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The global race to regulate Artificial Intelligence:

Can the EU once again be a global standard setter?

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Preface

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A. Introduction

The EU commissioner for the Internal Market, *Thierry Breton* stated that “Europe is NOW a global standard-setter in AI”¹, in response to the majority vote on the proposal for an Artificial Intelligence Act (AI Act) by the European Parliament in March 2024.² Artificial intelligence technology has developed rapidly over the past few years. The worries from legislators about this rapid development coupled with unknown consequences regarding the use of AI has driven legislators such as the EU to act quickly to regulate in this field. While other states such as the US, UK or China have adopted voluntary standards or guidelines to regulate the use of AI, the EU has been the first major world power to introduce robust legislation to battle the known and unknown consequences of artificial intelligence systems.³

The rapid development and popularity by private users of platforms such as ChatGPT created by OpenAI served as a call to action among legislators to adopt more strict regulation in this field. Thus, while the early 2020s mostly focused on a global “race to AI” innovation, in recent years, states have focused primarily on a “race to AI regulation”.⁴

This paper will operate with the definition of an AI system set out in Article 3(1) contained in the AI Act. “AI system’ means a machine-based system designed to operate with varying levels of autonomy, that may exhibit adaptiveness after deployment and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments”.⁵

¹ *Thierry Breton*, via X. 13. March 2024 <https://twitter.com/ThierryBreton/status/1767872158988960014> (last accessed 08/04/24).

² *Garanhel*, EU passes landmark AI Act, sets global standard <https://www.aiacceleratorinstitute.com/eu-passes-landmark-ai-act-sets-global-standard/> (last accessed 20/10/24).

³ *Kretschmer et al*, The global race to regulate AI, <https://verfassungsblog.de/europe-and-the-global-race-to-regulate-ai/> (last accessed 28/04/2024).

⁴ *Smuha*, Law, Innovation and Technology 13 no. 1/2021, p. 57, 58.

⁵ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence, OJ L, 2024/1689, p. 46 (Art 3(1)).

Due to the wide range of use of these technologies, from healthcare services or education to defence or law enforcement, the lack of insight into what drives AI-based systems to produce their results can have serious consequences. This lack of transparency makes it more difficult to ensure oversight over these technologies and has led to worries concerning possible human rights violations, lack of privacy for users and clients, possible ethical worries regarding AI making decisions on sensitive topics as well as cybersecurity concerns.⁶ These growing concerns, in particular regarding the storing of sensitive information through AI systems, have led to the call for increased regulation in the field.⁷

Not simply among legislators or the general public, but even scientists and experts developing AI systems have called for regulation, claiming that these technologies are evolving much more rapidly than anticipated.⁸ Some experts have even urged the companies developing these technologies to cease their innovation until legislation to regulate such technologies has been enacted, due to a lack of foreseeability of the consequences of their use.⁹

While the EU institutions have been eager to reach an agreement on a final text since the AI Act was proposed by the Commission in 2021 to ensure its role as a “global leader” or “standard setter” in the field of AI, some experts question the effectiveness of the AI Act, due to lack of knowledge about the future challenges surrounding AI, some arguing that the Act is too strict and does not allow for innovation in this, still rather new, field.¹⁰ Thus, with the clear ambition of the EU to

⁶ *Tobin*, Artificial Intelligence: Development, risks and regulation, <https://lordslibrary.parliament.uk/artificial-intelligence-development-risks-and-regulation/> (last accessed 20/10/2024); *Jones*, AI governance and human rights, <https://www.chathamhouse.org/2023/01/ai-governance-and-human-rights> (last accessed 20.10.2024).

⁷ *Kretschmer et al*, The global race to regulate AI, <https://verfassungsblog.de/europe-and-the-global-race-to-regulate-ai/> (last accessed 28/04/2024).

⁸ *Sky News*, 'Godfather of AI' Geoffrey Hinton warns about advancement of technology after leaving Google job, <https://news.sky.com/story/godfather-of-ai-geoffrey-hinton-warns-about-advancement-of-technology-after-leaving-google-job-12871065> (last accessed 20/10/2024); *Kang*, OpenAI's Sam Altman Urges A.I. Regulation in Senate Hearing, <https://www.nytimes.com/2023/05/16/technology/openai-altman-artificial-intelligence-regulation.html> (last accessed 20/10/2024).

⁹ *Future of Life Institute*, Pause Giant AI Experiments: An Open Letter, <https://futureoflife.org/open-letter/pause-giant-ai-experiments/> (last accessed 30/04/2024).

¹⁰ *Kretschmer et al*, The global race to regulate AI, <https://verfassungsblog.de/europe-and-the-global-race-to-regulate-ai/> (last accessed 28/04/2024). *Engler*, The EU AI Act will have a global impact, but a limited Brussels Effect, <https://www.brookings.edu/articles/the-eu-ai-act-will-have-global-impact-but-a-limited-brussels-effect/> (last accessed 30/04/2024).

create a rulebook on AI which can be adopted by other states as well, the question must be asked whether the AI Act in its current form can generate a global standard for AI.

The EU has created a similar rule book within “big tech” before, in its enactment of the renowned General Data Protection Regulation (henceforth referred to as “GDPR”) in 2018,¹¹ which was quickly fully or partially replicated in other states.¹² This led to a somewhat widespread consensus in the important field of data protection.¹³

This article will examine the ability of the EU AI Act to set a global standard based on the approach used by *Bradford*, outlining the so-called “Brussels Effect”.¹⁴ This approach considers the ability of the European Union through its legislation to influence regulatory frameworks through norm creation and “soft law” means to get states, but also multinational corporations to adopt their regulatory standards voluntarily (de facto-Brussels Effect), as well as through the application of EU legislation in non-EU member states through for instance extraterritorial jurisdiction (de jure-Brussels Effect).¹⁵

B. Introduction to the AI Act

The EU AI Act regulates the placing on the market and use by providers, distributors, and end-users of Artificial Intelligence systems through a risk-based approach. The AI Act focuses on applying the risk-based approach proportionally, which is a key principle of EU law, to ensure that key considerations when determining risk factors of certain AI systems are considered.¹⁶ This would include factors such as in which field the AI system will be deployed, and the risks

¹¹ Regulation (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 (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1.

¹² *Bradford*, *The Brussels effect* (2020), p. 148.

¹³ *Siegmann and Anderljung*, *The Brussels Effect and Artificial Intelligence: How regulation will impact the global AI market*, Centre for Governance and AI. <https://arxiv.org/pdf/2208.12645> (last accessed 28/04/2024).

¹⁴ *Bradford*, *The Brussels Effect* (2020), p. 14.

¹⁵ *Engler*, *The EU AI Act will have a global impact, but a limited Brussels Effect*, <https://www.brookings.edu/articles/the-eu-ai-act-will-have-global-impact-but-a-limited-brussels-effect/> (last accessed 30/04/2024).

¹⁶ *Feldstein*, *Democratization 2023*, p. 1, 12.

associated with this particular field. Fields such as health care or education carry increased risk and ensure the adherence to human rights and privacy obligations contained in EU legislation (such as the GDPR) and the EU Charter of Fundamental Rights.¹⁷

This entails enhanced obligations for AI systems which are characterised as high risk, such as conformity assessment procedures against set standards before placing the AI system on the market and assessment of possible human rights implications the AI system may pose for its end-users. High-risk AIs also have stricter reporting obligations in instances of a security breach within the system, especially where this could affect the privacy and personal data of their users.¹⁸

Whereas AI systems associated with limited risk have a duty of information to inform the user when they are interacting with or viewing content produced by AI.¹⁹ These may be services such as AI-generated Chatbots or images or videos generated by AI, so-called “deep-fakes”. AI systems which are deemed to pose a minimal risk have no mandatory obligations imposed on them under the AI Act but are urged to adopt voluntary AI codes of practice.²⁰

The overall aim of the regulation is to ensure a human-based approach towards AI, through a focus on the possible human rights and privacy implications which may be affected by AI systems, as well as ensuring the right of developers of these technologies to innovate. A further goal for the AI Act is to ensure “trustworthy” AI through working on transparency of AI technologies and regulating the processing of sensitive data for AI systems.²¹

The European Commission, in their preliminary proposal AI Act, stated that they wish for the AI Act to be regarded as “future-proof”. This was done to ensure that the AI Act can be amended

¹⁷ *Siegmann and Anderljung*, The Brussels Effect and Artificial Intelligence, p. 12.

¹⁸ *European Commission*, AI Act: Shaping Europe’s Digital Future, <https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai>, (last accessed 20/10/2024).

¹⁹ *Siegmann and Anderljung*, The Brussels Effect and Artificial Intelligence, p. 12.

²⁰ *European Commission*, AI Act: Shaping Europe’s Digital Future, <https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai>, (last accessed 20/10/2024); OJ L 119, 4.5.2016, p. 30 (Recital 117).

²¹ *European Commission*, AI Act: Shaping Europe’s Digital Future.

easily in the face of new technological development of AI.²² This entails empowering the Commission to adopt delegated acts which ensures the flexibility of the definitions and legal obligations for certain AI systems amongst technological advancement.²³ Some would also argue the AI Act has purposefully been left somewhat vague in its wording to ensure its robustness for the future.²⁴ It is important to note that the final text for the AI Act has been in the works since 2021 and we have already seen great strides in technological development since then. This includes the launching of ChatGPT by OpenAI in 2022, which allowed for increased public access to and use of AI in daily life.

C. The Brussels Effect: Introduction

The Brussels Effect refers to the ability of a piece of legislation or general norm developed in the EU to have global influence. *Bradford* referred to the Brussels Effect as the “EU’s unilateral power to regulate global markets”.²⁵ The Brussels Effect aims to establish the EU’s position as a world power through its global regulatory influence during a time when the EU was largely considered a “fading” world power in international relations through a lack of military and (some argue) a diminishing economic power and the rise of China on the world stage.²⁶

The Brussels Effect is especially significant in the field of AI, as the previously mentioned “race to AI” through innovation has largely established the US and China as being in the lead. However, the EU has widely been considered to lead the “race to AI regulation” through its previously established position as having a significant regulatory capacity.²⁷ Some of the examples of previous regulations cited as creating a Brussels Effect will be discussed in section 4 of this paper. The paper will discuss the global influence of EU competition law, the CE-marking requirements and the

²² *Ibid.*

²³ OJ L 119, 4.5.2016, p. 114 (Article 97).

²⁴ *Kretschmer et al*, The global race to regulate AI, <https://verfassungsblog.de/europe-and-the-global-race-to-regulate-ai/> (last accessed 28/04/2024).

²⁵ *Bradford*, The Brussels Effect (2020), p. 15.

²⁶ *Bradford*, The Brussels Effect (2020), p. 14.

²⁷ *Smuha*, Law, Innovation and Technology 13, no. 1/2021, p. 57.

GDPR as significant examples of the EU's global regulatory influence and will compare them to the AI Act to examine its potential to generate a similar effect.

It is important to distinguish the de jure and the de facto Brussels Effect for further examination in this article. A de jure Brussels Effect refers to the ability of EU legislation to affect the regulatory drafting of states outside the EU, while de facto Brussels Effect refers to the companies which operate both on the EU market and in non-EU markets, developing products and standards in accordance with EU rules globally to ensure efficiency both in terms of time and economically.²⁸

I. De jure Brussels Effect

De jure Brussels Effect largely refers to the influence EU law has on other states which are not member states of the EU.²⁹ There are many ways in which a state can be influenced to adopt legislation inspired by the EU regulatory regime. This section will discuss the most prominent reasons or ways in which a state can be influenced through a de jure Brussels Effect: regulatory borrowing, blueprint or template adoption and multilateralism.³⁰ Examples of the methods of de jure Brussels Effect will be discussed further in sections D. and E. when analysing previous examples of the Brussels Effect as well as through examining the ability of the AI Act to generate a Brussels Effect in the future.

Regulatory borrowing occurs when a non-EU state or jurisdiction adopts rules in their jurisdiction which are wholly or partly based on the given EU legislation. This is largely done through the adoption of the key aspects or principles contained in the regulation and adapting these principles to the given jurisdiction. An example given of regulatory borrowing is for instance adopting the principle of “trustworthy AI”, which is a key notion found in the AI Act.³¹ Further examples of “borrowing” would be the notion of a right-based approach to AI, which distinctly characterises

²⁸ *Siegmann and Anderljung*, *The Brussels Effect and Artificial Intelligence*, p. 3.

²⁹ *Bradford*, *The Brussels Effect* (2020), p. 78.

³⁰ *Bradford*, *The Brussels Effect* (2020), p. 65.

³¹ *Siegmann and Anderljung*, *The Brussels Effect and Artificial Intelligence* p. 63.

the EU approach to AI regulation, while jurisdictions such as the US are more focused on ensuring innovation when regulating in the field of AI.³²

Furthermore, an alternative to regulatory borrowing, which is often used by jurisdictions with a lower regulatory capacity, is blueprint or template adoption, where the de jure Brussels Effect is stronger than merely “borrowing” or taking inspiration from a piece of EU legislation, but rather utilising the core of the regulation more strictly and implementing key obligations contained in the regulation.³³ While minor changes to adapt the regulation to the given jurisdiction may be necessary, blueprint adoption largely adopts the structure and substantive rights of a piece of EU legislation and transports this to the desired legal system.³⁴ At any rate, both regulatory borrowing and blueprint adoption reflect the reputation of the EU as having a large regulatory capacity in drafting quality regulation.³⁵

The multilateralism channel of de jure Brussels Effect (which will be further discussed in section E.IV) combines the notion of the EU as a market power and influencer of norms on the international stage.³⁶ This “channel” of EU global influence could be considered an indirect form of influence, as the EU will influence global regulatory trends through impacting global standard-setting in international organisations and forums.³⁷ An example which will be further discussed in section E.IV is the EU’s involvement in the process of the development of the AI Principles within the OECD. Another example could be the EU’s influence on other soft-law instruments, such as standard-setting in the strict sense through the development of regional standards through the European standardisation body CEN. This can further influence the adoption of international

³² Ibid.

³³ *Bradford*, *The Brussels Effect* (2020), p. 65.

³⁴ *Bradford*, *The Brussels Effect* (2020), p. 77.

³⁵ *Bradford*, *The Brussels Effect* (2012), p. 14, https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1275&context=faculty_scholarship (last accessed 07/11/2024).

³⁶ *Damro*, *Journal of European Public Policy* 19, no. 5/2012, p. 682, 684.

³⁷ *Siegmann and Anderljung*, *The Brussels Effect and Artificial Intelligence*, p. 67.

standards through the International Standardisation Organisation (ISO), which in turn often inspires national regulation.³⁸

Additionally, companies which have adopted EU rules as their global standard may lobby states and jurisdictions to adopt the EU regulatory regime. This is considered the de facto Brussels Effect leading to a further de jure Brussels Effect. This is beneficial for companies, as this will streamline their operations process, as they have fewer regulatory regimes which may be incompatible to adhere to, which further allows them to develop products and services with no differentiation across different jurisdictions, thus saving time and money during the process of product development.³⁹

II. De facto Brussels Effect

As mentioned, de facto Brussels Effect refers to multinational corporations choosing voluntarily to adopt rules of EU law to its operations in non-EU jurisdictions. Thus, EU rules are voluntarily applied extraterritorially.⁴⁰ The choice by corporations to apply EU rules to all the jurisdictions in which they operate occurs because the EU has adopted more strict rules and the company has decided to continue their operation on the EU market and to adhere to the obligations of the new EU regulation.⁴¹ This is likely due to the importance and size of the EU market, which will be discussed further in the next section. The company must then decide whether they will develop two versions of the same product: a purely EU-compliant product and a “non-compliant” product, or offer only one version of the product, the EU-compliant version. This is often referred to as divisibility as opposed to non-divisibility.⁴² A de facto Brussels Effect occurs in the latter case, where the company decides that is more efficient and less costly to develop only one version of the same product.⁴³

³⁸ *Bradford*, *The Brussels Effect* (2020), p. 90.

³⁹ *Siegmann and Anderljung*, *The Brussels Effect and Artificial Intelligence* p. 68.

⁴⁰ *Bradford*, *The Brussels Effect* (2012), p. 6.

⁴¹ *Bradford*, *The Brussels Effect* (2020), p. 26.

⁴² *Bradford*, *The Brussels Effect* (2020), p. 60.

⁴³ *Siegmann and Anderljung*, *The Brussels Effect and Artificial Intelligence* p. 26.

Siegmann and Anderljung argue that a de facto Brussels Effect is more likely to occur in cases where companies develop high-risk AI systems in accordance with the AI Act because the obligations of the Act towards high-risk AI systems will be the costliest and the most time-consuming to incorporate into the product.⁴⁴ Whereas low or minimal risk AI systems may require few or no adaptations to the product in order to ensure compliance under the AI Act. Furthermore, there may be other factors apart from the cost of “divisibility” which determine whether a de facto Brussels Effect will occur. For instance, technologies which are applied in “regionalised” industries, such as AI systems determining credit scores for banks or other credit institutions, education or law enforcement may to a lesser extent be affected by a de facto Brussels Effect, due to the extent in which regional rules affect these sectors.⁴⁵ Therefore, it will not be beneficial to apply an AI Act-compliant version of the product across all jurisdictions, because the rules in different regions may vary greatly.

While the de jure Brussels Effect is significant due to the EU regulatory regime being reflected in the regulations of other states, serving as evidence of the quality of EU regulatory capacity, the de facto Brussels Effect is of equal, if not greater importance when adopted by large multinational corporations.⁴⁶ This applies even though these standards are adopted largely voluntarily. As discussed in the previous section, the adoption of EU regulation as the internal standards of large multinational corporations such as Google, Apple, Meta, Microsoft, or Amazon (the so-called GAFAM), can impact national legislation in non-EU jurisdictions through lobbying efforts, as a de facto channel leading to de jure Brussels Effect.⁴⁷ However, an equally impactful channel of the Brussels Effect is through multinational corporations setting industry standards, leading to other non-EU companies adopting EU rules as their internal standards, or being adopted in different industries as well.⁴⁸

⁴⁴ *Siegmann and Anderljung*, *The Brussels Effect and Artificial Intelligence*, p. 20.

⁴⁵ *Ibid.*

⁴⁶ *Bradford*, *The Brussels Effect* (2020), p. 53.

⁴⁷ *Siegmann and Anderljung*, *The Brussels Effect and Artificial Intelligence*, p. 68.

⁴⁸ *Bradford*, *The Brussels Effect* (2020), p. 56.

III. Significant determining factors of EU regulatory influence: The size and significance of the EU market

One of the reasons behind the global reach of regulatory norms of the EU is due to the large consumer base in the EU member states.⁴⁹ For companies, this is an important reason that EU norms have an impact globally. Multinational corporations are dependent on the large consumer base of the EU, as it encompasses over 400 million people, many of whom have greater financial means, often deemed “Market Power Europe”.⁵⁰ This means that multinational corporations must adhere to EU rules to operate, sell their products or provide their services in Europe to remain on the EU market. Because in many fields EU regulations are among the strictest, they often serve as a minimum standard across the entire company by generating a de facto Brussels Effect. This means that EU regulatory standards often become the norm in other states where they also operate to ensure consistent practice across the company.⁵¹

This has been seen to be the case in areas of EU law such as competition law, where the EU have laid down strict rules and ordered large fines for violation of these rules, especially for larger actors in the tech-industry, such as the aforementioned GAFAM.⁵² The investigation and ordering of large fines for these companies by the Commission’s DG Competition has in many ways introduced an “ultimatum” from the EU in which multinational corporations must adhere to the rules laid down by the European Union to operate within the single market.⁵³

This has been strengthened by the Digital Markets Act (DMA), which officially came into force in March 2024, which specifically regulates so-called “gatekeeper” companies, large multinational companies operating large digital platforms within the EU internal market.⁵⁴ The DMA imposes especially strict, *ex ante* obligations on these gatekeepers, which have either self-identified through

⁴⁹ *Bradford*, The Brussels Effect (2020), p. 28.

⁵⁰ *Damro*, Journal of European Public Policy 19, no. 5/2012, p. 682, 691.

⁵¹ *Bradford*, The Brussels Effect (2020), p. 54; *Siegmann and Anderljung*, The Brussels Effect and Artificial Intelligence, p. 29.

⁵² *Bradford*, The Brussels Effect, p. 99.

⁵³ *Ibid.*

⁵⁴ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector (Digital Markets Act), OJ L 265, 12.10.2022, p. 1.

fulfilling criteria set out in the Act or have been designated especially by the European Commission.⁵⁵

While these companies have been reluctant and have, in many cases, sought to challenge these rules and fines imposed on them by the European Commission, they have to a certain extent ceased their objections to paying these high fines connected to competition law violations and have accepted their designations as gatekeepers under the framework of the DMA.⁵⁶ Thus, this shows that these companies have acknowledged that their access to the EU internal market and its large consumer base is too significant and that adherence to rules laid down by EU law is a price worth paying for this access.

This further shows that when regulatory standards are raised by the EU, even large multinational corporations with a great economic and, to some extent, normative power, have followed suit to retain their access to the internal market and the profits that ensue.⁵⁷ The question will be if the AI Act asks too much of large multinational companies, but also smaller and medium-sized companies, in asking these companies to halt on their current path of AI innovation to ensure adherence to this new regulatory regime.⁵⁸

D. Previous examples of the Brussels Effect

I. EU competition law

EU competition law greatly showcases the Brussels Effect due to the European Commission's large regulatory and enforcement capacity in this field. As previously mentioned, the Commission has imposed very large fines on "big-tech" companies in the past, such as Google and Apple in particular, both being imposed multi-billion dollar fines for violations of EU competition law

⁵⁵ *European Commission*, the Digital Markets Act: Ensuring fair and open digital markets, https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets_en (last accessed 04/05/2024).

⁵⁶ *Bradford*, the Brussels Effect, p. 100.

⁵⁷ *Siegmann and Anderljung*, The Brussels Effect and Artificial Intelligence, p. 27.

⁵⁸ *Kretschmer et al*, The global race to regulate AI, <https://verfassungsblog.de/europe-and-the-global-race-to-regulate-ai/> (last accessed 28/04/2024).

rules.⁵⁹ The field of competition law has generated a de jure Brussels Effect in particular, as over 130 non-EU jurisdictions have adopted legislation regulating competition similar to that of the EU since its first adoption of competition rules contained in the EC treaties in 1957 (today articles 101 and 102 TFEU in particular).⁶⁰ This has occurred both through global regulators taking “legislative inspiration” from EU competition law, but also through adoption of similar rules due to trade relations, which was the case for instance in Turkey.⁶¹ A Brussels Effect has also occurred through so-called “copycat litigation”, where similar outcomes to EU cases have been found in Court rulings in different jurisdictions and legal reasoning or theories of harm have been “borrowed” from EU competition law cases.⁶²

The de jure influence of EU competition law is also showcased through the extraterritorial application of competition rules to jurisdictions outside the internal market where the anti-competitive effects are felt in the EU market. This was determined by the European Court of Justice (CJEU) in the case “Wood pulp” decided in 1988.⁶³ Here, the question of whether Canadian and Finnish companies (prior to EU accession of Finland) selling their products directly to consumers within the internal market were subject to obligations under EU competition law, was confirmed to be the case.⁶⁴

The EU’s global influence is showcased in particular through the extraterritorial application of the EU Merger Control Regulation (EUMR), which obligates companies with a certain turnover within the EU to report their proposed merger prospects with other companies to the European Commission for approval.⁶⁵ Furthermore, the Commission has used these powers within the Merger Control Regulation to disapprove merger between multinational companies which do not have their primary seat in the EU, as long as their merger would have negative effects on

⁵⁹ *Bradford*, the Brussels Effect, p. 99.

⁶⁰ *Bradford*, the Brussels Effect, p. 116.

⁶¹ *Bradford*, the Brussels Effect, p. 122.

⁶² *Bradford*, the Brussels Effect, p. 125.

⁶³ ECJ Judgement of 27 September 1988, *A. Ahlström Osakeyhtiö and others v Commission of the European Communities*, ECLI:EU:C:1988:447.

⁶⁴ ECJ Judgement of 27 September 1988, *A. Ahlström Osakeyhtiö and others v Commission of the European Communities*, ECLI:EU:C:1988:447, para. 17.

⁶⁵ *Bradford*, the Brussels Effect, p. 102.

competition within the EU internal market. In many cases, this has involved largely American companies, which have garnered reactions in the United States, as the US competition authorities operate with a higher threshold for intervention in such cases than their EU counterparts.⁶⁶

As previously mentioned, it is largely due to the significant market size of the EU that a Brussels Effect has occurred in competition law to such a large extent. Furthermore, due to the rise of globalisation and the prominence of multinational corporations with large market shares, competition law violations often have global effects, such as in EU merger control, where a regulatory convergence in the field of competition law has occurred. The reason that precisely EU competition law has inspired other jurisdictions to such an extent may be due to the trade relations of the EU facilitating legal convergence as well as the regulatory capacity and legitimacy that the EU has accumulated in the last 30 years.⁶⁷

II. CE-marking requirements

The CE-marking regime consists of a series of directives and regulations adopted by the European Council in 1985 as part of the New Legislative Framework to ensure product safety for goods sold within the EU internal market.⁶⁸ The New Legislative Framework set out that certain requirements for products, divided by category, must be fulfilled for the product to be deemed safe before being placed on the European market.⁶⁹ When products fulfil all the requirements set out in the regulations and directives required for the specific product category, the product must showcase this through including the well-known CE-mark on the packaging of the product when being placed on the market. Companies operating in the EU are therefore required to perform a conformity assessment procedure to ensure that the product complies with the specific requirements before reporting its conformity and being able to use the CE-mark.⁷⁰

⁶⁶ *Bradford*, the Brussels Effect, p. 101.

⁶⁷ *Bradford*, the Brussels Effect, p. 101.

⁶⁸ *Siegmann and Anderljung*, The Brussels Effect and Artificial Intelligence p. 78.

⁶⁹ *Ibid.*

⁷⁰ *European Commission*, Single Market and Standards: Manufacturers, https://single-market-economy.ec.europa.eu/single-market/ce-marking/manufacturers_en (last accessed on 15/04/2024).

Siegmann and Anderljung argue that many of the obligations for high-risk AI systems will need to be fulfilled through performing a conformity assessment to receive a CE-marking before being placed on the market.⁷¹ Therefore, because those selling products in the EU would need to perform this assessment procedure to be able to use the CE-marking nonetheless, the AI Act simply adds a few extra steps before conformity can be achieved.⁷²

The CE-marking regime has largely generated both a de jure and de facto Brussels Effect, as many non-EU jurisdictions have adopted the CE-marking requirements for product safety in their jurisdiction. This was the case in New Zealand, which adopted the CE-marking requirements for to facilitate easier access to the EU market for its national companies, as they already fulfil the product safety requirements. This also ensures that EU companies easily gain access to the New Zealand market, due to the uniform product requirements.⁷³ Therefore, the adoption of, if not identical, but at least compatible regulations to the EU have facilitated trade relations between the EU and third states.

Furthermore, the CE-marking regime has also been adopted by multinational companies as the global standard for product safety. This is especially the case in markets such as medical devices, food products and toys.⁷⁴ This is because markets are largely globalised (produce the same products globally) and oligopolistic, meaning few actors possess a large market share. Therefore, a de facto Brussels Effect is more likely in these fields, because it is less time-consuming and less costly to operate with one product safety standard globally in these fields.⁷⁵

Additionally, the adoption of the CE-marking as a global standard for product safety has generated a sense of legitimacy, where the CE-marking generates trust in the product by the consumers.⁷⁶

⁷¹ *Siegmann and Anderljung*, *The Brussels Effect and Artificial Intelligence* p. 78.

⁷² *Ibid.*

⁷³ *Siegmann and Anderljung*, *The Brussels Effect and Artificial Intelligence* p. 79.

⁷⁴ *Siegmann and Anderljung*, *The Brussels Effect and Artificial Intelligence*, p. 30.

⁷⁵ *Ibid.*

⁷⁶ *Siegmann and Anderljung*, *The Brussels Effect and Artificial Intelligence*, p. 80.

This is largely due to the de facto Brussels Effect generated by companies adopting CE-markings as a global standard in globalised industries previously mentioned.

III. The General Data Protection Regulation (GDPR)

The GDPR is considered one of the most significant examples of EU standard setting and is currently considered “the gold standard” of privacy protection globally.⁷⁷ Even though the GDPR has been in force for a short amount of time, having been adopted in 2018, the regulation has produced de jure Brussels Effect in 5 different countries already.⁷⁸ However, the Brussels Effect of the recently adopted GDPR may have been aided by the substantial global influence of its predecessor, the Data Protection Directive (DPD).⁷⁹

The GDPR is also one of the previous cases of the Brussels Effect which is the most comparable to the AI Act, due to similarities in markets, as the regulations both cover largely the digital market and therefore market sizes and structure of the market (whether globalised or local, pluralistic, or oligopolistic) is easier to compare.⁸⁰ With the established success of the GDPR in generating a Brussels Effect, it may bode well for the AI Act, as it has been deemed the GDPR of its field.⁸¹

One of the primary reasons the GDPR has had such a wide-ranging influence is due to the extraterritorial scope of application of the regulation, which means that digital content and services which may end up being used by EU citizens or companies must comply with the obligations of data protection set out in the GDPR regarding these users.⁸² Because of the far reach of the internet,

⁷⁷ *Bradford*, the Brussels Effect, p. 148.

⁷⁸ *Siegmann and Anderljung*, The Brussels Effect and Artificial Intelligence, p. 70.

⁷⁹ *Salbu*, The European Union Data Privacy Directive and International Relations, <https://deepblue.lib.umich.edu/bitstream/handle/2027.42/39802/wp418.pdf;sequence=3> (last accessed 03/05/2024).

⁸⁰ *Siegmann and Anderljung*, The Brussels Effect and Artificial Intelligence, p. 70.

⁸¹ *Blackman and Vasiliu-Feltes*, the EUs AI Act and how companies can achieve compliance, <https://hbr.org/2024/02/the-eus-ai-act-and-how-companies-can-achieve-compliance#:~:text=Earlier%20this%20month%2C%20member%20states,2016%2C%20but%20for%20artificial%20intelligence> (last accessed 05/05/2024).

⁸² *Siegmann and Anderljung*, The Brussels Effect and Artificial Intelligence, p. 70.

this means that the GDPR must be complied with for most companies which process personal data globally, even if they are not established or have subsidiaries within the EU internal market.⁸³

Another important reason the GDPR has received this status as the gold standard of data protection is due to the importance of the EU market and its consumers in the field of digital products and services. Furthermore, the level of stringency of the regulation also plays an important role as to why the regulation has had a substantial de facto Brussels Effect.⁸⁴ *Siegmann and Anderljung* further found that “forking” happens early in the process of development. This means that when developing an EU compliant product and a non-compliant product to be sold outside the EU, the decision to differentiate must be made very early in the development process. When forking happens in the earlier stages, this will also bring about higher costs of “divisibility” and often leads to a de facto Brussels Effect.⁸⁵

The combination of a high level of stringency of the EU regulation and “forking” in the early stage of the development process creates a large differentiation between an EU-compliant and non-compliant product. Therefore, it is more costly to create two products than to operate with one EU product across all jurisdictions i.e., non-divisibility. This non-divisibility means that the product has been affected by a de facto Brussels Effect. Furthermore, the EU largely benefited both from its level of stringency, but also from its “first-mover” advantage in the field, in having adopted the most expansive regulatory regime for personal data protection at the time.⁸⁶ This is argued to possibly happen in the case of the AI Act where the rules are most stringent, such as for high-risk AI systems, where “forking” will also need to happen early in the development process of the AI. Therefore, as with the GDPR, there is a high chance that the AI Act, particularly regarding obligations for high-risk AI systems, will generate a de facto Brussels Effect.⁸⁷

⁸³ *Ibid.*

⁸⁴ *Bradford*, *the Brussels Effect*, p. 143.

⁸⁵ *Siegmann and Anderljung*, *The Brussels Effect and Artificial Intelligence*, p. 70; *Bradford*, *The Brussels Effect (2020)*, p. 60.

⁸⁶ *Siegmann and Anderljung*, *The Brussels Effect and Artificial Intelligence*, p. 36.

⁸⁷ *Siegmann and Anderljung*, *The Brussels Effect and Artificial Intelligence*, p. 71.

However, in further comparing the Brussels Effect of the GDPR and possible global influence of the AI Act, it could be argued that the level of extraterritoriality in the scope of application of the AI Act is not as far-reaching as the GDPR. Therefore, the de jure but also the de facto Brussels Effect of the AI Act is not as likely as it was for the GDPR, as fewer companies globally are obliged to adhere to the rules of the AI Act, and therefore, fewer companies may choose to adopt the obligations of the AI Act as their global standard.⁸⁸ However, it could be argued that this does not impact the number of companies which voluntarily adopt the standards of the AI Act globally to the same extent. Thus, it may still be possible for the AI Act to generate a de facto Brussels Effect similar to the GDPR in some areas.

E. Examining the ability of the AI Act to generate a Brussels Effect

Having explored previous examples of the Brussels Effect in practice, this section will discuss the ability of the AI Act to generate a similar regulatory influence. Section I. will explore further the contrast between de jure and de facto Brussels Effect in relation to the AI Act and which type of global influence this regulation will be able to generate. Furthermore, section II. will discuss the limitations of the AI Act as well as AI innovation in the EU affecting the ability to generate a Brussels Effect in this sector. Sections III. and IV. will tackle regulatory competition as well as the possibility of the EU to influence norm creation in international organisations through pioneering regulation in AI. Lastly, Section V. will explore the so-called “Race to Regulate AI” through comparing two pioneering approaches to regulating AI, notably the EU AI Act and the Council of Europe’s Draft Framework Convention on AI and Human Rights. Considering these factors together is crucial to determining the ability of the AI Act to influence global standards on AI regulation.

⁸⁸ Engler, The EU AI Act will have a global impact, but a limited Brussels Effect, <https://www.brookings.edu/articles/the-eu-ai-act-will-have-global-impact-but-a-limited-brussels-effect/> (last accessed 30/04/2024).

I. Comparing the possibility of de jure and de facto Brussels Effect of the AI Act

Following discussions in the previous sections, it is clear that there are certain aspects or obligations of the AI Act which may generate either a de facto or de jure Brussels Effect, e.g., a global regulatory influence on non-EU states. However, the effects of the AI Act may vary across different jurisdictions.⁸⁹ It could for instance be argued that the AI Act has little possibility of influencing large world powers, such as the US on a federal level or China through a de jure Brussels Effect, but it may especially influence US companies on a de facto basis. This is because American companies which are considered global leaders in AI innovation export their products globally.⁹⁰ Whereas Chinese companies largely operate within China, therefore the de facto Brussels will be seen to a lesser extent in Chinese companies compared to American companies, which often depend upon the European market forces.⁹¹

However, it is argued that the de jure Brussels Effect of the AI Act will rather be felt in smaller jurisdictions which have a reduced regulatory capacity and consider EU regulation to be legitimate and have a high quality of drafting, as well as in cases where the AI Act fulfils the relevant regulatory aims. Furthermore, as previously mentioned, the level of influence of the EU on states in which they have trade or association agreements is significant.⁹² This ensures a significant de jure Brussels Effect in these jurisdictions, as regulations which are incompatible with the EU AI Act may act as a trade barrier between companies developing and importing AI systems between the EU and the respective state with trade relations. Due to the perceived regulatory quality and legitimacy of the EU, states with trade and political relations with the EU will adopt EU regulations or regulations inspired by the AI Act to ease the flow of trade for their national companies.⁹³ This further applies to candidate countries with the EU, who have a direct legal obligation to adopt regulations in accordance with the EU acquis, as part of the accession negotiation and agreement.⁹⁴

⁸⁹ *Siegmann and Anderljung*, The Brussels Effect and Artificial Intelligence, p. 3-5.

⁹⁰ *Smuha*, Law, Innovation and Technology 13, no. 1/2021, p. 57, 58.

⁹¹ *Siegmann and Anderljung*, The Brussels Effect and Artificial Intelligence, p. 24.

⁹² *Damro*, Journal of European Public Policy 19, no. 5/2012, p. 682, 691.

⁹³ *Siegmann and Anderljung*, The Brussels Effect and Artificial Intelligence, p. 69.

⁹⁴ *Bradford*, the Brussels effect, p. 70.

II. Lagging innovation hindering the ability to influence policy

It has also been argued that an important factor affecting the EU's prospects for global regulatory influence is the lack of innovation of EU companies, considering that the largest centres for AI innovation are not located in Europe.⁹⁵ EU member states are further lagging behind the US and China regarding investments into AI technology and the companies contributing to technological advancement in the field are scarcely from a European country.⁹⁶

Therefore, while the AI Act exhibits impressive feats in regulatory innovation, some argue that the lack of investment and expertise on AI on the European continent may indicate that the AI Act will not influence regulatory regimes which have played a larger role in the "Race to AI innovation".⁹⁷

While the EU in other fields has proven itself to be a "master regulator" in the absence of innovation by European companies, the attempt to regulate complex AI systems without the in-depth knowledge of how the technology works or continues to develop may create tensions between the EU and companies operating within the internal market. This may create difficulties in enforcing the standards that the AI Act requires for placing certain products and systems on the market.⁹⁸ Furthermore, requiring a strenuous process in amending the definitions or designations of certain systems as high-risk may also serve as a challenge as AI technology continues to develop.⁹⁹

III. Regulatory Competition and the AI Act's effect on innovation

There have also been concerns that the AI Act, through placing a particularly high burden on developers of AI, may halt innovation, especially for smaller and medium-sized companies that do not have the capacity or resources to shoulder the enhanced legal risk. These strict obligations may

⁹⁵ *Feldstein*, *Democratization 2023*, p. 1, 9.

⁹⁶ *Feldstein*, *Democratization 2023*, p. 1, 11.

⁹⁷ *Ibid.*

⁹⁸ *Kretschmer et al*, *The global race to regulate AI*, <https://verfassungsblog.de/europe-and-the-global-race-to-regulate-ai/> (last accessed 28/04/2024).

⁹⁹ *Ibid.*

lead to companies relocating to jurisdictions with less strict regulatory obligations for AI developers.¹⁰⁰ This should be considered in the context of *Smuha's* argument that jurisdictions will engage in regulatory competition to attract investment by creating regulatory incentives for companies to develop their products in those states, which would generate jobs and wealth for the state.¹⁰¹

This may be an argument against the AI Act being widely used as a blueprint for regulations in other jurisdictions.¹⁰² In the wake of the EU adopting stricter legal obligations in the EU AI Act, other jurisdictions may wish to legislate in a way which attracts businesses developing AI technology, through adopting less strict obligations for developers.¹⁰³ This could include shifting the legal risk to other areas of the supply chain, such as importers or distributors, which deal directly with the users of the technology.¹⁰⁴

IV. The ability of the EU to influence norms in international organisations

On the other hand, while there are certain critiques of the AI Act's possibility for global influence due to lack of innovation in the EU, the approach behind the EU AI Act shows great potential for influencing global policies in the field because the approach carried a wide consensus in the OECD, through their agreement on common AI Principles.¹⁰⁵ These principles were also agreed upon by the United States, which may indicate growing consensus with the EU and US in this field, despite their differences in regulatory approaches in the field of technology.¹⁰⁶

This also indicates that the EU's approach may be echoed in some capacity in the US and in other OECD member states, as the EU AI Act largely concretises the approach outlined in the OECD AI

¹⁰⁰ *Ibid.*

¹⁰¹ *Smuha*, *Law, Innovation and Technology* 13, no. 1/2021, p. 57, 60.

¹⁰² *Ibid.*

¹⁰³ *Smuha*, *Law, Innovation and Technology* 13, no. 1/2021, p. 57, 71.

¹⁰⁴ *Kretschmer et al*, *The global race to regulate AI*, <https://verfassungsblog.de/europe-and-the-global-race-to-regulate-ai/> (last accessed 28/04/2024).

¹⁰⁵ *Feldstein*, *Democratization* 2023, p. 1, 7.

¹⁰⁶ *Smuha*, *Law, Innovation and Technology* 13, no. 1/2021, p. 57, 74.

Principles.¹⁰⁷ It is further found that the EU was very vocal in the process of drafting these AI principles, which may indicate a wider plan by the EU to influence the approach taken in agreeing upon the AI Principles to facilitate a wider consensus for the future influence of the AI Act.¹⁰⁸

This is discussed by *Siegmann and Anderljung*, who refer to this phenomenon as a de facto multilateral Brussels Effect and highlight that the EU often have a significant global regulatory influence on multilateral arenas, such as the International Standardisation Organisation (ISO) and their standard-setting, as well as the ability of the EU to influence decision-making in the OECD, as previously discussed.¹⁰⁹ These largely soft-law instruments often carry a sense of legitimacy in further influencing regulatory decisions in other jurisdictions. Therefore, this could also be described as an indirect de jure influence, as the EUs influence in multilateral organisations further leads to regulations based on these soft-law instruments beyond the EU.¹¹⁰

V. The race to regulate AI: Comparing the EU and Council of Europe’s approaches to AI regulation

This section will explore the EU’s AI Act, and its ability to generate a Brussels Effect in relation to the new Council of Europe (CoE) Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law. The Framework Convention will be briefly introduced and compared to the AI Act in relation to their potential global influence.

The Council of Europe Framework Convention on AI opened for signatures from Council of Europe signatory states as well as third states and international organisations on 5 September 2024 and has currently been signed by 57 states and organisations, including the United States, Israel, and the EU. The Convention will enter into force 3 months after the signature of at least 5 signatories, with at least 3 being CoE member states.¹¹¹ Thus, while the Council of Europe

¹⁰⁷ *Feldstein*, *Democratization 2023*, p. 1, 7.

¹⁰⁸ *Smuha*, *Computer Law Review*, vol. 20, no. 4/ 2019, p. 97, 105.

¹⁰⁹ *Siegmann and Anderljung*, *The Brussels Effect and Artificial Intelligence*, p. 66.

¹¹⁰ *Siegmann and Anderljung*, *The Brussels Effect and Artificial Intelligence*, p. 67.

¹¹¹ *Council of Europe*, *The Framework Convention on Artificial Intelligence*, <https://www.coe.int/en/web/artificial-intelligence/the-framework-convention-on-artificial-intelligence> (last accessed 12/11/2024).

Convention has a wider reach, in being the first international treaty on AI regulation, this does not necessarily mean it will easily generate a so-called “Strasbourg Effect”.¹¹² The Convention is legally binding for its signatories, however its enforcement mechanisms are up to each signatory state. This places an obligation, especially on third state signatories and the EU to monitor and enforce the Framework Convention within their own legal systems and institutions, as they have not consented to adjudication under the European Court of Human Rights (ECtHR).¹¹³

Furthermore, while the AI Act and the CoE Framework Convention might be grouped together as regional AI regulation initiatives, it is important to note that they have a different focus and goal in mind.¹¹⁴ While both pieces of legislation adopt a risk-based approach to AI regulation and focus on ensuring human-centric and trustworthy AI, the Framework Convention largely focuses on human rights aspects, while the AI Act also serves to regulate the placing on the market of AI systems. Furthermore, the CoE Framework Convention is, first and foremost, a treaty, creating a duty for states to ratify it and implement its obligations domestically. While the AI Act, as an EU Regulation, is directly binding in its wording on EU member states.¹¹⁵ This distinction shapes the substantive provisions of these legislative acts, as the AI Act is addressed to both member states and to private actors placing AI systems on the EU market, while the CoE Convention is largely directed at states as opposed to private actors. Additionally, the CoE Convention on AI provides more general substantive obligations, which can be easily adaptable to different legal systems¹¹⁶, while the EU AI Act lays down more specific and technical obligations on its addressees.¹¹⁷

¹¹² *Sarmiento and Sánchez*, Insight; the “Strasbourg Effect“, EU Law Live, <https://eulawlive.com/insight-the-strasbourt-effect-by-daniel-sarmiento-and-sara-iglesias-sanchez/> (last accessed 12/11/2024).

¹¹³ Council of Europe, Explanatory Report to the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, <https://rm.coe.int/1680afae67> (last accessed 12/11/2024).

¹¹⁴ *Ziller*, The Council of Europe Framework Convention on Artificial Intelligence vs. the EU Regulation: two quite different legal instruments, <https://ceridap.eu/the-council-of-europe-framework-convention-on-artificial-intelligence-vs-the-eu-regulation-two-quite-different-legal-instruments/?lng=en> (last accessed 12/11/2024).

¹¹⁵ *Strzpek*, Human Rights as a Factor in AI Alignment, *GIS Odyssey Journal* 4/2024, p. 73.

¹¹⁶ *Ziller*, The Council of Europe Framework Convention on Artificial Intelligence vs. the EU Regulation: two quite different legal instruments.

¹¹⁷ *Powell*, The Council of Europe Convention on AI: National Security Implications, *CETaS Explainers*, <https://cetas.turing.ac.uk/publications/council-europe-convention-ai-national-security-implications> (last accessed 12/11/2024).

Therefore, it could be argued that the EU AI Act can more easily generate a de facto Brussels Effect through companies adopting certain obligations as part of their global manufacturing standard to avoid costs associated with “divisibility”.¹¹⁸ In contrast, the CoE Framework Convention could generate a de jure Brussels Effect by serving as a template or influence on other regional or international treaties regulating AI technologies, and nevertheless has a global reach as it is open to third state signatories.¹¹⁹ Thus, while the AI Act and the Framework Convention have several differences and may generate global influence in different ways, they nevertheless complement each other in pioneering a consensus on the issue of human-centric and trustworthy AI.¹²⁰

F. Discussion: The ability of the AI Act to set global standards

This section offers a summary of the key arguments discussed and offers a preliminary answer to the question of whether the AI Act is capable of setting a global standard before moving on to the conclusion.

Based on the arguments made and considered in this paper, a preliminary conclusion would argue that, while the AI Act sets a powerful example in its field, not all aspects of the Act will generate a substantial Brussels Effect. However, the rules contained in the EU-Regulation which are especially stringent, such as the obligations towards High-risk AI systems, will be able to generate a de facto Brussels Effect, due to the amount of money and time which may be saved through global non-divisibility.¹²¹ Many of these rules will be incorporated into a conformity assessment procedure akin to the CE-marking requirement, becoming a step in the process of AI systems gaining a CE-mark to operate on the European market. As the CE-marking regime has generated a substantial de facto and de jure Brussels Effect, this bodes well for the AI Act in this regard.¹²²

Furthermore, the EU AI Act will continue to play an important role in norm creation in the field of AI, through the adoption of norms and principles for AI regulation such as the rights-based

¹¹⁸ *Siegmann and Anderljung*, The Brussels Effect and Artificial Intelligence, p. 20.

¹¹⁹ *Strzpek*, Human Rights as a Factor in AI Alignment, p. 74.

¹²⁰ *Strzpek*, Human Rights as a Factor in AI Alignment, p. 73.

¹²¹ *Siegmann and Anderljung*, The Brussels Effect and Artificial Intelligence, p. 59.

¹²² *Siegmann and Anderljung*, The Brussels Effect and Artificial Intelligence, p. 80.

approach and trustworthy AI. This is further exemplified in the section of this article surrounding the substantial role the EU has played in framing the discussion on AI in international fora, such as the OECD or UNESCO.¹²³

Considering the argument that the EU AI Act will generate a de jure Brussels Effect, the chance of this may be slightly lower than the chance of the regulation generating a de facto Brussels Effect. However, as previously mentioned, the likelihood that the structure, such as the risk-based approach or principles contained in the Act may be replicated in other jurisdictions, is greater.

Bradford argues that the reason many jurisdictions choose to base their regulatory regimes on the EU “blueprint” is because “the EU has combined statutory precision with flexible drafting”.¹²⁴ This is due to the EU being a supranational organisation and its legislation needs to be flexible to ensure that it fits into many different legal systems across the EU member states. However, legislation must also be sufficiently precise to ensure that national courts can easily interpret the regulation in the member states and to ensure swift enforcement.¹²⁵

While concerns regarding the EU’s lagging on innovation and the lack of expertise of the EU regarding regulating AI is a valid argument, they cannot serve as an excuse to cease efforts in regulating a technology which can lead to serious consequences when left unrestricted. The EU has gone to great lengths to ensure the AI Act remains “future-proof” in the face of new technological development, ensuring that the regulation is sufficiently flexible to be amended in the future.¹²⁶ While we do not know what the future holds, and law is often considered to be lagging in the face of technological development, the EU has made great strides in regulating the digital sphere through the GDPR and DMA and Digital Services Act (DSA)¹²⁷ which recently came into force.¹²⁸ The EU, therefore, has sufficient regulatory experience in the field to ensure that the AI Act is not

¹²³ *Smuha*, Law, Innovation and Technology 13, no. 1/2021, p. 57, 76-77.

¹²⁴ *Bradford*, The Brussels Effect, p. 81.

¹²⁵ *Ibid.*

¹²⁶ *European Commission*, AI Act: Shaping Europe’s Digital Future, <https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai>, (last accessed 08/04/2024).

¹²⁷ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services (Digital Services Act), OJ L 277, 27.10.2022, p. 1.

¹²⁸ *Siegmann and Anderljung*, The Brussels Effect and Artificial Intelligence, p. 11.

falling behind in the face of innovation.¹²⁹ Furthermore, the EU institutions have also committed to fostering innovation in the field and therefore the most significant lagging may be mitigated through these efforts.

However, comparing the AI Act to the global reach of the GDPR, it is worth noting that the AI Act does not display the same extraterritorial reach as the GDPR or rules of EU competition law. This is one factor which speaks against the notion that the AI Act is the GDPR of its field. Therefore, one is left with the conclusion that the EU Act AI will likely not have the same standard-setting ability as the GDPR. While falling short of the so-called "gold standard", the AI Act nevertheless has the potential to generate a Brussels Effect by already shaping the discussion through its first-mover advantage and regulatory aims.¹³⁰

G. Conclusion

While it is not possible to look into the future to see whether the AI Act will become a global standard setter, this article has considered the most important factors for regulation to influence global regulatory practice to determine the possibility of the AI Act becoming a global standard setter as time elapses and the regulation is further applied in practice.

This paper has showcased the factors which contribute to the EU's global regulatory influence or the Brussels Effect, provided significant examples of EU Brussels Effect in the past and examined whether the AI Act will generate such a global regulatory influence based on these factors, comparing the regulation to established examples.

Furthermore, through utilising the framework of the Brussels Effect, and distinguishing between de jure and de facto Brussels Effect, the paper has showcased the nuanced nature of EU regulatory influence and how this is shaped both by nation-states, multilateral organisations and multinational

¹²⁹ *Feldstein*, *Democratization 2023*, p. 1, 12.

¹³⁰ *Foo et al.*, *EU sets global standards with first major AI regulations: Here's what you need to know.* <https://www.weforum.org/agenda/2023/12/europe-landmark-ai-regulation-deal/> (last accessed 03/05/2024).

corporations as key players.¹³¹ The importance of the size of the EU market and the cost of divisibility is further cited as an important determining factor, especially in regards to de facto Brussels Effect, as the ability of a multinational corporation to leave a market or differentiate its products across markets greatly hinders the ability of regulatory regime to generate a global influence.

Additionally, citing both the Brussels Effect as the EU having global *regulatory* influence is a further complex notion that can be complemented by the notion of Market Power Europe and the norm-generating capabilities of the EU on the international stage.¹³² How these notions interplay is a discussion which is beyond the scope of this article and could benefit further examination.

¹³¹ *Bradford*, The Brussels Effect, p. 15-16.

¹³² *Damro*, Journal of European Public Policy 19, no. 5/2012, p. 682–99.

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