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How EU Regulation Is Shaping International Standards

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The European Union regroups 27 European countries who decided to come together to implement common goals and values. The European Union is based on the rule of law and as such, everything the European Union does is founded on treaties that the member states democratically approved.

They are two main European Union law types: (1) the primary law (that is, treaties setting out the European Union's principles and objectives) and (2) the secondary law (that is, regulations, directives, decisions, recommendations, and opinions).

EU regulations and directives are both binding legal acts that aim at achieving the European Union treaties' objectives, but they differ in that the former is automatically applicable in all EU member states after entering into force, while the latter requires each member state to transpose it into national law before becoming applicable.

The European Union is not a unified country, yet it has an indisputable global ruling power through its ambitious regulatory activity that has inspired many countries and businesses outside the European Union and contributed to raising international standards on various topics such as investors' protection, personal data protection rights, the anti-money laundering fight, and environmental considerations.

This article aims at analyzing the latest EU regulations and how such rules, which are supposed to apply within the single market, have in fact had extra territorial effect. What Anu Bradford, a professor at Columbia University, called the "Brussels Effect" in her famous book, is in full motion and does not seem to be stopping anytime soon.

The Alternative Investment Fund Manager Directive

The Alternative Investment Fund Managers Directive (AIFMD) was adopted, among other key objectives, in order to increase investors' protection and create a common set of rules for the authorization, organization, operation, and supervision of private asset managers in the European Union.

Given the extraterritorial reach of the rules introduced by AIFMD, it was recognized as the most significant piece of regulation affecting the private fund industry worldwide.

The adoption by the US Securities Exchange Commission (SEC) of its private fund reforms on August 23, 2023, seems to be the United States version of the key concepts and requirements imposed by AIFMD on the private fund sector.

The AIFMD came into force on July 22, 2013, and was the EU's response to the financial crisis of 2008. The AIFMD framework is made up of the directive of June 8, 2011, as supplemented by

technical delegated and implementing measures 2 (that is, various EU regulations). More than 10 years after introducing AIFMD, the European Union is now at an advanced stage of amending the provisions thereof, in order to better integrate the market for alternative investment funds to ensure investor protection and to better monitor risks to financial stability.

On August 23, 2023 the SEC issued its anticipated new rules for private fund advisers and we cannot help but compare the new obligations introduced by such new rules to the already existing equivalent rules of AIFMD.

Without going into too much details about the SEC private fund advisers new rules, which is not the topic of this article, it is worth mentioning: (1) the Quarterly Statement Rule, which requires each covered adviser to prepare a quarterly statement that includes certain information regarding fees, expenses, and performance for each private fund that it advises; and (2) the Audit Rule, which requires advisers in scope to obtain annual financial audits of private funds they advise from an independent public accountant, prepared in accordance with US generally accepted accounting principles and to distribute such audited statements to investors within 120 days of the private fund's fiscal year-end. These two rules seem very similar to the AIFMD transparency and reporting obligations.

The General Data Protection Regulation

The General Data Protection Regulation (GDPR) adopted in April, 2016 by the European Union, effective as of May 25, 2018, has repealed the European Data Protection Directive of 1995.

With the exponential technology growth which our societies have been witnessing, increasing needs emerged to ensure that, in today's global context, personal data and privacy protection safeguards are in place, in order to reduce the risks of personal data misuse and cyber-attacks. GDPR was the EU's

response to such new concerns and needs which the European Data Protection Directive of 1995 was not equipped to properly address.

On June 28, 2018, shortly after GDPR came into effect, the Governor of the State of California signed the California Consumer Privacy Act (CCPA). CCPA entered into effect on January 1, 2020, and was amended and expanded by the California Privacy Rights Act (CPRA). While CCPA differs in many ways from GDPR (with nuances in terms of scope, terminology, or basis for data processing), the two legislations share common goals and CCPA has without a doubt been inspired by GDPR. Some provisions of the CCPA seem to have simply been copy-pasted from GDPR.

Japan is another example of the EU's regulatory influence, as in 2020 it has amended its 2005 Protection of Personal Information (APPI) Act by bringing it closer in line with GDPR.

Apart from governments, many business companies with a global footprint have adopted the GDPR standards in their internal privacy policies. In doing so, those businesses apply the highest and most protective standards available across their global platforms and avoid the costs of having to comply with the different rules of the various jurisdictions they operate in.

The Anti-Money Laundering Directives

The fight against money laundering and terrorist financing is tackled at EU level through the periodic issuance of directives, which must be implemented by member states into their national law. Every new directive brings stricter rules to close existing gaps in combating money laundering, terrorist financing, and evasion of sanctions in the European Union.

On March 13, 2022, the European Union issued an updated list of "high risk third countries" which are considered as having strategic deficiencies in their regime on anti-money laundering and countering the financing of terrorism, also known as the "EU AML List." The Cayman Islands were included

on that updated EU AML List, following the addition of the Cayman Islands on February 25, 2021 to the Financial Action Task Force's (FATF) 'grey' list.

The Cayman Islands have ever since been working on filling the gaps in their AML rules by adopting stricter and more efficient ones. On June 23, 2023, the Cayman Islands' efforts were recognized by the FATF which announced that the Cayman Islands had satisfied all of the FATF recommended actions.

This again shows the power of the European Union to encourage other countries to adopt higher standards on critical areas such as the fight against money laundering. The European Union is one of the wealthiest and most important markets, therefore not many countries can afford not to do business with it.

Businesses across the globe have been amending and/or establishing their internal AML/CFT processes by implementing EU AML standards. Similarly, to the adoption of GDPR standards by those global businesses, this is contributing to revising and upscaling the global standards of our economy.

The Sustainability Finance Disclosure Regulation

With the Sustainability Finance Disclosure Regulation (SFDR), which came into application on May 10, 2021, the European Union is implementing a regulatory reform to help the transition to a more sustainable economy and has, among other participants, engaged the investment management industry to support said transition. New transparency obligations derive from SFDR whereby entities in scope must provide regulators and investors with greater transparency on how the risks caused by climate or social change and failures in governance will be incorporated into their management processes.

In its communication about the European Green Deal, the European Commission stated "The European Union has the collective ability to

transform its economy and society to put it on a more sustainable path." While the European Green Deal aims at setting out how to achieve the European Union's goal to be the first climate-neutral continent by 2050, it is in reality paving the way for a global achievement of its ambitious commitment to solving the world's climate and environmental-related challenges.

We have witnessed all over the world investors turning to this developing framework to guide their approach to sustainable investing and using it as a tool to compare funds, no matter the jurisdiction in which such funds are located.

The European Union may be leading the way on sustainability policymaking, but the United States also has taken investor requests into consideration and in March 2022, the SEC announced a proposed rule that will require publicly traded companies to disclose greenhouse gas (GHG) emissions, climate-related risks, impacts and risk management processes within registration statements and annually (10-K).

Conclusion

While the non-EU rules and laws mentioned in this article may vary from their European Union counterparts in certain ways, they have all been inspired or influenced by the European Union comparable rules that seem to form the blueprint for shaping our global economy standards.

The European Union seems to be seen as a super regulator which, over the years, managed to impose its views to others in a somewhat indirect way by simply enacting local rules, aimed at regulating the EU single market, but which end up transforming into global standards. The European Union is thereby shaping the global economy to its own image and values. This has proved crucial in today's interconnected world, as this extra-territorial regulatory influence of the European Union contributes to establishing international standards in key areas that allow better access by all to global markets, foster global regulatory convergence, and enhance international competitiveness.

We have yet to see how the recently adopted Markets in Crypto-Assets Regulation (MiCAR), entered into force on June 29, 2023, will impact global markets. MiCAR introduces a harmonized regulatory framework for crypto-assets and related services and is expected to have a significant impact on the EEA market in crypto-assets. It already has been defined as being the world's first comprehensive

set of rules in the space and may soon inspire other countries and market participants.

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