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The EU and the Brussels Effect on Human Rights Protection in the New Era of Technology

Dissertation to obtain a Master's Degree in Law, in
the specialty of International and European Law

Supervisor:
Dr. Francisco Pereira Coutinho, Professor of the NOVA School of Law

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Anti plagiarism statement

I hereby declare that the work I present is my own work and that all my citations are correctly acknowledged. I am aware that the use of unacknowledged extraneous materials and sources constitutes a serious ethical and disciplinary offence.



(Joana Filipa Barata Gomes da Silva)

To my dear, amazing, family.

To my grandparents, Manuel and Assunção.

To my son.

Acknowledgements

First and foremost, I would like to acknowledge my Supervisor, Prof. Dr. Francisco Pereira Coutinho for being so considerate and taking into my background in my International Relations' degree, by helping me to choose a path when I was lost. I would further like to thank my Supervisor, for being ever so patient and understanding, providing all the necessary help and guidance.

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Even though the road is always winding, this dissertation is undoubtedly a step forward in my life, as I believe my father acknowledges.

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Finally, I would like to acknowledge Pedro, the best person in the whole world, whom I am so fortunate to call my best friend, boyfriend and husband. I would like to thank him for being way beyond understanding, ever so supportive, for wiping down my tears and pointing out the silver lining while making jokes when I could not cope with the pressure, and for taking care of our son, Manuel, when I could not. Pedro truly is my rock, my home.

Reading guidelines

a) Written Language

I opted to write this dissertation in the English Language, even though my mother tongue is Portuguese. The reasons behind this decision are the following:

1) my Master's is in International and European Law, therefore, it seems to me a matter of coherence to write my dissertation in the most universal/ international language, i.e. English;

2) The research for this dissertation has been conducted in English, apart from some small exceptions, in view of the nature of the subject. Even though I am not a native speaker, I do have a very good command of the English Language, therefore writing in the same language I am reading, greatly facilitates the creation of the text, as my brain is solely functioning in one language.

b) References and citations

(i) In the first citation, the works are identified by the name of the author, followed by the full title of the work in italics, year of publication, place of publication, publisher and the indication of the page or pages specifically cited; the articles of periodicals, will be identified by the authors name, title of the article in italics, year of publication, the name of the periodic; the articles published in collective works will be , will be identified by the authors name, title of the article in italics, year of publication, the name of the periodic, volume, issue and pages cited; interviews will be identified by the interviewee's name, name of the article or transcript of the interview, date, name of the interviewer(s) and name of the periodic. Suffice to say that whenever the information is incomplete, this is due to its absence in the source.

(ii) If the works are only available on the internet, the site where they are accessible online will be indicated, as well as the date of access.

When mentioning websites containing relevant information, the source will be identified, followed by "cf." and the link where the specific information is present.

(iii) In the subsequent citations, the works are identified by the author's last name and by the title, in caps, followed by the page or pages (this rule may also apply to some articles published in journals and collective works).

(iv) When quoting a certain part of text, the transcription will be in quotation marks, followed by the last name of the author, year of publication and page or pages, all in brackets.

(v) Italics will also be used to reference latin words, to underline a certain term, or to introduce the most relevant concepts within this dissertation.

(vi) If a quote is not available in the English Language, I will take the liberty to translate it into the idiom in which this dissertation is being written, in view of the imperative of clairvoyance. Whenever this is the case, it will be mentioned on the respective footnote.

c) Initials, abbreviations, and acronyms

In order not to overload the text, it has been decided to use a set of several initials, abbreviations and acronyms, whose meaning is now clarified in alphabetic order:

(i) Initials/Acronyms

AI – Artificial Intelligence

AUKUS – Australia, United Kingdom, United States. This is a pact between the mentioned countries for the Indo Pacific region.

B3W – Build Back Better World

BE -Brussels Effect

BRI – Belt and Road Initiative

CAI – Comprehensive Agreement on Investments

CCP – Chinese Communist Party

CCPA - California Consumer Privacy Act

CFREU- Charter of Fundamental Rights of the European Union

CFSP - Common Foreign and Security Policy

The EU and the Brussels Effect on Human Rights Protection in the new Era of technology

DSR – Digital Silk Road

EC – European Commission

ECFR – European Commission on Foreign Affairs

ECHR – European Convention on Human Rights

ECJ -European Court of Justice

ECtHR -European Court of Human Rights

EEA – European Environment Agency

EP – European Parliament

EU – European Union

EUCO – European Council

eWTP – economic World Trade Platform.

G7 – Group of seven industrialized counties (USA, the UK, Germany, Canada, Japan, France and Italy)

G8 – Group of eight industrialized counties (US, UK, France, Germany, Japan, Canada, Italy and EU)

G20 - Group of twenty developed and emerging countries (Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey, the UK and the USA)

GATT - General Agreement on Tariffs and Trade

The EU and the Brussels Effect on Human Rights Protection in the new Era of technology

GDP – Gross Domestic Product

GG – Global Gateway

GDPR – General Data Protection Regulation

GMO – Genetically Modified Organisms

HR - Human Rights

HS – Hate Speech

ICCPR – International Covenant on Civil and Political Rights

IFIT - Information Technology and Innovation Foundation

IMF – International Monetary Fund

IOT – Internet of Things

LGPD - Brazilian General Data Protection Law (English translation)

MERICS - Mercator Institute for China Studies

MS – Member States

MOU – Memoranda of Understanding

M€ - million Euros

NGO / NGO's – Non-Governmental Organization(s)

OECD - Organization for Economic Co-operation and Development

The EU and the Brussels Effect on Human Rights Protection in the new Era of technology

PDPB – Personal Data Protection Bill

PIIGS – Portugal Ireland Italy Greece Spain

PIPL – Personal Information Protection Law

PPP – Power Purchasing Parity

PPS – Purchasing Power Standard

PRC – Peoples Republic of China

PTA's- Preferential Trade Agreements

PwC – Price Waterhouse Coopers

SEA – Single European Act

TEU – Treaty on European Union

UDHR- Universal Declaration of Human Rights

UK – United Kingdom

UN – United Nations

UNECE – United Nations European Commission for Europe

UNO - United Nations Organization

US – United States [of America]

USA – United States of America

USD – United States Dollars

WEF – World Economic Forum

WTO – World Trade Organization

5G - fifth generation standard for transmission of data through cellular networks

6G – sixth generation standard for transmission of data through cellular networks

(ii) **Abbreviations**

art. – article

Cf. – Confront

cit. – citatum

e.g. - example

n° - number

p. - page

pp. – pages

e.g. - example

Declaration

The body of this dissertation including spaces and notes occupies a total of 186.684 characters.

Abstract

A presente dissertação foca-se na União Europeia e no *efeito Bruxelas* em relação aos Direitos Humanos na nova Era tecnológica. Tendo em conta a nova realidade tecnológica e o seu efeito disruptivo na sociedade, ademais considerando a crescente interdependência gerada ao minuto, torna-se evidente a erosão de alguns dos direitos consagrados, nomeadamente em termos de Direitos Humanos. Neste sentido, a União Europeia pode ser um elemento decisivo para contrariar esta tendência por via do Efeito Bruxelas, pois é através dele, mediante a regulação do mercado interno e na observância de determinadas circunstâncias, que os *standards* exigentes da UE se impõem nos mercados globais, um pouco por toda a parte, sem que para tal seja necessário envidar grandes esforços – a UE surge, portanto, como o inusitado regulador internacional. Assim, o objetivo desta investigação é avaliar como é que a União Europeia, ajudada pelo *Efeito Bruxelas*, se encontra na posição mais favorável, não obstante a atual situação geopolítica, para levar a cabo uma transição responsável da sociedade para um lugar de maior unísono com a tecnologia, mantendo a matriz universal do respeito pelos Direitos Humanos, com a sua menor mitigação possível.

The present dissertation is to focus on the European Union and the *Brussels Effect* in relation to Human Rights in connection to the new technological Era. Given the new technological reality and its disruptive effect on society, further considering this growing interdependence generated by the minute, some consecrated rights are suffering an erosion, namely Human Rights. In this sense, the European Union might be the decisive element to countervail the current tendency through the Brussels Effect, for this enables the EU, by regulating its internal market alone and under the right circumstances, to impose its stringent standards in global markets, almost effortlessly – in practice, the EU emerges as the unprecedented international rules setter. The aim of the investigation is, therefore, to assess how the EU, aided by the *Brussels Effect*, finds itself in the most favourable position, notwithstanding the current geopolitical situation, to lead and carry out a responsible transition of society to a place of enlarged unison with technology, while maintaining the universal matrix of respect for Human Rights, with their least possible mitigation.

Introduction

As of today, it can be fairly stated that Humankind has never experienced such an outstanding technological¹ evolution, and contrary to former beliefs which tended to analyse the speed of progress as linear, it is now accepted this occurs exponentially, reviving Moore's² law, prompting some scientists, such as Raymond Kurzweil, to claim that technological development in the next two years, computing wise, is going to be as much as what has been since computing begun³ - the 4th Industrial Revolution, a term coined by Klaus Schwab, seems to be an evidence.

Due to contributions such as Moore's law⁴, the thrive for improvement has grown so much that we now live a spectacular moment of unimagined possibilities; however, just like a coin, there are two sides to this issue. On one hand, technology and its many manifestations (AI; blockchain; cloud computing, etc.), are vital to safeguard people and enhance Human Rights while on the other, it seems as though technology is one of people's worst enemy.

The former UN High Commissioner on Human Rights, Zeid Ra'ad Al Hussein, recognised in 2016 that "Encryption and anonymity are needed as enablers of both freedom of expression and opinion, and the right to privacy"⁵ and Ahmed Motala, Director A.I. at the UN Training and Documentation Centre at United Nations Human Rights, reinforces how a cellphone in the most remote area of the planet can, through a simple picture, raise awareness to human rights' violations that otherwise would be impossible either to detect in due time or at all, thus allowing effective action⁶. Unsurprisingly, however, in the same Times article, Al Hussein stressed that "In the worst cases, a Government's ability to break

¹ "We understand technology as "a cumulative process of experiment and recombination that over mere hundreds of thousands of years harnessed phenomena such as fire to cook food, and ultimately smelt metal;(...) It is this, above all, that marks humanity's departure from the rest of life on Earth. (...).Alone among species (at least until the crows have put in a million years more effort) humans can consciously improve and combine their creations over time – and in turn extend the boundaries of consciousness. It is through this process of recursive iteration that tools became technologies; and technology a world-altering force." Chatfield, Tom, "*Technology in deep time. How it evolves alongside us*", 2019. Available at: <https://www.bbc.com/future/article/20190207-technology-in-deep-time-how-it-evolves-alongside-us> Date of access: 17 July 2021.

² Gregersen, Erik; et al *Moore's Law* [s.d.]. Available at: <https://www.britannica.com/technology/Moores-law>

³ To better understand see Kurzweil, Raymond, *The Law of Accelerating Returns*, 2001. Available at: <https://www.kurzweilai.net/the-law-of-accelerating-returns>

⁴ Source: Intel website. Cf: <https://www.intel.com/content/www/us/en/silicon-innovations/moores-law-technology.html>

⁵ Rhoda, Maya, *U.N. Commissioner warns apple not to allow FBI to access Private Data*, 2016. In Time. Available at: <https://time.com/4247666/u-n-commissioner-warns-apple-not-to-allow-fbi-to-access-private-data/> . Date of access: 1 July 2021.

⁶ Ith, Tracy, *Technology helps the UN advance the protection of human rights in new ways*, 2017. Available at: <https://news.microsoft.com/features/technology-helps-un-advance-protection-human-rights-new-ways/> . Accessed: 1 July 2021.

into its citizens' phones may lead to the persecution of individuals who are simply exercising their fundamental human rights"⁷, even if that break has the intention to protect people from criminals, hence putting into evidence the fine red line between safety and repression. Sadly, the dark ages of totalitarianism are not yet to be called bygones (if they will ever be), and so the People's Republic of China (hereinafter PRC or China), currently the world's center of innovation, serves as the most terrifying example of how to control people with the helping hand of technology, with their facial recognition technology and social credit system – China's example, will be further explored on this dissertation in Chapter II.

The myriad of ways in which technology can be used as both an enabler for greater good or serve as heavy artillery against society is not, in most cases, a new idea⁹ - the problem lies within the ability and capacity which is incommensurably bigger than it ever was, predictably becoming even greater, thus also augmenting the aptitude for doing more evil or good, depending on the chosen path and how much it can be controlled.

When using the word *control*, it is intended to point out two major features identified as paramount: first, control of technology itself; second, control over how humans can use technology. Naturally, the first point is not for us to explore, but rather people with scientific knowledge on that field; as for the second aspect of the word, it should be considered an urgent matter to be dealt with.

Bearing in mind the previous lines, the stakes are high and the technological reality lying ahead is bound to materialize what so far has only been known as science fiction, therefore casting society to an increasingly digital immersion, infinitely different than the past "analog" journey on which humankind has been built. One of the biggest identifiable and capital challenges, both in terms of importance and difficulty, is how to make the fundamental rights prevail in this (disruptive) technological era, leading us also to the question of who will enforce this almost byzantine task.

The answer to those two questions is what this dissertation aims at responding, by theorizing the hypothesis of the European Union (hereinafter EU) as the leader and the Brussels

⁷ See supra footnote 5.

⁹ The amount of data collected these days for the sake of and because of technology, seems to be constantly usurped by those with that ability (namely governments – e.g. US elections 2026 -, companies – e.g. Cambridge Analytica- or even individuals like Snowden), leading to the obvious conclusion that privacy is bound to be fairly disrespected. However, the Nazis, through the SS and the Gestapo, or Stalin, through the Stasi, did precisely the same thing with much less technology, having found a way to gather massive amounts of information about millions of people, violating everyone's privacy, and using that same information to the purposes they saw fit.

Effect¹⁰ (or simply BE) as the enabler. Therefore, this dissertation builds on Bradford's assessment of the EU's regulatory power, which instils her to state that Brussels rules the world through what she has called the *Brussels Effect*. The BE will be extensively described on Chapter I of this dissertation, yet it could be quickly summarised as a unique ability from the EU that, through the regulation of its internal market alone and under the right circumstances, will affect global markets by imposing their stringent standards all over, almost effortlessly: there seems to be no doubt that it is because of EU's parameters that beverages around the world have less sugar or that GMO's are not so widely cultivated – through the BE, art. 25° of the UN Human Rights Charter is defended, in relation to standards of living, namely food, but also the right to be informed regarding what consumers are buying (art.19°); even though the USA does not even consecrate the principle of privacy on its constitution, Google and FB adopt the same data privacy stringent rules both in Europe and America (and around the world) – the BE, through the GDPR, tries to ensure compliance with art. 12° of the Human Rights Charter. When considering Bradford's theory, while corroborating the importance of the EU as a most important actor in the international arena, an evaluation on the reach of its standards beyond the mere point of view of it having practical economic effects must be conducted: each deliberation coming from Brussels – and pretty much elsewhere- has in itself embedded the values for which the EU vouches for, first and foremost, human rights¹¹ and democracy. In this vein, the Brussels Effect is a much privileged vehicle to extend the Fundamental Rights, which is precisely one of the most notable consequences that can be, hypothetically, further enhanced. At the same time, the tectonic plaques in the international arena are currently moving in the most alarming way, menacing to reshape the world order: the BE is under threat, thus, it is fundamental to evaluate, on Chapter II, what are both the internal and the external dangers, with an emphasis on the foreign ones as they seem to represent the most prominent and defying menace. The BE, as a every theory, is not bullet proof¹³, yet it certainly validates how powerful the EU is, in spite of the constant narrative against it¹⁴, further strengthening a needful appraisal

¹⁰ Term coined by Anu Bradford, most recently developed in her book “The Brussels Effect, How the EU rules the world”.

¹¹ It is not believed to be of any interest to dwell into discussions accessing whether or not the EU is an hypocrite in this matter. Either way, the European Union is certainly a strong advocate for the HR, as it has recently been further proved by adopting, on the 7th December 2020, a new regulation on a global human rights sanctions regime.

¹³ Even if one considers the flaws in the theory, there are but a few and they are merely explanatory, not affecting the practical evidence of Bradford's thesis. In this sense, it is considered the Brussels Effect as a very robust theory which sustains what promises: the EU's current international jurisdictional hegemony as a fact. For a critical assessment on the BE see, for e.g.,: Bygrave, Lee A. ,*The Strasbourg Effect*, 2020. Computer Law & Security Review, Vol. 40. Available at: <https://www.sciencedirect.com/science/article/pii/S0267364920300650>

¹⁴ There are good reasons both internal and external to support this view, and some of them will be examined on Chapter I of this thesis. These arguments are also accompanied by a felling among Europeans within the EU of

considering that even if one takes into account the BE copious advantages, the aim of perpetuating a culture of human rights in the new technological era, also demands for an assessment on how to make it endure – the menaces to our civilization, particularly to the power emanating from Brussels, need to be countervailed head on, and the good judgment of prudence must pave the way for a constant appreciation of weather the BE, notwithstanding the contribute of other international actors, is enough to tackle this new Era as of now and, most importantly, in the future.

Finally, Chapter III will be concentrated on a more general scrutiny regarding technology and its effects on society and human rights, arguing the importance of what I call a *techno-positive realistic* approach. This approach conveys a realistic vision in face of the of the crescent fusion between the analog and digital world, where it is believed to be of the uttermost importance to embrace the positive effects of technology while trying to control the threats it inevitably conveys, even if, at times, that means hampering innovation in light of the moral and ethical imperative, which is what I defend to be what the EU is attempting to do.

To summarize, this dissertation will evaluate how the EU stands, as a) the primordial international actor who is concretely tackling the arising technological issues; b) has indeed a set of values (e.g. democracy and Human Rights) which tend to shape its relations with 3rd parties; c) through its massive regulatory capacity and the Brussels Effect, is spreading some of its standards worldwide, making international actors abide by its rules; d) and is becoming increasingly aware of its power, having set a clear agenda on that, albeit there are several issues arising which might menace the EU's leadership and, perhaps, a responsible transition of society to a place of enlarged unison with technology, guided by ethics and Fundamental Rights.

Euro-pessimism, as recently observed on a survey conducted by the European Council on Foreign Relations. This study is available at https://ecfr.eu/wp-content/uploads/what_europeans_really_feel_the_battle_for_the_political_system_eu_election.pdf.

Chapter I

The Brussels Effect

The years 2007-2008 marked what has become known as the subprime mortgage crises in the USA, quickly spreading to the rest of the world in the form of a global financial crises. Naturally, the EU was not spared to the collateral effects coming from the other side of the Atlantic Ocean and ended up suffering a several year hardship which translated into the European sovereign debt crisis¹⁷, resulting in an overall complicated situation in the Member States, though many eurozone countries, such as Ireland, Italy, Portugal, Spain and Greece (the so called *PIIGS*) were particularly struck by this state of affairs. Starting in 2010, the EU began a series of summits¹⁸ in order to resolve this ordeal, culminating in a second bail out for Greece in 2012, as a reminder that there was still a long way to go to fully surpass one of the hardest moments the EU has endured.

Despite the very challenging times, Anu Bradford offered, on that same year, i.e., 2012, a daring perspective of the EU as one of the most important and unrecognized rulers of the world, coining the term “Brussels Effect”. As time went by, the facts singing the requiem of the EU continued to pile up in the view of many, echoing the waterfall of the unfolding unfortunate events which have, indeed, ashore to Europe, like the 2015 refugee’s crises, or the internal “misfortunes”, as revealed by, for e.g., the 2016 Brexit. Nonetheless, since the beginning of the Eurozone crises, none of the subsequent adversities served as an impediment to the EU’s might, pushing the setbacks to that sole category, as Bradford kept on defending on a more detailed book about the Brussels Effect (or simply BE), recently published in 2020²⁰.

The BE, however, is first and foremost a consequence of the ambitions of the EU, considering it is not something that it has been rationally build and appeared in 2012, but rather an indirect result of the policy the EU has been following starting in the 1990’s. Indeed, because of the difficulties the common market has faced, the 1986 Single European Act (SEA), changed the paradigm, presenting itself as one of the most fundamental treaties of the EU’s History and,

¹⁷ The European debt crises, in a nutshell, is a several year financial crises that has erupted in the Eurozone due to the inability of some countries to repay their governmental debt, while being facing over indebt banks under national supervision that also needed financial assistance. This situation led to the need of exterior help in order to bail out both the State and Banks, which was provided in a three folded manner by Member States, the International Monetary Fund (IMF) and the European Central Bank (ECB).

¹⁸ Anderson, Richard, *Eurozone Summits: Moments of Truth or Waste of time?*, 2012. In BBC. Available at <https://www.bbc.com/news/business-19959759>. Date of Access 5 August 2021.

²⁰ Bradford, Anu , *The Brussels effect: How the European Union rules the world*, 2020. New York: Oxford. [hereinafter BRADFORD, BRUSSELS EFFECT].

in this sense, modifications were enacted envisioning one of the major objectives, i.e., the single market, determined by the SEA to enter into force on 31st December 1992. Alongside this vectorial goal, the qualified majority was defined as the general rule, thus enabling ground-breaking decisions to pass which would not have been possible with the previous unanimity requirement, contributing both to the success of the single market solidification and the birth of a regulatory agenda as a way of policy enabler. What this means is that the European Commission (EC), the European Parliament (EP) and the European Council (EU), within their treaty attributed responsibilities, have been defining and refining over the years its legislation strategy, ultimately resulting on a substantial and fruitful regulatory agenda. The strategy was based on harmonizing the standards for all Member States, while leaving them the choice on how to reach the goals and still respecting the idiosyncrasies of each country²¹, therefore opting for a “minimum harmonization”²²; “upward harmonization” has often been the rule, signifying that the EU tends to opt for higher standards, many times with the contribution of Member States²³, turning them effective by allying the economic gains to the societal purposes, thus making it easy for the different stakeholders to reach common ground and also to find support in exterior parties²⁴. Regulation has been key to promote European integration in general and the Commission has played a major role in fostering this “legislative culture” for it is where the legal documents are initiated and drafted, but also because the EC has found that “(...) the only way for the European Commission to increase its influence is to expand the scope of its regulatory activities” (Majone, 1997:150), considering its small constraining budget. By fully embracing this canny design, the Commission has ferociously pursued the internal market objective, having the side effect of exporting the EU’s criteria -the shy beginning of the BE-, although time made the need to actively participate in “world governance” obvious after being perceived that engaging with 3rd parties means that “for the internal market to function properly, the EU must ensure that its principles are adequately

²¹The paradigmatic case of *Cassis de Dijon* has cemented the principle of mutual recognition of national standards. Case C-120/78, *Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein*, 1979 E.C.R..

²² “National competence is not completely ousted: the applicable Community legislation sets a floor, the Treaty itself sets a ceiling and the Member States are free to pursue an independent domestic policy between these two parameters.” (Dougan, 2000:855).

²³An e.g. of this would be the Social Protocol annexed to the Maastricht Treaty, which “(...) opened the way for a high level of welfare integration on an extensive cross-sectoral basis” (Gomá, 1995:14), thus elevating the standards in countries like Portugal, following the footsteps of countries like Germany. However, Member-States also influence regulation in many other ways by, for instance, contributing with their superior expertise on issues to be legislated.

²⁴ Greenpeace, for instance, has been rather successful in pushing the EU’s environmental campaigns forward, working closely with it through its office in Brussels. For e.g., after the combined efforts of Greenpeace and other NGO’s, the EU stopped importing commercially harvested products in 2009, even though this policy has negatively affected both the regional marine ecology and the Inuit people.

reflected in international relations” (Gstöh,2007:6). Therefore, the single market became an unintentional vehicle of EU’s stringent standards to the world, which combined with Brussels extraordinary regulatory capacity (developed by the need to further harmonize and foster European integration) amounts to nothing less than one of the most prominent international rules setter. Furthermore, the EU is, nowadays, very aware of this power, having a declared agenda²⁵ on setting the standards not only within its borders but also beyond them, thus fully enhancing what started as a mere collateral effect. It wouldn’t be a stretch to state that the Brussels Effect is not a new thing, albeit presently being way more conscious and premeditated, consequently more effective.

This Chapter will examine the BE in light of the evidence pointing out to it as, perhaps, the greatest driving force of the EU’s influence in the world, enabling its stringent standards and, necessarily, its values, such as human rights, to spread in such way that others - be it companies, countries or blocks of countries – have to , in practice, abide by the EU’s foreign rules, therefore leading to a factual and decisive source of rules emanating from Brussels, which determine not only how international actors will behave within the single market but also outside of it. The 4th Industrial Revolution, a term coined by Klaus Schwab, poses major challenges to society and civilization, as has been briefly argued in the introduction of this dissertation, namely in terms of human rights, therefore making it necessary to address a transition in society which can seriously adapt to this unprecedented, highly disruptive Era – the BE, considering its practical effects, may be bullied for imposing certain standards which deem the EU as an imperialistic “Mr. Right(s)”; however, those rules of conduct embedded in the Brussels Effect are the ones pushing evolution more responsibly and with greater practical effects than other actions taken elsewhere.

This Chapter will demonstrate how this happens, validating these previous statements, therefore making a descriptive assessment of the BE a necessity. Consequently, a *general notion* of the theory behind the BE will be presented, eventually leading to the description of the cumulative premises necessary to its existence, i.e., *1.1. market size; 1.2. regulatory capacity; 1.3. stringent standards; 1.4. inelastic targets; 1.5. non-divisibility*. At the same time, it is also considered fundamental to understand how the BE mechanics work in practice and how the EU has shielded its current unilateral regulatory power even beyond the BE itself, which will be established in *2. Manifestation* and *3. Enhancing the BE*. Afterwards, the

²⁵The Strategic Agenda of the EU 2014-2024, for instance, clearly states on p.20 that: “At the same time it has never been as important to engage our partners on issues of mutual or global interest. To defend our interests and values and to protect citizens, a stronger engagement of the European Union in world affairs is crucial”.

Brussels Effect will be unmistakably fixed as a thesis which necessarily embeds human rights values, in view of the EU's deep commitment to defend them in 4. *An economic valuable theory*. Therefore, point 4.1. puts into evidence *the chain of values* created, while the next subsection addresses the practical example of the EU code of conduct on countering illegal hate speech online, under 4.1.1. *Hate Speech*, in relation to the consecrated human right of freedom of expression (art. 19° of the UN Human Rights Charter). To wrap this chapter up, the final part will convey a mixed assessment of both the economic and value gains the EU seeks to achieve in 4.2. *dismissing criticism through a practical exercise*.

1. Notion

“Today, very few Americans are aware that EU regulations determine the default privacy settings on their iPhone (...). Examples of EU's regulation influence abound across global markets. EU laws determine how timber is harvested in Indonesia, (...) what equipment is installed in dairy factories in China, what chemicals are incorporated in plastic toys in Japan, as well as how much privacy is afforded in Latin America (...)” (Bradford, 2020: xiv).

The Brussels Effect might be described as a phenomenon dependent on a set of five pre-conditions, as laid out by Anu Bradford, i.e.: market size; regulatory capacity; stringent standards; inelastic targets; non-divisibility. From the moment these five premises are aligned at the same time, the Brussels effect occurs, conversely signifying they also represent its limits – it is through the BE that the EU is able to exercise global regulatory power unilaterally (despite rendering their efforts mainly from soft power), thus making the Brussels Effect both a consequence and vehicle of EU's policy, notwithstanding the other existing tools which, however, couldn't be as decisive in world governance considering this very idiosyncratic phenomenon. Bradford's theory builds up on Dave Vogel's *California Effect*²⁶, which has demonstrated that those with the most stringent standards will export them to other countries (or block of countries) with more lenient ones, in exchange for and through market access, thus prompting a regulatory “race to the top”, much contrary to the fear of a *Delaware Effect*²⁷“race

²⁶ Vogel, David, *Trading Up and Governing Across: Transnational Governance and Environmental Protection*. In *Journal of European Policy*, pp.561-563, 1997. [hereinafter VOGEL, TRADING UP].

²⁷ The idea of a “race to the top” is embedded in David Vogel's theory of the California Effect, which determines that stringent standards might actually be adopted by several actors (be it a state, block of countries or industries) for there are certain advantages in doing so, contrary to the Delaware Effect, that is, the easing of standards. As

to the bottom”. The EU’s powerful rule is guided by its values (such as democracy and respect for the human rights)²⁸ and undoubtedly based on both its internal market³⁰ and regulatory capacity (Bradford,2020:7-24).

The following lines are to precisely describe each necessary, cumulative condition for the BE to occur.

1.1. Market Size

According to the results of the International Comparison Program³¹, the EU, despite Brexit, remains one of the largest economies in the world, only surpassed by the United States of America (USA) and the People’s Republic of China (hereinafter PRC or China), which holds 1st place in terms of the Gross Domestic Product (GDP). Even though “(...) power is the defining concept of the [International Relations] discipline, and there is no consensus about what that concept means” (Drezner,2019:3), it is widely accepted that it is somehow closely connected to the economic power, as proved by assemblies such as the G8 or G20³², thus making it one of the conditions necessary to have authority and effectively influence international standards. In this sense, the EU proudly declares on its website to be “(...) the biggest player on the global trading scene and remains a good region to do business with (...)”³³, considering its 440 millions of consumers searching for quality goods, the transparency of rules and regulations within the world’s largest single market, the most open market to developed countries, having a legal investment framework which is not only among the most accessible but also very secure³⁴.

As previously explained, the single market is key to the EU’s successful existence, however, “(...) market power depends on the attractiveness of its consumer market compared to the alternative markets available” (Bradford,2020:26) and, in this sense, companies make an

an example, and according to Michael Porter, one of the reasons for this to happen is simply that “Stringent Standards for product performance, product safety (...) impact [and] pressure companies to improve (...). Easing standards, however tempting, is counterproductive.” (Porter,1990:88).

²⁸ This idea has already been lightly explored and it will be fully appreciated further along this chapter.

³⁰ To better understand the importance of the internal market in this sense, see Gstöh, Sieglinde, *Political Dimensions of an Externalization of the EU’s Internal Market*, 2007. In EU Diplomacy Papers. Bruges: College of Europe.

³¹ The results of the 2017 International Comparison Program were published in May 2020 and consider the EU of the 27.

The 2017 results of the International Comparison, *Program China, US and EU are the largest economies in the world*. 2020. Available at: https://ec.europa.eu/eurostat/documents/portlet_file_entry/2995521/2-19052020-BP-EN.pdf/bb14f7f9-fc26-8aa1-60d4-7c2b509dda8e

³² The EU is part of both.

³³ Source: European Commission website. Cf: <https://ec.europa.eu/trade/policy/eu-position-in-world-trade/>

³⁴ idem

assessment of whether waiving the 440 millions of EU consumers is worthwhile, considering the opportunity cost of making the necessary adjustments to this jurisdiction stringent standards: given the large size of the single market (importing venue) comparatively to the market of other countries (exporting venue), the companies tend to recognize the EU as a high value market which they cannot forego³⁵, thus preferring to comply with the EU's rules and entering the market, consequently enabling the BE. However, being one of the largest economies in the world is not sufficient to calculate how valuable a market is – in other words, looking solely at the GDP might be misleading. In this regard, if considering the GDP in terms of Purchasing Power Standard (PPS), China abruptly abandons first place despite its 1.400 billion population³⁶, while both the USA and the EU remain strong at the top 5, although the USA has less consumers (roughly 333 million people³⁷) comparatively, explaining why the EU easily convinces the producers to keep on exporting to its market³⁸.

The top exporting countries to the EU are the USA, China, Switzerland, Russia, Turkey and Japan³⁹, which by itself is illustrative how much these markets are dependent on the EU, yet, by isolating and analyzing the mentioned countries, the EU invariably figures among one of the top three preferred export destinations⁴⁰. Despite the previously mentioned, it should be noted that those countries' exportation values are calculated in absolute terms, thus being necessary to observe that dependence also varies in relation to the specific traded goods, i.e., if the EU does not represent a destination market for a certain commodity, its market power diminishes, therefore limiting the BE because it fails to occur⁴¹. The European Parliament's website, clearly states that "The main mechanism for incorporating human rights into the EU's bilateral agreements consists of an "essential elements" human rights clause that enables one

³⁵ As clearly explained by Bradford "(...) the greater the ratio of exports to the jurisdiction relative to sales in home and third-country markets, the more likely the Brussels Effect will occur" (Bradford,2020:27).

³⁶Source: Worldometer. Cf: <https://www.worldometers.info/population/china-eu-usa-japan-comparison/> Date of access: 10 September 2021.

³⁷idem

³⁸Despite the growing tendency of the increasing PPS in countries with large economies, like China and India, it is highly unlikely they will reach the EU's power of purchase, thus making relocation of producers a rather improbable scenario.

³⁹Source: Trading Economics. Cf.: <https://tradingeconomics.com/european-union/exports-by-country>

⁴⁰Russia, for instance, exports a total of 96819.10 million USD to the European Union, a figure even more impressive when considering the second place on this matter, China (36808.20 million USD), thus making the EU not only its primary exporting market, but also highly dependent on it. Source: Trade Economics. Cf.: <https://tradingeconomics.com/russia/exports-by-country>

⁴¹This is likely to occur due to the difficulty to meet EU's stringent standards, as exemplified by the Takeda sleep drug divestment.

Gregan, Kevin, *Takeda Gives up on getting ok for sleep drug*, 2011. In PharmaTimes online. Available at: http://www.pharmatimes.com/news/takeda_gives_up_on_getting_european_ok_for_sleep_drug_980275

party to take appropriate measures in case of serious breaches by the other party”⁴², thus once again making the EU’s ambition of exporting its values in exchange for access to its internal market rather obvious. However, this is quite a difficult task to monitor a third party actions on matters such as human rights, albeit some Member States, namely France and the Netherlands, are trying to better accomplish this objective⁴³.

Ultimately, despite making the access to its internal market dependent on many conditions (which are more stringent than in many other jurisdictions), the EU’s large economy plus the quantity and quality of its consumers, is absolutely decisive for the other economic agents, hence making market size the corner stone of the Brussels Effect.

1.2. Regulatory Capacity

Firstly, it is important to establish that “regulatory capacity refers to a jurisdictions ability to promulgate and enforce regulations” (Bradford, 2020:31) and, in this sense, “the Europeanisation of policy making, by which is meant the increasing interdependence of domestic and supranational policies within the European Community/European Union”(Majone, 1997:114) is a choice made by the Member States, resting upon the successive reinforcement of the EU Institutions, which have been increasingly vested with regulatory power, in order to foster the integration process and the single market. In other words, the regulatory apparatus has steadily increased to complete the European goals, namely those dictated by the SEA, thus making regulations an imperative to success, shifting the paradigm to ”(...) a reduced role for the positive, interventionist state and a corresponding increase in the role of the regulatory state(...) (Majone,1997:139) – the single market is, therefore both based on the regulatory capacity the EU has been building and empowered by the rules emanating from Brussels, thus making regulatory capacity a fundamental quality of the Brussels Effect, conversely signifying that where the EU cannot exercise regulatory power, the BE is absent.

As informed in the introduction of this chapter, the EU’s regulatory capacity has met an exponential growth after the SEA, and the EU’s institutions (PE, EC, CE) have since then expanded its powers. It would be important to denote the growing importance of the EP, namely after the Lisbon Treaty, thus democratizing the European Union; as for the EC, whose role has already been previously and briefly exposed on the lines of this dissertation, it is worth

⁴² Source: EU Parliament website. Cf: [https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI\(2019\)637975](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2019)637975)

⁴³ See Macchi, Chiara; Bright, Claire, *Hardening Soft Law: the Implementation of Human Rights Due Diligence Requirements in Domestic Legislation*, 2020. In M. Buscemi, N. Lazzerini and L. Magi (eds), *Legal Sources in Business and Human Rights - Evolving Dynamics in International and European Law* (Brill, 2020).

mentioning the deep commitment towards the European project among the staff, while empathizing that “(...) the development of the EC as a regulatory state has strongly influenced a parallel development in the member states” (Majone,1997:146), contributing to an overall expertise in regulatory capacity, i.e., both supra nationally and within each Member State. Considering that regulatory power is dependent on the ability to impose sanctions (a key feature to deter undesirable actions from others), it is the EC that is ultimately able to prohibit anyone to enter the EU market if the standards it sets are not met.

It must also be noted that “the involvement of the courts in administration and policy making is perhaps the most important consequence of the growth of the regulatory state⁴⁴” (Majone,1997:156), thus elevating the ECJ decisions to be paramount in establishing that “(...) the treaties themselves, as well as Community acts done under their authority, take precedence over national law and have direct effect in the member states” (Majone,1997:156).

Despite the might of the EU’s regulatory capacity, this ability is highly dependent on the Member States willingness to delegate what is traditional perceived as the fundamental powers of the state, indicating the EU to be more powerful in areas where its competence is absolute, as opposed to others, such as diplomacy, which states are not willing to forego.

A final remark is needed to state that not every jurisdiction is able to exercise regulatory authority globally, no matter how big its GDP. A paradigmatic case would be China, although more recently it is trying to change the current state of affairs, by trying to force the resolution of any judicial matter within its territory, as long as one of the companies involved is Chinese; they also want to “(...)take a more active role in shaping international law “⁴⁵, i.e., PRC is seeking to expand Chinese law beyond its borders⁴⁶. Notwithstanding the above, what this suggests is that so far, a democratic, independent and mature institutions are the ones more capable to exert global regulatory power, considering the amount of gathered experience and cumulative expertise.

⁴⁴ The EU is obviously not a State and may never reach that category. Regardless, considering that Member States have transferred part of its sovereign powers to the EU, the concept of it being a “regulatory state” is deemed appropriate. (Moran,2002:403).

⁴⁵ *China is becoming more assertive in international legal disputes*, 2021. In The Economist. Available at: <https://www.economist.com/china/2021/09/18/china-is-becoming-more-assertive-in-international-legal-disputes>. Date of access: 18 September 2021.

⁴⁶ Idem. China is already achieving its goals, as proven by Samsung’s example, a South Korean company, that preferred to settle its dispute in a Chinese court and won.

1.3. Stringent Regulations

Irrespective of the regulatory capacity a market might have, political will to implement its corollaries is fundamental to convey the potential influential power, hence making the predilection to promote stringent standards a condition for the BE.

Developed countries are more prone to encourage stringent standards, for their wealth diminishes the cost effect of the ration between economic growth and higher standards of well-being, as opposed to poorer countries which cannot afford any obstacles to their chance to thrive. In this sense, David Vogel sustains the theory that a shift in disseminating regulatory power has occurred between two developed countries, i.e., from the USA to the EU, immediately identifying 3 motives to represent both this change but also underlying the reasons to this growing preference for stringent standards: “(...)stronger public demands for more stringent regulations in Europe, more political support for regulations by policy-makers in the EU than in Washington, and different policy approaches to risk assessment.”(Vogel,2011:1).

From this perspective, and according to Anu Bradford⁴⁷, it is possible to identify two main causes for this tendency, one concerning the ideology and the other, the process. The first motive, is intrinsically connected to the European History⁴⁸, transpiring a traditional distrust in markets to self-regulate, thus relying on governments to intervene and safeguard their welfare, underpinning a disposition within the EU Member States to support this policy.

As for the process, the EU tends to opt for *ex ante* government regulation, revealing an inclination for precaution, a fact which can also be linked to the historical habit of leaning on regulations and “social command”, rather than private individuals, hence explaining “(...) the EU’s emphasis of administrative rule-making over tort liability(...)” (Bradford,2020:43); the Precautionary Principle, present in article 191° of the Treaty on the Function of the European Union (TFEU), is fundamental for the EU to make regulatory decisions when the risk cannot be fully comprehended, once again revealing a tendency for precaution.

However, it must be noticed that when states cannot agree on certain standards, therefore preferring keeping heterogeneity, it becomes rather difficult to impose stringent standards. Moreover, heterogeneity leaves space open for alternative jurisdictions to occupy, although it is not a condition for this to happen for it cannot be disregarded the hypothesis of another country to be able to exercise regulatory power globally by promulgating an even more

⁴⁷ BRADFORD, BRUSSELS EFFECT, pp. 39 ff.

⁴⁸“(…) twentieth-century European governments regarded the markets as an institutional legacy of the Middle Ages. It was something that, traditionally, could be regulated for a variety of reasons (...) [including] regulating prices, not only to protect consumers but also to secure a living for poor producers. Some European governments also regarded markets as being rather feeble at allocating resources(...). (Casson, 2011:11).

stringent legal regulation⁴⁹ than the previous one – ultimately, the BE could be globally enhanced if diverse stringent standards emanated from a multitude of different jurisdictions (obviously related to separate subjects) were able to coexist, thus configuring a counter scenario to the EU's alone might.

1.4. Inelastic Targets

Inelasticity is paramount because the tightness of a regulation can only be observed globally when products or producers are incapable of “forum shopping”, therefore being forced to abide for a given legal regime. The EU regulates its internal market, which means that the European consumers are the ultimate target and they are rigidly static within the European geographical territory, ergo, if a company does not comply with the stringent standards in this jurisdiction, it is automatically excluded from doing business in this market. However, not all categories are determined by this logic and “in such cases where the regulatory regime is determined by the location of company's headquarters or place of incorporation, companies have a choice over what regulations will apply to them” (Bradford,2020:49), thus suggesting elastic targets to be a limit to the BE.

In the end, by regulating inelastic targets, the EU is able to predictably influence global standards, whereas when a jurisdiction pursues inelastic ones, it is not only more difficult to foresee the outcome but also to export its prerogatives.

1.5. Non-divisibility

The previous examined requirements for the BE to take place, are exclusively forceful when an international corporation exports the stringent standards dictated by a jurisdiction to its operations worldwide. For this voluntary action to materialize, a company must have “(...) the greatest incentive to adopt a global standard whenever its production or conduct is non-divisible across different markets” (Bradford,2020:54). In this sense, standardization – be it in the form of business practices or products – is the unavoidable concept permitting uniformity of standards, hence, a consequence of the EU policy reflected both regionally but also in the International arena (Mendel,2002:412) in addition to be a practical effect of the logic behind scale economies⁵⁰. *A maiori, ad minus*, signifies a stimulus for a given company to adopt the

⁴⁹ The new Chinese GDPR like law is an e.g. of this statement, which will become clearer on this dissertation's assessment on China.

⁵⁰To clarify, “Scale economies consist of potential reductions of average costs associated with higher levels of productivity, which is measured by the quantity of output that can be produced in the time unit” (Celli,2013:255).

most stringent existing standard within the jurisdictions that represent markets for its products, irrespective of it having more lenient ones: typically, the most important, stern legislation is the one adopted.

Three types of non-divisibility are identified⁵¹: Technical non-divisibility; economic non-divisibility; legal non-divisibility. The first type consists on the plight of technically splitting the manufacturing of products (be it goods or services) across different markets, of which the GDPR is a paradigmatic example; as for the second type, it is closely linked to scale economies, signifying that even if a company is theoretically able to divide its production, it will not do so in practice in view of the associated costs, thus opting for the mass production of few standardized goods⁵². Another associated virtue is the greater ability for a company to prevent sunk costs, because leaving a jurisdiction is not as impactful, for the products already produced are easily diverted to another one that still consumes the standardized good; in addition, a company's reputation relies on the global brand's recognition, naturally further incentivizing standardization; a certain product that obeys stringent standards world wide will satisfy activists that advocate for stricter rules of conduct. Legal non-divisibility is concerned with legal uniformized standards, bound to be manifested in relation to a company's internal or external conduct: internally speaking, issues like a company's standardized policy diminishes the costs associated with risk-adjusted compliance; externally, the best example would be competition law – the EU's stringent standards in this perspective invariably deems a merger to be banned worldwide if the EU decides in this way⁵³.

However, standardization is not always desirable and, naturally, in these cases, the BE is limited. Factors dictating differentiating products vary from factual impossibility to harmonize (e.g. labor standards) to consumers preferences among different jurisdictions.

2. Manifestation

The previous lines have established the necessary conditions for the BE to occur, while making the argument on why each one is capital with abstract exercise, although recurring to

⁵¹ See BRADFORD, BRUSSELS EFFECT, pp. 57-65.

⁵²The underlying logic behind scale economies demonstrates that, in many circumstances, if a company chooses to pursue differentiated products in various markets, the costs rise considering factors such as the required equipment: when opting for a single standardized product, a single piece of machinery is necessary. This is exactly one of the major reasons for the California Effect. See VOGEL, TRADING UP, supra note 26.

⁵³ See Bradford, Anu; Chilton, Adam S. ; Linos, Katerina & Weaver, Alex, *The Global Dominance of European Competition Law Over American Antitrust Law*, 2019. In JOURNAL OF EMPIRICAL LEGAL STUDIES, VOL. 16, p. 731. Available at: https://scholarship.law.columbia.edu/faculty_scholarship/2513

some examples mainly given in relation to the EU, in view of the fact that the BE phenomenon has emerged due to the aligned characteristics present on this jurisdiction.

In practice, however, how can the BE be observed? The answer to this question resides on the cumulative characteristics described above which are ultimately expressed in two ways that can happen individually or combined: *de jure* or *de facto*. The *de jure* BE happens when regulations drafted in Brussels are adopted by legislators in other jurisdictions, notwithstanding some adjustments adapted to their reality, thus making the EU law as a very appreciated template which is sometimes closely replicated, for e.g., in South Africa⁵⁴; once a jurisdiction adopts a piece of legislation similar to that of the EU, the additional advantage of using the European Courts decisions as a basis for their national courts' own rulings becomes very useful, namely because the European expertise and investigation, to which 3rd parties have access to, has already been taken care of, thus saving time and costs to the national courts, hence allowing for more efficient rulings⁵⁵.

The *de facto* BE manifests itself when companies export the EU's stringent standards to other markets in which they operate, even though the other jurisdictions have more lenient rules concerning a certain subject⁵⁶, hence the BE may not be present in a legally binding form, however, the practice does dictate the existence of the Brussels Effect. Fundamental for the *de facto* BE to occur is the Commission and its power to veto and supervise the EU's Treaties, recalling that it is from there that the primordial regulation emanates⁵⁷. In other words, companies have an extra incentive to comply with EU's standards, which mainly derive from the EC, for fear of losing access to the common market and, by doing so, the firms are also necessarily conveying the values encapsulated on the European Treaties.

To sum it up, in order to determine whether or not the BE is present, the methodology dictates the necessity to make the "5 steps" test along with evaluating the major identified legislation in accordance with the given subject to finally reach the conclusion of the existence of the *de facto* and/or the *de jure* BE. Through the BE, the EU ramifies its laws, but also its values – EU law is, in the end, a reflection of its standards. In terms of digital economy, the GDPR has been responsible for beginning a new age in both the fundamental right to data and consumer protection, not only within its borders but also beyond them, by observing, for

⁵⁴ *Competition in the Digital Economy*, 2019. Prepared for the United Nations Conference on Trade and Development Intergovernmental Group of Experts on Competition Law and Policy, Eighteenth Session, Contribution by the Competition Commission of South Africa. Available at: https://unctad.org/system/files/non-official-document/ciclp18th_cont_South_Africa.pdf

⁵⁵ See BRADFORD, BRUSSELS EFFECT, pp. 122-128.

⁵⁶ *Idem* pp.196-199.

⁵⁷ *Idem* pp.107-108.

instance, the spillover effect of the subsequent GDPR like laws which are being put forward by many other countries⁵⁸-*de jure* BE; as for consumer health and safety, the BE protects consumers in the EU from genetically modified organisms⁵⁹ (GMO's) but also in another jurisdictions – because the EU's market has such high standards and it is rather difficult to have a non-GMO plantation alongside a GMO one without the risk of contamination⁶⁰, brands do choose to either produce options that are organic in the market (e.g. Weetabix) or completely ban GMO's from their whole production (e.g. Ben and Jerry's)⁶¹ – *de facto* BE⁶²; the adoption of Euro emissions standards concerning vehicles has been or is in the process of being widely adopted in a vast majority of Asian countries, thus exporting the commitment the EU has with the environment globally⁶³ - *de jure* BE.

The limits of characters in this dissertation deems it impossible to further empirically demonstrate how far reaching the BE is and, consequently, EU's might. In spite of this, point 4. of this chapter will once again pick up on this subject and thoroughly evaluate the Union's commitment towards human rights in a far more reaching comprehensive fashion, as this matter, as of today, is at the heart of the EU – in a sense, defending human rights is bigger than the BE, for it represents an objective in itself. In the same vein, EU's power is also larger than the theory previously exposed, thus the current hegemonic position of the Union cannot be solely understood through the Brussels Effect, irrespective of it being a phenomenal contributor, as it will be evaluated on the following lines.

⁵⁸ Several GDPR like legal documents have been drafted, and some have already entered into force, namely in Brazil and Canada. On Google's website, the GDPR (EU), Brazilian General Data Protection Law (English translation of LGPD) and the California Consumer Privacy Act (CCPA) are all taken into account, and it can be read "Privacy regulation is changing. We know you need to select products that are both compliant with all applicable data protection laws, and use personal data in ways that are compliant. Learn more about how Google is complying with specific privacy laws(...)". Source: Google. Cf: <https://business.safety.google/compliance/>. Date of access: 5 September 2021.

⁵⁹ To understand why GMO's might have a negative impact in health and safety see Kobayashi-Solomon, Erik, *Here's The Real Reason Why GMOs Are Bad, And Why They May Save Humanity*, 2019. In Forbes. Available at: <https://www.forbes.com/sites/erikkobayashisolomon/2019/02/15/heres-the-real-reason-why-gmos-are-bad-and-why-they-may-save-humanity/>. Date of access: 5 September 2021.

⁶⁰ It must be observed that technology is evolving on this field through RNA interference, thus mitigating the mentioned problem. RNAi technology suppresses the manifestation of an already existing gene in the DNA chain (without using chemicals, although it is not yet certain this is always the case), as opposed to "traditional" GMO's, which have a new sequence added in their DNA. See Koberstein, Paul, *A Very Different Kind of GMO is Headed to Supermarket Shelves*, 2015. In Earth Island Journal. Available at: https://www.earthisland.org/journal/index.php/articles/entry/a_very_different_kind_of_gmo/. Date of access: 31 August 2021.

⁶¹ Theeboom, Sarah, *6 major brands that have vowed to go GMO free*, 2014. In Business Insider. Available at: <https://www.businessinsider.com/major-brands-that-are-going-gmo-free-2014-6> Date of access: 22 June 2021.

⁶² A quick note should be made to point out that civil society, namely NGO'S such as the American Non-GMO Project, also exercise pressure for the industry to change.

⁶³ Source: European Environment Agency. Cf: <https://www.eea.europa.eu/data-and-maps/figures/number-of-international-environmental-agreements-adopted-1> Date of access: 11 September 2021.

3. Enhancing the BE

Although the Brussels Effect has substantial power in disseminating EU's stringent standards, it is certainly not the only way through out which Brussels exercises its unilateral regulatory might. In view of this, there are other factors and techniques which can both increase or complement the BE, or even compensate for the absence of a BE, thus further defending the argument of the EU as a global regulatory power.

It has become clear, by now, that market driven harmonization is the basis of the BE – and, necessarily, one of the most prominent sources of the EU's success-, but Joanne Scott stresses about the importance of the influence exerted on foreign actors through a legislative technique Scott has called territorial extension⁶⁴, which reflects the EU's changing view concerning extraterritoriality: power is exercised in relation to others who do not have a territorial connection to the EU⁶⁵, by increasingly using this technique – depending on the right circumstances abroad, a territorial extension is observed, prompting the EU to regulate in certain areas that although happening outside its borders, also have a negative intern impact, as exemplified by the EU's Emissions Trading Scheme. A note must be made regarding the EU regulations that explicitly have extraterritorial effects on others not territorially connected to the EU, as directly exemplified by EU competition law, which directly enforces the remaining actors to abide by it even when their conducts occur abroad.

International institutions are a vehicle the EU is keen to use to help sculpting the global rules⁶⁶, either on its own or through its Member States⁶⁷ and the European Central Bank. In this sense, the EU is part of many international institutions such has the WTO, while, at the same time, considered a valuable contributor and/or observer in some others, namely in the OECD and UN⁶⁸, consistently shaping the global Law. This may be attributed to EU Law

⁶⁴ Scott, Joanne, *Extraterritoriality and Territorial Extension in EU Law*, 2014. In *The American Journal of Comparative Law*, vol. 62.

⁶⁵ As an example of the EU's increasing might on this domain, which was usually a prerogative of the USA, it should be paid special attention to *Responding to extraterritorial Legislation: The European Union and Secondary Sanctions*, 2011, pp. 1246-1247. In *Developments in the Law, EXTRATERRITORIALITY*. 124 HARV. L. REV. 1226, 2011. Available at: https://harvardlawreview.org/wp-content/uploads/pdfs/vol124_DEVO.pdf Date of access: 1 August 2021.

⁶⁶ See Blavoukos, Spyros; Bourantonis, Dimitris, *The EU presence in International Institutions*, 2011, New York and Oxon, Routledge.

⁶⁷ For e.g., despite not being part of the IMF, tradition dictates that same way the World bank has always had an American president, the IMF has always had an European one, even though the rules do not impose or recommend such thing. For more information see Keating, Joshua E. *Why is the IMF Chief always a European? Because Europeans choose him*, 2011. In *Foreign Policy*. Available at <https://foreignpolicy.com/2011/05/18/why-is-the-imf-chief-always-a-european/> Date of access: 17 September 2021.

⁶⁸ Concerning the UNECE (United Nations Economic Commission for Europe), on its website is stated that “The World Forum for Harmonization of Vehicle Regulations and the European Commission are currently working on

appeal as template which is more universally designed than, for instance, those of the USA. Because these International Institutions are involved in an interconnected network that goes beyond its members, the EU can, through this cooperation, further amplify the reach of its standards. Notwithstanding the above, it must be noted that despite “(...) EU coordination in multilateral forums has increased significantly over time, weak coordination mechanisms and EU competences have often hampered a common position and “single voice” (GsTöhl, 2011:185).

Another source of influence which has already been previously mentioned are the European Courts. The paradigmatic *Google Spain* in 2014, has pronounced the “right to be forgotten” long before it was incorporated in the GDPR under art. 17°, thus capturing how the ECJ interpretes the European Treaties and “accidentally” creates new standards. *Google Spain* also inflates the argument that courts around the world are, many times with effective manifestations, tempted to use EU judgements as the basis for their national verdicts, hence, demonstrating how EU rulings are so dignified that they are even cited on other courts’ decisions⁶⁹. On the other hand, engaging in “copycat” litigation is viewed as valuable because of the EU’s investigations, as they are relevant in offering information which is bound to warn foreign jurisdictions about a certain conduct that may need action; other jurisdictions also benefit from relying on the investigation’s resulting information, as they can lower their own costs and resources to achieve the same outcome, something most importantly observed the lesser the available budget; sometimes it is the EU, within the conduct of its investigations, that demands for exterior parties assistance, therefore allowing for material to be created which can be afterwards used by the jurisdiction in which the investigation has been conducted. In addition, the number of cases being litigated to resolve disputes concerning foreign enterprises in the European Courts or Commission are vast, because they believe, especially in relation to competition law, to have “(...) a better chance of obtaining a favorable decision under the EU’s strict standards compared to their domestic competition law” (Bradford, 2020: 78)⁷⁰.

the harmonization between UN Regulations and EU Directives.”, thus clearly exemplifying how the EU is endorsing its stringent standards through an International Organization, albeit not being an official member. Source: UNECE. Cf: <https://unece.org/faq> . Date of access: 17 September 2021.

⁶⁹ Indeed, the Anonymous Applicant v. Google Mexico case, in Mexico, did have similar outcome to that of *Google Spain* and cited the ICJ’s decision, solidifying the argument of the “copycat” litigation as an attraction exerted by the EU. Source: Columbia Freedom of Expression. Cf: <https://globalfreedomofexpression.columbia.edu/cases/fiaipd-anonymous-applicant-v-google-mexico/> Date of access: 17 September.

⁷⁰ Of course, much more could be said in relation to why the European Courts are so attractive to resolve competition law disputes. Perhaps, one of the greatest contributors to this state of affairs is the current dire situation the WTO faces, namely in view of Article XXIV of the General Agreement on Tariffs and Trade

At the same time, EU's law is fairly appealing as a template to other jurisdictions, for it is drafted in a quite comprehensive manner in view of conciliating the 27 member states consensus, providing a rather juridical approach and it is drafted in a multitude of languages due to the European multilingual reality. Another argument in favor would be Europe's colonial past that still has deep roots in today's relations between member states and former colonies, thus further enhancing the appeal to EU's norms as a template, as for e.g. observed in the linkage between Latin America in relation to Portugal and Spain.

The EU also relies on cooperation via instruments such as bilateral and multilateral treaties of various forms, namely Preferential Trade Agreements (PTA'S). Whatever the case, these negotiations have, many times, the negative side of being more costly⁷¹, despite conveying EU's standards. In these agreements, there are often clauses related to moral conditions, such as Human Rights, although their success is disappointing, to say the least. As an example, it should be pointed the failure in Lybia, which is part of a strategic policy to ensure the EU consolidates its might to the immediate extent of its territory through the European Neighborhood Policy (ENP). The negotiation power of the EU has its climax whenever countries are applying for membership, however, it diminishes incommensurably right after a state becomes a member, as exemplified by Hungary which is currently approximating a semi-dictatorship⁷².

There are clear advantages in market driven harmonization (which one must continuously bear in mind as a corner stone of the BE), especially when contrasting them to policy enacted by treaties with 3rd parties, in particular those associated with the uncertainties consistently related to both the treaty ratification process and the outcome.

Nonetheless, this technique persists because there are agenda circumstances dictating a "(...) much closer economic alignment and political association than the BE can ever bring about" (Bradford, 2020:37). As an example, whenever the subject concerns the EU as an exporter – as the opposite of importer, which could immediately trigger the Brussels Effect -, and the BE fails to occur, treaties are the best possible solution to achieve the intended goals. This line of reasoning is always true where the EU's capacity to regulate is limited.

(GATT), which has been fairly liberally instrumented by countries, not to mention the never-ending Doha round and the present USA blockage to the Appellate Body, among others.

⁷¹ While the BE costs are outsourced to the abiding companies and/or jurisdictions who apply the EU standards, the agreements such as PTA's involve a cost to all the contracting parties.

⁷² See Arató, András, *Hungary is becoming a semi-dictatorship as the EU watches idly*, 2021. In euronews.. Available at: <https://www.euronews.com/2021/05/10/hungary-is-becoming-a-semi-dictatorship-as-the-eu-watches-idly-view> . Date of access 17 September 2021.

Although the EU does have very high standards, in occasions in which another jurisdiction has even more stringent ones, the EU must rely on treaties to negotiate its norms to be recognized in order to continue on being a partner without altering its own premises.

Treaties also serve the purpose of, after the materialization of the BE, reinforcing the practice, therefore serving as a complementary instrument of the BE; the institutionalization of standards offer an opportunity to both augment the legitimacy of EU regulation and imprison particular market driven standards.

In any case, whether the BE is missing, incomplete or worthless, there are other available powerful resources the EU can make use of so as to compensate certain instances; at the same time, the mentioned techniques can also be employed to further enhance the BE when it does occur.

Regardless, the BE is indeed a powerful tool and Brussels has developed a magnificent apparel to cover as many vacuums as possible. It is exactly because of this “octopus” like machine that there are voices raising concerns about the EU’s true intentions, that will hopefully be dismissed on the following section, where the values guiding the Union’s actions will be clearly exposed.

4. An economic valuable theory

Despite being conceivable that the virtues of the BE are, at this point, fairly clear to the reader, what has so far been emphasized is the Brussels Effect as an economic theory, for this constitutes its undeniable core. Nevertheless, the succession of actions triggered by the rationale behind the BE, encompass more than economic consequences in view of the fact that, at the same time, they disseminate a series of values necessarily linked to the EU, as the BE enabler. In this sense, one might wonder whether the BE is indeed advantageous to others and not just for the European Union.

The next section on this dissertation aims at 1) more clearly defining what the mentioned values are; demonstrating, through the hate speech e.g., how they are disseminated while debating its eventual effects; 2) rejecting some criticism which is sometimes addressed to the BE, in view of the gains obtained by both the economic and principles point of view.

4.1. A chain of values

According to art. 2° of TEU, “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including

the rights of persons belonging to minorities(...)” - if a Member State violates any of these, it is likely it will be scrutinized and possibly sanctioned under art. 7^{o73}. In addition, art. 2^o also sheds significant light into the Union’s commitment to defend the supra mentioned principles not only within its borders, but also beyond them, as it clearly pledges to defend human rights (which are considered universal).

Beyond TEU, in year 2000, the EU has proclaimed the EU Charter of Fundamental Rights (EUCFR), that became legally binding after the enactment of the Treaty of Lisbon, therefore elevating this piece of legislation to the same “constitutional” level as other EU laws. By doing so, any subsequent legislative actions have gained renewed support, such as the GDPR (one of the most eloquent BE manifestations), which derives from art. 7^o of the EUCFR.

One must also bear in mind the European Court of Human Rights, whose members encompass almost all the European countries (through the Council of Europe), considered to be one of the most effective, “(...) the crown jewel of the world’s most advanced international system for protecting civil and political liberties” (Helfer, 2008:159).

Aside from EU’s law, “(...) all treaties and agreements signed by the EU need to be compliant with human rights as defined by the EU charter”⁷⁴, further entrenching the Union’s dedication in this sense whenever engaging with a 3rd party: moral clauses are many times included on these agreements, as it has been briefly pointed out in Chapter I, section 3.. Furthermore, defending Human Rights is, for the EU, an objective in itself, something proven in 2012, when stating, “(...) its commitment to the promotion and protection of all human rights, whether civil and political, or economic, social and cultural” while “[calling] on all States to implement the provisions of the Universal Declaration of Human Rights and to ratify and implement the key international human rights treaties(...)”⁷⁵; this was reaffirmed and enhanced in 2020 with the EU Action Plan on Human Rights and Democracy 2020-2024.

Obviously enough, in view of the limits of characters of this dissertation, not all the examples of the EU’s dedication to human rights have been enumerated, yet the Union’s narrative in this sense has become evident, as well as how much efforts it puts on acting accordingly, trying to spread what it has repeatedly vouched for, and, naturally, the BE is no exception in this stance.

⁷³ Art. 7^o has been recently triggered because of Poland and Hungary.

⁷⁴ Source: Council of the European Union. Cf.: <https://www.consilium.europa.eu/en/policies/human-rights/#>

⁷⁵ Cf. *EU Strategic Framework and Action Plan on Human Rights and Democracy*, p. 1. Available at: https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf . Date of access: 15 August 2021.

The question remains: beyond the economic factor, why do 3rd parties decide to sign up for these principles which are necessarily embedded in the BE? The response: the EU is the medium, most reasonable answer. In Bradford's words "The idea of the EU being perceived as a legitimate regulator comes down to whether the values reflected in its regulations are embraced by governments, companies and consumers. Partially, the answer determines whether companies themselves would be willing to be seen as following certain rules and standards. This is clear in the tech industry, where companies now want to be seen as being associated with the values embodied in the EU rules. This is the reason why they do not adopt, for instance, the more stringent Chinese rules on free speech online. US techno-libertarianism is now widely held to be obsolete, while the Chinese digital authoritarianism is unacceptable; therefore, the best way to gain their consumers' trust might be to subscribe to EU rules and underlying values, which are generally well thought and produced through an appropriate legislative process. EU's perceived legitimacy is also clearly important for the *de jure* Brussels Effect; indeed, foreign governments are only comfortable with emulating the EU because it is perceived by their own citizens as a good example to follow."⁷⁶

4.1.1 Hate Speech

Although Bradford's words are true, the assessment of the enforcement of EU's principles must be carefully and case-by-case established. Let the Code of Conduct on Countering Illegal Hate Speech Online be considered and its undeniable success.

The EU has managed to secure cooperation in a non-legally binding manner with several IT companies⁷⁷, albeit not being mandatory to abide by this Hate Speech rule of conduct (contrary, for e.g., to a Regulation), exposing that even EU's soft law is able to convey the BE, in this case corresponding to a *de facto* situation. In addition to the voluntary adherence, these IT firms cannot escape the non-divisibility BE criterion, for it is not feasible to separate the EU from the rest of the world, due to the difficulties imposed by geo-blocking, consequently dictating a global adoption of the code of conduct in their "terms and conditions", enshrining it as the red flag of the company's policy.

⁷⁶ Bradford, Anu, *The European Union in a globalized world: the "Brussels effect"* [s.d]. In *Revue Européenne du Droit*, n°2. Available at: <https://geopolitique.eu/en/articles/the-european-union-in-a-globalised-world-the-brussels-effect/>. Date of access: 31 August 2021.

⁷⁷ According to Council of the European Union on the Assessment of the Code of Conduct on Hate Speech online, in 2019, 96% of the online platforms present within the EU market, signed the HS Code of Conduct. Cf. <https://data.consilium.europa.eu/doc/document/ST-12522-2019-INIT/en/pdf> Date of access: 6 August 2021.

Conversely, and despite a vigorous and clear disseminated *de facto* BE, it seems difficult to conceive a *de jure* BE in view of the close linkage between Hate Speech and the consecrated human right of freedom of expression: to strike a balance between freedom of expression and its limits is quite a difficult task due to the fine red frontier between censorship and freedom of thought and expression. Moreover, the notion of “freedom of expression” is changeable and will depend on the region of the globe in which it operates, ergo, the BE is not, regarding this subject, as powerful as it could be, at least in relation to other jurisdictions, such as the USA, with a strong and distinct sentiment towards freedom of expression⁷⁸. In other words, the BE lacks enforcement when confronted with another jurisdictions’ hard law, ultimately resulting in a loss for the EU’s perspective on this subject. In this sense, the “European hate speech” is limited in its scope, for it fails to change the cultural assessment of others. However, the growing tendency of dissemination of misinformation and fake news on the internet, as recently observed during the Coronavirus pandemic, may help to convey the European concept, yet this is conclusively dependent on governments’ actions and, so far, no signal has been given in that sense – the USA, for instance, keeps on ferociously defending its first Amendment.

A final remark should be made to denote a possible pervasive consequence of the *de facto* BE regarding HS. Notwithstanding the previously mentioned IT companies’ adherence to the European Code of Conduct on Hate Speech, the *de facto* BE also entails that those who ultimately have the power to censor the digital realm are indeed the IT companies, not the EU. The IT companies have been vested with a legitim unprecedented power on a very much sensible subject – (most likely) an unintended consequence, nevertheless, a consequence.

4.2. Dismissing Criticism through a practical exercise

It is rather easy to encounter criticism supporting arguments pointing out to the disguised imperialism the EU is trying to force on 3rd parties for its own gains, or how EU policy hinders

⁷⁸ David Irving was convicted, in Austria, to three years in prison for having denied the existence of the Holocaust. In Europe, this case sparked the debate to whether these types of claims were acceptable, whilst in the US, under the First Amendment, the conviction was criticized for restricting the freedom of expression. See: *Is David Irving’s jail sentence justified?*, 2006. In The Times. Available at: <https://www.thetimes.co.uk/article/is-david-irvings-jail-sentence-justified-b7jj99bbpsf> . Date of access: 8August 2021.

innovation⁷⁹, all the while hiding behind the mask of rights and principles' defender. Anu Bradford does quite a remarkable job at defending the BE from its critics⁸⁰; yet it seems fundamental to conduct an original, practical assessment and further entrench some aspects based on one of the latest proposals by the EC.

A press release from the European Commission⁸¹ on the 23 September 2021, has communicated the adoption of a new piece of legislation imposing USB-C chargers as the only ones to be used in all relevant devices within the EU, once again raising some brows (Apple seems, so far, to be the only one concerned). The hampering of innovation is a frequent critic addressed to the EU regulatory power, nonetheless it is hard to understand if Apple is truly preoccupied with this subject or with the associated costs implied on this mandatory modification on its devices which still use, in some instances, lightning technology⁸². The objectives behind this directive proposal⁸³ (which may take years to be enforced depending on the pending debate in the EP and among member states) seem noble and aligned with the EU's agenda on the environment by, in this case, reducing electronic waste and promoting reutilization⁸⁴.

The Commissions calculus⁸⁵ on this subject does contemplate the losses for the manufacturers, who currently manufacture a charger and cable for each device sold, amounting to 352m€; however, this cost is presumably compensated by the growth of the chargers market, which is estimated to be 457m€ per year: in the end, by subtracting the negative impact on the manufacturers to the benefits attained by retailers and distributors, the overall turnover would be positive in 105m€. In other words, assuming that devices will be sold at the same price they

⁷⁹ Robert D. Atkinson, the president of the recognized public think tank *Information Technology and Innovation Foundation* (ITIF), is one of the critics of the "precautionary principle", which he identifies as the cause of both hindering innovation and an incomprehensible policy which the EU tries to impose on others, thus demonstrating the imperialistic vein because "(...) Europe has instead tried to get other nations, including in Latin America, to adopt its regulatory regime in order to reduce its own competitive disadvantage". Atkinson, Robert D., *Resisting Europe's Regulatory Imperialism*, 2020. In ITIF. Available at: <https://itif.org/publications/2020/05/13/resisting-europes-regulatory-imperialism>. Date of access: 17 September 2021.

⁸⁰ BRADFORD, BRUSSELS EFFECT pp.235-263.

⁸¹ See European Commission press release *Pulling the plug on consumer frustration and e-waste: Commission proposes a common charger for electronic devices*, 2021. Available at file: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_4613. Date of access: 23 September 2021.

⁸² See Foo, Chee, *EU plans to legislate for common phone charger despite Apple grumbles*, 2011. In Reuters. Available at: <https://www.reuters.com/technology/eu-plans-legislate-common-phone-charger-despite-apple-grumbles-2021-09-21/>. Date of access: 21 September 2021.

⁸³ Cf. COM(2021)547 - Proposal for a Directive amending Directive 2014/53/EU on the harmonization of the laws of the Member States relating to the making available on the market of radio equipment. Available at: <https://ec.europa.eu/docsroom/documents/46755>

⁸⁴ If chargers become "universal", the consumers will be incentivized to re-use the same one on a new purchased cellphone (one of the devices covered by this legislative proposal) – chargers will solely be sold separately.

⁸⁵ See supra note 83, p.8.

do now but without the chargers -whose price is considerably higher for the end consumer- the final price of the device would be higher. In the end, even if the consumer only needs one charger for the various devices it possesses, he will be having an additional cost, no matter how “insignificant”: the charger. As it has been illustrated by this very recent example, stringent standards, many times emanated from Brussels, do negatively affect the consumer... or do they? If referring to the immediate cost, the answer would be a resounding yes, but when considering the future generations and the environment, the response is a clear no. In this sense, the EU’s regulatory agenda and promotion of stringent standards may very well imply a gain which might not be obvious due to the immediate cost. It is still very premature to advance the occurrence of BE in accordance to this legislative proposal, yet by considering the likelihood of that happening, the ultimate outcome is continuing on advancing the promotion of good standards and values⁸⁶, that critics call regulatory imperialism⁸⁷.

Governments and firms do try to constrain the BE, namely through lobbying⁸⁸. It will be interesting to see how Apple will, in practice respond to this draft of Law, for despite its manifested discontent, the reality is that most of its devices already use this USB-C technology⁸⁹. As for Apple’s claims of this being a measure which will hinder innovation, it is not easy to convey an assessment with certitude. This kind of criticism, however, is fairly common whenever the EU puts forward tech-wise legal proposals and, so far, the relation between regulation and the disabling of innovation has not reached a proper conclusion, as demonstrated by a study commissioned by the EC because “(...) interaction between regulation and innovation is complex, multi-faceted, and often ambiguous, such that assessing the impact of a given piece of regulation on innovation is often an empirical, case-by-case exercise”⁹⁰.

This practical exercise on a recent development, has addressed and dismissed some of the most common reproaches to the EU in relation to the BE. Moreover, this first Chapter has established the premises of the BE and hopefully demonstrated the virtues it carries out not

⁸⁶ Evidently, this kind of assessment depends on the people evaluating each specific question. If a person does not believe in global warming and disregards the effects of pollution, the answer to this legislative proposal would be negative.

⁸⁷ See *Regulatory Imperialism*, 2007. In Washington Street Journal. Available at: <https://www.wsj.com/articles/SB119334720539572002> . Date of access: 23 September 2021.

⁸⁸ BRADFORD, BRUSSELS EFFECT p. 253-257.

⁸⁹ See supra note 82.

⁹⁰ Pelkmans, Jaques; Ronda, Andrea, *How can EU Legislation Enable and/or Disable Innovation?*, 2014. Available at: https://ec.europa.eu/futurium/en/system/files/ged/39-how_can_eu_legislation_enable_and-or_disable_innovation.pdf . Date of access: 10 September 2021.

The EU and the Brussels Effect on Human Rights Protection in the new Era of technology

only for the EU but also to the rest of the world. However, beyond the theory and academic criticism, one must consider what constricts the BE in the present geopolitical reality.

Chapter II

The menaced Virtue

“We do not place especial value on the possession of a virtue until we notice its total absence in our opponent”. (Nietzsche, 1996:137)

The Brussels Effect, as a theory, is theoretically constricted by systemic factors which are bound to narrow down or impede its scope, as it has been exposed on Chapter I. However, if another country is able to answer to the premises embedded in the theory, it is possible that that jurisdiction will exert a correspondent alternative/opposing power to that of the EU; if the EU stops being capable of retaining its present authority, the BE may still be able to survive but in relation to a new source of influence – the Brussels Effect is a phenomenon created, improved and perpetrated by the EU, nonetheless an independent theory expected to be applicable to anyone who fulfils its requirements.

The present geopolitical situation presents an increasingly difficult task for the EU to keep its hegemony, both due to internal factors but especially because of the rise of another jurisdiction, China, who is deeply committed to reinstate a new world order oriented by its leadership, namely through the *Beijing Effect* - there is a new theory which is different from the BE, menacing to either annihilate the Brussels Effect or to substitute the EU as the international rule setter, via the BE.

In view of this, it is imperative to carry out a methodical geopolitical assessment of today's world, not only in relation to the internal but especially to the external elements menacing the BE and EU's might. Naturally, there are a multitude of factors threatening the BE, and Bradford analyses some of them⁹¹. However, instead of conducting a fragmented and superficial assessment of the menaces, I believe it to be preferable to carry out a more profound and systematic evaluation. The necessity of this Chapter II becomes even more evident considering that 1) Bradford's book primordially aims at conveying the BE as a theory and, therefore, her geopolitical assessment is rather superfluous 2) the supra mentioned reasons demand an extensive geopolitical analysis of the world's current situation, especially in relation to China, for the PRC is what I and the EU consider to be the greatest threat to the BE⁹², as it will be

⁹¹ BRADFORD, BRUSSELS EFFECT, pp.265-276.

⁹² See Leonard, Mark, *Redefining Europe's economic sovereignty*, 2019, pp. 3-9. In Policy Contribution, Issue n°9. Available at: https://www.bruegel.org/wp-content/uploads/2019/06/PC-09_2019_final-1.pdf

demonstrated. Furthermore, this dissertation also rests on the perils of a growing technological world in relation to Human Rights: China is one of the world's top performer in high tech, the largest economy in the world and an authoritarian regime⁹³ which systematically ignores and/or directly attacks human rights, making obscene use of technology to meet its ends⁹⁴.

In light of the previously stated, Chapter II firstly proposes an analysis on a selection of *1. internal circumstances* that menace the BE: *1.1. the rise of the far right in the EU*; *1.2. Brexit*; *1.3. Shrinking population*. The greatest emphasis, however, will be placed on the external perils coming from China, as both the jurisdiction and the Beijing Effect theory represent the most direct, serious and eminent threat to the EU and BE, thus compounding the longest sub chapter. Therefore, section 2. will be divided on a geopolitical catalog that envisions China's way of achieving its pretense goals in *2.1. The Belt and Road Initiative* and *2.2. The Digital Silk Road and the Beijing Effect*; the confrontation between the EU and the PRC becomes more evident when discussing the GDPR and its subsequent *de jure* BE in *2.3. Data: protection vs sovereignty*; *2.4. Tackling China* explores how the two jurisdictions are presently dealing with each other, focusing on the EU's proposed solutions to tackle Chinese power, while exposing the difficult political situation between western "allies", i.e., the EU and the USA, in view of their common enemy.

1. Internal Factors

1.1. The rise of the far right in the EU

As previously mentioned, the bargaining power of the EU is at its peak when countries apply for EU's membership and it diminishes tremendously immediately after a new member state is welcomed. In the present days, this is particularly patent on situations such as the one Hungary represents.

The President Viktor Orbán poses a myriad of problems to the EU in the sense that, since it has once again reached power in 2010, has growingly promoted a culture very much against the EU's values and actions, conducting a political regime which is increasingly approximating

⁹³ A remark must be made to address the question of why I am not considering assessing the USA as well. The answer to this is quite similar to the elected reasons for not conducting a more fragment assessment; on the other hand, the USA poses a significant different threat than China: while the US are menacing the EU's might in terms of hegemony same way PRC is, the latter further extends this threat to shared values by the EU and USA, such as Human Rights.

⁹⁴ *Global threat to Human Rights*, 2020. World Report 2020. Source: Human Rights Watch. Cf: <https://www.hrw.org/world-report/2020/country-chapters/global>

to a dictatorship, either by censoring the social media⁹⁵ or approving discriminatory laws⁹⁶; Orbán has also been blocking EU actions whenever he can and sees fit, thus preventing the EU to take action on certain subjects, therefore impeding the externalization of EU's influence⁹⁷. Given that the EU has not, so far, taken any action to countervail such shocking events⁹⁸, it becomes clear that the enforcement of the Union's prerogatives also relies on the good will of its MS to endorse its agenda; by deeming the EU powerless, Hungary's example severely damages EU's image and credibility, while impairing its strength⁹⁹ which can damage the BE's ability to disseminate certain imperatives, namely in connection to morality, such as HR.

This right wing nationalism is, unfortunately, a current tendency all over Europe¹⁰⁰ which may, in the future, actually influence power, as demonstrated by the recent municipal elections in Portugal that have undermined multiple municipalities with Chega's¹⁰¹ representatives¹⁰². The rise of authoritarianism and nationalism in Europe is a direct menace to the EU itself and, consequentially, the BE.

⁹⁵ idem

⁹⁶ In July 2021, a new law was enforced that, through a ban on propaganda concerning any kind of gay manifestation, does nothing else than stigmatize the LGTI+ community. See Spike, Justin, *Hungary once held LGBTQ+ promise — then Orbán stepped in*, 2021. POLITICO. Available at: <https://www.politico.eu/article/hungary-once-held-lgbtq-promise-then-viktor-orban-won/> . Date of access: 19 September.

⁹⁷ A most recent e.g. on this subject is the EU call for a ceasefire between Hamas and Israel. Although all MS agreed to the appeal for the ceasefire in order to let aid come to Gaza, Orbán repeatedly vetoed this subject, making use of the unanimity principle in the Common Foreign and Security Policy (CFSP). See Luk, John *Could Hungary break the EU? The EU is facing a democracy crisis, and there is nothing it can do about it*, 2021. In Aljazeera. Available at: [aljazeera.com/opinions/2021/7/15/could-hungary-break-the-eu](https://www.aljazeera.com/opinions/2021/7/15/could-hungary-break-the-eu) . Date of access: 19 September 2021. In this case, however, it is remarkable to notice that art.31^o(3) of the TEU, does contemplate the so called passarelle clause, which does allow, mediant some conditionings, for a qualified majority in voting in some areas of the CFSP. Irrespective of difficulty of using this clause, the question arises of whether Von der Lyen could, in the future, find a solution to prevent these situations from happening again.

⁹⁸ See supra note 73. Although art. 7^o of TEU has been triggered, so far, its practical effects are disappointing, to say the least.

⁹⁹ Unfortunately, Poland is also following a similar path to Hungary.

¹⁰⁰ See *Europe and right-wing nationalism: A country-by-country guide*. In BBC. Available at: <https://www.bbc.com/news/world-europe-36130006>

¹⁰¹ Although Chega's political program does not explicitly declare its extreme right plan, read flags appear in art. 17^o "O Chega é nacionalista" and 60^o "Coesão nacional".Cf. <https://partidochega.pt/programa-politico-chega/> . Furthermore, when analyzing Chega's members interventions, their position regarding certain subjects becomes clearer by, for e.g., denunciation a racist and xenophobic agenda. Cf. Silva, Maria Torres da, *Das palavras aos actos: o efeito Chega na expressão de ódio racial*, 2020. In Sic Notícias. Available at: <https://sicnoticias.pt/especiais/extremos/2020-10-23-Das-palavras-aos-atos-o-efeito-Chega-na-expressao-de-odio-e-violencia-racial> Date of access: 3 June 2021.

¹⁰² As for the elections results cf.: <https://www.rtp.pt/eleicoes/autarquicas-resultados/2021/partido-Q0g-eleicao-AF/990000#resultados> .

1.2. Brexit

The Brexit situation¹⁰³ is also, undoubtedly, bound to bring some losses to the EU, first and foremost by obviously significantly reducing the internal market and, therefore, theoretically and in practice¹⁰⁴, diminishing its power. On the other hand, and contrary to Bradford's beliefs that a *de jure* BE would occur regarding almost every step¹⁰⁵, the current government plans to tear down all the EU legislations which have been transposed to the United Kingdom (UK) in over 40 years of membership¹⁰⁶. This action may be linked to a desire of forming a stronger alliance with the USA¹⁰⁷, which, when compared to the EU, has more lenient standards – by, for instance, ripping off pieces of legislation in relation to GMO's, the UK would once more become an export destination for the US, thus solidifying these countries' economic relations¹⁰⁸. However, even if Prime Minister Boris Johnson does deliver what his cabinet has recently promised to do, the USA does not seem to be in a hurry to conduct business and negotiate with the UK¹⁰⁹; on the other hand, an approach to the USA's lower standards will deem the already difficult negotiations with the EU to achieve mutual recognition much more tricky. The UK is currently facing a difficult situation, resulting from the combination of Brexit and the Coronavirus pandemic, that has led to a shortage of products in the British shelves, which has recently developed into a turkey and, most importantly, a fuel crisis¹¹⁰, putting into evidence how it is not easy to Brexit. Truth is, many times the UK would *opt out* on many of

¹⁰³ BRADFORD, BRUSSELS EFFECT pp. 277-283.

¹⁰⁴ See, on this dissertation, a) Market Size, Chapter I, pp. 9-11. The UK was the second largest economy in the EU, therefore its impact in the single market is huge, proving the forecasts to be true. To evaluate Brexit economic impact on the EU see: Berthou, Antoine et. al., *Assessing the macroeconomic impact of Brexit through trade and immigration*, 2019. Documentos Ocasionales, nº 1911. Source: Banco de España. Available at: <https://www.bde.es/f/webbde/SES/Secciones/Publicaciones/PublicacionesSeriadas/DocumentosOcasionales/19/Files/do1911e.pdf>; recent evaluation of Brexit's impact on the UK see *The cost of Brexit becomes apparent. In the Economist*, 2021. Available at : <https://www.economist.com/britain/2021/03/13/the-cost-of-brex-it-becomes-apparent> Date of access: 19 August 2021.

¹⁰⁵ BRADFORD, BRUSSELS EFFECT, pp. 277-283

¹⁰⁶ See Kylie MacLellan, Kylie; Piper, Elizabeth, *UK sets out plans to replace and repeal regulations copied from EU*, 2021. In Reuters. Available at: <https://www.reuters.com/world/uk/uk-sets-out-plans-replace-repeal-regulations-copied-eu-2021-09-16/>. Date of access: 16 September 2021.

¹⁰⁷ Cf. *Joe Biden plays down chances of UK-US trade deal*, 2021. In BBC. Available at: <https://www.bbc.com/news/uk-politics-58646017> Date of access: 24 September 2021.

¹⁰⁸ Idem.

¹⁰⁹ Idem.

¹¹⁰ The freedom of movement was one of the costs of Brexit. The difficulty of entering the country accompanied by the prohibition of EU citizens to live in the UK, has led to a relocation of more than tens of thousands of lorry drivers to their hometowns, consequentially leading to a shortage in workers, therefore in goods. For more comprehensive explanation see Salfiti, Zinya, *One part Brexit and one part coronavirus have derailed Britain's transportation system—and given the government a huge headache*, 2021. In Foreign Policy. Available at: <https://foreignpolicy.com/2021/09/27/uk-fuel-crisis-cause-brex-it-covid/> Date of access: 27 September 2021.

the EU's proposals¹¹¹, therefore whether Boris Johnson will toss away EU's law or not, the BE will not be seriously harmed for it is unlikely that British companies will forgo the single market, and so the *de facto* BE will most probably continue to occur and convey the EU's stringent standards in the UK¹¹², irrespective of Boris' plan to lower British criteria.

1.3. Shrinking population

The EU's population is, according to Eurostat, to age severely and diminish in 6.9% (30,8m) from 2019 to 2100, thus bringing several internal difficulties, such as those concerned with the well fair state, additionally considering that there will be less than two people for each existing elderly by 2100¹¹³. In terms of economy, PwC has analyzed IMF's 2016 data (which naturally does not take into consideration the effects of the Coronavirus pandemic) and has predicted a grim future for western economies, with PPP adjusted GDP to drop by 9% in the EU and 12% in the US, already in 2050; these troubling forecasts become even more worrying when looking at the general picture, for it is expected the global economic power to shift from the G7 to the E7¹¹⁵, which may in 2040 have doubled the size of the G7.¹¹⁶

Bradford briefly addresses this subject¹¹⁷, and although conducting a serious analysis, the interpretation of the facts may be considered somewhat optimistic¹¹⁸, for even when observing the worst case for the EU, she declares the hypothesis of reversing the Brussels Effect as uncertain, namely in relation to China, a subject to be explored on the next section of this dissertation. However, with a significant shortage of active population, the stress on the European governments to keep up the current living standards will be incommensurably

¹¹¹ Briggs, Mark, *Europe "à la carte": the whats and whys behind Uk opt-outs*, 2015. In Euractive. Available at: <https://www.euractiv.com/section/uk-europe/linksdossier/europe-a-la-carte-the-whats-and-whys-behind-uk-opt-outs/> Date of access: 19 August 2021.

¹¹² See supra notes 104 and 107 to understand and better support the arguments conveyed hereafter. In view of the pandemic and the circumstantial constraints, along with Biden's apparent disinterest in forging trading deals with the UK, adding the uncertainty to how British people will react to lower standards, it is hard to assess how Boris Johnson will respond to his country's economic contractions. Although the Prime Minister is determined to Brexit, the people are likely to press and oppose the government in many areas, starting with the current situation on the country's borders. In addition, UK's exports to the EU have dropped by 40% between December 2020 and January 2021, thus further impacting the British GDP (a situation which has been proved difficult to leverage with non-EU states), therefore it is very plausible that UK's firms will also push the government to do something so they can more easily continue and resume their business with the EU, hence keeping the BE alive.

¹¹³ Source: Eurostat. Data extracted in 2020. Available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=People_in_the_EU_-_population_projections&oldid=497115#Population_projections

¹¹⁵ E7 – Emerging countries, i.e., China, India, Indonesia, Brazil, Russia, Mexico and Turkey.

¹¹⁶ *The world in 2050. The long view: how will the global economic order change by 2050?*, PwC, February 2017. Available at: <https://www.pwc.com/gx/en/research-insights/economy/the-world-in-2050.html>.

¹¹⁷ BRADFORD, BRUSSELS EFFECT pp. 266-270.

¹¹⁸ This statement entails my personal opinion and takes into consideration the circumstances at the time of the book's writing, which I will sustain along this Chapter.

difficult to sustain for the ratio between active adults and the elderly will establish an economic gap that will be hard to counteract: it seems obvious that the social public expenses will increase in relation to pensions or national health care systems, that cannot find an economic compensation. Aside from speculations on what course each government and/or the EU will follow, it is not difficult to imagine a scenario where the retiring age will be extended and the active population will be increasingly burdened with taxes. If this does happen and the predictions are correct, the internal market will diminish and the PPP will also decrease – it is never enough to recall the internal market as the driving force of the EU and the BE, and that the European superior PPP does captivate the richest companies in view of the domestic demand for more expensive products, therefore, a blow in its core would signify an eminent loss of international power for the EU.

2. External factors: The Peoples Republic of China

2.1. The Belt and Road Initiative

Perhaps, a more dangerous challenge to the EU's might would be China. A clearer assessment of the PRC's actions must be made, starting in 2013, when President Xi Jinping announced the colossal Belt and Road Initiative (BRI)¹²⁶. BRI is one of the most ambitious plans ever designed, which now comprises a lot of areas under this “umbrella” along with the initial infrastructural project. By reviving and stretching beyond the Asian continent the old Silk Road, China's strategy envisions a global political and economic domain through financing a series of maritime and terrestrial infrastructures in other countries – currently 138¹²⁷ - with very low interest rates¹²⁸. China's investment seems to favor developing¹²⁹ countries (including the very poor)¹³⁰ and involves such a ridiculous amount of money that the

¹²⁶ *President Xi Jinping Delivers Important Speech and Proposes to Build a Silk Road Economic Belt with Central Asian Countries*. Ministry of Foreign Affairs of People's Republic of China (September 2017). Available at: https://www.fmprc.gov.cn/mfa_eng/topics_665678/xjpfwzysiesgjtfhshzzfh_665686/t1076334.shtml . Date of access: 10 September 2021.

¹²⁷ Devonshire-Ellis, Chris, *China's Belt And Road Initiative: All Participating Countries by Income Group*, 2021. In Silk Road Briefing. Available at: <https://www.silkroadbriefing.com/news/2020/10/02/chinas-belt-and-road-initiative-all-participating-countries-by-income-group/> . Date of access: 16 September 2021.

¹²⁸ See Perryer, Sophie, *How China uses infrastructure as means of control*, 2019. In World Finance. Available at: <https://www.worldfinance.com/featured/how-china-uses-infrastructure-as-a-means-of-control> . Date of access: 10 September 2021.

¹²⁹ List of developing countries and concept. Source: UNO. Available at: https://www.un.org/en/development/desa/policy/wesp/wesp_current/2014wesp_country_classification.pdf .

¹³⁰ Idem supra note 127.

idea of a debt trap for the most vulnerable is indeed a concern¹³¹, although this has been somewhat mitigated by a recent systematic analysis on the matter¹³². Regardless, China's helping hand helps itself. China is apparently liberal and leaves freedom of choice for the hosting countries to choose who will carry out the construction, however, Chinese products are usually cheaper and have reasonable quality (tech wise, they are phenomenal) which means that the PRC has found an additional way of profiting from their investment; same rationale is behind the Chinese firms' dominance over infrastructure¹³³. Irrespective of the above, the countries who have adhered to BRI, have in fact improved their level of development and jobs have been created, yet this has contributed to the deepening of the gap between rich and poor and, more importantly, it has come with a high cost in terms of human rights¹³⁴: BRI has actually disseminated authoritarianism, considering that many of its members are perceived as highly corrupt; judicial systems have become (even more) feeble; civil rights and freedom of expression have been constricted – suffice to say, the list could go on.¹³⁵ Perhaps the cherry on top of the cake is that by making other countries dependent on both the Chinese government and firms, the PRC yields vast control over them which also explains why some regimes are becoming more authoritarian, considering that China itself is one. When allying technology to the Chinese practice, all the perils already exposed by BRI, are incommensurably magnified.

2.2. The Digital Silk Road and the Beijing Effect

The Digital Silk Road (DSR) has become part of BRI in 2015 and shares the same logic, albeit related to high tech, ranging from networks infrastructure, to AI, cloud computing, e-commerce, etc., with the difference that Chinese companies are the ones in full control of this

¹³¹Hurley, John; Morris, Scott; Portelance, Gailyn, *Examining the Debt Implications of the Belt and Road Initiative from Policy Perspective*, 2018. Center for Global Development. Available at: <https://www.cgdev.org/publication/examining-debt-implications-belt-and-road-initiative-a-policy-perspective>.

¹³² The argument is that such high investments even at low interest rates, do not permit that countries on a very dire economic and financial situation can ever effectively develop sufficiently to meet the payment deadlines. China is therefore accused of immersing these countries into a black hole of debt, hence the known term “debt trap diplomacy”. However, until recently, this idea had not been systematically empirically studied and it is now partly mitigated. See Jones, Lee; Hameiri, Shahar, *Debunking the Myth of 'Debt-trap Diplomacy' How Recipient Countries Shape China's Belt and Road Initiative*, 2020. The Royal Institute of International Affairs, 2020. Available at: <https://www.chathamhouse.org/sites/default/files/2020-08-25-debunking-myth-debt-trap-diplomacy-jones-hameiri.pdf>.

¹³³ See Chiyemura, Frangton, *Chinese firms – and African Labour – are building Africa's infrastructure*, 2021. In The Washington Post. Available at: <https://www.washingtonpost.com/politics/2021/04/02/chinese-firms-african-labor-are-building-africas-infrastructure/>. Date of access: 10 September 2021.

¹³⁴ Faiz, Abbas, *Is China's Belt and Road Initiative Undermining Human Rights?*, 2019. In The Diplomat. Available at: <https://thediplomat.com/2019/06/is-chinas-belt-and-road-initiative-undermining-human-rights/>. Date of access: 6 September 2021.

¹³⁵ Source: Amnesty International. Cf. *China 2020*, available at: <https://www.amnesty.org/en/location/asia-and-the-pacific/east-asia/china/report-china/>. Date of access: 3 September 2021.

transformation¹³⁶. So far, sixteen countries¹³⁷ are part of DGS, although it is unclear what the real number is due to the memoranda of understanding (MoU's) which are not obliged to display who is indeed cooperating with China, so it is believed that some of the members of BRI are also part of DGS.

Here, however, the PRC's danger increases exponentially. The Chinese people may well be the most surveilled country in the whole world through schemes like the social credit system¹³⁹, an (almost) only digital cash society¹⁴⁰ or even online courts to settle disputes¹⁴¹: the Chinese Communist Party (CCP) – which is basically the PRC¹⁴² – is probably the supreme champion on controlling people, emanating an unprecedented authoritarianism in History, trampling Human Rights in many ways. Concerns about China's role in exporting "(...) its model of technology-enabled authoritarianism (...)"¹⁴³ seem very real in view of the African countries that have already had access to cutting-edge surveillance technology"¹⁴⁴. Anu Bradford does use the term Beijing Effect on her BE manuscript¹⁴⁵, however, the concept has only been theorized afterwards – Bradford's expression only serves the purpose of a brief economic analysis, while Erie's and Streinz borrowed the use of the *Beijing Effect* to

¹³⁶ See *Assessing China's Digital Silk Road Initiative. A transformative approach to technology financing or a danger to freedoms?*, in Council on Foreign Relations. Available at: <https://www.cfr.org/china-digital-silk-road/>. Date of access: 10 September 2021.

¹³⁷ Triolo, Paul; Allison, Kevin et. al., *The Digital Silk Road: Expanding China's Digital Footprint*. Eurasia Group, 2020. Available at: <https://www.eurasiagroup.net/files/upload/Digital-Silk-Road-Expanding-China-Digital-Footprint.pdf>. Date of access: 29 August 2021.

¹³⁹ See Liav Orgad & Wessel Reijers, *How to Make the Perfect Citizen? Lessons from China's Model of Social Credit System*, EUROPEAN UNIVERSITY INSTITUTE WORKING PAPERS RSCAS 2020/28

¹⁴⁰ Zhong, Rui *China Can't Afford a Cashless Society*, FOREIGN POL'Y (Sept. 11, 2018) Available at: <https://foreignpolicy.com/2018/09/11/china-cant-afford-a-cashless-society/>. Date of access: 10 September 2021.

¹⁴¹ Tashea, Jason *China's All-Virtual Specialty Internet Courts Look Set to Expand into Other Areas of the Law*, ABA JOURNAL (Nov. 1, 2019), <https://www.abajournal.com/magazine/article/china-all-virtualspecialty-internet-courts>. Date of access: 11 September 2021.

¹⁴² The People's Republic of China has been founded in 1949 and, since then, the CCP has been the supreme ruler over the country. Thenceforth, the fusion between state and party has only grown. To better understand see Muscat, Sabine, *In Xi's China, the party morphs into the state*, 2018. In MERICS. Available at: <https://merics.org/en/analysis/xi-china-party-morphs-state> Date of access: 11 September 2021. The Chinese Constitution has been amended in 2018 and clearly references CCP in a very uncanny manner, thus further solidifying the merger between the state and the party. The constitutions' preamble declares "We the Chinese people of all ethnic groups will continue, under the leadership of the Communist Party of China(...)" (paragraph 7). Art 1^o, 2nd paragraph, after the 2018 amendment, that "The socialist system is the fundamental system of the People's Republic of China. Leadership by the Communist Party of China is the defining feature of socialism with Chinese characteristics. It is prohibited for any organization or individual to damage the socialist system". The People's Republic of China Constitution. Source: The State Council, The People's Republic of China. Available at:

https://english.www.gov.cn/archive/lawsregulations/201911/20/content_WS5ed8856ec6d0b3f0e9499913.html

¹⁴³ Idem supra note 40.

¹⁴⁴ *Testimony before the U.S.-China Economic and Security Review Commission Hearing on China's Strategic Aims in Africa* by Steven Feldstein, 2020, p.12. Available at: https://www.uscc.gov/sites/default/files/Feldstein_Testimony.pdf.

¹⁴⁵ See supra note 136.

encapsulate a rather complex theory¹⁴⁶ on China's DSR on data governance - when using the epithet Beijing Effect on this dissertation, it will be in relation to the theorized concept¹⁴⁷.

The Chinese Cybersecurity Law tones territoriality as the criteria for data, which means “construction, operation, maintenance, and use of networks, as well as to cybersecurity supervision and management within the mainland territory of the People's Republic of China.”¹⁴⁸, therefore mandating “(...) that the relevant physical infrastructures (e.g., data centers) [to] be geographically located in mainland China, and, ownership and control over such infrastructures [done] by Chinese entities”¹⁴⁹. Although companies who want to do business in the PRC must abide by its rules, they do not have any obligation to replicate the same conduct on other jurisdictions; however, whenever forgoing the Chinese market is not viewed as an option, complying with China's standards becomes mandatory, and so the control they have over this subject is in reality not their own, but rather the CCP's¹⁵⁰. Albeit the territorial criterion does limit the externalization of China's standards, this becomes less obvious in view of the appeal to third countries of a supposed “data sovereignty”, notwithstanding considering that “(...) digital infrastructures are increasingly supplied by Chinese technology corporations [which] poses distinct challenges due to their intricate relationship with the CCP. Consequently, it may be difficult for foreign jurisdictions, especially developing countries, to assert effective jurisdictional control over Chinese technology companies, whether state-owned or (formally) private” (Erie and Streinz, 2021:28).

Nowadays, China is one of the most relevant tech giants in the world, and it is firmly committed to be number one¹⁵¹, being the top leader in 5G technology and already preparing for 6G¹⁵². If China does continuously achieve dominance in such important technological

¹⁴⁶ A full assessment of the theory goes beyond the scope and characters' limit of this dissertation. Nevertheless, some of the aspects of the Beijing Effect must and will be exposed, although not extensively.

¹⁴⁷ Erie, Matthew S.; Streinz, Thomas, *The Beijing Effect: China's "Digital Silk Road" as a transnational data governance*, 2021. New York University Journal of International Law and Politics. [Hereinafter ERIE&STREINZ, BEIJING EFFECT].

¹⁴⁸ Cybersecurity Law, art. 2º. Cf: <https://www.chinafile.com/ngo/laws-regulations/cybersecurity-law-of-peoples-republic-of-china>.

¹⁴⁹ ERIE&STREINZ, BEIJING EFFECT, p. 20.

¹⁵⁰ In this sense, Apple's example is paradigmatic. To better understand see Nicas, Jack; Zhong, Raymond; Wakabayashi, Daisuke, *Censoship, Surveillance and Profits: a hard bargain for Apple in China*, 2021. In the New York Times. Available at: <https://www.nytimes.com/2021/05/17/technology/apple-china-censorship-data.html> Date of access: 11 September.

¹⁵¹ See *China ramps up tech commitment in 5-year plan, eyes 7% boost in R&D spend*. In Reuters. Available at: <https://www.reuters.com/article/us-china-parliament-technology-idUSKBN2AX055> Date of access: 7 September 2021.

¹⁵² See *Esqueça o 5G. Os Estados Unidos e a China já estão a lutar pelo domínio do 6G*. In Jornal de Negócios. Available at: <https://www.jornaldenegocios.pt/empresas/telecomunicacoes/detalhe/esqueca-o-5g-os-eua-e-a-china-ja-estao-a-lutar-pelo-dominio-do-6g> Date of access: 7 September 2021.

domains, therefore becoming the chief exporter, it will be hard to prevent the standards embedded in those products to be sent abroad as well.

Alongside this, Chinese on-line platforms are also a vehicle of standards. Albeit theoretically obeying to both national and international laws, when a legal vacuum is present, their obedience is less clear¹⁵³. Furthermore, Xi's intentions to control technology are only expanding, as he is ferociously attacking its own tech giants (and foreign investment) by enacting regulatory actions against them, aiming at taming them according to China's vision and exert even greater control over its people and, most likely, exporting its standards¹⁵⁴. "To summarize, China has growing influence in infrastructural data governance because Chinese technology companies increasingly supply the relevant physical components of digital infrastructures, set the relevant standards (both domestically and internationally), and operate and control digital platform infrastructures outside China." (Erie and Streinz, 2021:29-30).

According to Ann Kent, China's participation in international institutions has consistently been growing¹⁵⁵, Erie and Streinz sustain that the PRC is also increasingly engaging in global data governance institutions¹⁵⁶ and it can be added that the Chinese expansion is being carried out beyond Western Institutions¹⁵⁷; on top of this, International Institutions may, at times, contribute to the PRC increasing influence, as exemplified by the WTO's and World Economic Forum (WEF) support given to a certain Chinese economic world trade platform (eWTP)¹⁵⁸¹⁵⁹. All of the above illustrate and point out to China's foreign policy actively trying to convey its standards by making use of the existing international institutions and succeeding at it.

Erie and Streinz fatally conclude that the Beijing Effect is likely to grow and developing countries "(...) cannot escape the Beijing Effect nor achieve data sovereignty without foregoing the potential of digital development, [however] they might be able to hedge, that is,

¹⁵³ Tiktok was forced to be sold to the American Company Oracle for this reason and because of a fear that the app was being instrumentalized by China to surveil users. See Davidson, Helen, *Why it is being sold and who will own it*, 2020. In The Guardian. Available at: <https://www.theguardian.com/technology/2020/sep/22/tiktok-sale-the-reasons-behind-it-and-the-new-deal> Date of access: 7 September 2021.

¹⁵⁴ *Xi Jinping's assault on tech will change China's trajectory. It is likely to prove self defeating*, 2021 In The Economist. Available at: [economist.com/leaders/2021/08/14/xi-jinpings-assault-on-tech-will-change-chinas-trajectory](https://www.economist.com/leaders/2021/08/14/xi-jinpings-assault-on-tech-will-change-chinas-trajectory) . Date of Access: 7 September 2021.

¹⁵⁵ See Kent, Ann. *China's Participation in international organizations*. Chapter 6, pp. 132-166 Zhang, Yonjing; Austin, Greg, *Power and Responsibility in Chinese Foreign Policy*, 2013. Anu Press. Available at: <https://www.jstor.org/stable/j.ctt5vj73b> .

¹⁵⁶ ERIE&STREINZ, BEIJING EFFECT, p.22-26.

¹⁵⁷ Seibert, Eva (2020) China is expanding beyond Western Institutions. In The Diplomat. Available at: <https://thediplomat.com/2020/03/how-china-is-expanding-beyond-western-institutions/> Date of access: 7 September 2021.

¹⁵⁸ ERIE&STREINZ, BEIJING EFFECT, p. 36.

¹⁵⁹ It is also relevant to mention that this eWTP was conceived by both the Hangzhou region and Alibaba, thus showing that Chinese firms are also engaged on these matters.

to triangulate their relationship to the digital superpowers [USA, EU, PRC]” (Erie and Streinz, 2021:58).

2.3. Data: Protection vs Sovereignty

In view of the previously stated, it seems that the BE might be rather constrained in this domain and in relation to the developing countries¹⁶⁰ hence, in an ever-growing technological Era, where the analog and the digital world increasingly blend, the Beijing Effect is the greatest threat to the Brussels Effect and the values conveyed in it, namely in terms of human rights.

Let the GDPR be considered, in the sense that it has been emulated in China’s Personal Information Protection Law (PIPL), therefore configuring a *de jure* BE, where power still emanates from Brussels. Even though PIPL has an extraterritorial dimension, for it envisions data transference and, consequently, expansion of its standards, in view of the Standing Committee of the National People’s Congress position regarding transference of Personal information that demands for data transfer to only be possible to other jurisdictions with standards as strict as PIPL, adding the notion of data sovereignty that China is trying to convey, one might wonder if the BE will die, at least regarding data protection. It must be recalled that the BE is an independent theory, therefore also applicable to an eventual power shift to China’s rule. However, by closing the frontiers of data, each country seeking data sovereignty (although, as explained, this might be illusional due to the Beijing Effect pervasive notion), international mistrust will rise and cooperation, in today’s sense, no longer possible, thus, “(...) business will wither, and we will be looking at a real future of data localization and business segmentation around the globe”, where one can only have influence within its own borders¹⁶¹. Nevertheless, it is valuable to applaud the generalized commitment to defend the right to privacy, as the GDPR has also been emulated in a non-pervasive manner by other nations, such

¹⁶⁰ Naturally, this dependence is deeply connected to a country’s level of development. In other words, the lower the country’s development and economy, the greater the exposure to the Beijing Effect and vice-versa. In addition, some other factors might mitigate the Beijing Effect. For instance, Montenegro, a candidate to the EU’s membership, with an estimated GDP of 0,01% of world’s economy, has also engaged in China’s BRI to build its first highway reportedly, falling into a debt trap. However, Montenegro is much more likely to gravitate around the EU (or Russia), despite its somewhat alarming connection to the PRC. To validate Montenegro’s BRI alliance see Brelie, Hans von de, *The billion-dollar motorway leading Montenegro to nowhere*, 2021. In Euronews. Available at: <https://www.euronews.com/2021/05/07/the-billion-dollar-motorway-leading-montenegro-to-nowhere> Date of access: 7 September 2021; EU’s membership application and Russia’s influence, see Crawford, Orlando, *Montenegro wants to join the EU - but will Brussels have it?*, 2021. In euronews. Available at: <https://www.euronews.com/2021/02/01/montenegro-wants-to-join-the-eu-but-will-brussels-have-it>. Date of access: 7 September 2021; Montenegro’s GDP source: Trading Economics. Available at: <https://tradingeconomics.com/montenegro/gdp>.

¹⁶¹ Hu, Yimin “Ben” (2021) China’s Personal Information Protection Law and Its Global Impact . In The Diplomat. Available at: <https://thediplomat.com/2021/08/chinas-personal-information-protection-law-and-its-global-impact/> Date of access: 31 August 2021.

as Brazil, under the Brazilian General Data Protection Law, or, in the USA, through The California Consumer Privacy Act of 2018 (CCPA)¹⁶². These two examples enshrine the new age the GDPR has started in relation to consumer and data protection, as exemplified by the concept of informed consent into the legal system, aligning it as one of the foundations for the legitimacy of the processing of personal data, pursuant to art.4°, (11); the right to be forgotten, art. 17°; or the data protection by design or by default present in art.25°. However noble the EU's purpose to defend the human right to privacy in this new technological reality, the territoriality of human and fundamental rights' violations in the digital sphere is a significant problem, given that Law is syndicated in territoriality, i.e., its main field of action is the physical and visible frontiers; cyberspace, on the other hand, does not know any limits or delimited borders¹⁶³, therefore its regulation and implementation is difficult and allows for an exponential potential of violations that affect the good name, image, privacy, social identity of people and exposure of sensitive personal data.

As if legislating and enforcing technological related rights was not sufficiently complicated, although necessary, in view of the attractive power from China's PIPL territorial criterion, which must be recalled, has been based on the GDPR, one may conjure it to in fact serve as an excuse for digital sovereignty¹⁶⁴. This being the case, the BE is constricted, for it cannot exactly be said that jurisdictions have emulated the GDPR, but rather seized the opportunity to legitimize their own agenda in a disguised manner.

2.4. Tackling China

The European Union has identified both China and the USA as the “great power threat to European economic sovereignty”¹⁶⁵ and although both the EU and the US see the PRC as common adversary, it has been impossible for the two western powers to form an united front¹⁶⁶. As a result of this state of affairs, Ursula Von der Lyen (EC president) has announced

¹⁶² Source: California Legislative Information. Cf. https://leginfo.ca.gov/faces/codes_displayText.xhtml?division=3.&part=4.&lawCode=CIV&title=1.8.1.5.

¹⁶³ “The law needs the 'where'. [...] Legal language is filled with spatial elements: house, residence, domicile of legal entities; land and other immovable property boundaries; contiguity or proximity of land; places of conclusion of agreements, performance of duties, exercise of rights. This notion configures the birth and development of law, a terrestrial connection, an original need for places.”. Natalino, Norma e Luoghi, *Problemi di Geo-Diritto*, 2006, Laterza. ISBN 9788842074748, p. 3. Translated by the author of this dissertation.

¹⁶⁴ Idem

¹⁶⁵ See supra note 92, p.3.

¹⁶⁶ Tengjun, Zhang (2021) Impossible for the US to build an anti-China alliance with EU. In Global Times. Available at: <https://www.globaltimes.cn/page/202107/1227996.shtml> Date of access: 7 September 2021.

the Global Gateway (GG)¹⁶⁷, a European strategy explicitly aiming at directly compete with the Chinese BRI¹⁶⁸, and even though the details are not yet public, it is certain that the EU will conduct a “values-based approach”¹⁶⁹, much contrary to BRI which has, in fact, contributed to the opposite¹⁷⁰. Nevertheless, it is very early to draw any conclusions on GG’s success, and analysts fear that the EU’s method might actually inhibit adherence to the Global Gateway¹⁷¹.

A few months ago, the G7¹⁷² have combined forces to countervail China’s “New Silk Road” influence in the lower income countries, forging the “Build Back Better World” (B3W) during this year’s summer¹⁷³. Despite three of the G7 countries being EU member states (Germany, Italy and France) and in face of the EU and USA difficulty in finding common ground, even if MS (and the rest of B3W) do succeed in counterbalancing BRI, this does not mean that the premises or route established are in accordance with the EU. On the flip side, there are “insiders” in the B3W, on the other hand, this is exactly the kind of policy that hinders the BE – by conceding into the US forged strategy, the MS are giving in to the EU rival and allowing it to exert influence over them¹⁷⁴. Moreover, it remains to be seen whether B3W is to be

¹⁶⁷ Barton, Benjamin, *Global Gateway: the EU alternative to China’s BRI*, 2021. Interview by Merci A. Kuo, in *The Diplomat*, 28 June. Available at: <https://thediplomat.com/2021/09/global-gateway-the-eu-alternative-to-chinas-bri/> Date of access: 28 September 2021.

¹⁶⁸ Lau, Stuart; Cokelaere, Hanne, *EU launches “Global Gateway” to counter China’s Belt and Road*, 2021. In *Politico*. Available at: <https://www.politico.eu/article/eu-launches-global-gateway-to-counter-chinas-belt-and-road/> Date of access: 15 September 2021

¹⁶⁹ Idem supra note 167.

¹⁷⁰ Faiz, Abbas, *Is China’s Belt and Road Initiative undermining Human Rights?*, 2019. In *The Diplomat*. Available at <https://thediplomat.com/2019/06/is-chinas-belt-and-road-initiative-undermining-human-rights/> Date of access: 11 September 2021.

¹⁷¹ Supra note 167. “It will be intriguing to see if Brussels is able to reconcile its inclination for “transparency” with its ability to help meet the demand for infrastructure financing and construction amongst its desired partners. After all, the BRI was met with support by leaders in the Global South precisely because of the alignment, amongst others, of local political interests with those of the Chinese SOEs and policy banks seeking projects. The EU’s wish to “take a values-based approach, offering transparency and good governance to our partners” might sound like music to ears of many in Brussels but [the unpopularity of] this top-down attitude is partly one of the reasons why the BRI has been able to make such headway in the Global South.”(Barton, 2021).

¹⁷² Here, G7 has the meaning of the Aljazeera article, see infra note 148.

¹⁷³ *G7 leaders attempt to rival China with infrastructure project*. Source: Al Jazeera and News Agencies. Available at: <https://www.aljazeera.com/news/2021/6/12/g7-leaders-attempt-to-rival-china-with-infrastructure-project> Date of access: 11 September 2021.

¹⁷⁴ Obviously, it would be strange for the EU to have any saying in this particular case because the B3W is a military alliance, although for the first time in EU’s History, there is a budget with military components for the European Military Fund (EDF). However, in view of EU/US predicament on joining forces, this episode is quite telling of how MS sometimes do align with forces opposing the EU. Furthermore, this situation exposes a fragility of the EU, i.e., its might rests on soft power only (despite its recent investitures in military elements), thus in today’s apparent resurgence of a New Cold War, the US’ hard power gains renewed importance and the Biden administration is being pushed to usher Europe to also engage in it. The question remains whether the EU will further develop a military ambition, namely through the formation of an European Army. For EU military power see Campbell, Zach, *Hard Power: Europe’s military drift causes alarm*, 2021. In *The Guardian*. Available <https://www.theguardian.com/world/2021/may/19/hard-power-europes-military-drift-causes-alarm> . Date of access 15 August 2021; on the US urge to push EU hard power see: Herszhehorn, David M., *Biden urged to push EU to be a military power*, 2021. In *POLITICO*. Available at: <https://www.politico.eu/article/report-joe-biden-should-push-eu-to-become-a-global-military-power-nato-defense/> Date of access: 15 August 2021.

successful in view of recent events bound to stress the relationship between France and the United States. AUKUS (Australia, United Kingdom and United States) is a security pact launched by the three mentioned countries, focused on military capability in the Indo-Pacific region, seeking to level the tensions raised by China's moves in some regions, namely the South China Sea¹⁷⁵ - this would not have been a problem if the US had not back stabbed France by giving the previously accorded deal between the two countries to build 12 submarines to Australia instead¹⁷⁶.

It must also be pointed out that the RPC is increasingly enlarging its military power, reportedly surpassing the USA spending¹⁷⁷, and has taken advantage of the pandemic to engage in a steel industry buying spree that is rapidly consolidating China as the dominant player¹⁷⁸ in an industry that is vital for both defense and technology companies, thus raising concerns on an EU and US dependence.

Since Trump that the US seem determined go head on with China's growing power and influence in all domains, a policy now continued by the current Biden administration. The EU, however, is not pleased, nor the Europeans¹⁷⁹, with the hypothesis of choosing between the two potencies involved in this "Cold War 1.0", i.e., US and China, and is trying to strike a Balancing Act¹⁸⁰, not willing to give up on its cherished accomplished soft power sovereignty, although this is proving an increasingly difficult task.

EU is sending mixed signals: Comprehensive Agreement on Investments (CAI) has been announced last year between the PRC and EU, permitting "(...) the access of EU operators to

¹⁷⁵ AUKUS: UK, US and Australian launch pact to counter China. In BBC. Available at: <https://www.bbc.com/news/world-58564837>. Date of access: 16 September 2021.

¹⁷⁶ Cohen, Roger, *In submarine deal with Australia, U.S. counters China but enrages France*, 2021. In New York Times. Available at: <https://www.nytimes.com/2021/09/16/world/europe/france-australia-uk-us-submarines.html> Date of access: 16 September 2021.

¹⁷⁷ *Nominal spending features understate China's military might*, 2021. In The Economist. Source: IMF; SIPRI; Peter Robertson; *The Economist*. Available at: <https://www.economist.com/graphic-detail/2021/05/01/nominal-spending-figures-understate-chinas-military-might> Date of access: 12 August 2021.

¹⁷⁸ Braw Elizabeth, *Don't let China steal your steel industry*, 2020. In Foreign Policy. Available at: <https://foreignpolicy.com/2020/05/19/dont-let-china-steal-your-steel-industry/> Date of access: 17 August 2021.

¹⁷⁹ The European Council of Foreign Affairs (ECFR) has conducted a poll in May and June this year, involving 12 MS, concluding that although Europeans believe the Cold War is back (hegemony being disputed once again by the US and China – instead of Russia), they do not think their own country is involved. In view of the recent developments and the date in which this poll has been conducted, the present assessment by the Europeans might have changed. However, it is still a relevant study. Krastev, Ivan-, Leonard, Mark, *What Europeans think about US-CHINA Cold War*, 2021. In ECFR. Available at: <https://ecfr.eu/publication/what-europeans-think-about-the-us-china-cold-war/> Date of access: 22 September 2021.

¹⁸⁰ Lawrence, Norman; Hinshaw, Drew, *Europe's Balancing Act between the U.S. and China is buffeted from both sides*, 2021. In The Wall Street Journal. Available at: <https://www.wsj.com/articles/europes-balancing-act-between-the-u-s-and-china-is-buffed-from-both-sides-11632397575>. 23 September 2021.

the Chinese market and the improvement of a level playing field(...)”¹⁸¹, potentially stressing the relationship with the US, very much committed to cut its Chinese ties¹⁸²; some have declared it to be a Chinese victory¹⁸³, which indeed might be the case considering its growing influence. Meanwhile, China continues its rampant campaign in all directions. Early this year, nearly after CAI, the CCP has issued a five-year plan for the establishment of “a socialist rule of law with Chinese characteristics”¹⁸⁴, which is nothing less than a direct confrontation to both the American Anti-Trust Law, but especially to the European champion Competition Law - a phenomenal BE enabler¹⁸⁵-, and although it is yet to be proven how effective it is, Samsung has already profited from it¹⁸⁶, thus constraining the BE.

The EU’s might rests upon soft power, however, it seems as though blows are coming from all sides. The GG success will be paramount to establish whether the EU can a) countervail BRI and therefore, b) remain an independent power, i.e, not have to choose between aligning with China or America (although this might mean joining forces to defeat China) and, consequently c) being able to continue to exert regulatory power unilaterally, thus enabling the Brussels Effect survival.

The BE, in order to continue to play its preponderant role as enabler of the EU’s model in general but especially in what might be called “the vanguard of digital rights”, needs to find an immediate and renewed source of steam. In other words, to maintain its influence through soft power - as it has been doing so far-, and in face of the threats outlined above, a new strategy urges to be devised, most probably, beyond the GG. This strategy, may involve the creation, in the medium-long term, of a EU hard power that can implement the policies advocating for human rights – i.e., EU hard power is to defend EU soft power and, consequently, the BE. The reason behind this is placed on a hard power designed in a non-war formal combat, based on Swiss’ paradigm, in order to achieve a deterrent effect and convey the image of a strong(er) EU that takes its role as the HR stronghold ever more seriously. Although the EU army has for

¹⁸¹ Sanchés, Ignacio Escondrilhas, *The EU-China Comprehensive Agreement on Investments (CAI): a piece of the puzzle*, 2021. In Global Risk Insights. Available at: <https://globalriskinsights.com/2021/09/the-eu-china-comprehensive-agreement-on-investments-cai-a-piece-of-the-puzzle/> Date of access: 8 September 2021.

¹⁸² Idem

¹⁸³ Idem

¹⁸⁴ *China is becoming more assertive in International Legal Disputes*, 2021. In The Economist. Available at: <https://www.economist.com/china/2021/09/16/china-is-becoming-more-assertive-in-international-legal-disputes>. Date of access: 16 September 2021.

¹⁸⁵¹⁸⁵ BRADFORD, BRUSSELS EFFECT, pp. 100-128.

¹⁸⁶ idem

long been a matter of discussion¹⁸⁷, this idea may degenerate into effective war, a price the Europeans might not be willing to pay¹⁸⁸.

Chapter II has established difficulties that are bound to bring significant present and future challenges. Although the domestic troubles should not be dismissed nor diminished in importance, it becomes evident that the greatest and eminent threat is actually represented by the Chinese jurisdiction, as it has already undermined half of the globe with its strategy, increasingly impudently and unashamedly attacking the foundation of the world's order: human rights. This growing unapologetic path has been fueled by its economic growth, yet it has exponentially been boosted by China's technological development.

The upcoming technological Era is bound to irreversibly change the way humans live which is itself a byzantine task to be tackled; when adding up upfront pervasive, unremorseful use of technology actively being disseminated, the mission ahead becomes even more herculean. Luckily, however, in this sense as well, the EU has been the first and most successful in legally addressing the arising issue of the technological societal transition, envisioning compliance with human rights, the most prominent e.g. being the GDPR. Despite this, and the pending EU legislation regarding A.I., one of the most disruptive technologies ever created, the Union can (only) congratulate itself in relation to its vanguardist approach towards technology, for the European Union is not a technological titan, as opposed to China, who therefore, and hopefully not forever, indeed holds the power to deal the cards tech wise.

¹⁸⁷ Thebault, Reis; Ariès, Quentin, *Does the European Union need its own army? Afghanistan withdrawal revives an old debate*, 2021. In The Washington Post. Available at: https://www.washingtonpost.com/world/europe/afghanistan-eu-army/2021/09/03/ee0f4eea-0c24-11ec-a7c8-61bb7b3bf628_story.html . Date of access: 4 September 2021.

¹⁸⁸ Kuper, Simon, *Europe won't become a military power. What's more, it shouldn't*, 2021. In Financial Times. Available at: <https://www.ft.com/content/23b475f4-68eb-4f8e-9403-e7883deef510> . Date of access: 30 September 2021.

Chapter III

Human Rights in the 4th industrial Revolution

“Everywhere we remain unfree and chained to technology, whether we passionately affirm or deny it. But we are delivered over to it in the worst possible way when we regard it as something neutral; for this conception of it, to which today we particularly like to do homage, makes us utterly blind to the essence of technology.” (Heidegger, 1977:4)

As the last sentences of the previous chapter have briefly indicated, the EU is indeed the vanguardist in relation to regulating technology, even though it is not a technological potency, at least when compared to the USA and, most importantly, to China.

One of the current issues on the EU’s agenda is everything concerning technology²²⁸, as a series of legal documents keep on shaping not only its internal market, but also those abroad who want to engage in it, in a typical BE. The 2018 GDPR is the EU’s most known piece of legislation, but it is far from being the only one, taking into consideration others such as the Digital Services Act, the Digital Markets Act, along with the EU’s Cybersecurity Strategy, the Digital Decade and the European data strategy. The previous lines denote an impressive and determined ambition towards the future, which has been more recently consecrated by the EU’s next big regulation, i.e., the proposal of the A.I. Act, still to be ratified²²⁹.

In light of the above, why has the EU not only boldly taken the first steps in tech regulation, but it also seems to be the only jurisdiction continuing on pushing forward and expanding this growing legal field despite not being a technological potency? The answer to the formulated question is plainer than one might think.

The EU is firmly aware of the highly disruptive effect technology will have on society, which will most probably create something beyond everything that has been imagined in the most cunning science fiction books and/or movies. Bearing this in mind and recalling EU’s commitment to defend human rights - that are already being eroded due to this new pending reality- it seems only natural for the Union to take this matter into its own hands, making use

²²⁸ For more information see <https://www.economist.com/business/2020/02/20/the-eu-wants-to-set-the-rules-for-the-world-of-technology>. Date of Access 1 June.

²²⁹ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN HARMONISED RULES ON ARTIFICIAL INTELLIGENCE (ARTIFICIAL INTELLIGENCE ACT) AND AMENDING CERTAIN UNION LEGISLATIVE ACTS. COM/2021/206 final

of its current unilateral regulatory power that is further enhanced by the BE; at the same time, this ability of the EU to carry on riding the crest of the wave also enables it to project its unilateral might into the future. Consequently, the EU is not only effectively trying to take care of humanity, but also undeniably stretching its power beyond the present while creating a new realm where it faces fewer geopolitical menaces and, perhaps, buying some time to catch up with the technological titans, although EU commissioner Mariya Gabriel has clearly stated the obvious: that ship has sailed²³⁰.

The final Chapter of this dissertation aims at shedding some light into the challenges society and human rights face in view of the 4th Industrial Revolution. In this sense, *1. The Robot exercise* serves the purpose of putting into evidence the pertinence of the upcoming A.I. Regulation, while *2. Human Rights and technology: general assessment* discusses the problems the analog and the digital realm pose in relation to human rights, as the difference between the two is fading. The final part of this chapter suggests a conceptual approach to tackle the present and future disruptive circumstances, distilled from the EU technological regulatory conduct.

1. The Robot exercise

The aim of the following lines is to convey a practical exercise on how technology can disrupt society, while fostering a reflection on ethical issues which are bound to have implications in human rights, in light of the upcoming EU A.I. Regulation.

The world currently places the human being, the most complex being in face of the earth, at the centre, consequently morals and ethics are in this sense observed; moreover, the gregarious nature of human beings, a fact rather bluntly observed at least since Plato, seems to be defied in view of the relations established with technology²³¹. Considering this, the guidelines which measure society's current way of living will most probably not suffice with the surgency of robots that blur the boundaries between humans and non-humans and that will

²³⁰Haeck, Pieter, *Europe needs to stop fixating on Silicon Valley, says EU commissioner*, 2021. In POLITICO. Available at: <https://www.politico.eu/article/eu-silicon-valley-mariya-gabriel-european-commission/> . Date of access: 1 September 2021.

²³¹ See Abu-Naser, Samy S., *Effects of Mobile Technology on Human Relations*, 2017. In International Journal of Engineering and Information Systems (IJEAIS) ISSN: 2000-000X Vol. 1, Issue 5, Pages: 110-125 . Available at: https://www.researchgate.net/publication/319212701_Effects_of_Mobile_Technology_on_Human_Relationships

transfigure the way in which society operates and social interactions are perceived/performed²³².

The word Robot comes from a Czech's word "work", yet this machine represents way more than this, for "the generally accepted idea of a robot depends critically on the notion that it exhibits some degree of autonomy, or can 'think' for itself, making its own decisions to act upon the environment" (Becky, 2002:18). This notion does not pose a concern if we consider a deterministic robot²³³; however, AI changes the whole configuration of these machines into cognitive robots²³⁴, for through algorithms they become able to learn and reprogram themselves, something desirable as it means a personalized and consequently more effective action while, on the other hand, having the negative effect of unpredictable behaviour²³⁵. Although this is true, the advantages might be bigger than the downsides, and of course, the autonomy of a machine should (and must) be wisely determined. Moreover, the existing field of robot ethics²³⁶ must be, at some point, formally addressed and a work towards universal conduct should be conveyed, despite the already existing recommendations that have been drafted on an institutionalized and organizational level²³⁷ - the EU, once again, is on the

²³² This notion is not to be judged either good or bad, it merely stresses a fact rather frequently observed throughout History, for e.g., the pill altered the way in which we conceive sexuality and reproduction.

²³³ A Robot that is programmed solely to perform specific tasks, rendering the outcome as predictable. "Cybernetics captures determinism in the definition of a Determinate Machine (DM) as a series of closed, single valued transformations (for example describing a Finite State Automaton (FSA))" (Farnsworth, 2017:3).

²³⁴ "Cognitive Robotics is an emerging field of robotics, which will continue to evolve for the years to come. The field of cognitive robotics generally comprises the design and use of robots with human-like intelligence in perception, motor control and high-level cognition. To realize cognitive robots many overlapping disciplines are needed, e. g. robotics, artificial intelligence, cognitive science, neuroscience, biology, philosophy, psychology, and cybernetics. Thus attempting to tightly define the subject is not constructive as often its nature is amorphous, growing and a strict definition could exclude future relevant work". Source: Springer. Available at: https://link.springer.com/referenceworkentry/10.1007%2F978-0-387-30440-3_74#howtocite . Date of access 16 Jul 2021.

²³⁵ This issue raises the side question of traceability, in relation to legal responsibility and the ability to track down the exact moment the algorithms changed, thus facilitating the correction. In this sense, it is defended that "The general requirements of the application are dictated by the end-user and are enhanced with regulatory requirements, standards and other inputs such as societal requirements or ethical considerations. From those requirements, a robot application is developed which is then verified and validated (V&V) by the end-user as well as potential regulatory bodies (e.g., in safety certification). In general, such a process should be accompanied by measures to track each step of the process to ensure compliance, traceability, and accountability" (Breiling et.al., 2021:94)

²³⁶ The field of robot ethics concerns the conceptualization of guides of moral conduct in the manufacturing of the robot, i.e., "*is not the robot and its artificial ethics, but the human ethics of the robots' designers, manufacturers, and users*" (Veruggio, Operto, 2008:1501).

²³⁷ It is justifiable why the situation is as such. According to the Report of COMEST on Robots Ethics from 2017, "there are no specific ethical guidelines as to how such projects, especially those that have direct or indirect bearing on human beings, should proceed. One should also bear in mind that the robotics industry is becoming a highly lucrative business, and that experience has shown that codes of conduct and ethical guidelines are often seen as impediments to research and development" (p.64). Nevertheless, some ethical initiatives do exist, such as the "Robots and robotic devices: Guide to the ethical design and application of robots and robotic systems", issued in 2016 by the British Standards Institution.

forefront, with its proposed regulation on AI. Another branch which is still in its infancy is “machine ethics”, regarding implementation (or teaching) a robot to be moral. Here, even technologically speaking, there are several issues only possible to be dwelt with in the future²³⁹.

In order to achieve its full potential, robots are equipped with sensors and actuators, enabling big data processing, which poses several questions, namely in relation to human dignity, privacy and security. With the upcoming and ever increasing Internet of Things (IOT), all these issues and many others gain massive proportions, for instance, regarding the usage of robots in healthcare, and worries grow even bigger when dealing with social fragile groups, such as the elderly²⁴⁰ - in Europe there are already some measures coming into place to address IOT challenges, such as the Cybersecurity Act and The European Union Agency for Cybersecurity (ENISA)²⁴¹.

Robots, such as PARO²⁴², an apparent benign technology, are already “living” among us. In Japan and Denmark, this companion robot has been sold for years and, most recently, nursing homes in the US are also purchasing this friendly robotic seal²⁴³. Robots like PARO are meant to interact with humans, to bring psychological comfort and enhance emotional sensitivity, a capability only widely attributed to animals, such as human beings or pets²⁴⁴. Is it ethical to deceive an already fragile group, such as the elderly, with artificial one-sided relationships? Studies show that humans are indeed able to create empathy with robots²⁴⁵; it must be evaluated whether it is more ethical to leave people abandoned and alone, either at

²³⁹ As robots become more developed and ethically oriented, the issue arises regarding not only robotic duties but also rights; on the other hand, how are we to instil a sense of ethics and morals into a machine, given the fact that we humans cannot establish a fully closed definition to ourselves? See Gunkel, David, 2020: *The year of Robot Rights*, 2020. In The MIT Press Reader. Available at: <https://thereader.mitpress.mit.edu/2020-the-year-of-robot-rights/> Date of access: 16 July 2021.

²⁴⁰ As an example of this statement, it is interesting to read “A Study on the Deployment of a Service Robot in an Elderly Care Center”, involving two Portuguese engineers, which has rendered rather positive results and, despite minor complaints, some people actually wanted more interaction with the robot. It must be mentioned that those who did not want to participate in the experiment were fully respected.

Portugal, David et. al., *A Study on the Deployment of a Service Robot in an Elderly Care Center*, 2019. International Journal of Social Robotics, Volume 11, pp. 317–341. Available at: http://ingeniarius.pt/davidbsp/publications/Journal_2019_PACSD_SORO2019.pdf.

²⁴¹ Regulation (EU) 2019/881 of the European Parliament and of the Council of 17 April 2019 on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification and repealing Regulation (EU) No 526/2013 (Cybersecurity Act) (Text with EEA relevance). Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32019R0881>

²⁴² Source: Paro Robots website. Cf: <http://www.parorobots.com/>

²⁴³ Naveed, Saleh, *PARO is the therapeutic robot seal*, 2020. Source: Verywell health. Available at: <https://www.verywellhealth.com/paro-the-therapeutic-robot-seal-1123855>. Date of access: 16 July.

²⁴⁴ This falls into the category of *machine medical ethics*. See Genderen, Robert van den Hoven van, *Machine Medical Ethics and Robot Law: Legal necessity or Science Fiction?*, 2015. Available at: https://www.researchgate.net/publication/283488770_Machine_Medical_Ethics_and_Robot_Law_Legal_Necessity_or_Science_Fiction.

²⁴⁵ Glausiusz, Josie, *Empathy for inanimate objects*, 2015. In American Scholar. Available at: <https://theamericanscholar.org/empathy-for-inanimate-objects/> Date of access: 16 July 2021.

home or nursing homes²⁴⁶, or to give them some kind of comfort: despite its artificial inherency, a robot is probably better than nothing²⁴⁷.

All of the above might be true and supported with science, but not all robots are as nice as PARO - what is more, some people don't intend them to be so. When taking into account Asimov's Laws²⁵¹, there's a tendency to contemplate them as the paradigm that should guide A.I. However, if considering, for instance, the 1st law "A robot may not injure a human being or, through inaction, allow a human being to come to harm", it becomes clear its intrinsic difficulty of appliance, further illustrating the perils of such technology - Robin Murphy and David Woods²⁵² argue in this vein, rightfully observing it as an obsolete conception, in view of the usage of roboticized weapons which are meant to attack humans and in relation to the fact that "such weaponization is no longer limited to situations in which humans remain in the loop for control.(...) Scenarios have been proposed where it would be permissible for a military robot to fire upon anything moving without direct human permission"²⁵³. Even if an AI robot is carefully programmed, Elon Musk, in a 2014 interview to CNBC, pointed out the likelihood of a movie like "Terminator" scenario²⁵⁴ and, most recently, Mo Gadwat, the famous

²⁴⁶ This is a pressing reality. Either family 1) does not have the time to visit or 2) caregivers (regardless of their status) suffer from burnout, leading to mood swings that prompt inadequate responses 3) and/or the lack of personnel confines people, more often than not, to nursing homes, in a room full of people where a tv serves as friend. According to the America Psychological Association (APA), "caregiver neglect can range from caregiving strategies that withhold appropriate attention from the individual to intentionally failing to meet the physical, social or emotional needs of the older person". Source: APA. Available at: <https://www.apa.org/pi/aging/resources/guides/elder-abuse> .16 July 2021.

²⁴⁷ In another study, "results indicate that robot interactions have potential effects on agitation, anxiety and loneliness, medication consumption as well as the quality of life for older adults. But the potential for social robots to improve cognition, depression, and apathy needs further investigation" (p.49) Pu, Lihui et.al., *The Effectiveness of Social Robots for Older Adults: A Systematic Review and Meta-Analysis of Randomized Controlled Studies*, 2019. In *The Gerontologist*, Vol.59, n°1. Available at: <https://academic.oup.com/gerontologist/article/59/1/e37/5036100> .

²⁵¹ Asimov's Laws were enacted as part of his fictional book, *I Robot*, in the short story *Runaway*. There's an on-line version, although not an e-book, available at: http://ekladata.com/-Byix64G_NtE0xI4A6PA1--o1Hc/Asimov-Isaac-I-Robot.pdf .

²⁵² Murphy, Robin R.; Woods, David D., *Beyond Asimov: The Three Laws of Responsible Robotics*. In *Intelligent Systems*, 2009. IEEE. Available at: https://www.researchgate.net/publication/224567023_Beyond_Asimov_The_Three_Laws_of_Responsible_Robotics Date of access 16 July 2021.

²⁵³ Idem, p. 15.

²⁵⁴ Musk, also in this interview, says the character played by Arnold Schwarzenegger was not programmed to be bad, on the contrary, it was an inadvertent consequence of the AI. Musk, Elon, *First on CNBC: CNBC Transcript: SpaceX CEO Elon Musk Speaks with CNBC's "Closing Bell"*, 2014. Interviewed by Kelly Evans and Julia Boorstin. In CNBC. Available at: <https://www.cnbc.com/2014/06/18/first-on-cnbc-cnbc-transcript-spacex-ceo-elon-musk-speaks-with-cnbc-closing-bell.html> Date of access: 16 July 2021.

entrepreneur and former Google X worker, also revealed serious concerns about AI, stressing that “we are creating God”²⁵⁵.

Nevertheless, questions concerning robots and AI go way beyond the hypothesis of the apocalyptic end of humanity. Perhaps, the most known robot in the world is Sophia. Sophia was granted citizenship²⁵⁸ in Saudi Arabia (something that is in itself telling of a plausible future already present) in 2017²⁵⁹, a human right conceived solely for humans²⁶⁰; furthermore, it is curious to notice that this simple action has granted a machine an imperative Human Right in Saudi Arabia, a country still struggling to properly address women’s rights²⁶¹.

Naturally, embracing robotics represents a massive reshape in the current individual and social relations, but if the necessary mechanisms are created to maintain humans in control, the idea of having R2D2 or C-3TPO as friends is a rather appraising one, far away from Kubrik’s HAL 9000 before being reprogrammed by Dr. Chandra which, it must be recalled, according to Musk and Gawdat, is a very real possibility.

2. Human Rights and technology: general assessment

The ethnic minority of Uyghurs (roughly 12millions), who inhabit PRC province of Xinjiang, are, at least since 2015, being actively persecuted by the Chinese government, in name of defense against terrorism and reported fears of Jihad (the Uyghurs are predominantly Muslims, speaking a Turkic language), in what The Economist has considered to be “the gravest example of a worldwide attack on human rights”²⁶². The most terrifying issue is how

²⁵⁵ Gawdat, Mo, *Can this man save the world from Artificial Intelligence?*, 2021. Interviewed by Hugo Rifkin. In The Times. Available at: <https://www.thetimes.co.uk/article/can-this-man-save-the-world-from-artificial-intelligence-329dd6zvd> Date of access: 29 September 2021.

²⁵⁸ The conception of robots having legal personality has also been raised in the 2017 European Parliament Resolution on Civil Law Rules of Robotics, paragraph 59 f), where it is explored the idea of: “creating a specific legal status for robots in the long run, so that at least the most sophisticated autonomous robots could be established as having the status of electronic persons responsible for making good any damage they may cause, and possibly applying electronic personality to cases where robots make autonomous decisions or otherwise interact with third parties independently. Cf. European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103(INL)). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017IP0051> Date of access: 16 July 2021.

²⁵⁹ *Should robots be citizens?* Source: British Council. Cf: <https://www.britishcouncil.org/anyone-anywhere/explore/digital-identities/robots-citizens> . Date of access: 16 July 2021.

²⁶⁰ *OHCHR and the right to a nationality. About nationality and human rights.* Source: OHCHR. Available at: <https://www.ohchr.org/EN/Issues/Pages/Nationality.aspx> . Date of access: 16 July 2021.

²⁶¹ In order to evaluate women’s human rights in Saudi Arabia cf. <https://data.unwomen.org/country/saudi-arabia>. Source: UNWOMEN. Date of access: 16 July 2021.

²⁶² See *The persecution of the Uyghurs is a crime against humanity.* In The Economist. Available at: <https://www.economist.com/leaders/2020/10/17/the-persecution-of-the-uyghurs-is-a-crime-against-humanity> Date of access: 16 July 2021.

technology is enabling this persecution to reach a whole new level of effectiveness, using mass surveillance systems to “(...) conduct compulsory mass collection of biometric data, such as voice samples and DNA, and use artificial intelligence and big data to identify, profile, and track everyone in Xinjiang”²⁶³ ²⁶⁴ in such way that the executive director of the rights group Campaign for Uyghurs, Rushan Abbas, seems to have no doubts when saying “We cannot ignore the fact that these technologies have been developed in order to be able to efficiently carry out... brutal oppression”²⁶⁵ and so, according to Human Rights Watch, the Uyghurs are being victims of abuses that “(...) violate fundamental rights to freedom of expression, religion, and privacy, and protections from torture and unfair trials”²⁶⁶- this is exactly the kind of technology China is exporting to some developed countries which do not refrain themselves to make a similar use, as previously mentioned in Chapter II of this dissertation. However, Western countries also recur to this kind of technology in what might be called a “benign” way, for it is used solely to the purpose of preventing and solving crimes. Regardless of the fact that open societies also have access to and use the same kind of technology²⁶⁷, there seems to be a difference in the sense that there is not (yet?) a highly disseminated facial recognition system at the door of a zoo or mall, but rather old-fashioned video cameras; additionally, the ECJ has recently limited the power of States within the EU to gather data and surveil its citizens, except when a member state rightly justifies it in view of a serious threat to national security²⁶⁸.

²⁶³ Wang, Maya. “*Eradicating Ideological Virus*”. *China’s Campaign of Repression Against Xinjiang’s Muslims*, paragraph 10. Human Rights Watch Report. Available at: <https://www.hrw.org/report/2018/09/09/eradicating-ideological-viruses/chinas-campaign-repression-against-xinjiangs> Date of access: 16 July 2021.

²⁶⁴ In China, the facial recognition system is frankly disseminated, from malls to public bathrooms (the objective here is to prevent toilet paper theft). Recently, a Chinese professor of law made history by filing a lawsuit against Hangzhou zoo, on the grounds that there was no legal framework supporting the zoo’s collection of his biometrical data and he has won. Although this may look like the beginning of a different approach in view of recent modifications, it might be argued that the CCP is merely trying to centralize and better control in a disguised manner, for “(...) only the government (...) has the right to collect and collate unlimited facial recognition data”, which is also accomplished through obscure agreements between private companies and the government. To validate the previous sentences and the quotation, see Dou, Eva, *China built the world’s largest facial recognition system. Now, it’s getting camera-shy*, 2021. In *The Washington Post*. Available at: https://www.washingtonpost.com/world/facial-recognition-china-tech-data/2021/07/30/404c2e96-f049-11eb-81b2-9b7061a582d8_story.html . Date of access 30 July 2021.

²⁶⁵ Asher-Shapiro, Avi, *Chinese tech patents tools that can detect, track Uyghurs*, 2021. In Reuters. Available at: <https://www.reuters.com/article/us-china-tech-uyghurs-idUSKBN29I300> . Date of access: 16 July 2021.

²⁶⁶ Idem supra note 258, paragraph 2.

²⁶⁷ It is alarming to note that despite considering itself to be a bastion of Human Rights and criticizing China, it has been reported that the EU is, according to Amnesty International, selling surveillance technology to China. See Manacourt, Vincent, *EU is selling surveillance tech to China, says rights group*, 2020. In *POLITICO*. Available at: <https://www.politico.eu/article/amnesty-international-eu-is-selling-spyware-to-china/> Date of access: 16 July 2021.

²⁶⁸ Cf. Judgments in Case C-623/17, *Privacy International*, and in Joined Cases C-511/18, *La Quadrature du Net and Others*, C-512/18, *French Data Network and Others*, and C-520/18 and Joined Cases C-511/18, *La Quadrature du Net and Others*, C-512/18, *French Data Network and Others*, and C-520/18, *Ordre des barreaux francophones et germanophone and Others*.

Irrespective of the above, people are being scrutinized all over the planet for security reasons and convenience, in the sense that everyone's data is being gathered and stored in the name of safety or in order to facilitate the daily tasks²⁶⁹ more or less willingly. Beyond this apparatus is what Shoshana Zuboff has called surveillance capitalism²⁷⁰, an obscure way, yet in full disclosure, of using technology not only to sell ads, but also to shape human's behavior to meet others' ends²⁷¹, thus slowly and indelibly gaining control over humanity.

One might, therefore, wonder if privacy is dead²⁷². A home is, perhaps, a person's most irrefutable stronghold of privacy, the place to go and be at ease, where one can ultimately hide from the rest of the world and do as he/she pleases, echoing the words "my house, my rules". However, when considering today's house and the myriad of devices in it, embedded with technology that can record sound and images, all the while storing data in the cloud, chances are that it is quite possible for a third party to explore a house and have a fairly decent idea of what is going on inside it - if/when smart houses²⁷³ become the rule, what goes on within the four walls, will certainly become pretty accurate. In light of the above, and although the concept

²⁶⁹ For instance, when using a cellphone, the myriad of apps available that people use meant to facilitate and/or entertain their lives, such as Facebook and Uber, are fed on willingly given data. However, even when configuring privacy settings to limit the amount of data that can be processed (this is especially true in Europe because of the GDPR), it does not necessarily mean that that information stops being collected and stored, but rather that it is not allowed to be processed by third parties unless permission is given (e.g. health care data); storage of information is important for people to make backups or to keep track of their e-mails. Additionally, even if people are cautious about what apps they use, they will still be exposed to cybersecurity risks bound to compromise personal data. For cybersecurity risks concerning data see Doffman, Zak, *No, DON'T QUIT Whatsapp to use Telegram Instead – Here's why*, 2021. In Forbes. Available at: forbes.com/sites/zakdoffman/2021/02/13/why-you-should-stop-using-telegram-instead-of-whatsapp-use-signal-or-apple-imessage/ Date of access: 16 July 2021.

²⁷⁰ According to Zuboff, Surveillance capitalism is "1. A new economic order that claims human experience as free raw material for hidden commercial practices of extraction, prediction and sales; 2. A parasitic economic logic in which the production of goods and services is subordinated to a new global architecture of behavioral modification; 3. A rogue mutation of capitalism marked by concentrations of wealth, knowledge and power unprecedented in human history; 4. The foundational framework of surveillance economy; 5. As significant a threat to human nature in the twenty first century as industrial capitalism was to the natural world in the ninetieth and twentieth; 6. The origin of a new instrumentarian power that asserts dominance over society and +resents startling challenges to market democracy; 7. A movement that aims to impose a new collective order based on total certainty; 8. An expropriation of critical human rights that is best understood as a coup from above: an overthrow of people's sovereignty." See: Zuboff, Shoshana, *The age of Surveillance Capitalism*, 2019. London. Clays Ltd, Ecograph S. p. A. ISBN 978 1 78125 685 5. [Hereafter ZUBOFF, SURVEILLANCE CAPITALISM]

²⁷¹ "Surveillance capitalism's products and services are not the objects of value exchange. They do not establish constructive producer-consumer reciprocities. Instead, they are the "hooks" that lure users into these extractive operations in which our personal experiences are scraped and package as the means to other's ends" (Zuboff, 2019:10).

²⁷² Mance, Henry, *Is privacy dead?*, 2019. In Financial Times. Available at: <https://www.ft.com/content/c4288d72-a7d0-11e9-984c-fac8325aaa04> . Date of access: 16 July 2021.

²⁷³ A smart House can basically be described as a home full of gadgets and devices that, through IOT, is controlled whenever a person is inside its four walls or outside of them, no matter the distance. A smart House is connected to the owners cellphone, for eg., and its primordially dependent on machine learning and AI technologies. *The Future of smart home design*. Source: Silicon Labs. cf. <https://pages.silabs.com/rs/634-SLU-379/images/The-Future-of-Smart-Home-Design.pdf>

of privacy is philosophically debated and there is no consensual definition²⁷⁴, it becomes apparent that the traditional concept is, at a minimum, inadequate to the present reality, despite being a consecrated Human Right²⁷⁵; moreover, there is an urgent need to try to theorize and clarify a concept of privacy that covers the disruption conveyed by the digital realm, such as the definition proposed by Adam Moore: “A right to privacy is a right to control access to and uses of—places, bodies, and personal information” (Moore, 2008: 421).

Considering the AI Sophia once again, and its granted citizenship, it must be observed that, for the first time, an exclusive Human Right - the right to nationality²⁷⁶ - has been given to a non-human, therefore leaving the door open to the possibility of robots having the same rights (and perhaps, duties) than a human being, which would mean a new dimension regarding the right to equality. Furthermore, and despite robots’ rights, as previously mentioned on this dissertation, are still theorized under the impression of AI machine related rights, one might wonder what is to happen to a hybrid, i.e., part machine, part human: a Cyborg²⁷⁷. In view of this already existing reality, what is to become of the right to equality²⁷⁸, when confronted with two different realms of Rights? The present dichotomy between the analog and digital world may indeed become a unified reality, dictating the end of anthropomorphism. On a recent study at IE University’s Center for the Governance of Change, more that 50% of Europeans “support replacing their parliamentarians with algorithms”²⁸⁰ - it seems as though people are willingly prepared to strip themselves out of their inherent humanity.

These issues are slowly evading the philosophical realm and are increasingly being openly debated, with proposals to accommodate a new digital Human Rights Era. In this sense, the Rathenau Instituut, in its report regarding Human Rights in the Robot age²⁸¹, has proposed the

²⁷⁴ Thomson, Judis Jarvis, *The Right to Privacy*, 1975. Philosophy & Public Affairs, Summer, 1975, Vol. 4, No. 4 (Summer, 1975), pp. 295-314. Publish by Wiley. In addition Date of access 16 July 2021.

²⁷⁵ see art. 12^a of the UN Universal Declaration of Human Rights states that “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks” Cf. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>. In relation to the European Convention on Human Rights (ECHR), see art 8°. Cf. https://www.echr.coe.int/documents/convention_eng.pdf.

²⁷⁶ Idem. Supra note Art. 15°, 1. “Everyone has the right to a nationality”.

²⁷⁷ Towers-Clark, Charles, *Cyborgs are he and you’d better get used to it*, 2018. In Forbes. Available at: <https://www.forbes.com/sites/charlestowersclark/2018/10/01/cyborgs-are-here-and-you-d-better-get-used-to-it/> Date of access: 17 July 2021.

²⁷⁸ Idem supra note 48. Art. 1° “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”.

²⁸⁰ See *European Tech Insights 2021. Part II Embracing and Governing Technological Disruption*. p.4. Source: IE Center for the Governance of Change. Available at: <https://docs.ie.edu/cgc/IE-CGC-European-Tech-Insights-2021-%28Part-II%29.pdf> Date of access: 3 October 2021.

²⁸¹ Est, van Rinie; Geritsson, Joost, *Human Rights in the Robot Age*, 2017. The Hague. Rathenau Instituut. Available at: <https://www.rathenau.nl/sites/default/files/2018->

creation of two new HR a) Right to not be measured, analysed or coached²⁸²; b) Right to meaningful human contact²⁸³. Furthermore, companies like Neuralink are exploring neurotechnology, signifying, among other things, putting chips in people's brains and "While this technological trend may generate immense advantage for society at large in terms of clinical benefit, prevention, self-quantification, bias-reduction, personalized technology use, marketing analysis, military dominance, national security and even judicial accuracy, yet its implications for ethics and the law remain largely unexplored"²⁸⁴. In connection to neuro-rights, the solution may involve something similar to "(1) the right to identity, or the ability to control both one's physical and mental integrity; (2) the right to agency, or the freedom of thought and free will to choose one's own actions; (3) the right to mental privacy, or the ability to keep thoughts protected against disclosure; (4) the right to fair access to mental augmentation, or the ability to ensure that the benefits of improvements to sensory and mental capacity through neurotechnology are distributed justly in the population; and (5) the right to protection from algorithmic bias, or the ability to ensure that technologies do not insert prejudices"²⁸⁵.

The UN identifies ten Human Rights challenges: 1) Artificial Intelligence and Big Data Analytics; 2) Internet of Things; 3) Encryption; 4) Hate Speech and countering Violent Extremism; 5) Law Enforcement Relations; 6) Child Rights; 7) Costumer Due Diligence; 8) Non-discrimination; 9) Raw Materials Sourcing; 10) Forced and Bonded Labor²⁸⁶. The question arises: who is indeed acting upon these? The response is inevitable: EU.

The 2018 GDPR might be the EU's most known piece of legislation, but it is far from being the only one²⁸⁷; furthermore, the intentions of the EU are fairly clear and known to the world, for e.g., through the EU Cybersecurity Strategy or Digital Decade and the European data strategy; and, as already mentioned, the EU has been decisively bold with its proposal of the

[02/Human%20Rights%20in%20the%20Robot%20Age-Rathenau%20Instituut-2017.pdf](#) . Date of access: 9 June 2021.

²⁸² Idem, pp. 43-44.

²⁸³ Idem, pp. 44-45.

²⁸⁴ Ienca, Marcello; Adorno, Roberto, *Towards new human rights in the age of neuroscience and neurotechnology*, 2017, p.23. In Life Sciences, Society and Policy, 13:5. Available at: https://www.researchgate.net/publication/316488801_Towards_new_human_rights_in_the_age_of_neuroscience_and_neurotechnology . Date of access: 22 June 2021.

²⁸⁵ Yuste, Rafael; Genser, Jared; Herrmann, Stephanie, *It's Time for Neuro Rights*, 2021. Horizon-Winter, issue n°18. Available at: https://www.cirsd.org/en/horizons/horizons-winter-2021-issue-no-18/its-time-for-neuro-rights?cf_chl_managed_tk=pmd_w4RirIupwO9XelXfuXnpaMVK9Q4hCnYaHe8x7OHx5.c-1633482623-0-gqNtZGzNAZujcnBszRQR Date of access: 1 October 2021.

²⁸⁶ See attachment I.

²⁸⁷ The Introduction of this chapter has already enumerated some examples of the Union's proficiency in this domain.

AI Act, thus strengthening not only EU's commitment to remain in the forefront of techno-norms, but also consolidating its commitment to defend human rights in the technological Era. Despite not being part of the technological innovation club (US and China)²⁸⁸, the EU is certainly the rule setter in technology²⁸⁹, not only by, many times, being the first to take the necessary steps on this subject, but also due to the BE, as already extensively described.

3. A new concept

Technology is typically discussed in the light of two opposing philosophical positions: techno-pessimism and techno-optimism²⁹⁰. Perhaps, there is a 3rd way – a smart, realistic and hopeful view - which considers the increasing influence of technology in societies as a fact, and considers the struggle against the obvious as a losing battle. Given this, technology will be whatever humans make of it²⁹¹; therefore, it will not necessarily be good and most certainly, will be capable of bad effects. A realistic approach must be adopted, accommodating technology within our society, while establishing modalities and rules of conduct to further enhance its positive aspects and mitigate the negative ones. This may, at times, hinder innovation²⁹² in the light of moral and ethical imperatives. These past few lines encapsule what I call *techno-positive realism*, and is what I consider the EU is trying to achieve through its

²⁸⁸ Sahin, Kann; Barker Tyson, *Europe's Capacity in Acting in the Global Tech Race*, p.2, 2016. DGAP Report, n° 6. Available at: <https://dgap.org/en/research/publications/europes-capacity-act-global-tech-race> Date of access: 5 June 2021.

²⁸⁹ Amaro, Silvia, *How Europe became the world's top tech regulator*, 2021. In CNBC. Available at: <https://www.cnbc.com/2021/03/25/big-tech-how-europe-became-the-worlds-top-regulator.html> Date of access: 22 July 2021.

²⁹⁰ Though largely self-explanatory, the pessimistic variant espouses a rather grim worldview in which technology eventually erases humans or transforms them in negative ways - for instance, resulting in a loss of cognitive or by implying a darkly remodelled concept of social relations. This vision of the future is defended by authors such as Fukuyama in his 2002 book "Our post human future" and is part of the most radical view of techno-pessimism (i.e., bioconservatism), and its ultimate defence of the nucleus of human existence. On the other hand, Techno-optimism welcomes technology and envisions it as a wonder which will free humans from the 3 d's (dirty, dull and dangerous) and solve societal problems – to this effect, robots and AI are a huge part of this transhumanistic future. For techno optimism see: Bove, Tristan, *Techno-Optimism: Why money and technology won't save us*, 2021. Source: Earth.org . Available at: <https://earth.org/techno-optimism/> . Date of access: 14 June 2021; For Bioconservatism see Browne, Tamara Kayali; Clarke Steve, *Bioconservatism, bioenhancement and backfiring*, 2020. Journal of Moral Education, 49:2, 241-256. Available at: <https://www.tandfonline.com/doi/pdf/10.1080/03057240.2019.1576125?needAccess=true>

²⁹¹ In the same sense that a chemist may carry out daily tasks for bad purposes, such as chemical weapons, while others such as Marie Curie discovered radium, the same analogy is also valid in relation to today's world technology.

²⁹² Naturally, the limits of morals and ethics are very much debatable and subjective. For this reason, whilst a fundamentalist approach is never the answer, there are clear red lines which can be drawn, as illustrated by the eugenics practiced by the Nazis. A controversial technological innovation would be, for instance, the development of artificial wombs. See Devlin, Kayleen, *The world's first artificial womb for humans*, 2019. Source: BBC. Available at: <https://www.bbc.com/news/av/health-50056405> . Date of access: 16 July.

vanguard technological legislation, of which the latest Artificial Intelligence Regulation is, most likely, the most prominent example so far. However, this technologically-positive realistic approach is not applicable to all technological norms. For instance, the EC's proposal regarding the standardization of USB-C may hinder innovation in relation to chargers²⁹³ and it certainly impedes, at least within the EU territory, this technology from being substituted for a better one. Nevertheless, and while one might consider the proposal a positive measure, it does not respond to a moral or ethical imperative, but rather an economic one based on the imminent threat of a global environmental catastrophe. The GDPR, on the other hand, whilst based on a technologically positive realist approach, tries to protect the moral imperative of the human right to privacy.

The concept I propose is based on the EU's approach to the technological era, thus signifying its empirical existence to be still in its infancy, regardless of how proficient the EC is in tackling these issues; on the other hand, it is not possible, in view of the limits of characters of this dissertation, to fully develop and theorize the *techno-positive realism*.

Notwithstanding the above, approaching reality in this vein - which is, so far, the Union's way -, might be the answer to the challenges exposed on this last chapter, provided there is political willingness. Indeed, political willingness is key to implement a technologically-positive realistic approach, yet this is not a path that can be unilaterally paved, therefore cooperation is also fundamental among all the international actors and community, be it a country, a company or an international institution. However, even if a global synergy is created, there are opposing powers fighting for world governance, as exposed in chapter II, which are irreconcilably incompatible – the world ahead will also depend on the confrontation between freedom and oppression.

²⁹³ See Chapter I, 4.2. Dismissing Criticism through a practical exercise, pp. 24-26.

Conclusion

The 4th Industrial Revolution, a term coined by Klaus Schwab²⁹⁴, poses major challenges to society and civilization, namely in terms of human rights, therefore making it necessary to address a transition in society which can seriously adapt to this unprecedented, highly disruptive Era. According to Schwab, the founder of WEF, three major reasons explain the already existing unparalleled reality, which is bound to accelerate and turn science fiction into a fact: “**Velocity**: Contrary to the previous industrial revolutions, this one is evolving at an exponential rather than linear pace. This is the result of the multifaceted, deeply interconnected world we live in and the fact that new technology begets newer and ever more capable technology. **Breadth and depth**: It builds on the digital revolution and combines multiple technologies that are leading to unprecedented paradigm shifts in the economy, business, society, and individually. It is not only changing the “what” and the “how” of doing things but also “who” we are. **Systems Impact**: It involves the transformation of entire systems, across (and within) countries, companies, industries and society as a whole.” (Schwab, 2016:8-9). The obvious conclusion is: all issues concerning technology must be addressed now.

Since “(...)everything is connected, [therefore] anything can be disrupted” (Smith,2019:70), technology represents both a menace but also an opportunity for several issues, as illustrated by the friendly robot PARO, mention in Chapter III. However, in light of the perils, one must draw special attention to what we regard as fundamental, defending Human Rights and democracy before a *digital 9/11*; the fading differences between the two realms, i.e, the digital and the real one, demand for us, as a whole, as human beings, to determine whether we want to strip ourselves from our humanity or become something else, bearing in mind that if deciding for the latter, we will not be able to overrule that verdict.

Fortunately, it appears rule makers, namely and primordially the EU, are becoming increasingly aware of the subversive effect of technology and are fighting to maintain the human being at the centre of the equation, while trying to defend Human Rights in light of the challenges, although it is not yet entirely clear what the solutions are and/or if they will prove to be adequate.

In this technological dimension, the digital realm has proven to be a wide-open field for the violation of human rights, both by companies and individuals, as well as States. Therefore, it

²⁹⁴ Schwab, Klaus, *The Forth Industrial Revolution*, 2016. Geneva: World Economic Forum. Available at https://law.unimelb.edu.au/_data/assets/pdf_file/0005/3385454/Schwab-The_Fourth_Industrial_Revolution_Klaus_S.pdf

becomes imperative to legally frame human rights in relation to technology, such as the protection of personal data as a global fundamental right, a Human Right, not only because of its immediate reflection on the right to privacy but, more importantly, in connection to the side effects it might have, as exemplified by China's present Uyghur's situation. Indeed, it is within this framework that a growing concern is observed, on the part of States and supra-state entities. In this sense, the BE has been confirmed as a fantastic enabler of EU's might in many fields, but also, despite its limitations, in the digital realm, as attested by the GDPR.

Two study cases were briefly analysed in light of the BE, technology and human rights: hate speech and the GDPR, in chapter I and II, respectively. As far as the GDPR is concerned, for instance, its repercussions seem to be fairly obvious, although the same cannot be stated so clearly in relation to Hate Speech, for the latter has influenced IT companies much more than state legislation itself²⁹⁵. This is due to the fact that freedom of speech, as an abstract concept, has different understandings depending on the region of the globe and is closely related to the temporal scope of our lives. In other words, our perception of what this concept means, is much more dependent on a time frame of existence and cultural roots than the concept of privacy.

It is possible to observe a legislative trend to regulate data protection, but the same is not true in relation to hate speech, in correlation to the freedom of expression, which, combined with the principle of proportionality, is, in practice, more constrained and merely bound by codes of conduct that are nothing more than that, rules without imperative and coercive force. Anu Bradford has demonstrated the BE to be present in both the GDPR and the EU code of conduct on countering illegal hate speech online²⁹⁶, however, the undeniable emphasis is on data protection.

Notwithstanding the above, one might wonder whether the GDPR has proven to be so successful because of its subversive interpretation, i.e., data sovereignty. If we are to judge the emulation of the GDPR in Brazil or the CCPA, these pieces of legislation are in total conformity with the spirit of the original law, however, the same cannot be said towards PIPL. As discussed in Chapter II, we must recall the Beijing Effect and how it is promising data sovereignty to some developed countries. It is also interesting to note that the largest democracy in the world, India, also feels the need, in its PDPB -still under discussion-, to provide local

²⁹⁵ Not even the EU has managed to turn HS into hard law, despite Portugal, a member state, already has and, by doing so, has/is facing criticism.

²⁹⁶ BRADFORD, BRUSSELS EFFECT, pp. 131-169.

residence to data within its borders²⁹⁷. Irrespective of the possible reasons, data sovereignty is also becoming a tendency and, in this sense, the BE is being limited.

Notwithstanding the above, the real and the virtual reality dichotomy are interconnected and their effects can have repercussions in different parts of the world, thus explaining why the new legislations opt for a broader concept of place of damage in relation to these matters. It is important to underline the need not to lose sight of the notion that violations of rights happening in the “reality” realm and those occurring digitally, can equally have consequences for individual, tangible people. Surveillance capitalism²⁹⁸ is very real, the sale of data is a growing and profitable business and many companies make their living out of processing data, hence, the eventual consequences are not to be neglected; violations offline can be serious, but those resulting from spreading misinformation online, namely in relation to hate speech, can damage people and even discredit companies. The challenges of the future are countless, urging the need to establish a balance between the rights to be restricted and the principle of proportionality.

In light of the previously stated, it appears the BE has positive, yet limited results in relation to Human Rights and technology. While this might be true, the EU still comes out as the unilateral regulatory power, although it is not certain it will remain so. Nevertheless, EU’s campaign in fostering a whole new international rule of conduct with practical effects, is undeniable: the EU has been and still is, the driver for change, enacting what I have called techno positive-realism. Furthermore, both China and the USA do not seem interested in taking this role, in the sense that both countries are more engaged in opposing each other. In other words, China is more preoccupied with achieving world dominance²⁹⁹ and it is primordially in this sense that it legislates on subjects related to technology; the USA, on the other hand, is fully concentrated in countervailing RPC’s arising might, and albeit not at all indifferent to these technological queries, does not seem much interested in deepening its legal framework,

²⁹⁷ Prakash, Akanksha, *What is the purpose of data protection law in India?*, 2021. In Business Today. Available at: <https://www.businesstoday.in/opinion/columns/story/what-is-the-purpose-of-data-protection-law-in-india-300925-2021-07-09> Date of access: 1 October 2021.

²⁹⁸ See ZUBOFF, SURVEILLANCE CAPITALISM, supra note 265.

²⁹⁹ It must be observed that all is not well in China, as exemplified by the indebted Evergrade property giant and Xi’s centralization of the economy, bound to asphyxiate Chinese entrepreneurs, which have been fundamental to China’s economic development. See *China’s new reality is rife with danger*, 2021. In The Economist. Available at: <https://www.economist.com/leaders/2021/10/02/chinas-new-reality-is-rife-with-danger> Date of access: 2 October 2021. It must be further noticed that some scholars, although clearly, not a trend, uphold the opinion that China’s current situation is bound to result in implosion. Pei, Minxin, *Minxin Pei on why China will not surpass the United States*, 2021. In The Economist. Available at: <https://www.economist.com/by-invitation/2021/08/30/minxin-pei-on-why-china-will-not-surpass-the-united-states> Date of access: 30 August 2021.

even though American IT companies tend to perpetuate a *de facto* BE – it will be interesting to observe the repercussions of the AI Act, when enacted. Ultimately, this means that whatever the outcome of the apparent new Cold War, if the EU fails to strike a balancing act and secure itself as dominant player in the international arena, a void will be left for others to fulfil, and those others do not appear to be as engaged as the EU in techno positivism realism. Naturally, it can be conceived that even in a case scenario where the EU loses its current authority, it might still be able to exert influence, however, its power to do it will be much more restricted and mainly applicable within its borders. In this sense, the Brussels Effect is to a) be restricted in relation to the EU (the most likely and desirable outcome) , b) shift to another super power or c) die.

The premise that the EU is, for several reasons, one of the places on Earth that most eagerly defends Human Rights and the rule of law, as established in Chapter I, serves as the bases to demonstrate that however promising the BE is in keeping Human Rights protected in this new technological Era, there are other factors, such as the *Beijing Effect*, which may deviate the current rout. In addition, the EU is not the sole “legal precedent establisher”. Chile is currently aiming at, despite only recently achieving a stable democracy³⁰³, passing the world’s first “neuro-rights” law³⁰⁴, serving as a reminder that the world is, perhaps, coming to peace with the idea and urgency to regulate technology.

In conclusion, despite its best efforts, the BE is not super effective in conveying Human Rights, nevertheless it has proven to be highly valuable in this sense.

³⁰³ Only this year, 2021, has a new constitution started to be drafted. The previous one dated from Pinochet’s dictatorship.

³⁰⁴ *Mindblowing: Advances in brain technology spur push for 'neuro-rights'*, 2021. In The Economic Times. Available at: <https://economictimes.indiatimes.com/news/international/world-news/mindblowing-advances-in-brain-technology-spur-push-for-neuro-rights/brain-matter/slideshow/82385766.cms> Date of access: 1 June 2021.

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Attachment I



In 2011, the UN Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights, the first international instrument to assign companies the responsibility to respect human rights.

Human rights are inherent to all human beings. They are defined and established in more than 80 international legal instruments¹ and include fundamental protections of human dignity, needs, and freedoms, such as food, housing, privacy, personal security, and democratic participation.

Since the adoption of the Universal Declaration of Human Rights (UDHR) in 1948, the duty to protect human rights has primarily fallen on governments. However, over the following decades, it became increasingly clear that the freedoms enshrined in the human rights framework could also be violated—and promoted—by the private sector.

In 2011, the UN Human Rights Council unanimously endorsed the **UN Guiding Principles on Business and Human Rights** (Guiding Principles), the first international instrument to assign companies the responsibility to respect human rights. The Guiding Principles state that governments must put in place good policies, laws, and enforcement measures to prevent companies from violating rights, that companies must refrain from negatively impacting rights, and that victims of corporate abuses must have access to effective remedy. As part of this responsibility, the Guiding Principles require companies to undertake due diligence to identify and manage their negative human rights impacts.

This issue brief identifies the 10 most salient human rights risks for Information and Communications Technology (ICT) companies, as well as opportunities for positive impact. The information here is gathered from BSR's direct engagement with ICT companies, as well as our 25 years of experience helping companies in all sectors manage their human rights risks.

The ICT sector comprises a huge range of businesses and activities, such as internet, telecommunications, consumer electronics, software, network hardware, semiconductors, and media companies. While each of these sub-sectors will have its own human rights profile and challenges, this brief highlights common industry-wide challenges. When compared to other industries, the extent to which human rights impacts occur during the entire lifecycle—manufacture, use, and disposal—of the ICT industry's products, services, and technologies is notable.

¹ Including, notably, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and International Labor Organisation (ILO) fundamental conventions.

Top 10 Human Rights Risks for the Information and Communications Technology Sector

1 Artificial Intelligence (AI) and Big Data Analytics

The related developments of AI and big data analytics have been enabled by more powerful computing and the ability to utilize large and complex data sets. These developments present tremendous opportunities, such as in medical diagnostics, retail, and law enforcement. However, a variety of new risks emerge with their use, such as automated systems making discriminatory decisions (such as in housing, credit, employment, and health),² the automation of jobs impacting labor rights by reducing demand for certain skills,³ or the misuse of personal data.



Reference: UDHR Articles 2, 7, 12, 23

2 Internet of Things

The networking of objects, devices, people, and organizations to create the so-called "internet of things" is enabling a wide range of new products, services, and solutions, such as smart cities, sustainable agriculture, self-driving cars, connected healthcare, and more efficient industrial processes. These opportunities are accompanied by new risks and challenges, such as the difficulty of obtaining informed consent from citizens for data use, or the need to establish privacy protocols for who has access to data, who controls data, and how data is used. These challenges form an important new social license to operate—without public trust, the internet of things is much less likely to become a commercial success.



Reference: UDHR Article 12

3 Encryption

Strong encryption (i.e. authentication of digital interactions) is increasingly accessible for everyday communications, such as email, voice, messaging, and cloud storage. Encryption provides the privacy and security necessary to exercise the right to freedom of opinion and expression in the digital age and is especially important for human rights defenders, vulnerable populations, and whistleblowers.⁴ However, law enforcement and intelligence services are concerned that encryption makes fighting crime (e.g. drugs, terrorism, and fraud) tougher, and they are using public policies or hacking techniques to prohibit and fight it. Some states are implementing or proposing "back doors" to get around encryption—but providing "special access" to government authorities can weaken everyone's online security and privacy.



Reference: UDHR 3, 12, 18, 19

4 Hate Speech and Countering Violent Extremism

As set out in Article 19 of the UDHR, everyone has the right to freedom of opinion and expression, including the right to seek, receive, and impart information and ideas through any media and regardless of frontiers. However, governments are increasingly interested in proactive monitoring, surveilling, removing, and blocking of certain types of content, especially terrorist content and hate speech. These content restrictions are important for human rights protection but must be "necessary and proportionate" and the least intrusive restrictions to achieve the desired result.⁵ Access to appeal and remedy in the event of over-blocking is crucial.



Reference: UDHR 19, 29

5 Law Enforcement Relationships

ICT companies have relationships with law enforcement agencies, from, for example, responding to demands for user data and content restrictions or the sale of products, services, and technologies. However, companies face the risk that law enforcement agencies themselves violate human rights, such as when surveillance powers are misused, overbroad requests for data or content restrictions are made, or governments make use of hacking techniques without proper approvals.⁶ Transparency about company relationships with law enforcement agencies (including sales relationships) is increasingly important.



Reference: UDHR 3, 12, 19

6 Child Rights

As children spend more time online, it is important for companies to understand how to respect children's rights in the digital world. This extends beyond protecting children from harmful content to include how to empower children as active digital rights holders.⁷ A comprehensive approach to child rights will incorporate children's rights to privacy, freedom of expression, information, education, and non-discrimination and consider how to engage with children as rights holders. It will address important dilemmas, such as the role of parents, quality of available content, and need to balance child protection with important opportunities for development, discovery, learning, and expression.



Reference: UDHR 12, 19, 26; Convention on the Rights of the Child

¹ https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/2016_0504_data_discrimination.pdf

² https://obamawhitehouse.archives.gov/sites/default/files/whitehouse_files/microsites/ostp/NSTC/preparing_for_the_future_of_ai.pdf

³ https://view.officeapps.live.com/op/view.aspx?src=http%3A%2F%2Fwww.ohchr.org%2Fen%2FHRBodies%2FHRC%2FRegularSessions%2FSession29%2FDocuments%2FA.HRC.29.32_AEV.doc

⁴ <https://necessityandproportionate.org/>

⁵ <https://www.accessnow.org/cms/assets/uploads/2016/09/GovernmentHackingDoc.pdf>

BSR's Work

Our Human Rights Expertise

We draw on a team of nearly 20 human rights experts and a network of partners from business and civil society to tackle global challenges and ensure that companies in all sectors meet and exceed global human rights standards. Our work includes surveying and benchmarking human rights practices and policies across industries to aid our member companies' efforts to craft comprehensive, responsible approaches to human rights.



See more: <https://www.bsr.org/human-rights>

Human Rights Working Group

BSR's Human Rights Working Group brings companies together to share best practices, develop solutions, and work toward the implementation of the UN Guiding Principles.

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Resources

GLOBAL NETWORK INITIATIVE

International multi-stakeholder organization that brings together companies, civil society, academics, and investors to protect and advance free expression and privacy.¹⁰

RESPONSIBLE BUSINESS ALLIANCE

A nonprofit coalition of electronics, retail, auto, and toy companies committed to supporting the rights and wellbeing of workers and communities worldwide affected by the global electronics supply chain.¹¹

¹⁰ <https://www.globalnetworkinitiative.org/>

¹¹ <http://www.responsiblebusiness.org/>

¹² <http://www.freedomofthecollection.com/>

¹³ <https://www.centreishuman.com/>



BSR is a global nonprofit organization that works with its network of more than 250 member companies and other partners to build a just and sustainable world. From its offices in Asia, Europe, and North America, BSR develops sustainable business strategies and solutions through consulting, research, and cross-sector collaboration. Visit www.bsr.org for more information about BSR's 25 years of leadership in sustainability.



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Table of contents

Introduction	1
Chapter I	5
The Brussels Effect	5
1. Notion	8
1.1. Market Size	9
1.2. Regulatory Capacity	11
1.3. Stringent Regulations	13
1.4. Inelastic Targets	14
1.5. Non-divisibility	14
2. Manifestation	15
3. Enhancing the BE	18
4. An economic valuable theory	21
4.1. A chain of values	21
4.1.1 Hate Speech	23
4.2. Dismissing Criticism through a practical exercise	24
Chapter II	28
The menaced Virtue	28
1. Internal Factors	29
1.1. The rise of the far right in the EU	29
1.2. Brexit	31
1.3. Shrinking population	32
2. External factors: The Peoples Republic of China	33
2.1. The Belt and Road Initiative	33
2.2. The Digital Silk Road and the Beijing Effect	34
2.3. Data: Protection vs Sovereignty	38
2.4. Tackling China	39

Chapter III	44
Human Rights in the 4th industrial Revolution	44
1. The Robot exercise	45
2. Human Rights and technology: general assessment	49
3. A new concept	54
Conclusion	56
BIBLIOGRAPHY	60
Attachment I	84

