Cos. Face EU, US Regulatory Tension On Many Fronts

By **William Roppolo, Christina Dines and Jonathan Lorenzo** (September 11, 2025)

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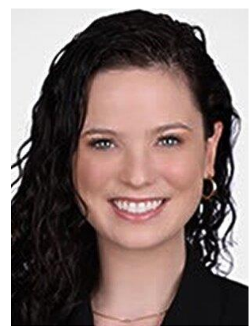

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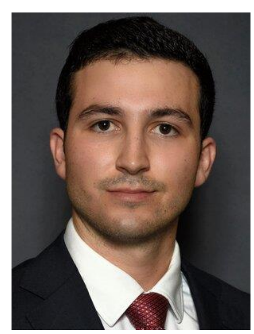

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For years, the global marketplace has been shaped by a centralized regulator: the European Union. When the EU sets stringent standards, companies seeking to operate in the international marketplace must conform to them — or else concede opportunities.

As a result, the EU sets the stage for strong regulations even beyond its borders. Other jurisdictions change their regulations to comply with the EU in a race to the top — a race that extends to multinational entities, which alters their strategies and standards of practice to remain competitive in the global market.

This phenomenon, coined the "Brussels effect," reflects the historical reality that other countries frequently mold their law — and that multinational companies examine and alter their operations — to conform with the EU's regulations.

But a crack has emerged in the landscape. In the U.S., recent deregulations and directives reveal a clash between established EU law and emerging U.S. standards. The result poses a question for companies that operate globally: Which standards — those of the EU or the U.S. — prevail?

Global Tech Divergences

Take, for example, the EU's General Data Protection Regulation. Its abbreviation, GDPR, became a household name after the regulation became enforceable in 2018.

The GDPR created uniform rules across the EU, governing data protection and privacy for individuals residing in and beyond the EU's borders. Given its extraterritorial reach — and the possibility of legal ramifications and fines for noncompliance — the GDPR soon became an almost global standard, despite its origination in the EU.

The U.S. has yet to enact a federal privacy law with comparable scope, although the American Privacy Rights Act, or APRA, if passed, would change the landscape. The bill, introduced in Congress in 2024, would align with the GDPR in several areas, including by requiring companies to provide transparency in their algorithm-related decision-making and permitting individuals the ability to access, delete and export personal data.

But there are also critical differences between the two. For example, unlike the GDPR, which generally requires companies to obtain permission before collecting personal data, the APRA would allow companies to collect and use data by default unless users proactively opt out.

These distinctions evidence a potentially growing divide. And if the APRA passes, it would mark a shift from certain GDPR requirements to which companies have already adapted.

Until and unless the APRA is enacted, though, the Brussels effect appears to continue to create a convergence between the U.S. and EU — one where the GDPR generally reigns supreme.

While the U.S. determines whether to pass the APRA, the EU has enacted yet another regulation with extraterritorial impact: the Digital Services Act. The DSA requires content moderation of all online intermediaries that offer services to users in the EU, including online platforms that "bring together sellers and consumers," such as search engines, e-commerce platforms and social media platforms.

Among other sweeping requirements, it mandates that companies disclose content moderation algorithms, implement mechanisms for individuals to report potentially illegal content, and allow independent audits.

While all companies covered by the DSA have baseline obligations, online platforms with over 45 million users per month in the EU face more stringent rules.[1] Noncompliance is severe. For example, failure to comply with the DSA can result in a fine of up to 6% of a company's annual global turnover.[2]

The DSA presents a challenge for multinational firms, not only because of its breadth, but also because it applies extraterritorially. U.S.-based global platforms have pushed back on the DSA, concerned that its hands-on oversight conflicts with freedoms guaranteed in the U.S.

On a macro level, the content moderation required by the EU's DSA is in tension with the U.S.' freedom of speech protections. And on a micro level, the U.S. is likely to permit much of the language that the DSA may deem impermissible.

Some governments — in the U.S. and elsewhere — also have pushed back on the DSA or attempts to regulate their citizens' freedoms. In the U.S., a White House memorandum tasked the secretary of the treasury, the secretary of commerce and the U.S. trade representative with "identify[ing] trade and other regulatory practices by other countries" that threaten freedom of speech or otherwise impair "the global competitiveness or intended operation of United States companies."[3]

Those offices are further instructed to recommend to the president "appropriate actions to counter such practices under applicable authorities."[4]

Diverging Trends in ESG

As with developments in technology and data privacy, Europe effectively sets the global standard for environmental, social and governance regulations. The EU's approach in this area, too, conflicts with that of the U.S.

In the EU, the Corporate Sustainability Reporting Directive, or CSRD, requires companies doing business in the bloc to report on climate-related risks, greenhouse gas emissions and workforce composition, among other disclosures. Beginning in 2025, large public-interest entities with over 500 employees were required to submit CSRD-compliant reports for their previous fiscal year.

In 2026, the scope of the CSRD will expand to include all large EU companies meeting certain thresholds.[5] By 2028, the CSRD will apply to non-EU companies with significant European operations.[6]

The CSRD is not the only ESG-specific regulation in the EU. For example, the Sustainable Finance Disclosure Regulation continues to require investment firms and financial advisers to disclose how ESG considerations are integrated into their operations.

This regulation casts a wide net, applying to non-EU firms that market financial products within the EU, and requiring covered firms to disclose how sustainability is integrated into investment decisions.

In contrast, the U.S. is trending toward deprioritizing ESG. The U.S. Department of Labor announced in May that it was rescinding the 2022 ESG rule that had allowed fiduciaries under the Employee Retirement Income Security Act to consider environmental and social factors when evaluating plan investments.[7]

Just one month earlier, H.R. 2988 was introduced in the U.S. House of Representatives, which, if passed, would ban ESG-oriented investing in federally regulated retirement plans.

At the state level, ESG also presents a clear divide. Florida, Kansas and Wyoming, for example, have enacted legislation restricting ESG-related considerations in state investing and contracting.[8] In contrast, states like New York, Illinois and Massachusetts require ESG considerations when granting state contracts or other procurement processes.[9]

Nonetheless, unless H.R. 2988 or another similar proposal is passed on a federal level, states, and companies therein, will continue to navigate the ESG arena absent a uniform nationwide standard.

Different Approaches to DEI

The EU mandates diversity, equity and inclusion compliance through a trio of directives: the Racial Equality Directive (2000/43/EC), the Employment Equality Directive (2000/78/EC) and the Gender Equality Directive (2006/54/EC).

Together, these measures prohibit employers from discriminating on the basis of race, religion, disability, age, sexual orientation and gender. Moreover, DEI obligations in the EU are increasingly integrated into sustainability reporting frameworks, including the CSRD, which requires large companies to disclose diversity metrics as part of their ESG compliance.

This elevates DEI in the EU from a voluntary initiative to a regulatory requirement tied to financial transparency and risk management. Companies that fail to fully implement these regulations may be barred from bidding on public procurements or excluded from financing under EU ESG scoring metrics.

A patchwork of national-level obligations within the EU presents an even greater challenge for multinational companies, particularly in jurisdictions like France and Germany — which independently require minimum executive board quotas for women.

Maintaining a high-level DEI standard like the EU's may be difficult for multinational companies that also operate in the U.S., which recently ended race and gender-based contracting preferences and defunded federal DEI programs. Two executive orders — No. 14151 and No. 14173 — illustrate this change.

The former dismantled DEI infrastructure within federal agencies. The latter required federal contractors and grantees to terminate all DEI mandates and affirmative action plans, and prohibited the Office of Federal Contract Compliance Programs from promoting diversity.[10]

In March, the U.S. Equal Opportunity Employment Commission and the U.S. Department of Justice issued a joint release announcing, without any change to the law, that DEI policies could violate Title VII of the Civil Rights Act of 1964, citing "serious implications for some very popular types of DEI programs."

More recently, in June, the U.S. Supreme Court ruled in Ames v. Ohio Department of Youth Services that Title VII does not impose a higher evidentiary burden on plaintiffs who belong to majority groups.

Ames resolved a circuit split, where several circuits had not required the additional hurdle, based on the text of Title VII and Supreme Court precedent. This case may lead to more private litigants bringing additional challenges to DEI initiatives, particularly in circuits where the requirement was removed with this decision.[11]

As these policies reflect, the EU treats diversity and inclusion as a component of corporate responsibility. The U.S., in contrast, may be shifting toward a model that treats DEI considerations as potentially unlawful. The result is a regulatory dilemma for multinational companies: Practices required in the EU may be scrutinized or penalized in the U.S.

AI Regulation

The EU's Artificial Intelligence Act, passed in 2024, is the first comprehensive AI law that applies across all sectors and sets mandatory guidelines for the development and use of AI systems throughout the EU.

The act applies to companies that create, deploy or otherwise put on the market an AI system or model. It sorts AI systems into risk tiers, and imposes strict obligations on those in the high-risk category — including, for example, AI tools used in biometric identification or hiring decisions.

Such high-risk AI systems must build in human oversight and submit to third-party conformity assessments to ensure compliance. And the AI Act doesn't stop at Europe's borders: Any company offering AI-driven services to EU users, regardless of where it is based, is subject to its scope.

With potential penalties reaching €35 million ($41 million) or 7% of global revenue, this is not a regulation firms can afford to treat lightly.

While the U.S. has yet to adopt anything comparable at the federal level, regulatory traction has grown in individual states. Texas, for example, has passed the Texas Responsible Artificial Intelligence Governance Act, expected to take effect on Jan. 1, 2026.

TRAIGA covers companies developing or deploying AI in Texas or conducting business in the state using AI tools. It restricts certain high-risk applications, and requires disclosures around how AI systems are used in public-facing contexts.

Texas may provide a blueprint for other states but, until then, or until Congress draws brighter lines federally, AI compliance will remain jurisdiction-specific in the U.S.

Bridging the Gap: Solutions to Divergence

Companies should continue to expect additional changes in the legal landscape. Regulations are not static.

In the ESG space, for example, the EU's CSRD expressly alters its requirements in the coming years. And the DSA, too, may take a new shape; it remains under fire from tech giants, which are concerned that content moderation will result in unfair targeting, and from governments that have expressed concern that the EU regulation is an attack on freedom of speech.

Multinational companies might consider using master services agreements with subcontracts that tailor their obligations based on jurisdiction. This practice would allow companies to draft new contracts to adapt to changing law, integrate regulation-specific compliance terms into their practices and manage risk exposure under conflicting jurisdictions.

Similarly, companies would be wise to update their internal policies to ensure transparency and compliance with emerging regulations.

Some companies might consider employing artificial consolidation strategies to meet CSRD requirements. This practice entails consolidating sustainability disclosures across all EU-based subsidiaries into a single report prepared by the largest EU entity in the group.

Companies that are fulfilling their ESG obligations in the EU, as well, should be prepared to explain and substantiate how investments with environmental, social or governance aspects are also best suited to maximize returns.

U.S. corporations can also work with members of Congress to pressure foreign governments with stifling regulations that contradict established principles. Despite the prevalence of the Brussels effect, regulations can be drafted in a way that does not force extraterritorial change without so much as receiving input from such territories and the corporations therein.

In addition, within the U.S., corporations may lean on the commerce clause of the U.S. Constitution to challenge restrictive regulations and potential unintended consequences for businesses in a particular state that may emerge as a result of another state's more stringent policies.

Ultimately, the Brussels effect has created divergence among jurisdictions, making multinational companies' ability to shift gears — quickly — more important than ever.[12] Companies should facilitate collaboration between cross-disciplinary teams abroad and at home, to ensure a synergized strategy and an understanding of requirements across jurisdictions.

Similarly, leadership throughout a multinational company's organizational chart should be trained on the obligations of their own entity and that of their sibling entities. While divergences exist, companies also can focus on the convergences: the areas where there is overlap in the scope of jurisdictional requirements, and the strategies that can fulfill them.

Conclusion

These different areas share a common thread: They are all in flux. Until there is resolution, companies will have to continue navigating the Brussels effect.

Nonetheless, even today's fragmented regulatory landscape — shaped by expansive and extraterritorial EU mandates and evolving U.S. deregulation — offers opportunities for strengthened cross-border collaboration and corporate input toward policy reform.

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[1] Companies, for example, which are defined as "very large online platforms" or "very large online search engines" must proactively identify and analyze risks related to their products or services. This includes considering "any actual or foreseeable negative effects on civic discourse and electoral processes." They must also assess the risks of "any actual or foreseeable negative effects in relation to gender-based violence ... and serious negative consequences to [a] person's physical and mental well-being."

[2] Under the DSA, too, the EU can flex its sanction powers to temporarily suspend a service as a last-resort measure, if the infringement is persistent and "causes serious harm to users and entails criminal offences" involving threats to a person's life or safety.

[3] Defending American Companies and Innovators from Overseas Extortion and Unfair Fines and Penalties, White House Memorandum, Feb. 21, 2025.

[4] Id.

[5] Two of the following three thresholds must be met: €50 million in net turnover, €25 million in total assets or at least 250 employees.

[6] The EU defines this as companies generating €150 million in EU revenue, provided they also have either a branch or subsidiary within the EU generating €40 million in net turnover or securities listed on EU regulated markets.

[7] See Utah v. Chavez-DeRemer, Case No. 23-11097, DE 335 (May 28, 2025, Letter).

[8] Take Florida's H.B. 3, which became effective in July 2023. It bars state and local governments from considering ESG factors in procurement and public investments. Kansas' H.B. 2100, which became effective that same month, similarly restricts state entities from "giving preferential treatment to or discriminating against companies" based on ESG criteria

when procuring or granting contracts.

[9] New York's GreenNY program requires state agencies and authorities to procure products and services that meet certain environmental criteria — for example, products that "maximize the use of recycled content" and those that "minimize the volume and toxicity of packaging." In committee as of July, New York's proposed S.B. S6917 would codify the GreenNY requirements as state law.

[10] The Office of Federal Contract Compliance Programs has also been directed to investigate contractors with practices that appear to consider DEI factors. Executive Order No. 14173 affects the private sector, too, by ordering "all agencies to enforce [the U.S.'s] longstanding civil-rights laws and to combat illegal private-sector DEI preferences, mandates, policies, programs, and activities."

[11] Ames v. Ohio Department of Youth Services, 145 S. Ct. 1540 (2025).

[12] In the U.S., the so-called California effect mirrors the Brussels effect — where California's stringent consumer regulations, environmental laws and even social trends influence the laws of its sister states. California boasts a massive economy that, like that of the EU, opens its doors to commerce if businesses are willing to adhere to its generally stricter and more nuanced regulations. While there is a corporate cost to compliance, it is generally cheaper than navigating two different sets of standards within the borders of the U.S. As a result, and in parallel to the EU, many companies incorporated elsewhere in the U.S. take the path of least resistance by complying with California law. Nonetheless, even well-meaning regulations can result in confusion in the marketplace, so a cross-disciplinary approach to compliance strategies, evaluating and drafting industry-specific contracts, and assessing litigation risk is important.