law even though, certainly, with a narrower scope.

The examples above show the ability of the EU to extend its regulatory power indirectly to other jurisdictions. Many other countries followed the same path of California and China: in South Korea, Argentina and Brazil, various similar regulations were passed. Even developing economies pursued similar policies, showing that also in less equipped countries, there was still the willingness to handle high compliance costs to follow the EU standards given the importance of its market.

### **The European Emission Trading System.**

The emission of greenhouse gases has been a global problem for over a decade now. With the increasing population worldwide and the industrial development, these emissions have been growing rapidly, leading to a rise in the average temperature and important climate changes.

To fight against this, the EU has adopted a system of emission quotas exchange, the Emission Trading System. It is a cornerstone of the EU's policy to combat climate change and its key tool for reducing greenhouse gas emissions cost-effectively, being also the world's first major carbon trading market<sup>84</sup>. This scheme was introduced in the EU in 2005, and it is still one of the main pillars of its energy policy. It was intended to incentivize firms to reduce their emissions by handing out financial motivations to do so. In fact, it works on the “cap and trade principle”: a cap is put on the total amount of specific greenhouse gases that can be emitted by operators working in certain fields such as aviation<sup>85</sup>. This cap is reduced over time in a way to further lower emissions<sup>86</sup>. A limited number of quotas for the emission of greenhouse gases is assigned to each firm. At the end of the year, a producer must submit enough of them to cover its emissions, if not, substantial fines are imposed on it. If it manages to emit less

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<sup>83</sup> See Art.10.3, 25214.10.(b) of HEALTH AND SAFETY CODE – HSC by the State of California, (2007)

<sup>84</sup> *EU Emissions Trading System (EU ETS)*, European Commission’s Website, (2023). [https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets\\_en#developing-the-carbon-market](https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets_en#developing-the-carbon-market)

<sup>85</sup> For a complete list, see Id. 82, subsection Sectors & Gas covered.

<sup>86</sup> Id. 82, subsection “A cap and trade system.”

than what it was previously allocated to it, it can sell its shares on the market. On the other hand, if it produces more gases than assigned, it has to buy more quotas to cover the difference. Hence, the industries that are able to reduce their gas emissions can earn a profit by selling their extra quotas on the market. This encourages emission reductions and investment in innovative, low-carbon technologies. At the same time, trading brings flexibility that ensures emissions are cut where it is cheaper to do so. This system was a success in the reduction of GHGs. Truly, it brought to a fall of 35% in emissions between 2005 and 2021<sup>87</sup>. Furthermore, under the European Climate law, EU member states will work together to make Europe carbon neutral by 2050<sup>88</sup>, with the help of this system.

The ETS has represented an important instrument of the Brussels Effect, thanks to its contributions in shaping worldwide environmental policies. Many countries like China and South Korea have adopted similar systems. For instance, Professor Zhang examined the impact of the EU ETS on China's climate policy and found that it had led to the adoption of emissions trading as a policy instrument in China<sup>89</sup>. This created a global harmonization regarding environmental policies, and it has contributed to reducing GHGs emissions worldwide. Moreover, it has influenced the environmental policies of many other countries through its shaping of international commercial forces. For instance, when the EU proposed the introduction of a tax on carbon emissions and on imports from countries with less stringent environmental policies, it created a bigger pressure on them to follow in its steps<sup>90</sup>. Nevertheless, in this case, in contrast to the previous one regarding the RoHS directive, the de facto Brussels effect was not going to be enough to make other countries act together to fight climate change. Indeed, it did not take into consideration local emissions, but only the ones created in the Union's territory. However, since the EU still wanted to export its environmental norms abroad, the need for a de jure Brussels effect was consequential. Hence, the export of its environmental norms abroad became an important goal of the EU.

It was achieved in many instances thanks to the EU's authority on environmental policies and its key role in international fora. In 2012, South Korea passed a remarkably

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<sup>87</sup> Id.82, subsection "Delivering emissions reductions."

<sup>88</sup> Id.85

<sup>89</sup> Zhongxiang Zhang, *Carbon emissions trading in China: the evolution from pilots to a nationwide scheme*, Climate Policy (2015)

<http://dx.doi.org/10.1080/14693062.2015.1096231>

<sup>90</sup> A. Garric, *EU adopts carbon border tax to fight polluting imports*, Le Monde (2022)

[https://www.lemonde.fr/en/environment/article/2022/12/13/EU-adopts-carbon-border-tax-to-fight-polluting-imports\\_6007589\\_114.html](https://www.lemonde.fr/en/environment/article/2022/12/13/EU-adopts-carbon-border-tax-to-fight-polluting-imports_6007589_114.html)

similar legislation to reduce its local GHGs emissions<sup>91</sup>. Being the second largest in scale after the European one, in 2020, it covered 76% of industrial CO2 emissions in the country, assigning emissions quotas to firms and other manufactures<sup>92</sup>. Like in the European ETS, also in the Korean model, firms exceeding their limits can buy additional allowances from the ones that emitted less. Truly, it differs from the European ETS in numerous areas like the scope, the mechanism of the determination of the allowances' price, and in their general structure. In fact, if in the EU's ETS, the cost of quotas is determined mostly by market factors, such as the relationship between supply and demand, in the Korean model, the government stabilizes the prices through the establishment of a maximum and a minimum figure<sup>93</sup>. Still, the influence of the EU is very much noticeable in the K-ETS, thanks to many cooperation projects aimed at exporting the EU's technical assistance in the implementation of such measures. This can be seen also in other foreign jurisdictions, like China and South Africa, where similar systems were adopted.

Nevertheless, the ETS' realm is also the one where it is possible to observe the limits of the Brussels effect. Indeed, it has provoked different preoccupations concerning competition and national sovereignty, especially when applied to the aviation field. In 2008, the EU tried to force international action by including international aviation emission in its ETS even though only a few countries had a similar system. After the failure of a consensus for the establishment of common emissions' norms in the 2009 Copenhagen Climate talks, the EU had to resort to unilateralism and the imposition of its standards. Its aviation directive forced all airlines to buy emission permits for all their flights leaving from or landing in European Airports, thus making such commodities non-divisible and suitable for the application of the Brussels Effect.

This was harshly criticized by third countries like the USA, seen that companies were obliged to pay for their GHGs emissions for the flights landing in the EU, even when only 30% of the duration of the flights was in the European Union's territory<sup>94</sup>. These airlines were excluded from this, only if they were already subject to equivalent measures in their home states, or if a global agreement about reducing GHGs emissions was achieved. Nonetheless, the notion of "equivalent measures" was still to be evaluated

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<sup>91</sup> See Korea Emission Trading System, more precisely the Report published by the Korean Government about the first phase (2015-2017)

<sup>92</sup> Pricing Greenhouse Gas Emission, Country Notes by the OECD, (2022)  
<https://www.oecd.org/tax/tax-policy/carbon-pricing-korea.pdf>

<sup>93</sup> id 88

<sup>94</sup> See generally, Anu Bradford, *The Brussels Effect: How the European Union rules the world*, Oxford University Press (2020).

by the EU<sup>95</sup>. As above mentioned, many countries went against it. China and India even boycotted this scheme, by not selling or buying European aircrafts in 2012 given that, according to them: “the EU is exceeding its legal jurisdiction by charging for an entire flight, as opposed to just the part covering European airspace<sup>96</sup>.” This economic move and the pressure coming from the aviation lobby prompted the EU to change its position and to freeze the implementation of the ETS in aviation until the end of 2016. Luckily, in the meantime, multinational negotiations were revised and, in 2016 the International Civil Aviation Organization was able to reach an agreement on carbon emissions. It included some exceptions, not envisaged in the European scheme, for developing countries and those mostly depending on plane travel, like small islands or landlock developing states.

With the achievement of this negotiation, complemented by others ICAO’s agreements, the EU agreed to give up the application of the ETS extraterritorially and limit its scope to intra EEA flights from 2017<sup>97</sup>.

This latter example shows both the limits and the strengths of the Brussels Effect concerning environmental legislations. Since the Brussels effect is based on the attractivity of the European market, if economic threats come into the game, the EU will concede to them. In this case, the aviation market was collapsing due to the suspension of the buying and selling of European airbuses. Due to the pressure it brought on its market, the EU had to reconsider its position.

On the other hand, it illustrated perfectly how the EU can use its powerful market to facilitate an international agreement and the achievement of its objectives.

Notwithstanding the many difficulties encountered, the EU was still able to obtain the establishment of an international protocol on emission trading. To this latter point it is possible to link the main topic that will be investigated in the next chapter. In fact, more attention will be given to the implementation of labour rights in third countries. In this way, the possibility of exporting, once again, the stringent standards of the Union will be analysed.

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<sup>95</sup> See Art. 25(a) of Directive 2008/101/EC of the European Parliament and of the Council

<sup>96</sup> A. Kotoki, *After China, India asks airlines to boycott EU carbon scheme*, Reuters (2012)

<sup>97</sup> Id 91

### **CHAPTER 3: CAN THE EU EXPORT ITS STANDARDS ON LABOUR LAW THROUGH THE BRUSSELS EFFECT?**

Working has always been one of the main pillars of society. Since the Roman empire, there have been some norms regulating it and many associations, such as the roman *collegia*<sup>98</sup> or the later medieval *guilds*<sup>99</sup>, for the protection of the rights of workers. Nevertheless, it is only in the XVIII century, with the Industrial Revolution, that labour rights and laws started becoming more important in the lives of western societies. Due to the rapid process of industrialization and the creation of factories, many people found themselves working interminable hours (almost thirteen per day) while being paid extremely low wages. Indeed, if before most products were handmade and a connection was established between the producer and the buyer, now the transition to new machines brought about the complete alienation of the workers. This novel approach to the market resulted in a fall in the prices and an enormous increase in workers. The majority of them was made of unskilled ones, including women and children that were paid even less than men, subjected to dangerous working conditions. They did not have any social protection and were often living in extreme poverty. To fight for better circumstances, workers started organizing in associations: the creation of the first trade Union goes back to the General Union of Trades, also known as the Philanthropic Society, founded in 1818 in Manchester<sup>100</sup>. These Unions commenced battling for the implementation of general legal frameworks controlling the conditions of workers in factories. In the following years, trade Unions became increasingly organised and representative of more categories of labourers. They began to negotiate with employers to obtain better wages, safer working conditions, and social rights like the one to rest time. Hence, new pieces of legislation started being introduced in the legislative frameworks of western countries. For instance, in the UK, the first norms regarding labour rights were established with the approval of the Factory act in 1802, determining some limitations on the

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<sup>98</sup> According to Britannica Encyclopaedia they are numerous private associations with specialized functions, such as craft or trade guilds, burial societies, and societies dedicated to special religious worship in ancient Rome.

<https://www.britannica.com/topic/collegia>

<sup>99</sup> According to Britannica Encyclopaedia they are associations of craftsmen or merchants formed for mutual aid and protection and for the furtherance of their professional interests which flourished in Europe between the 11<sup>th</sup> and 16<sup>th</sup> century.

<https://www.britannica.com/topic/guild-trade-association>

<sup>100</sup> See the National Archives' Website of the United Kingdom

<https://www.nationalarchives.gov.uk/education/resources/protest-democracy-1818-1820/philanthropic-society/>

working hours of children in the factories, while in 1871, the Trade Union Act recognised trade Unions as legal entities <sup>101</sup>.

Additionally, in the same period, a unified political awareness was raised between workers who started organising themselves in political parties to defend their interests. This was the case in Germany with the birth of the 1875 Social Democratic Party (SPD) which represented an important win for the workers, now represented politically.

Thanks to the evolution of trade Unions and the growing support towards them, the recognition of many rights was accomplished: equal pay, minimum wage, retirement, parental leave, maximum hours, and paid leave are only few of the many rights that were granted in Western Europe, setting up labour law basis.

Unfortunately, this did not spread equally worldwide. Even in highly industrialized countries such as the USA, some differences can be observed. If on one side, modernization and globalization brought to higher standards of labour, on the other it led to horrible working conditions in countries like Bangladesh and Pakistan. In fact, due to the growing demand and the need for a faster and cheaper production line, many producers, beginning in the 1980s, had to outsource their factories in third countries. In this way they could still be competitive on the national market by lowering their prices and increasing their range of products. Thus, a sharp division can be seen between the western world in which labourers' rights are protected, and the others in which they are not. Nevertheless, it is important to notice that most of the industries outsourcing their production and violating the international conventions on labour law, come indeed from either the EU, the USA or Canada.

Additionally, it is relevant to notice the divergence between the evolution of labour rights in Europe, the USA, and the developing world. As it will be later examined, Europe can be defined as the social continent, thanks to the importance given to labours' rights since the industrial revolution.

On the other hand, in the USA the implementation of workers' rights depends a lot on who is at the presidency; there is little coherence and continuity between the policies implemented by democratic and republican presidents. Moreover, during the Cold War, trade Unions were ostracized and weakened, as they were seen as having a communist imprint. Overall, still today, labour laws in Europe tend to prioritize worker protections and collective bargaining, while the United States have a more employer-friendly legal system that places a greater emphasis on individual employment contracts and market-based solutions.

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<sup>101</sup> See generally Chapter XXXI of the United Kingdom Trade Union Act, (1871)



Finally, in the developing world, as it will afterwards be observed, the protection of workers is still extremely low. Indeed, even though it is often inscribed in the local constitution, governments usually lack the means to enforce it.

The aim of this Chapter is to understand if the Brussels effect can be applied to labour standards, even though, according to Professor Anu Bradford, it is not possible since this market is movable and can thus be shifted to a different jurisdiction<sup>102</sup>.

The analysis will be conducted in various Sections and Subsections. The First Section will be devoted to a deeper analysis of the EU labour law, with a first insight into the evolution of this legal framework in the Union through the exploration of its treaties. This will be followed by a description of its main characteristics. In the Second Section, an account of labour rights worldwide will be given. This will be done with more focus on countries like Bangladesh, in which labour law is not well enforced. Finally, the Third Section will deal with the application of the Brussels Effect to labour law. A first reminder of the characteristics of the Brussels Effect will be followed by the examples in which the EU was able to export its standards abroad.

### ***From limited protection to a fundamental right.***

In the last decades, the European Union has passed many legislations granting its citizens social and political rights. Moreover, in 2017, the European Parliament, the Council, and the Commission proclaimed the European Pillar of Social Rights at the Gothenburg Summit, setting out twenty key principles that represent the guide towards a strong social Europe that is fair, inclusive, and full of opportunity in the 21st century<sup>103</sup>. The EU's approach to employment and social policy has evolved significantly since the early days of the EEC. While the EU was initially hesitant to intervene in the social domain, it has gradually expanded its competences in this area over time. Today, the EU plays a vital role in setting minimum standards for working conditions and promoting social rights across Europe. Through its social dialogue process and other mechanisms, the EU collaborates closely with employers and employees to develop policies that support

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<sup>102</sup> See generally, Anu Bradford, *The Brussels Effect: How the European Union rules the world*, Oxford University Press (2020).

<sup>103</sup> *European Pillar of Social Rights: Building a fairer and more inclusive European Union*, The European Commission Website, (2023)  
[https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/european-pillar-social-rights\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/european-pillar-social-rights_en)

economic growth and social welfare, while respecting the diversity of national social models.

Nonetheless, it is relevant to mention that, given that labour standards are implemented only through directives aimed at minimum harmonization, the phenomenon of social dumping may arise even in the EU. Indeed, even though illegal in the EU, it is still a concern, particularly in industries such as agriculture, construction, and transport, where there is an elevated level of cross-border employment. This occurrence has terrible effects on the conditions of workers. In fact, workers subject to it may face reduced job security, poor working conditions, and low wages, leading to social inequality, poverty, and economic instability. This problem has been tackled by the EU through many acts like the Posting of Workers Directive, the European Labour Authority, and the European Pillar of Social Rights, but is still persistent in the region.

### **The Treaty of Rome: limited protection of workers**

In the founding treaty of the EEC, the treaty of Rome in 1957, the field of labour law was excluded. In fact, even though title III refers to the free movement of people, services, goods and capitals, no clear reference is made to labour rights, if not for what concerns discriminations based on a different nationality made in Art. 48 (2)<sup>104</sup>. It was not considered necessary to harmonise social policies or social conditions before or alongside measures to promote greater freedom of international trade. Social policy was intended to remain within the regulatory domain of the nation-state, and, in the EEC, it was limited to free movement of workers, equal pay, and cooperation in the area of social security. Indeed, it was difficult to introduce a comprehensive social policy within member states, seeing that it depended on the accommodation of numerous political interests. It was tough to speak about a European social model, and minimum standards were set to reduce competition between Member States. This was in clear contrast with what was going on inside each of the MSs at the time: with regard to the historical dynamics of their labour systems, the six founding countries were quickly instituting labour law frameworks. This was the case in Italy with the raise of a protective and redistributive model which peaked in 1970 with the Workers' Statute, granting workers' rights such as the protection of employees in case of illegitimate, unjust,

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<sup>104</sup> Chapter 1(workers) of Title III (free movement of persons, services, and capital) defines some workers' rights but in a limited way.

and discriminatory dismissal<sup>105</sup>.

In this period many different national policies started disseminating through Europe giving rise to different systems and norms. Nonetheless, in the 1970s, this model of separation between economic and social spheres began to break down. The various national standards were seen by the EEC as something that could create an obstacle to the creation of a single market.

Therefore, as seen before, the EEC commenced setting minimum standards to assure some sorts of harmonisation, following a functionalist path aimed at the creation of a more stable society in Europe, and the elimination of competition. The first directives on collective redundancies and gender equality aimed at reinstating the autonomy of national systems, while setting minimum standards of protection for Member States to comply with, but that could still be implemented with higher levels of protection. Such mechanism is illustrated by Art. 100 and 235 of the Treaty of Rome, that allowed the EEC to use directives for the approximation of laws that “directly affect the establishment or functioning of the common market”<sup>106</sup> and if “action by the Community should prove necessary to attain... one of the objectives of the Community”<sup>107</sup>.

### **The Paris conference: the raise of social policies**

A major step was taken at the Paris Summit in 1972, when member states declared that: “they attached as much importance to vigorous action in the social fields as to the achievement of the Economic and Monetary Union.”<sup>108</sup>, and also established a programme of action along with a social fund. This was implemented by the many directives above mentioned, which focused on the restructuring of enterprises and equality between men and women, being the latter one of the main topics brought about by the feminist movement in those years. For example, the Equal Pay Directive of 1975 defined the concept of equal pay as “for the same work or for work to which equal value

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<sup>105</sup> See Art.18 of the norm 20 May 1970, n. 300, also known as Workers’ Statute.

<sup>106</sup> See Art.100 of the Treaty establishing the European Economic Community (1957)

<sup>107</sup> See Art.235, Part six: General and Final Provisions of the Treaty establishing the European Economic Community (1957).

<sup>108</sup> See Statement from the Paris Summit (19 to 21 October 1972).

is attributed, the elimination of all discrimination on grounds of sex, with regard to all aspects and conditions of remuneration.”<sup>109</sup>.

The need for social harmonization was pushed even further with the Treaty of Schengen in 1985 and the creation of a single European space, which deepened the integration of European economies by abolishing internal borders<sup>110</sup>. However, progress in this area was still slow, as Member States were reluctant to give up their regulatory autonomy in the field of social policies.

### **The Single European Act: social policies to reach the creation of a single market.**

The signature of the Single European Act in 1986, and the goal of creating a single market by 1992, strengthened the need for more common social policies even more and marked an important turning point for the EEC. In fact, in Europe the perception and thematization of a European social deficit within the MSs was spreading. Hence, the MSs decided to significantly expand the Union’s legislative competences in the social field by adding an autonomous treaty base<sup>111</sup> for a supranational social policy, which could lead to a more cohesive harmonization<sup>112</sup>. The SEA also provided for the coordination of social security systems across EU member states, allowing for the free movement of workers between countries, without losing social security benefits. This was a major step in facilitating the movement of labour across borders and encouraging greater mobility within the EU. It also established the European Social Fund, which was designed to promote social and economic cohesion by investing in education, training, and job creation.

Furthermore, the Treaty of Maastricht of 1992 presented a new trend in the realization of labour law provisions, namely social dialogues, and it enlarged the competences of the Union. They were introduced with the Agreement on Social Policy annexed to the Maastricht Protocol on Social Policy. In it, the role of social partners in

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<sup>109</sup> See Art.1 of Council Directive 75/117/EEC on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (1975).

<sup>110</sup> By signing the Schengen Agreement on 14 June 1985, Belgium, Germany, France, Luxembourg, and the Netherlands agreed to gradually remove controls at their internal borders and to introduce freedom of movement for all nationals of the signatory countries, other EU Member States, and some non -EU countries.

<sup>111</sup> See Title V of the Single European Act 1986

<sup>112</sup> Franco Carinci and Alberto Pizzoferrato, *Diritto del Lavoro dell’Unione Europea*, Third Edition, Giappichelli, (2021)

the European legislative process was constitutionally recognised. This was incorporated in the agreement on Social Policy with the Treaty of Amsterdam (1997), giving a single framework for European social dialogue. The agreements negotiated by the representatives of the two sides of the industry, i.e., management and labour, could now be given force of law through a Council decision. In this way, trade Unions were given a direct role in the legislative process through their membership in the European trade Union confederations<sup>113</sup>. Many Council directives, like the ones on parental leave (1995) and the one on part-time work (1997), were implemented between 1994 and 2002, thanks to the negotiations between social partners through social dialogues.

At the same time, a change in the Union's voting systems, from unanimity to qualified majority, in certain fields such as working conditions, equal pay, access to jobs and information and consultation of workers, enlarged the Union's competences and made the issuing of directives easier. Still many topics like retributions, right of association, right of striking and the right of lockout, remained out of the EU's competences<sup>114</sup>.

### **The Charter of Fundamental Rights: the indivisibility of human rights.**

A decisive moment was the signing of the Lisbon treaty in 2006 which made the Charter of Fundamental Rights of the EU, adopted in 2000, having the same legal value as other founding treaties (Art.6 TEU). This was a significant move since the Charter recognizes political, civil, and social rights, and it applies to actions of EU institutions and to Member States when implementing EU law, giving individuals the right to challenge them directly before the European courts.

By bringing together all the rights recognized in the Union, it goes even further than the European Convention on Human Rights, which only mentions freedom of association as a fundamental social right. Social rights are hence placed alongside more easily recognizable fundamental rights, such as the one to life and human dignity, acknowledging, for the first time, the indivisibility of human rights, with the inclusion of civil, political, social, cultural, and economic rights.

In the last years, the main problems in the EU have been to achieve high employment, strong social protection, improve living and working conditions, and protect social cohesion. This is clearly stated in the Preamble of the Treaty on the

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<sup>113</sup>Rebecca Zhan, *Europeanisation and European Labour Law*, Chapter 3 of New Labour Laws in Old Member States, Cambridge University Press (2017)

<sup>114</sup> Id. 105

Functioning of the European Union (TFEU), promoting social progress and the improvement of living, and working conditions of the people of Europe. Nowadays, the EU complements policy initiatives taken by individual EU countries by setting minimum standards. It still adopts directives that set minimum requirements and that must be incorporated by MSs in their national law. For instance, the European Working time directive provides for four weeks of annual paid leave<sup>115</sup>, but some countries, like France and Denmark have opted for a more generous benefit (5 weeks).

In 2016, the EU established the European Centre of Expertise that covers the legal, regulatory, economic, and policy aspects of employment and labour markets in the EU, the UK, and the EEA countries. It assists the Commission in its role of ensuring the correct application of EU law across all Member States, and monitors reforms in labour legislations. It reinforces the Commission's capacity to anticipate any issues that could arise from the application of EU directives, and analyses potential legal issues alongside the impact of the European Court of Justice's rulings. It also improves awareness and encourages public debate on topical issues of interest for EU labour and legislation<sup>116</sup>.

A crucial role in the interpretation and implementation of labour law in the EU is also played by the European Court of Justice and by the Commission. In fact, whenever a dispute about the interpretation of an EU directive is raised before a national court, the latter can refer it to the ECJ, which will give it the answer needed. On the other hand, the Commission checks if EU directives are well incorporated into national law and guarantees its monitoring. If, according to the Commission, an EU country has failed to do so, it may start an infringement procedure, as explained in Art.7 of the TEU.

Overall, EU labour law has come a long way since the adoption of the Treaty of Rome of 1957. The EU has set out to achieve ambitious social and economic objectives, and its institutions have been playing a key role in implementing its policies through a top-down approach. Today, with over 158.9 million full-time workers<sup>117</sup>, the EU represents one of the biggest and most protected labour markets worldwide. Its workers benefit from a large number of rights which have a positive impact on their daily lives, by providing a clear framework of rights and obligations in the workplace, protecting the health of the workforce, and promoting sustainable economic growth.

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<sup>115</sup> See Art.7(1) of Directive 2003/88/EC of the European Parliament and of the Council concerning certain aspects of the organisation of working time (2003).

<sup>116</sup> See Labour Law on the website of the European Commission  
<https://ec.europa.eu/social/main.jsp?catId=157&langId=en>

<sup>117</sup> Data taken from Statista (2021)  
<https://www.statista.com/statistics/1197123/full-time-workers-in-the-EU/#:~:text=There%20are%20over%20158.9%20million,time%20workers%20in%20the%20EU.>

## **Does the Brussels effect have any consequences for the labour market?**

The main question to be answered here is if the European Union can, through its Brussels Effect, influence the respect and eventually the draft of legislations similar to its Charter of Fundamental Rights, thus exporting its values to third countries. According to Professor Bradford, it is not possible to apply the mentioned effect to the labour market since they are divisible as long as scale economies do not require the producer to concentrate production into a single location<sup>118</sup>.

On the other hand, a couple of years before in 2009, Professor Layna Mosley, examined a similar question, hypothesizing that a “California effect”<sup>119</sup> serves to transmit superior labour standards from importing to exporting countries, in a manner similar to the transmission of environmental standard<sup>120</sup>. In her article she argues that the pressure created by economic globalization on governments to protect their workers, is exercised through economic interdependence (de facto) and norm diffusion (de jure). To demonstrate this, she covers data from seventy countries between 1986 and 2002, and she measures labour rights using the International Labor Organization's indicators on freedom of association, collective bargaining, and child labour.

What she discovers through her analysis supports the thesis that a California effect can trigger changes also in process standards and not only in product ones, giving rise to a trade-based diffusion of labour rights; countries that trade more with the ones having higher labour standards, tend to adopt better ones over time. This is even more remarkable in democratic regimes, given that they are more reactive to public pressure from labour activists, trade Unions, and non-governmental organizations (NGOs) asking for better criteria. Certainly, this effect is weaker in countries in which economies are less integrated into the global one since they are less exposed to international trade. Likewise, she argues that norm diffusion plays a critical role in promoting labour rights. She asserts that when IOs, such as the ILO or the WTO, promulgate labour standards, they create new norms that governments can implement. They then influence the behaviour of firms and policymakers, who begin to see labour rights as a legitimate concern.

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<sup>118</sup> See generally Anu Bradford, *The Brussels Effect*, Columbia Law School, Scholarship Archive (2012)

<sup>119</sup> David Vogel, *Trading up: Consumer and Environmental Regulation in a Global Economy*, Harvard University Press, Cambridge, (1995)

Following this brief theoretical discussion, it is now time to turn to a more practical field. This will be done first with an inquiry into the current treatment of labour rights in developing countries such as Bangladesh. Afterwards, it will be assessed if the Brussels effect can indeed have any consequences on third countries dealing with the European Union. To do so, the recent proposal by the European Commission to ban the goods made from forced labour will be taken into consideration, with a specific focus on its influence on third countries' legal framework.

### **What is going on worldwide?**

To remain competitive on the global market, since the 1970s, multinational enterprises (MNEs) have been subcontracting their production in factories in developing countries in which labour rights are not protected as much as in Europe or North America. One of the main examples is Bangladesh, one of the poorest and highest populated country in the world, in which, even though principles like paid leave and decent working shifts are embedded in the national legislation, they are often not respected by subcontractors. Big Western labels take advantage of this lack of compliance, of other alternatives, and of the poverty of the local population, to pay the manufacturers between \$1.9 and \$2.4 per day, even though they have to work for 12 hours<sup>121</sup>. In this way, costs are diminished while productivity is increased. Thus, they can be more competitive in the international market and keep on getting high profits. For instance, in 2018, 4.5 million of Bangladeshi labourers were able to assemble \$30 billion worth of ready-to-wear garments that were exported to Western countries<sup>122</sup>.

The decrease in the expenses of production is composed of two distinct aspects; (i) a lowering of the wages and (ii) a reduction in the funds used for the maintenance and conservation of the working place. Both these elements reduce the protection of workers' rights while increasing the violations of them. This leads to an inhuman exploitation of them in these factories through brutal means which, if examined in comparison with international labour rights law, results illegal. Some of them include locking the employees inside their working place so that they cannot leave or take a break or, for the same goal, closing all the windows with metallic bars. They do not stop at structural measures. Many women in Bangladesh suffer physical abuses every day

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<sup>120</sup> See generally Layna Mosley, Brian Greenhill, Aseem Prakash, *Trade-Based Diffusion of Labor Rights: A Panel Study, 1986–2002*, American Political Science Association (2009)

<sup>121</sup> "Why we still need a fashion revolution," Fashion Revolution White Paper, 2020

<sup>122</sup> I. H. Ovi, "RMG exports saw 8.76 percent growth last fiscal year", Dhaka Tribune, 2018



from their supervisors to incentivise their productivity and finish in time the orders received.

This lack of rights' protection translates into terrible tragedies in which hundreds, if not thousands, of workers die. In 2013, in only 18 months, there were forty-three fires in factories in Bangladesh. Most of them claimed victims due to the impossibility of escaping the workplace. The biggest example is the Rana Plaza building fire on the 24th of April 2013. The eight-floor construction crashed during a working day because of the lack of maintenance, the construction of two new abusive floors, and the enormous number of people working there. This incident caused 1130 casualties and left over 2500 people injured or mutilated, hence unable to work again. Their families received only \$200 as compensation, and just seven of the twenty-nine brands using the factory offered to finance a fiduciary fund for the Rana Plaza. Unfortunately, this is only one of the main images of what happens every day in these places where multinationals keep on subcontracting the production of their items. Just five months prior to the Rana Plaza disaster, another one killed 100 people in the factory of Tazreen Fashions, still in Bangladesh.

Here the problem of responsibility arises: who is to be blamed for what happened? Lot of controversies follow; traditionally, the protection of labour rights is in the hands of states and is regulated by international treaties and conventions such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR). They identify the responsibilities that states have to respect, protect, and fulfil the civil, political, economic, social, and cultural rights that every individual is entitled to. However, as we have seen before, they are often violated by multinational corporations. Indeed, with globalisation and the breaking of the supply chain in different countries, the dilemma of how to regulate business activities developed. If governments have some obligations under public international law, the same cannot be said for private enterprises. They do not create direct accountability for companies, but only require states to regulate their actions. In 1997, Maastricht Guidelines on Violations of Economic, Social and Cultural Rights reinforced this point. According to it, the obligation of the state to protect also includes its responsibility to ensure that independent entities or individuals do not rob each other of their economic, social, and cultural rights. It also has to take serious steps to put an end to these abuses. At the domestic level, this can be done either by targeting these businesses directly or by issuing a mandate for transparency in global business activities, linking the latter with accountability. However, both national and international law are strong only as

long as they can be enforced; unfortunately, in many places labour laws are hindered by the incapacity of the government to enforce them.

### **The proposal for a ban on goods made using forced labour.**

Forced labour, defined by the International Labor Organization (ILO) as “all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily”<sup>123</sup>, remains a pervasive issue in today's global economy. It is estimated that in 2021 there were over fifty million people living in conditions of modern slavery, including forced labour, in a wide range of industries, comprising agriculture, manufacturing, mining, and construction, taking place mostly in the private economy but being, sometimes, imposed also by State authorities<sup>124</sup>.

Over the past decade, concerns over the use of forced labour in global supply chains have grown, urging governments and international organizations to act. This has led to attempts to use national legislation to fill the voids left by international labour law. Hence, some forms of hybrid regulation emerged, combining certain aspects of state-based public regulations as well as private governance ones, such as social responsibility initiatives. For instance, the California 2012 Transparency Act requires large companies to report on measures taken to go against forced labour<sup>125</sup>.

Nevertheless, these reports are usually not specific and are focused on overseas practices. Indeed, major weaknesses have been identified in the effectiveness of these types of labour legislation. The soft body of law varies across jurisdictions in terms of quality and stringency, and does not impose any new legally binding standards, resulting in a lot of non-compliance. Consequently, it is ineffective for the fight against forced labour: transparency legislations have not sparked anything new in businesses, and companies can still comply without changing anything<sup>126</sup>.

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<sup>123</sup> See Art. 2 of the Forced Labour Convention (1930)

<sup>124</sup> See generally Forced Labour and Forced Marriage, Global Estimates of Modern Slavery, (2022)

<sup>125</sup> See The California Transparency in Supply Chains Act, State of California, Department of Justice (2012)

<sup>126</sup> See Genevieve LeBaron & Dr Andreas Rühmkorf, Webinar *European Union supply chains and trade: improving worker rights? Due Diligence, Transparency Legislation, and Forced Labour*, Centre for European studies: a Jean Monnet centre for Excellence, (2021)

<https://EUurope.unc.edu/event/trade-global-supply-chains-worker-rights-EU/>

Always being committed to the promotion of labour rights and sustainable development in global markets, the EU took a more concrete step towards this issue. In September 2022, the European Commission proposed a new law that would ban the import of goods produced by forced labour. This proposal has the potential to have a significant impact on global trade, since it covers all products made available within the EU market, meaning both products made in the EU for domestic consumption and for export, and imported goods. The provisions of the proposal would apply to products of any type, including their components, regardless of the sector or industry.

Yet, it raises a number of legal issues. One of them is the question of how the ban will be enforced. Companies importing goods into the EU would be required to certify that their products were not made using forced labour. The certification would have to be provided by independent auditors, and companies found to be in violation of the law could face fines and other penalties. The enforcement of the ban will require the development of a robust system of monitoring and verification. The EU will need to work closely with importing countries to ensure that the certification process is effective and that companies cannot evade the ban through fraudulent or misleading practices. Being a directive, this will lead to different implementations in each country and hence to different mechanisms of compliance control. Member States' authorities, following an investigation, would be empowered to withdraw products made using forced labour from the EU market.

Another issue raised is whether it is consistent with international trade law. Under the World Trade Organization (WTO) rules, countries are prohibited from discriminating against imports because of how they were produced. However, the WTO does allow countries to impose restrictions on imports to protect public morals, public order, or public health. It is possible that the EU could argue that the proposed ban on goods produced by forced labour falls within one of these exceptions.

At the European Union level, the Commission proposed this directive with the use of Art. 114 and 207 of the TFEU, deeming it necessary to avoid obstacles to the free movement of goods in the internal market, and to prevent distortions of competition caused by diverging national laws.

This proposal will have significant economic implications for both importing and exporting countries. The ban could create a market for goods produced without forced labour, providing an incentive for companies to adopt more ethical supply chain practices. This could help the promotion of sustainable and responsible trade and could lead to increased demand for goods produced in countries with stronger labour

standards. Not willing to forego the wealthy European consumer market, companies will prefer complying with more stringent standards, even at a higher cost.

While there is EU legislation already in force to combat forced labour, neither existing nor pending legislation includes a prohibition on placing and making available products made using forced labour on the EU market<sup>127</sup>. The new proposal would ban these products from it, closing to them. This could lead to a similar effect to the one produced in the environmental field analysed before. Seeing that the Brussels Effect is a form of regulatory power that arises from the EU's economic influence and regulatory powers, and that the EU is trying to impose its standards on global supply chains, this proposal could, in the future, give rise to more stringent regulatory influence.

Nevertheless, different problems result from it. In fact, as examined by Professor Bradford, as long as the labour market remains divisible, it would be difficult to implement stringent standards and to have different jurisdictions comply with them<sup>128</sup>. Yet, what the European Commission is now trying to do is to tie product standards to process ones, in a way to make the labour market less divisible and attached to the making of the final product. Still, the problem of effectiveness persists. According to a Civil Society Statement signed by a wide range of civil society organisations, coalitions, and trade Unions, this proposal is insufficient since it does not take into consideration the workers' future. They demand amendments ensuring that workers' views and interests are considered at all stages of the investigation and decision processes, by also criticising lack of remediation measures for impacted workers and the need for public disclosure of MNEs' suppliers, sub-suppliers, and business partners throughout their value chains. Thus, as stated by Anna Cavazzini, chair of the Committee on the Internal Market and Consumer Protection, "The remedies need to be strengthened because ultimately the idea is that with this proposal, we help workers in forced labour situations in different countries of the world."<sup>129</sup>

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<sup>127</sup> See Proposal for a ban on goods made using forced labour, Briefing EU Legislation in Process, the EU parliament, (2023)

[https://www.EUroparl.EUropa.EU/RegData/etudes/BRIE/2023/739356/EPRS\\_BRI\(2023\)739356\\_EN.pdf](https://www.EUroparl.EUropa.EU/RegData/etudes/BRIE/2023/739356/EPRS_BRI(2023)739356_EN.pdf)

<sup>128</sup> Id. 111

<sup>129</sup> Silvia Ellena, *MEPs, experts ask to shift burden of proof in forced labour products ban*, Euroactiv, (2022)

## **CONCLUSION**

The arguments above examined prove that the European Union is still the main regulatory power nowadays. Thanks to the characteristics analysed in the First Chapter, it was possible to observe how it has been able to directly influence the productions of many firms that, in turn, asked governments to implement similar standards. Indeed, its market size, regulatory capacity, stringent standards, inelastic targets, and the non-divisibility of production, make it so that the Union is able to promulgate regulations and directives that will have a far-reaching effect that just inside itself. As seen, the EU has used this ability to promote causes close to it, such as the protection of the environment and of workers' rights.

This paper has explored how the Brussels Effect can help safeguard these rights outside the EU. Through an analysis of relevant literature and case studies, it has been demonstrated that the EU's regulatory framework and its application have a significant impact on the behaviour of businesses operating outside of it. As a large and influential market, the EU can use its market power to encourage other countries to adopt similar environmental and labour rights standards, even if they are not directly subject to EU regulations.

This was the case with the ETS regulation to which many companies had to adapt in order to keep selling their products in the EU. As observed, this paved the way for similar legislations in third countries like South Korea, which decided to embrace its Korean equivalent, namely the K-ETS. In this way, the Union was able to promote its stringent standards in this area, not only having its own Member States to comply, but even third countries. This increased the regulatory influence of the Union, making it the global standard setter in the environmental field.

The Third Chapter tried to see if it was possible to apply the Brussels effect to the subject of workers' rights. This investigation contrasted with the study of Professor Bradford, the first one to theorize the Brussels Effect in 2012, since she claimed that as long as the supply chain and hence the production process remains divisible, it is impossible for the Union to impose any standards. Nevertheless, the European Commission has proposed in 2022 a new directive on the ban of products made with forced labour. By reading and inquiring into the future implications of this European directive on third countries, what is found is promising. According to the briefing given by the European Parliament on the proposal: *“it covers all products made available within the EU market, meaning both products made in the EU for domestic consumption*

*and for export, and imported goods. The provisions of the proposal would apply to products of any type, including their components, regardless of the sector or industry.*<sup>130</sup>” In this manner, the European Commission was able to put its market accession at the centre, making its consumer market immobile. Therefore, even though the production process can still be divided into many different countries, what matters is the final product and if it respects the guidelines imposed. What many expect is a ripple effect in which MNEs will start to respect this directive and, as seen in the cases of the RoHS and the ETS, will ask its governments to implement similar standards so as to not distort global competition.

To conclude, this thesis investigated the EU’s regulatory influence worldwide. With the help of concrete cases, it pointed out its key role in the promotion of environmental and labours’ rights. Nonetheless, it did so, not by examining direct international trade agreements, but by tackling a more indirect form of influence i.e., access to its wealthy market. Being born mostly as an economic alliance, the European Union is still today using its economic power to regulate other markets. The appealability of its consumer pool makes it so that manufacturers will prefer complying with its more stringent standards, rather than being excluded from its wealthy market.

The Union has and will continue to be the main regulatory power, regardless of the many challenges it has gone through, and of the raising of new forms of influence such as China. Nevertheless, still many factors can undermine and diminish the Brussels effect. The EU has gone through challenging times in the last decades due to the financial crisis of 2008, the enlargement process, COVID 19, the current crisis of the rule of law in two of its countries (Hungary and Poland) and the ongoing Russia-Ukrainian war.

Still, its regulatory power has not diminished, and the Union has been able to counterattack these issues through strong legal frameworks and the upholding of its fundamental rights. Hopefully, the European Union will continue on this trend and promote the protection of its fundamental rights both inside and outside of it.

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<sup>130</sup> See the *Briefing on the Proposal for a ban of goods made using forced labour*, EU legislation in process. (2022)

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## RIASSUNTO IN ITALIANO

Negli ultimi decenni, il fenomeno della globalizzazione ha portato a un'enorme quantità di scambi e investimenti tra i confini internazionali, creando complesse catene di approvvigionamento nelle quali molteplici attori, dai produttori e fabbricanti ai rivenditori e ai consumatori, sono coinvolti. Di fatto, l'aumento della domanda di nuovi beni ha aperto la strada a un'intensificazione dell'offerta, spingendo i produttori a suddividere la catena di approvvigionamento in diversi paesi, con la maggior parte della produzione che si svolge nei paesi in via di sviluppo.

Ultimamente l'impatto sociale e ambientale di queste catene globali è stato messo sotto i riflettori. Coscienza è stata presa su come l'inseguimento del profitto e della competitività venga raggiunto attraverso lo sfruttamento dei lavoratori, le pessime condizioni di lavoro e il degrado ambientale, soprattutto in quei paesi ove le normative sul lavoro e sull'ambiente sono spesso deboli e difficili da far rispettare. Per rispondere a queste preoccupazioni, molte istituzioni internazionali come l'Organizzazione Internazionale del Lavoro (ILO) e le Nazioni Unite (ONU) hanno stabilito standard e linee guida per promuovere il lavoro dignitoso e lo sviluppo sostenibile. In aggiunta, gruppi della società civile e organizzazioni non governative (ONG) hanno sostenuto normative più rigorose e il controllo delle catene di approvvigionamento, al fine di garantire la protezione dei diritti dei lavoratori e il rispetto degli standard ambientali. Nonostante ciò, la maggior parte di tali normative non è stata veramente efficace nel contrastare il problema, specialmente laddove, come nei paesi in via di sviluppo, i produttori occidentali approfittano della situazione sociale e politica incerta.

L'Unione Europea è oggi protagonista all'interno di questo dibattito, dato il suo status di grande blocco commerciale e potenza regolamentare. Contrariamente a quanto molti pensano, il suo ruolo globale non è diminuito negli ultimi decenni; la sua capacità regolamentare l'ha resa il principale impositore di standard a livello mondiale. L'UE è stata in grado di implementare varie politiche e regolamenti per garantire il rispetto da parte degli Stati membri di elevati standard ambientali e lavorativi. Queste politiche sono servite da guida per altri paesi e regioni nello sviluppo delle proprie normative. Concretamente, i suoi rigidi standard hanno spinto molte aziende globali a conformarsi ad essi e giurisdizioni straniere ad emanare legislazioni similari. Questo è stato il caso, ad esempio, della promulgazione dell'Emission Trading System europeo (ETS), cui ha fatto seguito l'ETS coreano.

Una domanda importante rappresenta la base di questa tesi. Perché i paesi terzi e le loro aziende si adeguano agli elevati standard dell'UE, in determinati settori, anziché ad altri più permissivi e conseguentemente più convenienti per loro? Secondo la Professoressa Bradford,

questo è dovuto al cosiddetto "Brussels Effect", ovvero all'influenza che l'UE esercita su questi attori in conseguenza del suo ruolo di leadership nella definizione delle norme economiche. Difatti, grazie al suo grande mercato, alla sua capacità regolamentare e ai suoi rigorosi standard, l'UE è in grado di mantenere tutt'oggi un ruolo importante a livello mondiale. Lo studio della Bradford è stato ispirato da David Vogel, che ha affrontato per primo un argomento simile, coniando il termine "California Effect" per descrivere l'impatto delle normative e delle politiche della California sul resto degli Stati Uniti e oltre. Egli sostiene che, grazie al suo mercato ampio e influente, combinato con politiche progressiste e innovative, lo Stato della California è riuscito a fare in modo che diverse multinazionali, per conformarsi ai suoi rigidi standards, adottassero politiche simili in altre parti del paese e persino a livello globale. Grazie alla spinta fornita da questo fenomeno, diversi stati si sono visti obbligati a varare nuove regolamentazioni. Ad esempio, le leggi californiane in materia di ambiente riguardo la qualità dell'aria e le emissioni di gas serra hanno influenzato altri attori federali e internazionali a adottare regolamentazioni simili altrove. Ugualmente, le sue politiche sulla protezione dei consumatori, sui diritti dei lavoratori e sulla privacy dei dati hanno avuto un effetto a catena su altre giurisdizioni. Questo spiega anche perché, negli ultimi decenni, ci sia stata una corsa al vertice piuttosto che una al ribasso, nonostante un regime favorevole alle imprese con strutture di governance societaria più flessibili che avrebbe dovuto incentivare più aziende a conformarsi ai loro criteri più bassi.

L'analisi di questa tesi mira a esplorare se il sopracitato "Brussel Effect" può verificarsi nel modello delle "supply chains" regolamentando gli standard ambientali e lavorativi. Pertanto, è stata divisa in tre capitoli.

Nel primo capitolo, è stato analizzato l'emergere di questo fenomeno. Dopo una spiegazione teorica di questo modello, sono state evidenziate le caratteristiche che determinano la sua comparsa, piuttosto che quella del "Washington Effect" o del "Beijing Effect". Infatti, l'UE è riuscita a ottenere il "Brussels Effect" attraverso una combinazione di fattori, tra cui le dimensioni del suo vasto mercato, il potere regolamentare delle sue istituzioni e la volontà di utilizzare il commercio come strumento per promuovere i suoi valori e standard. In particolare, è stato sottolineato il grande potere regolatorio dell'Unione che, attraverso l'esternalizzazione della sua legislazione interna, influisce sulle regolamentazioni dei paesi terzi.

Il secondo e il terzo capitolo sono dedicati ad aree più sostanziali del diritto dell'UE, con riferimento ai due trattati fondamentali dell'UE (TEU e TFEU) e alle diverse normative e direttive approvate da essa.

Il campo della protezione ambientale è al centro del secondo capitolo. Il ruolo chiave dell'Unione in questo settore è stato affrontato più volte dalle principali figure europee, come la

presidente della Commissione Ursula Von Der Leyen che ne ha evidenziato l'importanza. Per comprendere meglio la posizione centrale dell'UE, il capitolo è stato diviso in due diverse sottosezioni. La prima presenta la storia delle politiche ambientali dell'UE dalla sua formazione con il Trattato di Roma (1957) fino ad oggi, mentre la seconda si occupa di due regolamenti attuati negli ultimi due decenni, il RoHS e l'ETS. Con l'aiuto di quest'ultimi due, è stato possibile investigare l'influenza regolamentare che l'Unione esercita sulle legislazioni dei paesi terzi, come la Corea del Sud. In questo capitolo, si è sostenuto, facendo riferimento ai trattati costitutivi dell'Unione e al suo meccanismo regolamentare, come negli ultimi decenni l'UE sia stata in grado di influenzare altri attori per quanto riguarda la protezione dell'ambiente.

Il terzo capitolo tratta l'applicazione del “Bruselles Effect” nell'ambito del diritto del lavoro. La promozione delle norme lavorative è stata una priorità chiave per l'UE nelle sue politiche esterne. Ha collaborato con l'ILO per promuovere il lavoro dignitoso e lo sviluppo sostenibile e ha incluso clausole sulla condizione sociale in molti dei suoi accordi commerciali. Ciò è stato ulteriormente rafforzato dal Trattato di Lisbona nel 2009, che ha costituzionalizzato l'impegno dell'UE verso gli obblighi in materia di diritti umani, sia all'interno che all'esterno delle sue azioni. Grazie al suo quadro regolamentare, l'UE è stata in grado di mobilitare diversi strumenti di governance con una prospettiva sociale, mirati alla promozione di un'economia di mercato sociale altamente competitiva.

Questo capitolo è stato suddiviso in tre sezioni principali. La prima descrive una storia generale degli standard lavorativi nell'Unione, concentrandosi su quanto significativi siano diventati nel corso degli anni. L'evoluzione dalla limitata protezione fornita dal Trattato di Roma del 1957 alla costituzionalizzazione della Carta dei diritti fondamentali dell'Unione Europea viene trattata in maniera approfondita in questa sezione, mentre, nella successiva, rilevanza è stata data alla problematica dei diritti dei lavoratori nei paesi in via di sviluppo. Per renderla più chiara, sono stati menzionati il caso del Bangladesh, e in particolare la tragedia del Rana Plaza. In una terza sezione è stata analizzata la nuova proposta del Parlamento europeo su un divieto sui beni prodotti tramite il lavoro forzato. Leggendo e indagando sulle implicazioni future di questa direttiva europea nei confronti dei paesi terzi, si possono intravedere risultati promettenti. Secondo le informazioni fornite dal Parlamento europeo sulla proposta: "essa copre tutti i prodotti resi disponibili nel mercato dell'UE, compresi i prodotti realizzati nell'UE per il consumo interno e per l'esportazione, nonché i beni importati. Le disposizioni della proposta si applicherebbero a prodotti di qualsiasi tipo, compresi i loro componenti, indipendentemente dal settore o dall'industria". In questo modo, la Commissione europea è stata in grado di porre al centro il suo accesso al mercato, rendendo il

suo bacino di consumatori un obiettivo immobile. Pertanto, anche se il processo produttivo può ancora essere diviso in molti paesi diversi, ciò che conta è il prodotto finale e il rispetto delle linee guida imposte. Ciò che molti si aspettano è un effetto domino in cui le multinazionali inizieranno a rispettare questa direttiva e, come avvenuto nei casi di RoHS e ETS, chiederanno ai loro governi di implementare standard simili al fine di non alterare la concorrenza globale.

Con l'aiuto delle argomentazioni esaminate sopra, è stato possibile stabilire come l'Unione Europea sia ancora oggi la principale potenza regolamentare a livello globale. Grazie a questa sua caratteristica, è stato possibile esplorare come il "Bruselles Effect" possa contribuire a tutelare i diritti sopracitati al di fuori dell'UE. Attraverso un'analisi della letteratura pertinente e di studi di caso, è stato dimostrato che il quadro regolamentare dell'UE e la sua applicazione hanno un impatto significativo sul comportamento delle imprese che operano al di fuori dell'UE. Essendo un mercato vasto e influente, l'UE può utilizzare il suo potere di mercato per incoraggiare altri paesi a adottare standard simili in materia di ambiente e diritti del lavoro, anche se non sono direttamente soggetti ai regolamenti dell'UE.

In conclusione, questa tesi ha indagato l'influenza regolamentare dell'UE a livello mondiale. Con l'aiuto di casi concreti, ha evidenziato il suo ruolo chiave nella promozione dei diritti ambientali e dei diritti dei lavoratori. Tuttavia, ha fatto ciò non esaminando direttamente gli accordi commerciali internazionali, ma affrontando una forma di influenza più indiretta, ossia l'accesso al suo ricco mercato. Nata principalmente come un'alleanza economica, l'Unione europea continua oggi a utilizzare il suo potere economico per regolare altri mercati. L'attrattiva del suo bacino di consumatori fa sì che i produttori preferiscano conformarsi ai suoi standard più rigorosi anziché essere esclusi dal suo profittevole commercio.

L'Unione sarà e continuerà a essere la principale potenza regolamentare, indipendentemente dalle molte sfide che ha affrontato e dall'emergere di nuove forme di influenza come la Cina. Tuttavia, molti fattori possono minare e ridurre l'Effetto Bruxelles. L'UE ha attraversato momenti difficili negli ultimi decenni a causa della crisi finanziaria del 2008, del processo di allargamento, della pandemia di COVID-19, della crisi attuale dello stato di diritto in due dei suoi paesi (Ungheria e Polonia) e della guerra in corso tra Russia e Ucraina. Tuttavia, il suo potere regolamentare non si è ridotto e l'Unione è stata in grado di contrastare questi problemi attraverso solide strutture legali e il rispetto dei suoi diritti fondamentali. Speriamo che l'Unione europea continui su questa linea e promuova la protezione dei suoi diritti fondamentali sia all'interno che all'esterno di essa.