THE MIRAGE OF TERRITORIALITY: EU LAW'S EXTRATERRITORIAL REACH BETWEEN PROTECTIONISM AND ALTRUISM[1]

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Abstract: The paper examines the evolving extraterritorial reach of European Union law and its implications for the principle of territoriality in international public law. Focusing on internal market regulation, it argues that the EU's legal framework increasingly generates extraterritorial effects through access-to-market conditions, competition enforcement, and sustainability obligations. The study traces this development from the early effects doctrine in competition law to recent instruments such as the Foreign Subsidies Regulation and the Corporate Sustainability Due Diligence Directive These measures illustrate how internal policies acquire external dimensions — sometimes as protective tools safeguarding the internal market, sometimes as altruistic instruments promoting global public goods. The paper categorises the extraterritorial effects of EU law as productive, structural, and behavioural, demonstrating how the Union projects regulatory power beyond its borders while formally adhering to territorial limits. It concludes that the EU's regulatory expansion reflects a tension, and often a mirage, between protectionist self-interest and altruistic globalism, demanding careful calibration of its external reach and internal legitimacy.

Keywords: EU Law, extraterritoriality, blocking statutes, CSDDD, competition law, public procurement

Introduction[3]

The question of territoriality and extraterritoriality of law is a matter of jurisdiction as it is framed by international public law. The general rule is that every state applies its

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law within its boundaries, unless international law provides otherwise.[4] However, the jurisdiction of a state can be stretched outside of its boundaries via the personal principle, protective principle, or universality principle. Also, the territoriality principle can create effects outside of the territory of the state via the respected "effects doctrine."[5] The extraterritorial effect of actions of states can be observed in the legislative and regulatory framework (prescriptive jurisdiction) as well as via enforcement actions (jurisdiction to adjudicate, jurisdiction to enforce).

The same categories can be applied to the European Union (EU).[6] However, the consequences of breaching international public law in terms of jurisdiction can determine the validity of acts within the ambit of the EU. Generally, norms of international public law covering relations among states or international organizations are not directly applicable and enforceable from the point of view of individuals. The Court of Justice of the European Union (CJEU)[7] has confirmed in several cases that the EU is bound by international customary law[8] and therefore an infringement of an international norm can lead to annulment of an act of an EU institution. The action for annulment under Article 263 of the Treaty on the Functioning of the European Union (TFEU)[9] can link the "internal" consequences of invalidity of an act with an "external" violation of an international rule which normally has an effect only at the inter-state level.[10] For these reasons, the EU institutions, including the CJEU, are very cautious in formulating the activities of the EU, embedding them in adherence to the territorial principle.

Scott has provided a comprehensive analysis of "triggers" for the extraterritorial effect of EU law: old or traditional (conduct, nationality, presence) and novel (effects,

[4] LOWE, Vaughan. Jurisdiction. In: EVANS, Malcolm D., ed. *International law*. Oxford: Oxford University Press, 2006, p. 340.

[5] Ibid., pp. 344–345.

[6] For a conciseness and better readability, in the text it will not be distinguished between the European (Economic) Community (EC/EEC) and the EU and the EU will be referred only also in historic cases when the EC/EEC were actually involved.

[7] For a conciseness and better readability, CJEU will be referred only, notwithstanding the actual name of an institution in referred period, and the term will cover the Court of Justice, the Court of First Instance and the General Court, unless stated otherwise.

[8] E.g., Judgment of 27 February 2018, Western Sahara Campaign UK, C-266/16, EU:C:2018:118, par. 47.

[9] For a conciseness and better readability, all provisions of the Treaties will be referred in the current numbering of the Treaty on European Union (TEU) and the TFEU.

[10] As examples of such claims, e.g. actions in C-89/85 Ahlström Osakeyhtiö and Others v Commission, T-102/96 Gencor v Commission, T-65/18 - Venezuela v Council, T-512/12 Front Polisario v Council.

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anti-evasion, transaction with an EU-established person).[11] Recently, Hornkohl[12] has categorized the extraterritorial application of EU law regulation. The aim of this paper is not to replicate the abovementioned research. The analysis will focus solely on regulations that are primarily addressed to the functioning of the internal market of the EU. Therefore, rules and norms that are directly aimed to have extraterritorial reach will not be studied (e.g. rules of international private law or restrictive measures).

Extraterritorial application is sometimes confused with the extraterritorial effects of territorial application.[13] The paper will examine the development of the extraterritorial reach of purely internal-market regulation, i.e. based on the provision of internal policies. This "extraterritorialization" of internal market rules represents a blurring of the boundaries between internal regulation and global projection of regulatory power, raising questions as to whether it reflects protectionist self-

[11] SCOTT, Joanne. The new EU "extraterritoriality." *Common Market Law Review*. 2014, vol. 51, no. Issue 5, p. 1347. DOI: 10.54648/COLA2014110

[12] HORNKOHL, Lena. *The Extraterritorial Application of Statutes and Regulations in EU Law*. 2022. DOI: 10.2139/ssrn.4036688

[13] JEVREMOVIĆ PETROVIĆ, Tatjana. Extraterritoriality effect of the CSDDD on non-EU companies. *InterEULawEast: Journal for the International and European Law, Economics and Market Integrations*. University of Zagreb Faculty of Economics and Business, 2024, vol. 11, no. 2. DOI: 10.22598/iele.2024.11.2.9; CORVAGLIA, Maria Anna and Kevin LI. Extraterritoriality and public procurement regulation in the context of global supply chains' governance. *Europe and the World: A law review*. UCL Press, 2018, vol. 2, no. 1. DOI: 10.14324/111.444.ewlj.2018.06; MEHRA, Salil K. Extraterritorial antitrust enforcement and the myth of international consensus. *Duke Journal of Comparative & International Law*. 1999, vol. 10.; IRAMBONA, Estelle Valentine. The extraterritorial dimensions of the CS3D (CS3D Part 2). In: *Consumer Competition Market Blog* [online]. 8. 10. 2024 [accessed 30.09.2025]. Available at: https://www.law.kuleuven.be/ccm/blog/posts/cs3d-part-2; HORNKOHL, Lena. *The Extraterritorial Application of Statutes and Regulations in EU Law*.; JANEBA, Eckhard. Extraterritorial trade sanctions: Theory and application to the US–Iran–EU conflict. *Review of International Economics*. John Wiley and Sons Inc, 2024, vol. 32, no. 1. DOI: 10.1111/roie.12682; MARTYNISZYN, Marek. Intel, iiyama and Air Cargo: Far-Reaching Extraterritorial Application of EU Competition Law. *European Competition Law Review*. 2022, vol. 43, no. 11.; ZELGER, Bernadette. EU Competition law and extraterritorial jurisdiction–a critical analysis of the ECJ's judgement in Intel. *European Competition Journal*. Taylor and Francis Ltd., 2020, vol. 16, no. 2–3. DOI: 10.1080/17441056.2020.1840844; FOX, Eleanor M. Extraterritorial Jurisdiction, Antitrust, and the EU Intel Case: Implementation, Qualified Effects, and the Third Kind. *Fordham International Law Journal* [online]. 2019, vol. 42, no. 3 [accessed 28.09.2025]. Available at: https://ir.lawnet.fordham.edu/ilj/vol42/iss3/8; PERRONE, Nadia. Perspectives of Extraterritorial Jurisdiction for Environmental Damage in the Proposal of the European Directive on Corporate Sustainability Due Diligence. *The Italian Review of International and Comparative Law*. 2023, vol. 3, no. 2. DOI: 10.1163/27725650-03020012; CUNHA RODRIGUES, Nuno. Filling the Regulatory Gap to Address Foreign Subsidies: The EC's Search for a Level Playing Field Within the Internal Market. In: CUNHA RODRIGUES, Nuno, ed. *Extraterritoriality of EU Economic Law*. Springer Nature, 2021. DOI: 10.1007/978-3-030-82291-0_10

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interest or altruistic pursuit of global public goods. This phenomenon has gained significant momentum in recent years through the adoption of the Foreign Subsidies Regulation, the Deforestation Regulation, and the Corporate Sustainability Due Diligence Directive, and therefore further layers or "triggers" for extraterritorial reach may have been added.

Moreover, the aim of this paper is to categorize the extraterritorial effects created by internal market regulation based on their consequences for individuals established outside of the EU's territory as well as on the rationale of such reach. In doing so, it will explore whether the expanding reach of EU law constitutes a genuine transcendence of territoriality or merely a "mirage" masking strategic economic interests. Hence, based on the analysis of the regulatory framework and the case law of the CJEU, the study will seek to answer whether recent legislative activity introduced new triggers for the extraterritorial effect of EU law, whether it still stays within its limits of territoriality, and whether it has reached its outer limits before being pushed back.

Territorial scope of the Treaties

The territorial scope of the founding treaties of the EU seems to be apparent. Article 52(1) TEU names the Member States as addressees of the Treaties and Article 52(2) mentions explicitly the territorial scope of the Treaties to be specified by Article 255 TFEU. On the first sight it can seem that the Treaties distinguish between the Member States as addressees of the treaties (personal scope) and the territory of the Member States as the space where the Treaties shall be applied. However, Article 355 TFEU does not define the territorial scope of the Treaties itself and merely modifies territorial scope of the Treaties as defined by Article 52 TEU. Summing up, the territory of the Member States with restrictions provided in Article 355 TFEU constitute the territorial scope of the Treaties. Moreover, there is a multitude of "sectoral" territorial scopes of EU law regulation, e.g. Schengen area, European monetary union, customs union, application of tax laws.[14] Indeed, the Member States could not confer to the EU broader territorial competence that they altogether had. Despite this precise description of the territorial scope of the Treaties, the CJEU has no objections against the extraterritorial effects of the EU law and its conformity with customary public international law.[15] E.g., in the *Air Transport Association of America*

[14] KOCHENOV, Dimitry. Article 52 TEU. In: *The EU Treaties and the Charter of Fundamental Rights*. Oxford University Press, 2019, p. 336. DOI: 10.1093/oso/9780198759393.003.64

[15] QUESADA, Jimena. Article 52 TEU [Territorial Scope of the Treaties]. In: BLANKE, Hermann-Josef and Stelio MANGIAMELI, eds. *The Treaty on European Union (TEU)*. Berlin, Heidelberg: Springer Berlin Heidelberg, 2013, p. 1466. DOI: 10.1007/978-3-642-31706-4_53

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case[16] the CJEU found no violation of customary international law on territoriality and sovereignty[17] because it found that flights from and to aerodromes in the EU territory and aeroplanes registered in the EU countries are fully within the jurisdiction of the Member States and the EU. Similarly, the CJEU confirmed the jurisdiction regarding vessels sailing under the flag of the one of the Member States.[18]

In conclusion, although the Treaties explicitly refer to the territorial scope of the EU law based on the sovereign territories of the Member States, the CJEU found no violation in customary international law via anchoring it to the territory of a Member State. Hence, it rather answered to extraterritorial objections via founding territorial link, i.e. assert that regulation or its application in issue is in fact territorial. Moreover, it must be noted, that the EU law directly expects actions outside of the EU's territory, in particular within the Common Foreign Security (and Defence) Policy. Furthermore, in some cases, the territorial application of the EU law is stretched to territories that are considered territories of the Member States, in particular fictious territories such as embassies, ships, planes.[19] Moreover, the CJEU confirmed that the EU law can be applied in cases incurring outside of the EU territory if legal order of a Member State is applicable. [20]

Extraterritorial effects through setting rules for entry to internal market

The extraterritorial reach of European Union regulation originates in the Union's position as the largest integrated consumer market globally. Although producers may, in principle, redirect exports to alternative destinations, the economic weight of access to the EU market renders withdrawal an implausible strategy.[21] As Bradford

[16] Judgment of 21 December 2011, Air Transport Association of America and Others, C-366/10, EU:C:2011:864.

[17] Judgment of the International Court of Justice of 27 June 1986 in *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), I.C.J. Reports 1986*, p. 392, paragraph 212, judgment of the Permanent Court of International Justice of 7 September 1927 in the *Case of the S.S 'Lotus'*, PCIJ 1927, Series A, No 10, p. 25.

[18] Judgment of 24 November 1993, Mondiet / Armement Islais, C-405/92, EU:C:1993:906, par. 12 and case law cited therein.

[19] SZIGETI, Péter D. The Illusion of Territorial Jurisdiction. *Texas International Law Journal*. 2017, vol. 52, no. 3.; SZIGETI, Péter D. In the Middle of Nowhere: The Futile Quest to Distinguish Territoriality from Extraterritoriality. In: MARGOLIES, Daniel S. et al., eds. *The Extraterritoriality of Law: History, Theory and Politics*. Routledge, 2019.

[20] E.g., Judgment of 30 April 1996, Boukhalfa v Bundesrepublik Deutschland, C-214/94, EU:C:1996:174.

[21] BRADFORD, Anu. The Brussels Effect. *Northwestern University Law Review* [online]. 2012, vol. 107, no. 1, p. 12. Available at: https://scholarship.law.columbia.edu/faculty_scholarshipAvailableat:https://scholarship.law.columbia.edu/faculty_scholarship/271

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has argued in her seminal account of the "Brussels effect," EU regulation penetrates economic activity well beyond Union borders through a process of "unilateral regulatory globalization" and his phenomenon can observed across a range of regulatory domains, including competition law, data protection, public health, environmental law, and food safety.[22]

The effect created by the rules on access to the Internal market do not affect merely companies which desire to directly provide goods and services, but it may have spill-over effect to their suppliers. Importers or provider of services within the internal market may provide goods or services (intermediate services) that fulfil the EU regulatory standard. Moreover, in public procurement procedures, contracting authorities may further shape conditions for participation in tenders by standards that are not statutory, including environmental policies and social responsibility a protection of human rights, because of the possibility to enforce these standards all along the global supply chains.[23]

Yet the "Brussels effect" is not monolithic. For analytical clarity, it is useful to distinguish between modalities of extraterritorial impact according to the divisibility of regulation, namely, whether undertakings may meaningfully segment their conduct or production between activities affecting the Union and those that do not. Thus, in the field of antitrust prohibitions, undertakings may avoid the reach of EU competition law by ensuring that the effects of their unlawful practices do not extend to the internal market. By contrast, merger control exemplifies an indivisible regulatory domain: structural alterations within an undertaking are inherently incapable of territorial segmentation. A further category is constituted by internal market standards that, although formally addressed to actors operating within the EU, generate collateral extraterritorial effects as undertakings outside the Union voluntarily conform their goods and services to EU norms.

The majority of internal market measures are grounded in Article 114 TFEU (and its legislative predecessors) and are directed primarily towards facilitating the free movement of goods and services within the Union. Their addressees are undertakings established in the internal market; consequently, allegations of discrimination on the part of third-country service providers or importers are difficult to sustain. The Digital Markets Act (DMA),[24] however, presents a qualitatively distinct scenario. By now, the Commission has addressed its designation decisions to

[22] Ibid., pp. 19–32.

[23] CORVAGLIA, Maria Anna and Kevin LI. *Extraterritoriality and public procurement regulation in the context of global supply chains' governance*.

[24] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (OJ L 265, 12.10.2022, pp. 1 – 66).

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the following entities: Alphabet Inc. (USA),[25] Amazon.com Inc. (USA),[26] Apple Inc. (USA),[27] Booking, ByteDance Ltd.[28] (Cayman Islands),[29] Meta Platforms (USA), Inc. (USA),[30] Microsoft Corporation (USA).[31] The designation decisions of the Commission describes addressee of the duties of the gatekeepers as "undertakings", i.e. all group of entities lead by the parent company as addressee of the decision, and therefore it covers the EU and the non-EU part of the "undertaking" in issue.
However, the territorial scope of the DMA is strictly framed by the EU's internal market: the DMA shall ensure "(...) contestable and fair markets in the *digital sector across the Union where gatekeepers are present* (...)" (Article 1(1) DMA) , and the DMA shall be applicable to "to core platform services provided or offered by gatekeepers *to business users established in the Union or end users established or located in the Union*, irrespective of the place of establishment or residence of the gatekeepers and irrespective of the law otherwise applicable to the provision of service" (Article 1(2)

[25] Commission Decision of 5.9.2023 designating Alphabet as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector (DMA.100011 – Alphabet – OIS Verticals, DMA.100002 - Alphabet - OIS App Stores, DMA. 100004 – Alphabet – Online search engines, DMA.100005 – Alphabet – Video sharing, DMA.100006 – Alphabet – Number-independent interpersonal communications services, DMA.100009 – Alphabet – Operating systems, DMA.100008 – Alphabet – Web browsers, DMA.100010 – Alphabet – Online advertising services), C(2023) 6101 final.

[26] Commission Decision of 5.9.2023designating Amazon as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925of the European Parliament and of the Council on contestable and fair markets in the digital sector (DMA.100018 Amazon - online intermediation services – marketplaces, DMA.100016 Amazon - online advertising services), C(2023) 6104 final.

[27] Commission Decision of 5.9.2023 designating Apple as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector (DMA.100013 Apple - Online Intermediation Service - app stores, DMA.100025 Apple - operating systems and DMA.100027 Apple - web browsers), C(2023) 6100 final.

[28] TikTok Technology Limited is a subsidiary of ByteDance, established in Ireland.

[29] Commission Decision of 5.9.2023designating ByteDance as a gatekeeper pursuant to Article 3 of Regulation (EU)2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector (DMA.100040 ByteDance - Online social networking services), C(2023) 6102 final.

[30] Commission Decision of 5.9.2023designating Meta as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector (DMA.100020 Meta - online social networking services, DMA.100024 Meta - number-independent interpersonal communications services, DMA.100035 Meta - online advertising services, DMA.100044 Meta - online intermediation services – marketplace), C(2023) 6105 final.

[31] Commission Decision of 5.9.2023 designating Microsoft as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector (DMA.100017 Microsoft - online social networking services, DMA.100023 Microsoft - number-independent interpersonal communications services, DMA.100026 Microsoft - operating systems), C(2023) 6106 final.

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DMA) (emphasis added). Summing up, the DMA still resembles the regulation of the goods and services on the internal market that affect also undertaking established outside of the EU who provides services on the internal market. And the fact that the parent companies of all designated gatekeepers have their seats outside the EU's territory cannot lead to the conclusion, that the DMA has primarily extraterritorial scope. On the other hand, the Brussels effect of the regulation is undeniable. The duties of the designated gatekeepers, as they are formulated in the DMA, cover the whole undertaking and thus the users and business users outside of the EU territory can benefit from the contestability on digital markets established by the EU legislation.

Similar protective shield can be identified within the scope of application of the General Data Protection Regulation (GDPR)[32] shielding rights of individuals in processing their personal data.[33]

The recent Regulation on Deforestation-free Products (EUDR),[34] adopted on the basis of Article 192 TFEU (environmental protection), represents a form of access-to-market regulation with an altruistic extraterritorial dimension. It establishes the following conditions for placing relevant commodities on the EU market: they may be placed on the market only if (a) they are deforestation-free; (b) they have been produced in compliance with the applicable legislation of the country of production; and (c) they are accompanied by a due diligence statement.[35] Such approach "exports" EU environmental rules to the third countries via conditions for access to internal market.

[32] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, pp. 1–88)

[33] GSTREIN, Oskar Josef and Andrej Janko ZWITTER. Extraterritorial application of the GDPR: Promoting european values or power? *Internet Policy Review*. Alexander von Humboldt Institute for Internet and Society, 2021, vol. 10, no. 3. DOI: 10.14763/2021.3.1576; KUNER, Christopher. Protecting EU Data Outside EU Borders Under the GDPR. *Common Market Law Review*. 2023, vol. 60, no. 1. DOI: 10.54648/cola2023004

[34] Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 (OJ L 150, 9.6.2023, s. 206 – 247).

[35] Article 3 EUDR.

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The evolution of extraterritorial effects in competition law

The application of the extraterritorial effect of the EU competition mirrors over half of the century old effects doctrine established in the US[36] in the *Aluminium CO of America* case.[37] Similarly to the US, the EU has been following the "protective principle" approach to extraterritorial effect of competition, rather than "nationality principle" and export cartel committed by companies under the jurisdiction of the exporting country are not normally prosecuted by the latter.[38]
The approach to the extraterritorial effects of the EU competition law has been developed gradually by the CJEU.[39]

… single economic unit test

The first theory established by the Court was the theory of the single economic unit.[40] The court established that all the companies forming one undertaking are altogether liable for infringement, notwithstanding that some of the legal persons that are part of that undertaking are established in the third country. This approach was strictly territorial based on the "nationality principle", i.e. the Commission exercised its powers against the "European" undertakings. In the *Dyestuffs* case Imperial Chemical Industries Ltd (company established in the UK) claimed lack of the jurisdiction of the Commission and claimed that merely its subsidiaries established on the common market shall be liable for fines. The CJEU rejected this argument of a formal separation and at the same time it found that the parent company operated on the common market via its subsidiaries.[41]

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[36] ZELGER, Bernadette. *EU Competition law and extraterritorial jurisdiction–a critical analysis of the ECJ's judgement in Intel*, p. 614.
[37] United States v. Aluminum Co. of America, 148 F.2d 416 (2d Cir. 1945).
[38] MARTYNISZYN, Marek. Export cartels: Is it legal to target your neighbour? Analysis in light of recent case law. *Journal of International Economic Law*. 2012, vol. 15, no. 1. DOI: 10.1093/jiel/jgs003; ZELGER, Bernadette. *EU Competition law and extraterritorial jurisdiction–a critical analysis of the ECJ's judgement in Intel*, p. 616.
[39] ZELGER, Bernadette. *EU Competition law and extraterritorial jurisdiction–a critical analysis of the ECJ's judgement in Intel*, pp. 617–620.; MARTYNISZYN, Marek. *Intel, iiyama and Air Cargo: Far-Reaching Extraterritorial Application of EU Competition Law*, p. 506.
[40] Judgment of 14 July 1972, ICI v Commission, C-48/69, EU:C:1972:70.
[41] "In the circumstances the formal separation between these companies, resulting from their separate legal personality, cannot outweigh the unity of their conduct on the market for the purposes of applying the rules on competition." Judgment of 14 July 1972, ICI v Commission, C-48/69, EU:C:1972:70, par. 140.

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… implementation test

The second theory, the implementation doctrine, confirmed the applicability of the EU competition law, including nullity of the agreement restricting competition, on all agreements restricting competition that are implemented on the common/internal market.[42] This theory relies on the conditions of applicability of Article 101 TFEU – restriction of competition *on internal market* and effect *on trade between Member States*. If both conditions are met, the agreement falls into the scope of application of Article 101 TFEU notwithstanding the place of the establishment of the parties to that agreement.

… implementation test and effect doctrine

The third approach confirmed in the *Woodpulp* case followed the implementation theory similarly to the *Béguelin* case. However, comparing to the previous cases, the CJEU could rely neither on the *single economic unit* theory, because the case involved also entirely non-EU entities, neither to focus on the implementation of a "contract", because the cartel case covered also concerted practice. The CJEU confirmed the "implementation test" as a form of an "effect doctrine" and distinguished between two elements of conduct "the formation of the agreement, decision or concerted practice and the implementation thereof."[43] The Court confirmed that "[t]he decisive factor is therefore the place where it is implemented."[44] It also rejected relevance of the place where the agreement, decision or concerted practice was formed because "the result would obviously be to give undertakings an easy means of evading those prohibitions."[45] Moreover, the Court abandoned its previous "single economic unity test" because it "is immaterial in that respect whether or not they had recourse to subsidiaries, agents, sub-agents, or branches within the Community in order to make their contacts with purchasers within the Community". [46] From the point of view of territorial and extraterritorial effects and application of the EU law, the Court explicitly stressed that the application is strictly territorial, notwithstanding that the

[42] Judgment of 25 November 1971, Béguelin Import v G.L. Import Export, C-22/71, EU:C:1971:113, par. 11: "The fact that one of the undertakings which are parties to the agreement is situated in a third country does not prevent application of that provision since the agreement is operative on the territory of the common market."

[43] Judgment of 27 September 1988, Ahlström Osakeyhtiö and Others v Commission, joined cases 89, 104, 114, 116, 117 and 125 to 129/85, EU:C:1988:447, par. 16.

[44] Judgment of 27 September 1988, Ahlström Osakeyhtiö and Others v Commission, joined cases 89, 104, 114, 116, 117 and 125 to 129/85, EU:C:1988:447, par. 16.

[45] Judgment of 27 September 1988, Ahlström Osakeyhtiö and Others v Commission, joined cases 89, 104, 114, 116, 117 and 125 to 129/85, EU:C:1988:447, par. 16.

[46] Judgment of 27 September 1988, Ahlström Osakeyhtiö and Others v Commission, joined cases 89, 104, 114, 116, 117 and 125 to 129/85, EU:C:1988:447, par. 17.

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EU competition law is applied to the companies established outside of the EU territory and their actions because due to effect on the internal market the jurisdiction of the EU "is covered by the territoriality principle as universally recognized in public international law." [47] Finally, the Court also rejected the claim that exercise of the EU jurisdiction over cartel arranged outside of the EU territory violate the customary rule of international law on non-interreference into domestic matters because the Commission does not impose sanctions for behaviour required by foreign law observing that "the Webb Pomerene Act merely exempts the conclusion of export cartels from the application of United States anti-trust laws but does not require such cartels to be concluded." [48]

… qualified effect test in concentration

The fourth approach has stretched the effects doctrine even more in merger control. In the *Gencor* case, companies established outside of the EU territory challenged the competence of the Commission to review its concentration under the EU merger regulation.[49] In a concentration case the Court could not rely directly on the previous tests: neither on the single economic unit, because the undertakings were established in the third countries, nor the implementation test, because the concentration agreement would have been implemented outside of the EU territory and no behaviour contrary to the EU law would not be implemented in the EU territory. Therefore, the Court of the First Instance had to develop another approach to the applicability of the EU merger law reflecting to the concept of Community/Union "dimension" of the concentration. Along the concentrations of the EU companies, equally the applicant and the German Government intervening in favour of the Commission, saw the most flexible and most comprehensive scope of the dimension of concentration was seen in Recital 11 of Regulation No 4064/89: "… the concentrations are effected by undertakings which do not have their principal fields of activities in the Community but which have substantial operations there." Obviously, both went to the opposite conclusion.
Similarly to the previous approaches, the Court sticked to the territoriality of the EU law and found that the application of the European merger rules "is justified under

[47] Judgment of 27 September 1988, Ahlström Osakeyhtiö and Others v Commission, joined cases 89, 104, 114, 116, 117 and 125 to 129/85, EU:C:1988:447, par. 18.
[48] Judgment of 27 September 1988, Ahlström Osakeyhtiö and Others v Commission, joined cases 89, 104, 114, 116, 117 and 125 to 129/85, EU:C:1988:447, par. 20.
[49] Currently Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, pp. 1 – 22), in the time of the case in issue Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ L 395, 30.12.1989, pp. 1–12); despite different regulation, the concept of a concentration with the Community/Union dimension remained unchanged.

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public international law when it is foreseeable that a proposed concentration will have an immediate and substantial effect in the Community."[50] The argument on the requirement of "substantial operation" within the territory of the EU was explicitly rejected by the Court.[51] In ***Gencor***, the Court confirmed that the foreseeable substantial effect on the competitive structure of the EU internal market constitutes the sole criterion for determining jurisdiction under the EU merger control regime.

… consolidation of territorial, implementation and qualified effect tests

The fifth approach to the effects doctrine emerged in the *Intel* saga, the first abuse of dominance case in which the CJEU was required to clarify the extraterritorial reach of EU competition law.[52] Although the CJEU finally upheld the annulment of the decision of the Commission,[53] the question of the territorial scope of the EU competition law was closed in the previous stage of the court proceeding.[54] The General Court observed two approaches to the jurisdiction of the Commission in competition matters: the territorial approach based on *Woodpulp* case and the approach based on the qualified effects of the practices in the European Union relying on the *Gencor* case.[55] The General Court found them equal alternatives and for establishing the jurisdiction in competition matters "it is sufficient to establish either the qualified effects of the practice in the European Union or that it was implemented in the European Union."[56] The Cour of Justice upheld the opinion of the General Court that the qualified effects test is sufficient for establishing the jurisdiction of the Commission to enforce the EU competition law as it prevents "conduct which, while not adopted within the EU, has anticompetitive effects liable to have an impact on the EU market."[57]

In the *Intel* case, the CJEU used for abuse of dominant case doctrines developed in the cartel cases and merger cases and confirm their interchangeability. Hence, the alternatives of "implementation test" and "qualified effects test" are applicable in merger as well as cartel cases. It suggests that the restrictive agreement need not be implemented on the EU territory if it has "foreseeable, immediate and substantial effect" on the internal market, e.g. it can catch behaviour of non-EU selling inputs to

[50] Judgment of 25 March 1999, Gencor v Commission, T-102/96, EU:T:1999:65, par. 90.
[51] Judgment of 25 March 1999, Gencor v Commission, T-102/96, EU:T:1999:65, par. 85.
[52] MARTYNISZYN, Marek. *Intel, iiyama and Air Cargo: Far-Reaching Extraterritorial Application of EU Competition Law*, p. 507.
[53] Judgment of 24.10.2024, Commission v Intel Corporation, C-240/22 P, EU:C:2024:915.
[54] Judgment of 6 September 2017, Intel v Commission, C-413/14 P, EU:C:2017:632 and Judgment of 12 June 2014, Intel v Commission, T-286/09, EU:T:2014:547.
[55] Judgment of 12 June 2014, Intel v Commission, T-286/09, EU:T:2014:547, paras. 232-233.
[56] Judgment of 12 June 2014, Intel v Commission, T-286/09, EU:T:2014:547, paras. 232-244.
[57] Judgment of 6 September 2017, Intel v Commission, C-413/14 P, EU:C:2017:632, par. 45.

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a non-EU third party, when only finished products are subsequently sold in the EU.[58] The "qualified effects test" has overcome the rigidity of the "*single economic unit*" test and the "*implementation test*" as in the globalized economy more flexible criteria are necessary.[59] On the other hand, its application can cause clashes with other jurisdictions and, for example, Fox warns that behaviour such as that of Intel-Lenovo may be at the same time encouraged by decisions of the "incumbent-firm-leaning Supreme Court" in the USA and prohibited by the EU law.[60] In context of the EU "qualified effects test" must be noted that the same test applies under 15 U.S.C. § 6a (Sherman Act) as inserted by Foreign Trade Antitrust Improvements Act (FTAIA).

… exporting state aid principles

Since state aid rules govern the activities of Member States, it might appear that they leave no room for extraterritorial effect. The Foreign Subsidies Regulation (FSR),[61] however, to some extent mirrors the state aid regime under Articles 107 and 108 TFEU with respect to subsidies granted by third countries, following a similar investigative structure: existence of a subsidy, distortion in the internal market and the subsidy's redeeming virtue.[62]

The FSR is multifaceted legislation. It is aimed to solve distortions on the internal market, to fill gaps in the system of protection against subsidies established by the WTO legal framework[63] as well as to establish contestable playing field[64] for

[58] MARTYNISZYN, Marek. Intel, iiyama and Air Cargo: Far-Reaching Extraterritorial Application of EU Competition Law. European Competition Law Review. 2022, vol. 43, no. 11, p. 508.

[59] ZELGER, Bernadette. *EU Competition law and extraterritorial jurisdiction–a critical analysis of the ECJ's judgement in Intel*, p. 626.

[60] FOX, Eleanor M. *Extraterritorial Jurisdiction, Antitrust, and the EU Intel Case: Implementation, Qualified Effects, and the Third Kind*, p. 995.

[61] Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market (OJ L 330, 23.12.2022, pp. 1–45)

[62] NAGY, Csongor István. Foreign Subsidies, Distortions and Acquisitions: Can the Playing Field Be Levelled? *Central European Journal of Comparative Law*. Central European Journal of Comparative Law, 2021, vol. 2, no. 1, p. 155. DOI: 10.47078/2021.1.147-162

[63] CROCHET, Victor and Marcus GUSTAFSSON. Lawful remedy or illegal response? Resolving the issue of foreign subsidization under WTO law. *World Trade Review*. 2021, vol. 20, no. 3. DOI: 10.1017/S1474745621000045; FRANK, Malte. The EU's new Foreign Subsidy Regulation on collision course with the WTO. *Common Market Law Review*. 2023, vol. 60, no. Issue 4. DOI: 10.54648/COLA2023070; CUNHA RODRIGUES, Nuno. *Filling the Regulatory Gap to Address Foreign Subsidies: The EC's Search for a Level Playing Field Within the Internal Market*.

[64] NAGY, Csongor István. *Foreign Subsidies, Distortions and Acquisitions: Can the Playing Field Be Levelled?*.; HOFMANN, Andreas. Is the Commission levelling the playing field? Rights enforcement in the European Union. *Journal of European Integration*. Routledge, 2018, vol. 40, no. 6. DOI: 10.1080/07036337.2018.1501368; SIRE, Thibault. The uneven playing field How to deal with foreign subsidies when assessing mergers. *Concurrences*. 2022, no. 1.

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undertakings and thus a protective measure of common commercial policy shielding internal market. This "multipurpose" character of the FSR is also apparent from the dual legal basis: Article 207 TFEU (common commercial policy) and Article 114 TFEU (approximation of law in the internal market). The bridge between the foreign activity and internal (territorial) effect within the EU is enshrined in Article 3(1) FSR "…a foreign subsidy shall be deemed to exist where a third country provides, directly or indirectly, a financial contribution which confers a benefit on an undertaking engaging in an economic activity in the internal market…" and in Article 4(1) FSR defining distortion in the internal market as situation when "a foreign subsidy is liable to improve the competitive position of an undertaking in the internal market and where, in doing so, that foreign subsidy actually or potentially negatively affects competition in the internal market."

There are clear commonalities between the state aid rules and the FSR. Their rationales are closely aligned: both seek to level the playing field between subsidised and non-subsidised undertakings by removing competitive advantages arising from subsidies. Moreover, under neither regime are subsidies regarded as unlawful from the perspective of the undertakings themselves—undertakings are not treated as perpetrators of a violation. In both regimes, however, the beneficiary of a subsidy may be required to repay it. Another similarity lies in the "balancing test" introduced by the FSR. This test more closely resembles the assessment of proposed state aid and its compatibility with the internal market than the "Union interest test" applied in anti-dumping and countervailing proceedings. In this respect, the FSR is conceptually somewhat closer to competition rules than to trade defence instruments.[65]

There are, however, several important divergences between the state aid regime and the FSR. First, the Commission reviews state aid ex ante, and only in cases of unlawful aid are the benefits required to be recovered, whereas foreign subsidies are examined ex post. Second, for state aid to be lawful it must either receive Commission approval, fall within a block exemption, or remain under the de minimis threshold; consequently, all state aid is subject to some form of scrutiny. By contrast, in the case of foreign subsidies, the exercise of investigative powers lies within the Commission's discretion (with an exemption of mergers and public procurement triggering FSR application). Finally, the distortive effect on competition is a constitutive element of the definition of prohibited state aid, while foreign subsidies are not prohibited per se; instead, their distortive effect is assessed as part of the

[65] TRAPP, Patricia. The Procedural Framework of the Proposal for a Regulation on Foreign Subsidies Viewed from a Common Commercial Policy Perspective. *Zeitschrift fur Europarechtliche Studien*. Nomos Verlagsgesellschaft mbH und Co KG, 2022, vol. 25, no. 3, p. 502. DOI: 10.5771/1435-439X-2022-3-495

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subsequent balancing test.[66] The broader balancing test in the FSR allows to answer to the emerging logics of economic security, strategic autonomy, and the quest for competitiveness, in line with its origins and the evolution of European policy in a more unilateral world and in the same time, Hornkohl and Mattiolo suggest that the balancing test will be conducted a more economic, "competition law-like', logic.[67] Despite these similarities, Hornkohl claims that the FSR does not achieved a level of a third-country state aid control, as in her view the divergences between the two regimes outweigh the commonalities.[68]

As a short period of application of the FRS already has shown, the FRS can have also effect of a "blocking legislation" and can lead to similar situations when heavily subsidized company CRRC[69] rather withdrew from the tender procedure that originally had won rather than being subject of in-depth investigation under the FSR.[70]

In summary, although substantively and procedurally different, the FSR effectively "exports" state aid principles to third countries when those countries subsidize undertakings operating within the internal market. While its scope remains strictly territorial (applying only to undertakings active on the internal market) the significant extraterritorial effects are evident. The FSR does not prohibit undertakings from receiving subsidies from the governments of the third countries per se; rather, it restricts their activities on the internal market, exposing them to the potential obligation to repay any acquired subsidies. As demonstrated in the CRRC case, the FSR can create a situation in which an undertaking prefers to withdraw from the internal market related activity rather than face an FSR investigation. After its

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[66] HORNKOHL, Lena and Pierfrancesco MATTIOLO. *Weighing the Scales: The Balancing Test of the Foreign Subsidies Regulation*. 2025, p. 25. DOI: 10.2139/ssrn.5487826

[67] HORNKOHL, Lena and Pierfrancesco MATTIOLO. *The Concept of "Distortion in the Internal Market" in the Foreign Subsidies Regulation - From the Legacy of State Aid Law to the First Case Practice*. 2025, p. 25. DOI: 10.2139/ssrn.5247472

[68] HORNKOHL, Lena. Protecting the Internal Market From Subsidisation With the EU State Aid Regime and the Foreign Subsidies Regulation: Two Sides of the Same Coin? *Journal of European Competition Law & Practice*. 2023, vol. 14, no. 3, p. 151. DOI: 10.1093/jeclap/lpad005

[69] BENVENUTI, Giulia. The FSR and Public Procurement. *EUROPEAN JOURNAL OF PUBLIC PROCUREMENT MARKETS*. 2024, vol. 1, no. 5, p. 7. DOI: 10.54611/HPTO1789

[70] EUROPEAN COMMISSION. Statement by Commissioner Breton on withdrawal by CRRC Qingdao Sifang Locomotive Co., Ltd. from public procurement following the Commission's opening of an investigation under the Foreign Subsidies Regulation. In: *European Commission* [online]. 26. 3. 2024 [accessed 01.10.2025]. Available at: https://ec.europa.eu/commission/presscorner/api/files/document/print/en/statement_24_1729/STATEMENT_24_1729_EN.pdf; EURACTIV.COM WITH AFP. Chinese train maker withdraws from Bulgaria tender after EU probe. In: *Euractiv* [online]. 30. 9. 2024 [accessed 01.10.2025]. Available at: https://www.euractiv.com/news/chinese-train-maker-withdraws-from-bulgaria-tender-after-eu-probe/

investigation, the Chinese government concluded that it considers the FSR a non-tariff barrier to accessing the EU market.[71] Nevertheless, no dispute has been brought before the WTO to date.

It must be noted, that even though the FSR regime resembles the foreign direct investment (FDI) screening, their mechanisms and rationale are completely different. The FDI screening[72] is purely a common commercial policy instrument based on Article 207(2) TFEU and the screening is based on grounds of security or public order.[73] Although the actions and situations occurred in the third countries' territories,[74] these criteria are apparently complementary to the basic criteria of screening which are focused on potential effect within the EU territory.[75]

Territorial, extraterritorial or universal effects of the Corporate Sustainability Due Diligence Directive

Although there were several international initiatives to introduce an international instrument on protection of human rights in business relations,[76] current discussions

[71] THE STATE COUNCIL INFORMATION OFFICE, the People's Republic of China. China says EU's foreign subsidy investigations constitute trade, investment barriers. In: *CHINA SCIO* [online]. 9. 1. 2025 [accessed 01.10.2025]. Available at: http://english.scio.gov.cn/pressroom/2025-01/09/content_117654850.html

[72] Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 79I, 21.3.2019, s. 1 – 14) (hereinafter "FDI Screening Regulation").

[73] Article 3(1) FDI Screening Regulation.

[74] Article 4(2)(a) and (c) FDI Screening Regulation.

[75] Article 4(1) FDI Screening Regulation.

[76] BLAŽO, Ondrej and Adam MÁČAJ. Legal Challenges for the European Union Concerning an International Treaty on Business and Human Rights. *Revista de Derecho Comunitario Europeo*. 2021, vol. 70, no. 620758. DOI: 10.18042/cepc/rdce.70.04; DE SCHUTTER, Olivier. *Towards a New Treaty on Business and Human Rights*. Cambridge University Press, 2016. DOI: 10.1017/bhj.2015.5; JONGE, Alice de. *Transnational Corporations and International Law*. Cheltenham, Northampton: Edward Elgar, 2011.; LETNAR ČERNIČ, Jernej. Corporate Responsibility for Human Rights: A Critical Analysis of the OECD Guidelines for Multinational enterprises. *Hanse Law Review* [online]. 2008, vol. 4, no. 1 [accessed 08.09.2018]. Available at: http://hanselawreview.eu/wp-content/uploads/2016/08/Vol4No1Art05.pdf; LETNAR ČERNIČ, Jernej. Corporate responsibility for human rights: Analyzing the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy. *Miskolc Journal of International Law* [online]. 2009, vol. 6, no. 1 [accessed 17.08.2018]. Available at: http://ssrn.com/abstract=1459548; LETNAR ČERNIČ, Jernej. Towards a Holistic Approach to Business and Human Rights in the European Union. *Human Rights & International Legal Discourse (HR&ILD)* [online]. Intersentia, 2016, vol. 10, no. 1. Available at: https://www.jurisquare.be/en/journal/hrild/10-1/towards-a-holistic-approach-to-business-and-human-rights-in-the-european-union/

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in in the working group of the UN Human Rights Council[77] will hardly come to world-wide binding instrument. Although the EU Member States were originally sceptical to the negotiations on the international instrument on business and human rights, later the European Parliament changed its view by taking the lead and recommended the Commission to propose a directive on corporate sustainability due diligence covering human rights and environmental due diligence of undertakings.[78] The Corporate Sustainability Due Diligence Directive (CSDDD)[79] was adopted after several modification in the legislative process[80] and its subsequent modification continues via "Omnibus" proposals substantially postponing date of the transposition[81] and modification of its scope and content of obligations of undertakings[82] which can significantly downgrade the effects of the CSDDD.[83]

[77] HUMAN RIGHTS COUNCIL. Report on the first session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, with the mandate of elaborating an international legally binding instrument. *United Nations Human Rights Council*. 2016, vol. 01535, no. February.; UNITED NATIONS-HUMAN RIGHT COUNCIL (UN-HRC). Elements for a draft legally binding instrument on transnational corporations and other business enterprises with respect to human rights. [online]. 2017, vol. 9. Available at: www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/LegallyBindingInstrumentTNCs_O BEs.pdf

[78] European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)) (OJ C 474, 24.11.2021, pp. 11–40).

[79] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (OJ L, 2024/1760, 5.7.2024).

[80] BUENO, Nicolas et al. The EU Directive on Corporate Sustainability Due Diligence (CSDDD): The Final Political Compromise. *Business and Human Rights Journal*. 2024, vol. 9, no. 2. DOI: 10.1017/bhj.2024.10

[81] Directive (EU) 2025/794 of the European Parliament and of the Council of 14 April 2025 amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements (OJ L, 2025/794, 16.4.2025).

[82] Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements (COM/2025/81 final).

[83] BERTRAM, Alice. Simplification Promised, Uncertainty Delivered. Verfassungsblog. Verfassungsblog, 2025. DOI: 10.59704/603B4BFFE749683E; SKINNER, Gwynne L. Beyond Kiobel: Providing Access to Judicial Remedies for Violations of International Human Rights Norms by Transnational Business in a New (Post-Kiobel) World. Columbia Human Rights Law Review. 2014, vol. 46.; MARULLO, Maria Chiara and Francisco Javier ZAMORA CABOT. Transnational Human Rights Litigations. Kiobel's touch and concern: A test under construction [online]. 2016. Available at: http://ssrn.com/abstract=2765068; SWAINE, Edward T. Kiobel and Extraterritoriality: Here, (Not) There, (Not Even) Everywhere. Oklahoma Law Review. 2016, vol. 69. DOI: 10.2139/ssrn.2958277;

Notwithstanding the outcome of the second Omnibus the rationale and scope of the CSDDD will substantially unchanged: the CSDDD is based on Article 50(1), Article 50(2), point (g), and Article 114 TFEU and from the personal scope it covers companies established in the EU as well as companies established in the third countries.[84] There are three "anchors" that link third-country companies with the personal scope of the CSDDD: (1) the company generated a net turnover of more than EUR 450 000 000 in the EU,[85] (2) the company is the ultimate parent company of a group that on a consolidated basis reached that threshold, or (3) companies entered into franchising or licensing agreements in the EU in return for royalties with independent third-party companies, where those agreements ensure a common identity, a common business concept and the application of uniform business methods, and where those royalties amount to more than EUR 22 500 000 in the EU, and provided that the company had a net worldwide turnover of more than EUR 80 000 000 in the EU; the same applies for the parent company in case of group of companies.[86]

From the conceptual point of view, we can see this outreach to the non-EU-based companies through at least two optics: first, it is apparent extraterritorial application of the EU law, or the CSDDD creates artificially a fiction of "de facto" EU companies,

KOLIEB, Jonathan. Kiobel v Royal Dutch Shell: A Challenge for Transnational Justice. Macquare Law Journal. 2014, vol. 13.; KONTOROVICH, Eugene. Kiobel Surprise: Unexpected by Scholars but Consistent With International Trends [online]. 2014. Available at: http://ssrn.com/abstract=2353226; LUSTIG, Doreen. Three paradigms of corporate responsibility in international law: The Kiobel moment. Journal of International Criminal Justice. Oxford University Press, 2014, vol. 12, no. 3. DOI: 10.1093/jicj/mqu040; STEINHARDT, Ralph G. Kiobel and the Weakening of Precedent: A Long Walk for a Short Drink. The American Journal of International Law. 2013, vol. 107, no. 4. DOI: 10.5305/amerjintelaw.107.4.0841; THOMPSON, Benjamin. Was Kiobel Detrimental to Corporate Social Responsibility? Applying Lessons Learnt From American Exceptionalism. Utrecht Journal of International and European Law. 2014, vol. 30, no. 78. DOI: 10.5334/ujiel.ce; KU, Julian G. Kiobel and the Surprising Death of Universal Jurisdiction Under the Alien Tort Statute . American Journal of International Law. 2013, vol. 107, no. 4. DOI: 10.5305/amerjintelaw.107.4.0835; ENGLE, Eric. Corporate Criminal Liability & the Alien Tort Statute: Kiobel v. Royal Dutch Petroleum. Houston Journal of International Law. 2010, vol. 2005, no. 2005.; STEINHARDT, Ralph G. Kiobel and the Weakening of Precedent: A Long Walk for a Short Drink. The American Journal of International Law. 2013, vol. 107, no. 4. DOI: 10.5305/amerjintelaw.107.4.0841; IKEGBUNAM, Kimberly Chinyere. "Touching the Concerns" of Kiobel: Corporate Liability and Jurisdictional Remedies in Response to Kiobel vs. Royal Dutch Petroleum. American Indian Law Review [online]. 2014, vol. 39 [accessed 21.11.2025]. Available at: http://digitalcommons.law.ou.edu/ailr/vol39/iss1/4; CURRAN, Vivian Grosswald. Extraterritoriality, Universal Jurisdiction, and the Challenge of Kiobel v. Royal Dutch Petroleum Co. Maryland Journal of International Law [online]. 2013, vol. 28. Available at: http://ssrn.com/abstract=233544ohttp://ssrn.com/abstract=2335440

[84] Article 2(1) and 2(2) CSDDD.

[85] The turnover threshold is the same as for the EU-based companies.

[86] Article 2(2) CSDDD.

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if they are qualifiedly present in the internal market of the EU. The former approach requires to check if it is reasonable to impose extraterritorial duties, e.g. due to protection of participants of the internal market. In other words, the third-country company cannot provide its goods or services on the internal market unless their goods and services fulfils the same obligations as EU-established companies (territoriality stricto sensu), or third-country companies cannot perform their entrepreneurial activities in a way that has foreseeable, immediate and substantial effect (qualified effects test). The latter approach not only pierces a corporate veil by moving the responsibility to the parent company[87] as well as creates a fiction that a company operating in the internal market is in fact under the jurisdiction of the EU. This link will be strengthened by the duty to establish an "authorised representative" in the Member States in which a non-EU company operates.[88] Nevertheless, apart from this "authorised representative", a company may fall into the scope of the CSDDD even without having formally established branch or subsidiary in the EU.[89]
Recital 30 CSDDD suggests that the extraterritorial effect is based on the latter approach: "For the purpose of defining the scope of application of this Directive in relation to third-country companies, the described turnover criterion should be chosen as it creates a territorial connection between the third-country companies and the Union territory. Turnover is a proxy for the effects that the activities of those companies could have on the internal market. In accordance with international law, such effects justify the application of Union law to third-country companies." Hence, the CSDDD still relies on the territorial application of the EU law and the presence on internal market (EU territory) places them into the territorial regulatory framework of the EU. In this aspect of the territorial/extraterritorial application of the EU law, the CSDDD follows the DNA of the decades of regulatory approach in imports, competition law and recently DMA.
The CSDDD embodies, however, another layer of extraterritoriality. The companies within the scope of the CSDDD shall be required[90] to assess actual and potential adverse impacts not only of their own activities, but also, where related to their

[87] EBBESSON, Jonas. Piercing the state veil in pursuit of environmental justice. In: EBBESSON, J. and P. OKOWA, eds. *Environmental Law and Justice in Context*. Cambridge: Cambridge University Press, 2009. DOI: 10.1017/CBO9780511576027.015; YILMAZ VASTARDIS, Anil and Rachel CHAMBERS. Overcoming the Corporate Veil Challenge: Could Investment Law Inspire the Proposed Business and Human Rights Treaty? *International and Comparative Law Quarterly*. 2018, vol. 67, no. 2. DOI: 10.1017/S0020589317000471
[88] Article 23 CSDDD.
[89] JEVREMOVIĆ PETROVIĆ, Tatjana. *Extraterritoriality effect of the CSDDD on non-EU companies*, p. 203.
[90] The CSDDD does not impose duties to undertakings directly but requires the Member States to adopt such regulation.

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chains of activities, activities of their subsidiaries and their business partners.[91] Based on that assessment, the companies shall prevent potential adverse impacts[92] or bring to the end actual adverse impacts.[93] The CSDDD does not require civil liability for damage caused solely by subsidiaries or business partners but if a company within the scope of the CSDDD fails to address potential or actual adverse effects, the basis for civil liability for damage shall be given.[94] Moreover, liability for administrative sanctions shall be established as well.[95]

The resolution of the European Parliament calling for adoption of analysed directive directly called for extraterritorial effect of the directive and praised it as one of its objectives, i.e. to "affect the social, economic and environmental development of developing countries and their prospects of achieving their SDGs."[96] The final wording of the CSDDD does not contain such a direct reference to extraterritoriality and the extraterritorial effect is rather "indirect".[97]

Undoubtedly, the CSDDD is a European answer to post-*Kiobel*[98] searching for attribution of gross violation of human rights by business entities and proliferation of

[91] Article 8 CSDDD.

[92] Article 10 CSDDD.

[93] Article 11 CSDDD.

[94] Article 29 CSDDD.

[95] Article 27 CSDDD.

[96] European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL))
(OJ C 474, 24.11.2021, pp. 11–40), Recital F.

[97] IRAMBONA, Estelle Valentine. *The extraterritorial dimensions of the CS3D (CS3D Part 2)*.

[98] SKINNER, Gwynne L. Beyond Kiobel: Providing Access to Judicial Remedies for Violations of International Human Rights Norms by Transnational Business in a New (Post-Kiobel) World.; MARULLO, Maria Chiara and Francisco Javier ZAMORA CABOT. Transnational Human Rights Litigations. Kiobel's touch and concern: A test under construction.; SWAINE, Edward T. Kiobel and Extraterritoriality: Here, (Not) There, (Not Even) Everywhere.; KOLIEB, Jonathan. Kiobel v Royal Dutch Shell: A Challenge for Transnational Justice.; LUSTIG, Doreen. Three paradigms of corporate responsibility in international law: The Kiobel moment.; THOMPSON, Benjamin. Was Kiobel Detrimental to Corporate Social Responsibility? Applying Lessons Learnt From American Exceptionalism.; KU, Julian G. Kiobel and the Surprising Death of Universal Jurisdiction Under the Alien Tort Statute .; ENGLE, Eric. Corporate Criminal Liability & the Alien Tort Statute: Kiobel v. Royal Dutch Petroleum.; GREAR, Anna and Burns H. WESTON. The betrayal of human rights and the urgency of universal corporate accountability: Reflections on a post-Kiobel lawscape. Human Rights Law Review. Oxford University Press, 2015, vol. 15, no. 1. DOI: 10.1093/hrlr/ngu044; IKEGBUNAM, Kimberly Chinyere. "Touching the Concerns" of Kiobel: Corporate Liability and Jurisdictional Remedies in Response to Kiobel vs. Royal Dutch Petroleum.; STEINHARDT, Ralph G. Kiobel and the Weakening of Precedent: A Long Walk for a Short Drink . American Journal of International Law. Cambridge University Press (CUP), 2013, vol. 107, no. 4. DOI: 10.5305/amerjintelaw.107.4.0841; CURRAN, Vivian Grosswald. Extraterritoriality, Universal Jurisdiction, and the Challenge of Kiobel v. Royal Dutch Petroleum Co. Maryland Journal of International Law [online]. 2013, vol. 28. Available at: http://ssrn.com/abstract=233544ohttp://ssrn.com/abstract=2335440

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cases in the Member States and legislation on the issue adopted by the Member States.[99]

The mirage of territoriality of the CSDDD is underpinned by the legal basis thereof: Article 144 TFEU (removing barriers to trade on internal market) and Article 50 TFEU (freedom of establishment and measures against discrimination, reporting duties). This may reflect a will of the Commission to prioritize avoiding fragmentation of internal market due different national regulations and thus creating obstacles to free flows within the internal market and impediment of competition.[100] The directive does not rely on other possible legal bases, such as provisions on protection of victims of crimes or private international law and competence of civil courts.[101] At the same time, the explanatory memorandum suggests that the CSDDD will cover 4 000 third-country companies.[102] The indirect extraterritorial effect of the CSDDD will be undoubtedly stronger and wider because companies within the scope of the CSDDD will be required to safeguard fulfilment of obligations throughout their production chains, subsidiaries and business partners, notwithstanding their turnover. The Commission was aware of this fact and mentioned it as a significant impact of the CSDDD.[103]

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[99] PERRONE, Nadia. *Perspectives of Extraterritorial Jurisdiction for Environmental Damage in the Proposal of the European Directive on Corporate Sustainability Due Diligence*, pp. 400–403.; KRAJEWSKI, Markus, Kristel TONSTAD and Franziska WOHLTMANN. Mandatory Human Rights Due Diligence in Germany and Norway: Stepping, or Striding, in the Same Direction? *Business and Human Rights Journal*. Cambridge University Press, 2021, vol. 6, no. 3. DOI: 10.1017/bhj.2021.43

[100] CECI, Federico. Luci e ombre della direttiva sul dovere di diligenza ai fini della sostenibilità. *Quaderni AISDUE - Rivista quadrimestrale* [online]. 2024, p. 8 [accessed 01.10.2025]. Available at: https://www.aisdue.eu/federico-ceci-luci-e-ombre-della-direttiva-sul-dovere-di-diligenza-ai-fini-della-sostenibilita/

[101] For possible other legal bases and corresponding analysis, see, e.g., BLAŽO, Ondrej and Adam MÁČAJ. *Legal Challenges for the European Union Concerning an International Treaty on Business and Human Rights*.

[102] Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM/2022/71 final), p. 16.

[103] COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT Accompanying the document Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (SWD/2022/43 final): "Due to the global outreach via value chains, third-country companies and economies will be affected. Positive effects are expected on human rights and the environment, and on local communities, through increased stakeholder awareness, improved sustainability-related practices, increased adoption of international standards in developing nations, better access to remedy for victims, sustainable investment. Potential negative impacts include: compliance costs on third-country companies, and subsequent moving of producers from third countries to uncontrolled product markets; the risk of companies switching to less risky suppliers."

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The CSDDD represents a move from protective extraterritorial effects to altruistic extraterritorial effects.[104] Recital 7[105] shows even more ambitious effect of the CSDDD – claim of universal responsibility of business to respect human rights.
Hence, the consequences of extraterritorial outreach are not only considered but also desired. At the same time, the legal basis of the CSDDD is purely "internal" with a claim to require imposing obligations to companies entering the EU market only.

Categories of the extraterritorial extension of the EU law

The scope of this paper is limited to the "territorial" regulations of the internal market that possesses an extraterritorial dimension. The effects of such regulations can be classified into three principal categories, depending on the type of consequences they produce: productive, behavioural, and structural extraterritorial effects.
The **productive extraterritorial effect** determines what undertakings may produce, how they may produce it, and under what conditions they may provide their services. This effect may arise through the spillover of market access rules or from the inherent inseparability of production processes, systems for providing services, and data-related operations such as the collection, processing, and combination of data. Traditional examples include technical standards, as well as health and safety regulations. In recent years, the scope of this category has expanded significantly through regulatory initiatives targeting the digital economy. The **DMA** and the **DSA**[106] exemplify this evolution: both instruments lay down detailed rules concerning the content, design, and quality of services offered within the internal market, irrespective of the territorial origin of the service providers, including those established in third countries. Similarly, environmental regulations such as the **EUDR** extend productive extraterritorial effects by conditioning market access on compliance with sustainability requirements in production processes taking place outside the EU.
The **structural extraterritorial effect** concerns the organizational and structural requirements governing the functioning of undertakings, even when their activities take place beyond the EU's territorial boundaries. This effect may, for instance, prevent concentrations (mergers and acquisitions) between undertakings established in third countries when such transactions produce a "qualified effect" on competition within the internal market. This interpretation was confirmed by the

[104] Similarly saw Bradford the EU as a "benign hegemon" in case of climate change: BRADFORD, Anu. *The Brussels Effect*, pp. 37–38.
[105] "All businesses have a responsibility to respect human rights, which are universal, indivisible, interdependent and interrelated."
[106] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, pp. 1–102).

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CJEU in the *Gencor* case, which established that the EU may assert jurisdiction over conduct outside its territory where the economic consequences are both immediate and substantial for the functioning of the internal market. Structural extraterritoriality thus reflects the EU's interest in safeguarding the competitive and institutional integrity of its market architecture against distortive external influences.

The **behavioural extraterritorial effect** represents the most complex and multifaceted dimension of the EU law's external reach. It regulates how undertakings are required to act or refrain from acting in the territory of third countries. The most deeply explored manifestation of this effect lies in the field of competition law, particularly concerning anticompetitive conduct. While both the Commission and the CJEU have consistently adhered to the principle of territoriality (even though the "single economic unit" doctrine can be seen as a functional approximation of the nationality principle), they have broadened the understanding of territorial "anchors" that justify jurisdiction over extraterritorial conduct. This expansion is reflected in the development of the *implementation test*, the *qualified effects doctrine*, and their subsequent reconciliation in the *Intel* judgment and subsequent case law.

Finally, the **behavioural extraterritorial effect** is the most multifaceted type of external outreach of the EU law. This type of effect provides rules for undertakings how to act and behave in the territory of the third countries. Anticompetitive behaviour is the oldest and the most explored limb of the behavioural extraterritorial effect of the EU law. The Commission as well as the CJEU strictly sticked to the territoriality principle (although the single economic unit test can be seen as a type of nationality principle), however they expanded the approach to territorial "anchor" of actions of undertakings outside of the EU territory: implementation test, qualified effects doctrine and their conciliation in the *Intel* case and subsequent case law.

The **DMA** and the **GDPR** also generate significant behavioural extraterritorial effects by virtue of their comprehensive regulatory scope. In the case of the GDPR, undertakings may more easily distinguish between EU-related and non-EU-related processing activities. By contrast, the DMA applies to gatekeepers whose activities, by their very nature, are transnational and technologically interconnected, thereby amplifying the behavioural reach of the EU law. Both instruments, however, primarily serve as protective shields for the internal market. Their extraterritorial extension is justified by the necessity of preserving the integrity of that market and ensuring a homogenous playing field within the internal market. The **CSDDD,** by contrast, represents a qualitatively different stage of extraterritorial behavioural effect. It extends beyond the scope of "qualified effects" by requiring imposing obligations on companies operating in third countries that are not directly covered by the CSDDD but are linked to EU-based companies through global value chains. The CSDDD thus creates an extraterritorial behavioural effect that reaches upstream

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and downstream supply-chain relations, effectively exporting EU sustainability standards through corporate networks.

As Sjåfjell has noted, a conceptual discrepancy exists between the **Commission's Impact Assessment Report** accompanying the CSDDD proposal and the final **legislative proposal** itself: while the former emphasised "sustainable value creation" as the central objective of the initiative, the latter adopts a more defensive orientation, focusing primarily on mitigating sustainability risks.[107] And shifting to focus on "sustainable value creation" within the EU internal market including the possible imbalances created by different level of national legislation may better reflect the ultimate purpose of the corporate social responsibility and, at least rhetorically, it will lose some of its neo-colonial "Europe-rules-the-world" tone turning it into internal-market-centred regulation on production and providing goods and services at the internal market. However, the current legislative process does not show such a recalibration of the regulatory framework and within the effort to simplify it, the "Omnibus proposals" tend to restrict the scope of the CSDDD.

Enforcement of the extraterritorial effects and the third countries' response

The extraterritorial reach of the EU law has inevitably led to reaction of the third countries affected by those effects or their nationals have been affected by that regulation.

The blocking regulation or blocking statutes are one of the options employed by countries to block the effects of the extraterritorial effects of foreign regulation. They have usually following contents or purposes: (1) to prohibit domestic entities to obey measures issued by foreign authorities, (2) to prohibit domestic judiciary recognizing or enforcing foreign decision or judgment, and (3) "claw back clause" allowing domestic companies to recover, via domestic processes, the damages paid by them in effect of foreign litigation.[108] These blocking statutes[109] were not only introduced against unilateral international sanctions imposed by the USA,[110] but also against

[107] SJÅFJELL, Beate. Conceptualising Corporate Sustainability Law. *Transnational Legal Theory*. 2025, p. 30. DOI: 10.1080/20414005.2025.2559542

[108] MARTYNISZYN, Marek. Legislation Blocking Antitrust Investigations and the September 2012 Russian Executive Order. *World Competition*. 2014, vol. 37, no. 1, p. 105.

[109] The list of examples of blocking statutes can be found, e.g. here: SHU, Zhongsheng. Application and Improvement of Blocking Statute in the View of the Intersection of Public International Law and Private International Law: Review of the Huawei's Meng Wanzhou Incident. *International Journal of Philosophy of Culture and Axiology*. vol. 21, no. 4, pp. 4–5.

[110] Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (OJ L 309, 29.11.1996, s. 1 – 6).

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measures violating international trade rules by the USA, e.g. introduced by the EU[111] and Japan.[112] In case of *Gazprom* investigation by the Commission, the Russian Federation adopted specific blocking rules targeted against such investigation although their scope was drafted broader.[113] The blocking regulation may represent a test of an actual extraterritorial action of a foreign regulator. If the enforcement actions by a foreign regulator cannot be effectively blocked by a domestic regulation, it can assert that a foreign regulator actually acts within its territorial and personal limits. Indeed, the intensity of application of blocking statutes depend on the willingness of countries to shield undertakings established within their territories.

While blocking statutes are quite passive measures, trade retaliation represents a countermeasure against regulatory or enforcement activity of a foreign authority. "Section 301" of the U.S. Trade Act of 1974[114] epitomize an example of a possible retaliatory measure if investigation show that "an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce…"[115] Recently, the President of the USA announced his intent to retaliate the fines imposed to the US-established companies for violation of competition rules,[116] or in the past, the threat of retaliation was connected with non-approval of Boeing merger by the Commission.[117]

Another option relies on the multilateral dispute settlement framework within the WTO as barriers to trade. E.g., Canada challenged the rules on import of seals,[118] Indonesia rules on biofuels,[119] or recently the Russian Federation challenges the

[111] Council Regulation (EC) No 2238/2003 of 15 December 2003 protecting against the effects of the application of the United States Anti-Dumping Act of 1916, and actions based thereon or resulting therefrom (OJ L 333, 20.12.2003, s. 1 – 2).

[112] YOKOMIZO, Dai. Japanese blocking statute against the U.S. Anti-Dumping Act of 1916. *The Japanese Annual of International Law*. 2006.

[113] MARTYNISZYN, Marek. *Legislation Blocking Antitrust Investigations and the September 2012 Russian Executive Order*.

[114] Title III of the Trade Act of 1974 (Sections 301-310, 19 U.S.C. §§2411-2420), titled "Relief from Unfair Trade Practices".

[115] Section 301 (b)(1) of the Trade Act of 1974.

[116] TRUMP, Donald J. @realDonaldTrump. In: *Truth Details | Truth Social* [online]. 5. 9. 2025 [accessed 06.10.2025]. Available at: https://truthsocial.com/@realDonaldTrump/posts/115153232183118149

[117] MEHRA, Salil K. *Extraterritorial antitrust enforcement and the myth of international consensus*, pp. 192–193.

[118] Case DS400: European Communities — Measures Prohibiting the Importation and Marketing of Seal Products.

[119] DS600: European Union and certain Member states — Certain Measures Concerning Palm Oil and Oil Palm Crop-Based Biofuels.

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Carbon Border Adjustment Mechanism (the CBAM Package);[120] the EU however rejected to participate in consolations due to complainant's aggression to Ukraine.
Moreover, actions of states of establishment are not only retaliation measure against extraterritorial extension of the EU law. As it was mentioned above, the European Commission Staff Working Document considers possibility of disengagement of some supply chains due to the CSDDD.[121] With respect developing countries, Mares identifies measures mitigating the impact of the regime established by the CSDDD to avoid disengagement from supply chains of companies established in those countries due to lack of capacity. However, some gas and oil suppliers to the EU market declared that they are not willing to comply with the CSDDD rules and they withdraw from the EU market.[122] Such consequences create costs of regulation that shall be considered in impact assessment of regulation (in the proposal phase as well as post-implementation phase). Indeed, there is a question, how much these declarations are pure sabre-rattling or real plans. As studies by the Commission and the Dutch Government estimate, the costs of the CSDDD compliance itself will affect payouts of the shareholders approximately by 0.13 %.

Conclusion

This study has traced the gradual evolution of the extraterritorial reach of EU internal-market regulation: its scope, theoretical underpinnings, and the variety of effects it produces.
The conditions for the provision of goods and services on the internal market have long served as a vehicle for what Bradford has described as the "Brussels effect." Access to the EU market requires alignment with EU standards, and this alignment often exerts indirect pressure on third-country legislators to adapt domestic rules to avoid competitive disadvantage. A further layer of influence has emerged through digital regulation: the DMA (and partially the DSA), regulate entire platform ecosystems rather than geographically delimited operations. Once a platform falls under their scope, both EU and non-EU users benefit from the contestability and fairness these instruments aim to ensure. In this way, the territorial borders of the

[120] Case DS639: European Union and its Member States — Carbon Border Adjustment Mechanism.
[121] JEVREMOVIĆ PETROVIĆ, Tatjana. *Extraterritoriality effect of the CSDDD on non-EU companies*, p. 208.
[122] EXXONMOBIL. A bone-crushing burden: Darren Woods discusses CSDDD | ExxonMobil in Europe. In: *ExxonMobil in Europe* [online]. 2. 10. 2025 [accessed 06.10.2025]. Available at: https://corporate.exxonmobil.com/locations/european-region/european-newsroom/2025/a-bone-crushing-burden-darren-woods-discusses-csddd#DarrenWoodsdiscussesCSDDD; MARTIN, Rik. Why Qatar's gas lifeline to Germany is at risk – DW – 08/01/2025. In: *DW* [online]. 8. 1. 2025 [accessed 01.10.2025]. Available at: https://www.dw.com/en/why-qatars-gas-lifeline-to-germany-is-at-risk/a-73460153

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internal market become porous, as the EU's internal rules radiate outward through the functional reach of global markets.

The development of EU competition law exemplifies the progressive refinement of jurisdictional "anchors" justifying such external reach. The CJEU's jurisprudence evolved from the single-economic-unit doctrine, through the implementation test, to the qualified-effects test. Whereas the earlier approaches sought to ground jurisdiction territorially, the qualified-effects doctrine accepts that anticompetitive conduct may occur entirely outside EU territory, provided its foreseeable, immediate, and substantial effects manifest within the internal market. Formally, the enforcement of competition rules remains territorial, yet in substance, the concept of territoriality itself has become increasingly elastic.

The recent instrument in the competition portfolio, the FSR represents a further stage in this process. It effectively "exports" the logic of EU state-aid control by enabling the Commission to assess third-country subsidies through the lens of EU competition principles. Although the FSR's jurisdiction is formally confined to undertakings active on the internal market, its impact inevitably extends beyond EU borders. In doing so, the Union positions itself as both a defender of fair competition and an architect of global regulatory order. The practical application has also shown that the FSR may produce *blocking effects*, that is, an undertaking may prefer to withdraw from the EU market or abandon a transaction rather than undergo scrutiny under the FSR. Indeed, the extraterritorial application is limited because the investigation and enforcement measures can be targeted merely to undertaking active on the internal market, not against the provider of the subsidy.

Finally, through the CSDDD, the EU seeks to construct what could be described as a universal or altruistic form of regulatory reach, asserting that all undertakings, irrespective of where they are based, should respect sustainability goals and human rights standards. Although the CSDDD may be weakened through forthcoming "Omnibus amendments," this pushback originates mainly within the EU itself, from political and business actors concerned with compliance burdens. The CSDDD therefore represents the ultimate form of the extraterritorial effect of internal-market-based regulation: an altruistic regulatory projection motivated by the EU's self-perceived role as a normative power. It extends to activities that have little or no effect on the internal market but are justified by the Union's commitment to pursue its foundational values beyond its borders. Nevertheless, the territoriality of the CSDDD remains legally anchored in the economic presence of undertakings within the internal market, while its effects spread through the web of production and supply chains connected to those undertakings.

Internal market regulation can thus generate three main types of extraterritorial effects: productive, structural, and behavioural. The extraterritorial impact relies primarily on the EU's import power when it is linked to access to the EU market or to

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the behaviour of importers operating within it. However, from an economic perspective, the EU must balance its import dependence and export ambitions. Threats to restrict EU exports, as recently voiced, for example, by the President of the United States, may limit the Union's willingness to impose regulatory measures with a broad extraterritorial reach. Another source of restraint arises from the EU's structural dependence on imported raw materials, which constrains its capacity to enforce regulations that could provoke retaliatory measures.

When drafting legislation, the economic, diplomatic, and systemic costs of extraterritorial effects must be carefully assessed and mitigated. As recent developments have shown, there is growing pushback against the EU's expanding regulatory reach. The persistent claim of "technical" territoriality changes little when confronted with strong external reactions, revealing the mirage-like nature of the territorial principle in EU law.

Does this mean that the EU should abandon its use of extraterritoriality as a protective shield for its internal market, or renounce its altruistic regulatory ambitions in favour of the global common good? Certainly not. Rather, it must acknowledge that the projection of its internal norms beyond its borders operates in a delicate balance between protectionism and altruism, between safeguarding internal interests and shaping global standards. This evaluation shall be including in the explanatory memorandum of the legislative proposal. Although possible "possible unnecessary divergence, tensions, and sources of conflicts with EU's trading partners" are mentions in the Better Regulation Toolbox,[123] effects of possible retaliatory measures and balancing them vis-à-vis benefits of proposed measures are not rigorously addressed or required. Therefore, it is suggested to update the Better Regulation Guidelines[124] and Toolbox with this context to transparently show also in the impact assessment possible external effect of regulation, not only technically review legal commitments of the EU as the current Better Regulation instruments require.

The challenge for the Union is to maintain that balance, to anticipate the costs of its regulatory influence, and to design accompanying strategies that preserve both its normative credibility and its economic resilience.

[123] Better Regulation toolbox. In: *Better regulation: guidelines and toolbox* [online]. 7. 2023, p. 220 [accessed 21.11.2025]. Available at: https://commission.europa.eu/document/download/9c8d2189-8abd-4f29-84e9-abc843cc68e0_en?filename=BR%20toolbox%20-%20Jul%202023%20-%20FINAL.pdf

[124] *Better Regulation Guidelines*. Brussels, 2021.

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