

**International Colloquium
of the University of Naples Federico II Faculty of Law
'How the EU Rules the World: Insights from Four Continents'
4 October 2021**

On 4 October 2021, the University of Naples Federico II Faculty of Law hosted an International Colloquium entitled “How the EU rules the world: Insights from Four Continents”. This event was one of the activities carried out by Federico II Faculty of Law in the framework of its cooperation agreement with Denver University Sturm College of Law.

The conference focused on *The Brussels Effect*, a monograph published in 2020 by Professor Anu Bradford, Henry L. Moses Distinguished Professor of Law and International Organization at Columbia Law School, describing the process whereby non-EU countries adopt, on a voluntary basis, rules and standards that are similar to or inspired by those set by the EU.

The conference participants were welcomed by the Dean of Federico II Faculty of Law, Professor Sandro Staiano, and by Professor Fabio Ferraro, Director of the Postgraduate Program in EU law at the University of Naples Federico II, who made some preliminary observations as to how EU law has been a global trend-setter in certain areas, such as data protection, consumer safety, environmental protection, competition law and the regulation of online hate speech, but not in others, such as the enforcement of the rule of law, immigration policy, as well as foreign and security policy.

The conference convenor, Amedeo Arena, Professor of EU Law at the University of Naples Federico II Faculty of Law, observed that the Brussels Effect stands in stark contrast to a nearly constant public commentary about the EU’s imminent demise and inability to address global challenges. He added that in order to understand this complex and fascinating phenomenon, it was necessary to analyze its “antecedents”, namely the California and Delaware effects. He thus introduced the keynote speaker, Professor Celia Taylor, Nanda Chair at Denver University Sturm College of Law and Visiting Scholar at the University of Naples Federico II Faculty of Law.

Professor Taylor explained that the “Delaware effect” stems from the circumstance that the majority of publicly traded companies in the US are incorporated in the State of Delaware, thus making Delaware corporate law a reference point throughout the US. Several theories have been put forward to account for Delaware’s prominence in the corporate law area. According to the “race to the bottom” theory, corporations

have an incentive to incorporate in Delaware because its laws tend to be pro-management. However, the reason underlying that incorporation trend may also be that Delaware's Court of Chancery is well-versed in corporate law matters and that Delaware's General Corporation Law is one of the most advanced and comprehensive corporation statutes in the US.

Professor Taylor then turned to the California effect, explaining that California is one of the most progressive States in the US and that it has prompted a "race to the top" in many policy areas, including Data Privacy, Health Care Regulation, Car Emission Standards. Professor Taylor focused on one of them: California's initiative to promote gender diversity in corporate governance. She mentioned that, on 30 September 2018, the State of California passed Senate Bill 826, requiring every corporation whose principal executive office is located in California to have at least one female director on its board by the end of 2019, or face fines up to \$300,000.

Professor Taylor explained that, even though many corporations despised this kind of Governmental interference in their governance structure, they complied with its requirements. In 2018, nearly 30% of California company boards were all male, but after the enactment of the bill that percentage dropped to 3%. Moreover, in 2018 only 766 California public company board seats were held by women, but that number increased to 1,275 in 2020, an increase of 66.5%.

After that, Professor Taylor provided an overview of the impact of Senate Bill 826 in other States. She mentioned that the State of Washington passed the "Women on Corporate Boards Act" that became effective on 11 June 2020 and required corporations in the State to have a "gender-diverse board" or provide shareholders a "board diversity discussion and analysis". She also added that other US States adopted similar strong recommendations for their corporations to act in this same way, thus suggesting that California's approach to gender diversity in corporate boards is spreading throughout the US.

Professor Taylor added that some individuals and special interest groups have challenged the legality Senate Bill 826, claiming it infringes the Equal Protection Clause of the California Constitution, because it facially discriminates on the basis of sex and serves no important government interest. She added that even if these challenges are eventually successful and Senate Bill 826 is struck down, it has already made a significant impact and it is unlikely that corporations will exclude women from their boards again.

After the keynote, an online roundtable took place, featuring antitrust experts from four different countries: Tadashi Shiraishi, Professor at the Graduate School for Law and Politics of the University of Tokyo; Arianna Andreangeli, Senior Lecturer at the Edinburgh School of Law and Joint Coordinator of the Jean Monnet Centre of excellence at the Edinburgh Europa Institute; Vicente Bagnoli, Professor at Mackenzie Presbyterian University and antitrust practitioner in Sao Paulo; and Spencer Waller, John Paul Stevens Chair of Competition law and Director of the Institute for Consumer Antitrust Studies at Loyola University of Chicago.

The roundtable focused on the impact that EU antitrust law has in those four countries. On this subject, most panelists agreed that, as far as the general public is

concerned, the interest in EU law is not particularly significant, except for the UK. Yet, panelists shared the idea that, taking into account a more specific group, such as law graduates and scholars, the awareness of EU law is much higher.

The discussion then turned to the influence of EU antitrust law in the four countries at issue. On this matter, the majority of the panelists agreed that EU competition law has had and continues to have a significant impact on competition law in their respective countries. Professor Shiraishi mentioned exploitative abuse regulation as an example of the influence of EU Competition Law on Japanese Competition Law. He explained that, while equivalent regulations exist in the EU, they are absent in the US, whose antitrust statutes inspired Japan's Anti-monopoly Act of 1947.

Moreover, Professor Shiraishi noted that the EU regulation of global big techs has been a game changer for Japan. Indeed, the Japan Fair Trade Commission (JFTC) changed its 65-year approach to exploitative abuse just six months after the German Competition Authority, following the enactment of the GDPR in the EU, launched an investigation on the alleged abuses by Facebook relating to the exploitation of the personal data of its users. Before that, he noted, the JFTC had never investigated exploitative abuses against end consumers, as it believed that the goal of Japan's exploitative abuse regime was the protection of Small and Medium Sized Enterprises (SMEs). However, the JFTC's probe on Facebook data policy seems part of a global rethinking of the Japanese competition law enforcement priorities, as it appears from the JFTC's recent guidelines on the exploitative abuse by big digital platforms of the personal data of their users.

As far as the UK is concerned, Professor Andreangeli explained that, despite leaving the EU, competition law is an area where the Brussels effect endures on a systemic level in the British legal order. She provided two examples supporting this statement. First, even after leaving the EU and being no longer subject to the EU prohibition on State aids, the UK granted the Competition and Market Authority (CMA) the power to monitor subsidies, so as to ensure that the competition is not distorted within the UK. Another example Professor Andreangeli provided is Section 60A of the UK Competition Act, which, even after Brexit, limits the possibility for UK courts and the UK competition authorities to depart from the EU's *acquis*. She thus concluded that the competition law in the UK is a textbook example of the Brussels Effect.

As far as Brazil is concerned, Professor Vicente Bagnoli referred to the *SKF* case of 2013: the Brazilian Competition Authority (CADE) fined the company SKF for resale price maintenance in the ball bearings market adopting an EU-style 'illegality by object' approach. Instead, in previous cases CADE had interpreted the relevant Brazilian antitrust law provision following a US-style 'rule of reason' approach, thus balancing efficiencies against anticompetitive effects.

Turning to the US, Professor Spencer Waller noted that there is low but increasing attention to EU antitrust law in the US; for a recent example, he referred to the *Cicilline report* by Congressman David N. Cicilline, Chairman of the US House of Representatives, Subcommittee on Antitrust. In his report, Congressman Cicilline focused on the regulation of tech platforms in the US and he examined how different it is from the EU, as well as from the rest the world, because of the Brussels Effect.

The panelists then turned to the reasons that could account for the relevance of EU competition law in their respective jurisdictions. According to Professor Tadashi Shiraishi, as far as Japan is concerned, the reason underlying the influence of EU competition law is its robust public enforcement system, but also the style of its regulations and guidelines, which are more organized and accessible than their US counterparts.

As far as the UK is concerned, Professor Andreangeli claimed that the reason underlying the relevance of EU competition law in the UK is that the UK has been an EU Member State for a very long time. She also pointed to the fact that the EU is the main destination for UK trade, so British traders will always have a strong incentive to align with the EU regulations.

According to Professor Bagnoli, the reason underlying the influence of EU antitrust law in Brazil lies in the congruencies between the values and the purposes of Brazilian competition law and the core values of the EU.

As to the US, according to Professor Waller, the low attention to EU competition law in the US is part of a broader trend of isolation in the field of antitrust, particularly in the area of unilateral conduct. Still, he suggested that over time there will be more internal and external pressures to harmonize portions of US law in accordance with the growing consensus, particularly in areas of regulation of dominant firms.

The last part of the conference was devoted to the remarks and comments of Professor Anu Bradford, Henry L. Moses Distinguished Professor of Law and International Organization at Columbia Law School and the author of “The Brussels effect” monograph.

Professor Anu Bradford expressed her deep appreciation for this conversation on the Brussels Effect among scholars across different countries, which she claimed was one of the goals of her book. She highlighted that, despite the waves of Euro-skepticism, EU law continues to shape the legal, economic, and personal life of people all around the world.

She suggested that the awareness of the Brussels effect should lead to a higher confidence in EU law, but it should also prompt a greater sense of responsibility, because, as she aptly put it, “if the EU gets it right, it can potentially get it globally right, but if the EU gets it wrong, it can potentially get it globally wrong”. This is why, in her opinion, it is essential that scholars around the world spell out what EU regulations mean in their jurisdictions, so that the EU can be aware of the global impact of its regulatory endeavors. The impact of the Brussels Effect is often positive, but sometimes it is not, thus calling for more collaboration by the EU with its regulatory counterparts around the world.

Furthermore, Professor Bradford focused on how the world has evolved since her monograph was published. She explained that, while there was a growing fear that the Covid-19 pandemic would bring globalization to an end, this outcome did not materialize, because the main driving force of the Brussels Effect – i.e. multinationals’ desire to market their products and services across the world – has not changed.

To conclude, Professor Bradford focused on the possible future instances of the Brussels Effect. She mentioned that the EU is pushing for regulations as part of the

Green Deal to fight climate change with a broad and ambitious regulatory agenda, which may set a trend in many other countries. Moreover, she referred to the Digital Markets Act and the Digital Services Act, which she believes have the potential to transform the regulation of digital economy not just in the EU, but all around the world.

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