Regulating the European Data-Driven Economy

A Case Study on the General Data Protection Regulation*

Moritz Laurer[†]

Timo Seidl[‡]

15 May, 2020

Abstract

In recent years, data have become part and parcel of contemporary capitalism. This created tensions between the growing demand for personal data and the fundamental right to data protection. Against this background, the EU’s adoption of the general data protection regulation (GDPR) poses a puzzle. Why did the EU adopt a regulation that strengthens data protection despite intensive lobbying by powerful business groups? We make two arguments to explain this outcome. First, we use process tracing to show how institutional legacies triggered and structured the policy-formulation process by strengthening the position of data protection advocates within the Commission. Second, we use discourse network analysis to show that the Snowden revelations fundamentally changed the discursive and coalitional dynamics during the decision-making stage, ‘saving’ the GDPR from being watered down. Our paper contributes to the literature on the political economy of data protection while also offering a comprehensive explanation of the GDPR.

---

*Earlier versions of this article were presented at the European University Institute and at the 2019 GIG-ARTS conference in Salerno. We would like to thank all participants for their helpful feedback. We are particularly grateful to Camille Borrett, Clément Perarnaud and Martin Weinrich for their detailed comments and suggestions. In addition, we would like to thank Alexander Dix and Christopher Kuner for taking the time to answer our questions and lending us their expertise. Replication materials can be found online at <https://www.timoseidl.com/publications/regulating-the-european-data-driven-economy/>

[†]Centre for European Policy Studies, moritz.laurer@posteo.de

[‡]European University Institute, timo.seidl@eui.eu

1 Introduction

In recent years, data have become part and parcel of contemporary capitalism. In sectors from insurance to retailing, economic success increasingly depends on the possession of (personal) data¹ and the technical and organizational ability to extract value from them (Haskel and Westlake 2017). Data are described as a ‘raw material (...) to be extracted, refined, and used in a variety of ways’ (Srnicek 2017, 40) and as a new ‘kind of capital, on par with financial and human capital in creating new digital products and services’ (MIT Technology Review and Oracle 2016, 2). While some hope that this process will boost innovation and productivity (Mayer-Schönberger and Cukier 2013), others fear that it will embolden surveillance capitalists to monitor and manipulate human experiences in increasingly comprehensive ways (Zuboff 2019).

This creates a potential conflict between companies’ growing demand for personal data and the fundamental right of individuals to have them protected. On the one hand, data protection regulations may limit the ability of companies to innovate in fields like personal entertainment or medicine. They may thus be a competitive disadvantage in an increasingly data-driven world economy. On the other hand, data protection regulations protect individuals against companies whose business models they do not fully understand or have no reasonable alternative to. They may thus reduce information and power asymmetries between individuals and the small number of companies which dominate digital markets (Calo and Rosenblat 2017; Pasquale 2015).

It is against this background that, in 2016, the European Union adopted the General Data Protection Regulation (GDPR), after four years of tense negotiations. There is a general consensus that the GDPR maintains, clarifies, reinforces and adds to the 1995 Data Protection Directive, which it replaced (Burri and Schär 2016; Burton et al. 2016; Hildén 2019). It strengthens the enforcement of data protection rules, it introduces new rights for individuals, it imposes new obligations on companies, and it threatens companies with fines of up to four percent of global turnover.

Thus, despite the growing economic importance of personal data, and despite an unprecedented lobbying effort by tech companies, the EU has not undermined European data protection, nor has it one-sidedly catered to business interests. While the latter certainly managed to take some of the GDPR’s edge off, the GDPR’s overall gestalt is certainly not what business wanted. This seems puzzling not only because it goes against the grain of an ascending “big data paradigm” (Hildén 2019, 3) that powerfully links the collection

---

¹While digital data have become more generally, we focus on the regulation of personal data.

and use of data to notions of competitiveness, productivity and progress. It is also puzzling given the EU’s often-alleged deregulatory and business-friendly bias, and the ‘cool reception’ (Vandystadt 2012) the GDPR received from member states.

We put forward two arguments to explain this puzzle. First, we show how issue-specific institutions (such as the constitutionalization of data protection) triggered and structured the drafting of the GDPR. The political science literature on the GDPR has mostly focused on the ‘noisy politics’ after the release of the proposal. However, many elements of the GDPR were already present in the Commission’s original 2012 proposal, which, at the time, was described as a ‘bold attempt’ (Kuner 2012, 14) to strengthen data protection in Europe. Drawing on a variety of sources from primary documents to expert interviews, we process trace the drafting of the GDPR from the early agenda-setting stage (1990s-2009) to the policy-formulation stage (2009-12). While others have studied why interest groups choose to lobby for or against the GDPR (Atikcan and Chalmers 2018) and which interest groups were successful in their lobbying efforts (Hildén 2019), we study how issue-specific institutions shaped the political context of these lobbying activities. Specifically, we show how such institutions strengthened the position of data protection advocates within the Commission and therefore help explain why business groups were not more successful in influencing the content of the proposal.

Second, we confirm the hypothesis that the Commission’s proposal would have been considerably watered down during the decision-making stage (2012-16) had the Snowden revelations not boosted the salience of data protection. While business interests were initially successful in amending and blocking the GDPR, the exploding public interest in data protection in the wake of the Snowden revelations made it much more difficult for business groups to lobby against data protection. We are not the first to make this argument (Kalyanpur and Newman 2019; Rossi 2016), but we are the first to systematically map the changes in the discursive and coalitional dynamics before and after the revelations, using discourse network analysis (Leifeld 2013). Our goal here is not to show how exactly salience changed the dynamics of the political conflict, but to systematically show that it did.

We proceed as follows. The next two sections give a short overview of the relevant literature and discuss our theoretical concepts. After introducing our methodological approach, we present our first argument, namely that issue-specific institutions – those that govern issue area like data protection – were crucial for the timing and the content of the Commission’s draft proposal. We then make our second argument, namely that the Snowden revelations indeed fundamentally changed the coalitional politics during the decision-making stage. We conclude with a brief sketch of the theoretical relevance of our findings and avenues for future research.

2 EU Policy-Making and Economic Interests

There is an influential strand of literature that argues that EU policy-making is biased towards deregulation – be it because interest heterogeneity and high consensus requirements make positive integration (regulation) much harder than negative integration (deregulation) (Scharpf 2010); because the EU’s dominant mode of integration by law favours market-enforcing over market-restricting integration (Höpner and Schäfer 2012); or because neoliberal ideas have taken hold in Brussels (Schmidt and (Schmidt and Thatcher 2014)). A related strand of literature argues that business interests have an inherent advantage in EU policy-making as they not only command more money but also more expertise (Dür and Bièvre 2007; Eising 2009). From this perspective, the adoption of the GDPR is puzzling, given that it is an example of positive and partly market-restricting integration that was strongly opposed by well-endowed and well-informed firms.

A more recent strand of literature, however, has qualified the view that business dominates EU policy-making. Dür and colleagues find ‘no clear business dominance in the policy-making process of the contemporary EU’ (Dür, Marshall, and Bernhagen 2019, 5), partly because the Commission’s growing focus on product and process regulations increasingly pitches it against business interests (Dür, Marshall, and Bernhagen 2019, 6–7). Similarly, Klüver finds no ‘systematic bias in favour of business interests. Even though economic power plays an important role, so do citizen support and information supply’ (Klüver 2013, 216). However, she also finds interest group influence to be ‘considerably larger during the policy-formulation than during the decision-making stage’ (Klüver 2013, 210). This, however, does not make the GDPR less puzzling. First, business groups were in fact close to watering down the Commission’s proposal during the decision-making stage (when they should have been less successful). Second, their influence during the policy-formulation stage was limited (when it should have been higher). It is therefore crucial to understand the conditions under which businesses are more – or less – successful in EU policy making. Here, we focus on two such conditions: the mediating role of issue-specific institutions and issue salience.

Issue-specific institutions are the formal and informal rules that govern a specific issue area like data protection. Their effects are more circumscribed but also more direct compared to those institutions that govern the EU’s legislative process during the agenda-setting and decision-making stages (Parker and Alemanno 2015). Focussing on such issue-specific institutions thus allows us to specify the causal mechanisms by which they constrain or enable certain interest groups in EU policy-making. In particular, issue-specific institutions have three important effects on the relative influence of business interests during the agenda-setting stage. First, for both cognitive and normative reasons, the desire for legal consistency constrains the Commission’s legislative leeway (Hartlapp, Metz, and Rauh 2014, 18–20; Pierson 1996). By defining the legal status

quo, issue-specific institutions thus shape what is politically possible and plausible. Second, issue-specific institutions (dis-)empower certain actors within the Commission. For example, they influence which Directorate General (DG) becomes lead DG. The lead DG then enjoys informational and strategic advantages that allow it to strongly influence the content of a proposal, for example by controlling which positions are heard (Hartlapp, Metz, and Rauh 2014, 21)). Third, entirely new actors can be created as a by-product of institutional reforms. These actors, as we will see with the Article 29 Working Party, can subsequently develop an identity of their own and exert considerable influence on policy initiatives.

Issue salience refers the importance of an issue “to the average voter, relative to all other political issues” (Culpepper 2010, 4). Increasing salience incentivizes policymakers to distance themselves from business interests. In the European Union, this is particularly true during the decision-making stage as both the European Parliament (EP) and the member states are directly accountable to their electorates (Dür and Mateo 2016). For example, business groups are more successful in the EP when issue salience is low (as well as when they were united and proposals are dealt with by ‘mainstream’ committees) (Rasmussen 2015). Business groups, and multinational corporations in particular, can therefore be expected to be more influential under conditions of low-salience, ‘quiet politics’; conversely, ‘business power goes down as political salience goes up’ (Culpepper 2010, 177; Kalyanpur and Newman 2019).

3 The Politics of Data Protection in Europe

How can we explain the origins of European data protection legislation? Using an institutionalist framework, Newman Newman (2008b) argues that national data protection authorities (DPAs) were instrumental in bringing about the 1995 Data Protection Directive. DPAs are ‘inside’ data protection advocates that are, other than ‘outside’ advocates like civil rights groups, endowed with advisory, oversight, and regulatory powers (Bennett 2011). DPAs successfully used these institutionally mandated resources, expertise and networks to push for supranational legislation, despite reluctance and resistance by European institutions, member states and business groups (Newman 2008a).

While Newman provides a convincing account of the adoption and the timing of the 1995 directive, political science accounts of the GDPR itself are still few and far between. Most analysis focus on legal, normative, or practical implications. The few existing explanatory accounts highlight the role of technological change in creating a demand to update European data protection rules (Burri and Schär 2016, 480); of the lead committee and rapporteur in the EP (Hildén 2019; Moulounguet 2016); the importance of the right to privacy in EU law which was further upheld in a number of ECJ rulings during the decision-making phase (Burri

and Schär 2016, 488); and the increased salience of data protection in the wake of the Snowden revelations, which saved the GDPR from being watered down by (mostly US) business lobbyists (Hildén 2019; Kalyanpur and Newman 2019; Rossi 2016). While we believe that these studies all point in the right directions, we want to investigate some of their claims more systematically, complementing and adding to their findings.

4 Methodological Approach and Data

Our research question – why the EU strengthened data protection despite intensive lobbying – can be broken down into two questions. Why did the agenda-setting and policy formulation stage result in a proposal that strengthens data protection? And why was this proposal not watered down during the decision-making stage? To answer these questions, we rely on two different methodological approaches. First, we use process tracing to reconstruct the causal chain that led from the early agenda setting in the 1990s to the Commission’s 2012 proposal (Bennett and Checkel 2015). Drawing on primary sources, media reports, secondary literature and expert interviews, we try to flesh out the causal mechanisms that triggered and structured this process. In doing, we follow the methodological guidelines of ‘efficient process tracing’ (Schimmelfennig 2015). Practically, this meant that we drew on the existing literature to specify putative causal mechanisms *ex-ante* (e.g. the importance of the legal framework as an institutional opportunity structure) and to focus our analysis on those actors that the literature identifies as particularly relevant (e.g. DPAs).

Second, we use discourse network analysis (Leifeld 2013) to map the structure and structural change of ‘discourse coalitions’ (Hajer 1993) between the release of the proposal (January 2012) and the adoption of the GDPR (April 2016). While previous studies have traced how central actors have changed their position on important aspects of the GDPR in the wake of the Snowden revelations, they have not systematically mapped the coalitional changes. Our analysis complements these findings by showing how the Snowden effect led to a sizeable shift in discourse coalitions, and how this discursive shift reflects and illuminates the underlying political shift.

In order to uncover these discourse coalitions, we analyzed statements by political actors about the GDPR or closely related issues like the Safe Harbour agreement in 164 newspaper articles.² If, for example, a Facebook spokesperson said the GDPR undermines innovation, we coded the concept ‘GDPR is bad for innovation’ for

---

²We did not code statements made by ‘observing’ actors like academics or consultants, statements relating to the protection of personal data in police and security contexts, statements regarding only the public sectors; statements relating to other elements of the EU’s digital agenda; or statements regarding technical details and timing.

the actor Facebook, and that Facebook agreed with this statement (actors can refer to the same concept but disagree with it). To reflect the relevance of both US and European actors and to ensure a politically and geographically representative sample we selected articles from the New York Times (31), Financial Times (48), Europolitics (71), and EURACTIV (14).³ This resulted in 703 statements by 103 actors on 53 policy concepts.

The central idea is that actors (represented by nodes) are connected by edges and therefore form a discourse coalition when they both agree, or both disagree over a concept. For example, if Google also said that the GDPR makes it harder for companies to innovate, Google will be connected to Facebook in the network because they agree that the ‘GDPR is bad for innovation’. The more concepts actors agree over, the higher the edge weight between them. The coding scheme was developed inductively, with the level of abstraction of concepts being relatively low (e.g. ‘GDPR’ is good for growth’ and ‘GDPR is good for innovation’ were not merged into ‘GDPR is good for the economy’). This ensured that actors were only connected if they really shared a policy concept, and it minimized interpretative leeway. The coding scheme was iteratively refined, and, when found exhaustive, the entire analysis was redone to ensure a consistent application. Moreover, several steps were taken to make sure that statements were not wrongly coded (Leifeld 2013, 177–78).

5 The Agenda-Setting and Policy-Formulation Stage

Why did the Commission start to draft the GDPR in 2009? We argue that the constitutionalization of data protection in the 2009 Lisbon Treaty was the decisive event in both setting the stage for and raising the curtain on the GDPR. Therefore, before analyzing how this both triggered and structured the drafting of the GDPR, we will look at how data protection was constitutionalized in the first place.

5.1 The Early Agenda-Setting Stage (1990s-2009)

Three legal events that occurred before the policy-formulation stage decisively influenced the GDPR (cf. González Fuster 2014). First, the 1995 directive created a strong legal precedent for the GDPR. It made

---

³Articles were obtained from Factiva based on a search string containing data protection, Europe* and regulation*. EURACTIV articles were sampled from July 2015 onwards after Europolitics was discontinued. We chose European newspapers for two reasons: first, because they provide a good reflection of the content and coalitional composition of the EU policymaking discourse, which is what we are interested in (Ovádek, Lampach, and Dyevre 2020); second, any choice of specific national newspapers would have been arbitrary to a certain extent, and would have biased our results towards the peculiarities of specific national discourses.

the creation of DPAs compulsory in all member states and formalized their cooperation in a new institution, the so-called Article 29 Working Party (WP29). The WP29 is supposed to ensure the uniform application of the directive and advise the Commission on ‘any proposed amendment of this Directive’ (Article 30). The DPAs in the WP29 have come to share a common perspective, similar to a collective actor, continuously trying to improve their cooperation and influence (Barnard-Wills, Pauner Chulvi, and Hert 2016). Thus, with the WP29, the 1995 directive ‘officially installed a kind of ‘privacy lobby group’ at the heart of the European institutions’ (Poullet and Gutwirth 2008, 571). The 1995 directive first supranationalized data protection in European secondary law, creating issue-specific institutions at the European level.

Second and third, data protection was soon also enshrined in primary European law: first in the 2000 Charter of Fundamental Rights (Article 7 on privacy and Article 8 on data protection), and then in the 2009 Lisbon Treaty, which made the Charter legally binding and constitutionalized data protection in Article 16 TFEU. Both events were strongly influenced by the WP29, which used their network to get access, their expertise to legitimize, and their official legal authority to influence the constitutionalization of data protection.

In 1999, the WP29 issued an official recommendation ‘on the inclusion of the fundamental right to data protection in the European catalogue of fundamental rights’ and offered to ‘help in the drawing-up of the charter’ (WP29 1999, 3). Its chairman Stefano Rodotà was appointed member of the drafting convention of the Charter (WP29 2002, 23) and the WP29 prides itself on having made a ‘major contribution’ to anchor data protection in the charter (WP29 2002, 5), which is confirmed by other sources (Pfeifle 2017; Pizzetti 2006).

The WP29 also influenced the draft Constitution for Europe itself. An explanatory memorandum from the drafting convention makes explicit reference to the Charter and the intention to create a ‘general article on the protection of personal data, which creates a single legal basis for data protection by both the institutions and the Member States’ (Convention Européenne 2003, 9). While the Constitution for Europe was rejected, the succeeding Lisbon Treaty created a strong legal basis for data protection legislation in Article 16 TFEU, which is very similar in wording to Article 50 of the Constitution. The WP29 thus played, in the words of its chairman, ‘an important role [in] the unrelenting constitutionalization [sic!] of the right to personal data protection’ (WP29 2004, 7). In doing so, it further consolidated the institutions that govern data protection in Europe (and to which the WP29 owes its very existence). These issue-specific institutions, in turn, would prove crucial for both the timing and the nature of the GDPR.

5.2 The Policy-Formulation Stage (2009-12)

Who initiated the data protection reform that led to the GDPR? We found no evidence of a particular member state pushing for reform, as intergovernmentalism would expect. Sweden, for example, held the Council presidency in 2009, but became one of the opponents of the GDPR after the Commission published its proposal. It is true that the European Council’s December 2009 Stockholm Program invited the Commission to evaluate the EU’s data protection legislation (European Council 2010, 18–19). However, this programme was drafted by the Commission itself (FRA 2009). Moreover, the Commission had already ‘launched a review of the current legal framework, with a high-level conference in May 2009 (European Commission 2010, 3). This indicates that the Commission had started preparing data protection reform before and then added the relevant passages to the Stockholm Programme with the tacit approval of the European Council.

We also found no evidence that a business coalition pushed for reform. While business coalitions have been found to exert significant influence on setting the agenda for the Commission, such as in the case of the European Round Table for Industrialists, there is no sign of such a coalition in the case of the GDPR (Cowles 1995). Instead, it was the Commission and the DPAs that were the main actors pushing for reform (Dix 2019).

Why did the Commission start working on the GDPR in 2009? It had already issued two evaluation reports in 2003 and 2007 in accordance with its mandate, explicitly formulated in Article 33 of the 1995 directive, to regularly evaluate the directive and propose amendments. In the first report, the Commission did not initiate reform, because member states did not support it and the implementation of the directive was not sufficiently advanced yet (European Commission 2003, 7–8). In the second report, it still did not advocate reform, but noted that the ‘ratification of the Constitutional treaty may open new perspectives’ by creating a ‘specific and self-standing legal basis for the Union to legislate in this matter’ (European Commission 2007, 8).

It was already clear before 2009 that technological advances, increasing cross-border data flows, and the lack of harmonization would increase the demand for reform. But it was only the Lisbon treaty that – in the Commissions own words – created a ‘new legal basis’ that allowed the EU to ‘address the above challenges [...] in a single legal instrument’ (European Commission 2010, 4). These ‘new legal possibilities’ were seized by the Directorate General Justice and Consumers (DG JUST), which, under the auspices of Viviane Reding, became lead DG for the formulation of the GDPR (European Commission 2010, 4). This shows that it was not only and not mainly functional pressures, but an institutional opening that triggered the drafting of the GDPR, namely article 16 of the Lisbon Treaty.

Moreover, the content of the GDPR itself was strongly influenced by the fact that DG JUST became the lead DG – and not, say, DG Market, which had been in charge of a previous review of the directive (Hildén 2019, 94). DG JUST is a consumer and not a market-oriented DG, which made it harder for business groups to get their voices heard (cf. Hartlapp, Metz, and Rauh 2014). And DG JUST was led by the experienced and ambitious Commissioner Reding, who was able to defend her proposal against other directorate generals, which did have their quarrels with it (Malhère 2012). But while Reding’s role in the political process leading to the GDPR can hardly be overstated (Dix 2019; Kuner 2019), it were issue-specific institutions that provided the opportunity structure for her political entrepreneurship. Moreover, the fact that, in the words of Ms. Reding herself, lobbying during the policy formulation was ‘fierce – absolutely fierce’ but that ‘the legislation was on the table’ as Ms. Reding ‘wanted to have it’ (Warman 2012), speaks to the limited clout of business interests when they face a powerful, consumer-oriented Commissioner.⁴

Perhaps most importantly, DG JUST provided the secretariat for the WP29 (WP29 2009, 1). This gave the latter an outsized influence in drafting the GDPR. In fact, the WP29’s contribution to the first public consultation by the Commission, already contained key elements of the GDPR (WP29 2009). A systematic comparison between this paper and the final text of the GDPR reveals that many of the WP29’s demands from 2009 not only made it into the Commission’s 2012 proposal but even into the final text of the GDPR.⁵ Table 1 clearly shows that we cannot understand the GDPR if we do not understand where many of its key paragraphs came from.

And to understand where they came from, we need to understand how the constitutionalization of data protection created a situation in which DG JUST was the logical choice as lead DG – and in which the WP29 could play an important role in drafting the GDPR. Crucially, the Lisbon Treaty strengthened the legal and political position of DG JUST and Fundamental Rights Commissioner Reding with respect to data protection. It helped establish data protection as a consumer rights issue and to emancipate it from a

---

⁴One study shows that it were mainly retail and finance firms that lobbied for retaining the old directive, while other firms were in favour of a new regulation (Atikcan and Chalmers 2018). This is not necessarily surprising as many businesses indeed had an interest in a reform that promised harmonization, greater legal certainty and less administrative burdens (Vogel 2011). But just because businesses want regulation (i.e. more harmonization), it does not mean they want more regulation (i.e. stricter data protection). In fact, superficial agreements over terms often hide deeper disagreements over their meaning (Hildén 2019, 130–31). Others have argued that data protection was initially not very high on the agenda of many European firms. It was only later that US lobby efforts ‘incentivized European business to join the watering down process’ [Kalyanpur and Newman (2019), p. 454]. In any case, the fact that the Commission’s proposal clearly decommodifies personal data – and the fact that many business groups later vehemently opposed it – strongly suggest that their influence on the content of the proposal was limited (Hildén 2019, 152).

⁵It can be argued that the anticipated backing by the EP, which had signalled support for comprehensive data protection in response to the Stockholm Programme, allowed the Commission to draft a more comprehensive proposal (Dix 2019).

purely market based logic (Hartlapp, Metz, and Rauh 2014, 160–206). It also made political and legal sense to task the DG hosting the national DPAs with data protection reform (Dix 2019). Politically, it enabled the Commission to partner up with a powerful transnational actor while allowing the member states to stay involved. Legally, the 1995 directive gave the WP29 an official role in advising the Commission on any amendments to the directive, which is exactly what the GDPR is.

None of this, however, can be explained outside the contingencies of the EU’s historical development. Thus, without taking a historical-institutionalist perspective we cannot explain why DG JUST and not, say, DG Market became lead DG (like in 1995), and therefore why the Commission’s proposal bears the hallmarks of the WP29 and not of data-driven businesses. Functional and economic pressures certainly mattered, but without reference to issue-specific institutions – in particular the 1995 directive and the constitutionalization of data protection – we can neither explain the timing nor the nature of the Commission’s proposal. It were issue-specific institutions that provided the necessary normative demand and legal supply for an overhaul of European data protection, empowered the DPAs and strengthened data protection advocates within the Commission, and made it harder for business groups to get their voices heard.

6 The Decision-Making Stage (2012-16)

Under the Lisbon Treaty, data protection became subject to the ordinary legislative procedure, which gave the Council and the Parliament equal formal power in amending and negotiating the Commission’s proposal. Analogous to DG JUST in the Commission, the responsible lead committee on Civil Liberties, Justice and Home Affairs (LIBE) was instrumental in making the EP’s position more fundamental rights oriented. As the EPP’s shadow rapporteur Axel Voss pointed out, LIBE is ‘always coming from the fundamental rights side’ while other committees would have been more ‘economically orientated’ (Moulonguet 2016, 12).

LIBE appointed Jan Philipp Albrecht, a German Green, former activist and trained IT lawyer, as a rapporteur. Albrecht’s national, political and personal background as well as his technical expertise and political pragmatism played an important role in orienting the EP’s position towards more data protection (Kayali 2015; Moulonguet 2016, 14–16). In the meantime, Viviane Reding continued to put her political weight behind the proposal, emphasizing that data protection is both a fundamental human right and crucial in creating a European digital single market (Reding 2013a). In fact, the European Commission viewed harmonization and the regulatory creation of consumer trust as key elements of its broader digital agenda, which chiefly aims at digital market creation (European Commission 2010, 3–4, 2012, 2).

Table 1: A comparison between the WP29 2009 position paper and the final text of the GDPR

WP29 Position Paper (2009)	GDPR 2016
Introduce a new ‘Privacy by Design’ principle (pp. 12-15)	Introduces a new ‘Privacy by Default and by Design’ principle (GDPR Art. 25)
Introduce a new ‘accountability’ principle (p. 20)	Introduces a new ‘accountability’ principle (Art. 5§2)
Increase data controllers’ responsibilities; introduce data protection impact assessments; reinforce the role of data protection officers (p. 20)	Increases data controllers’ responsibilities; data protection impact assessments are introduced; reinforces the role of data protection officers (GDPR Art. 35-39)
Improve redress mechanisms and introduce class action lawsuits (p. 16)	Improves redress mechanisms and strengthens the role of public interest groups for the enforcement of rights (GDPR Chapter VIII, particularly Art. 80)
Improve transparency; introduce data breach notifications (for high risk breaches) (p. 16, 21)	Improves transparency; data breach notifications become obligatory (for high risk breaches) (GDPR Section 1 and Art. 34)
Strengthen consent requirements (p. 17)	Strengthens consent requirements (GDPR Art. 7)
Give clear institutional, functional and material independence to the DPAs, as the 1995 directive’s Art. 28 was unclear (pp. 21-22)	Strengthens functional (Art. 52§1), institutional (Art. 52§2,5) and material (Art. 52§3,4,6) independence of DPAs
Clarify DPA’s enforcement powers, as the 1995 directive’s Art. 28 only contain 3 subparagraphs on enforcement (p. 22)	Contains 16 subparagraphs on investigative and corrective powers (Art. 58§1,2)
Extend legislative advisory powers. WP29 opinions should be addressable more actors (e.g. national parliaments) and treat more issues than ‘administrative measures and regulations’ (p.22)	Extends the scope of the DPA’s opinions to more actors (e.g. national parliaments) and to ‘any issue related to the protection of personal data’ (Art. 58§3b)
Strengthen the WP29	Renames WP29 to ‘European Data Protection Board’ with broadened task description (Art. 68 & 70)
Ensure more harmonization in an ‘unambiguous and unequivocal legal framework’ (p. 9)	Directive becomes a regulation

But despite Mr. Albrecht’s rapporteurship and Ms. Reding’s continuing support, the Commission’s original proposal was on the brink of being substantially watered down in the spring of 2013 (Rossi 2016, 42–58). Many, including Mr. Albrecht and Ms. Reding, feared that the new regulation could end up weaker than the old directive (Nielsen 2013). This turn of events was the result of an ‘unprecedented and extremely aggressive’ intense lobbying effort on the part of (mainly) US businesses (Fontanella-Khan 2013; Kalyanpur and Newman 2019, 453–54; Rossi 2016, 42–45). In the EP alone, a record number 3999 amendment proposals were filled (LobbyPlag 2013).

Previous studies have shown how these lobbying efforts were initially successful in amending the Commission’s proposal in ways that reflect business interests. Rossi looks at opinions issued by parliamentary committees (ITRE, IMCO, JURI), which were released between January and March 2013 (Rossi 2016, 47–56). He finds that, by and large, they aimed at weakening data protection in areas as diverse as consent requirements, the definition of legitimate interests to process data without explicit consent, data breach notification rules, fines, the definition of personal data, the right to data portability, or the right to be forgotten. Along the same lines, others find that business groups were initially successful in watering down the Commission’s proposed regulations on fines and data breach notification rules (Kalyanpur and Newman 2019, 457–58).

The Commission’s proposal also received a ‘cool reception from member states’ (Vandystadt 2012), some of which opposed it ‘fiercely’ (Rossi 2016, 56). LobbyPlag data tell a similar story, finding only 114 positive but 403 negative opinions on the GDPR in classified Council documents (LobbyPlag 2013). Germany, Ireland, Sweden and the UK were the biggest opponents to the GDPR.

Thus, in the spring of 2013, privacy advocates were justifiably afraid and business actors reasonably confident that Europe would not strengthen and might even weaken its data protection regime (Rossi 2016, 58–59). On June 6, Ms. Reding publicly remarked that the ‘absolute red line’ below which she was ‘not prepared to go is the current level of protection as laid down in the 1995 Directive’ (Reding 2013b). But then everything changed. On the very same day that Ms. Reding made her remarks, The Guardian published a story about mass surveillance based on documents leaked by Edward Snowden. This was the first of many stories that would soon transform the technical topic of data protection into a highly salient and hugely controversial issue (Kalyanpur and Newman 2019, 455; Rossi 2016, 42). The ‘salience shock’ (Kalyanpur and Newman 2019, 454) that followed these revelations fundamentally changed the public debate around data protection and tarnished the reputation of tech companies, which were perceived as ‘enablers of state surveillance’ (Rossi 2016, 61).

While ‘salience is no silver bullet’ and the political battle for the GDPR was far from over, the Snowden revelations led to a ‘noticeable shift in the negotiating dynamic’ (Kalyanpur and Newman 2019, 456). They made it much more difficult for US companies to make their voices heard in Brussels. ‘While business groups dominated early discussions, a former Senior Department of Commerce official summarized, ‘along comes Mr. Snowden and everything goes into a tailspin’. (...) The new consensus was that the Europeans would do whatever they could ‘to stick it to United States and the American companies’ (Kalyanpur and Newman 2019, 462). The revelations also empowered data protection advocates, finally giving them ‘a chance to react’ (Kalyanpur and Newman 2019, 460).

As a result, positions in the EP shifted considerably (Rossi 2016, 62–65). In October 2013, the LIBE committee overwhelmingly adopts Mr. Albrecht’s report, which endorsed the Commission’s proposal and – with some exceptions – further strengthened it. In March 2014, the plenary passed Albrecht’s report with near unanimity. This unity is remarkable given the tension between the economic and the fundamental rights dimension of data protection (Moulounguet 2016, 9). It shows the even when industry lobbyists are united, their influence in the EP is limited when issue salience is high and a ‘non-mainstream’ committee like LIBE deals with the proposal (Rasmussen 2015).

In the European Council, negotiations remained more protracted, not least as a result of sustained lobbying pressure (Hildén 2019). But powerful actors, most notably Germany, started to call for stronger data protection, not least driven by domestic public pressure (Kauffmann 2013). In addition, three rulings by the ECJ – one affirming the right to be forgotten (May 2014) and the other two invalidating the data retention directive (April 2014) and the Safe Harbour Agreement (October 2015) – further strengthened the case for the GDPR: first, by exposing ‘the deficiencies in the existing EU data protection framework’ (Burri and Schär 2016, 488) and second, by establishing legal principles that limit the leeway for political actors (Dix 2019). Against this background, the European Council reached a general approach on the GDPR in June 2015, and a trilateral agreement with the Commission and EP in December 2015. The GDPR, in a version that reflected a compromise between the Council and EP but nonetheless harmonizes and generally strengthens data protection in Europe, was officially adopted in April 2016 and became applicable in May 2018 (Burton et al. 2016; Hildén 2019).

The Snowden revelations thus fundamentally changed the political dynamics during decision-making stage and thereby ‘saved’ core elements of the Commission’s original proposal, which were at the brink of being watered down by a concerted lobbying effort. ‘Thank you, Mr. Snowden!’, Ms. Reding proclaimed (Kauffmann 2013), knowing full well that the GDPR, at least in its current form, ‘would be dead without Snowden’ (Kuner 2019). But the existing accounts on which this analysis has drawn so far only give us a piecemeal

picture of this ‘Snowden effect’. They show how the Snowden revelations changed the position of certain actors in certain political contexts on certain aspects of the GDPR. They do not give us a comprehensive picture of how coalitional alignments changed after Snowden.

Our second analysis fills this gap by showing how discourse coalitions – defined as actors sharing policy beliefs about the GDPR and assumed to reflect political coalitions – changed after Snowden. It is true that actors lobby behind the scenes and do not express all their beliefs publicly. But not only were these more covert activities already traced by other studies; many actors also do voice their beliefs publicly to influence other actors and the public at large. We should therefore expect the political shifts to be reflected in discursive shifts. To test this, we provide the missing bird’s-eye view on the discursive-coalitional dynamics during the policy-making process. Figure 1 depicts two actor congruence networks. The first one (on the left) contains statements made between January 2012, when the Commission released its proposal, and June 2013, when Snowden revealed his first documents. The second one (on the right) contains statements from June 2013 to April 2016 when the GDPR was officially adopted.⁶

In the first network we can identify roughly two discourse coalitions. On the left, we have a smaller and somewhat less dense coalition of GDPR-supporters. As we would expect, it centres around Mr. Albrecht, who is supported by the WP29 and the European data protection supervisor (EDPS), consumer protection groups, and some member states. We also find the JURI committee (but no other parliamentary actors) and Commission actors in this pro-GDPR coalition. On the right, we see a larger and denser coalition that opposes the GDPR. At its core are tech companies like Facebook, industry groups, US government actors, and again some member states, most notably Germany and the UK. Equally important, at its periphery we find the European Council, the ITRE committee, and a group of member states. Ireland is somewhat in between the two coalitions, which reflects its attempt to take on a broker role during its Council presidency in the first half of 2013. Similarly, Ms. Reding, while clearly part of the pro-GDPR coalition, is also connected to the anti-GDPR coalition, which is the result of her attempts to allay the fears of small businesses and member states. These findings confirm that data protection advocates were indeed losing the battle. They had few allies and were up against a large coalition of powerful actors that included many member states and parts of the Parliament.

How did things change after the Snowden revelations? We again find roughly two coalitions, but this time the pro-GDPR coalition (again on the left) is stronger and denser. There is still a sizeable coalition

---

⁶The data on which these networks are based as well as the R code to plot them are provided in the replication materials.

Figure 1: Timeline of the GDPR plus actor congruence networks for the period before (left) and after Snowden (right). Node-size represents degree centrality (square-rooted). Edge-size represents edge weight. Average activity normalization was applied and duplicates were removed by week to avoid overrepresentation of central actors. The ‘pro-GDPR’ coalition is on the left, the ‘anti-GDPR’ coalition on the right.

against the GDPR, which is again mainly composed of tech companies, industry groups, US government actors, and some member states, most notably the UK and, this time, Ireland, where many tech firms have their global headquarters. However, many crucial actors are now firmly in the pro-GDPR coalition. This discourse coalition contains Mr. Albrecht and Ms. Reding, the Commission, inside and outside data protection advocates (Bennett 2011). Crucially, this time it also contains most parliamentary actors as well as many member states including Germany and France.

Again, this confirms that the Snowden revelations indeed led to a sizeable discourse-coalition shift that gave the GDPR supporters the upper hand. With the parliament, the Commission, and most member states against them, the UK and Ireland could no longer simply block the GDPR (due to the lower consensus requirement under the ordinary legislative procedure). The coalitional shifts together with the institutional structure of the EU made the few remaining institutional actors more willing to compromise and thus paved the way for the general agreement the European Council reached in mid-2015. As Ms. Reding herself put it, given the ‘large majority emerging, we can forget the UK’s opposition’ (Iwaniuk and Vandystadt 2013). We thus find clear evidence of a ‘Snowden effect’ on the discursive-coalitional dynamics during the decision-making stage, and we also find that these discursive changes reflect and express the underlying political changes.⁷

So far, we have focussed on the coalitional form, but ignored the content of the discourse. Figure 2 depicts the most common frames actors used both in favour of or in opposition to the GDPR for the periods before and after Snowden.⁸ First, we find that more actors defend the GDPR on consumer protection grounds while fewer actors oppose it based on ‘business-friendly’ arguments, that is, arguments that criticize the GDPR for being overly restrictive or for hampering innovation. This is in line with our expectation that issue salience incentivizes actors to distance themselves from business interests.

---

⁷These findings are confirmed by cluster analyses of the actor congruence networks. One approach is to use different community detection algorithms, which are based on the idea of grouping together actors that have a higher probability of being connected to each other than to members of other groups. These algorithms sometimes find more than two communities. But while they split the pro- and anti-GDPR coalitions into two or more sub-coalitions, they do not put actors that belong into either of these coalitions in the same community. And while different algorithms sometimes place actors with ties to both coalitions in different communities, they reliably place the core members of both the pro and the anti-GDPR coalition into their respective communities. The corresponding figures can be found in online appendix C. Another approach is to assign actors to different communities based on theory and then compare the network density of these sub-networks with the density of the full network. Network density is based on the ratio of the number of edges and the number of possible edges. We would therefore expect the density to be higher for the coalitions than for the overall network (as members of coalitions should agree more with each other than with other actors). This is clearly the case for both time periods, as can be seen in online appendix B.

⁸For details on these frames and how they were aggregated, see online appendix A.

Second, we find a stark increase in statements that defend the GDPR on geo-economic grounds, that is, with regard to the relevance of the GDPR for the politico-economic competition and rivalry between Europe and the United States (e.g. trade, protectionism, competition policy). Snowden, one could argue, has laid bare the dangers of being dependent on the United States in areas that are increasingly central economically and militarily. For many European actors, the GDPR thus became a way to assert European informational sovereignty in a world of weaponized and weaponizable interdependence (Farrell and Newman 2019).

On the one hand, our findings are thus compatible with other studies that provide more detailed, process-level evidence of how issue salience was indeed a reason for many actors to distance themselves from business interests (Kalyanpur and Newman 2019; Rossi 2016). On the other hand, our findings suggest that this was in fact only one causal mechanism by which the Snowden revelations were translated into coalitional change – with geo-economic conflict being the other.

Statements made **in opposition to the GDPR** and **in favor of the GDPR** Breakdown by Aggregated Frames

Figure 2: Aggregated concepts, before (top) and after (bottom) Snowden

7 Conclusion

We have made two arguments in this paper. First, we showed that issue-specific institutions both triggered and structured the political process leading to the GDPR. In particular, the 1995 data protection directive and the constitutionalization of data protection in the Lisbon Treaty have empowered Viviane Reding, DG JUST and the DPAs during the Commission’s internal policy-formulation stage. The GDPR is thus an example of how institutional decisions made at one point in European history (the creation of DPAs or the constitutionalization of data protection) can have unintended consequences at later points (Newman 2008b; Pierson 1996). This seems particularly relevant for issues that have undergone dramatic changes since they were first institutionalized. Future research could thus focus on how issue-specific institutions, created many years ago, shape the EU’s current digital agenda more broadly, or, conversely, how issue-specific institutions on the national level affect the implementation and enforcement of the GDPR, which – despite its harmonizing thrust – leaves member states ‘significant leeway’ (Mayer-Schönberger and Padova 2016, 318) in this regard.

Second, we showed that the GDPR was at the brink of being watered down by lobbyists only to be ‘saved’ by the Snowden revelations. This confirms the crucial role of issue salience for the coalitional dynamics of EU policymaking (Culpepper 2010) as well as the usefulness of discourse network analysis in making sense of the coalitional dynamics of EU policymaking. However, it also points to the importance of geo-economic conflicts for the politics of data protection. Future research should further investigate the links between geopolitical rivalry and economic interdependence in the regulation of digital markets (Farrell and Newman 2019).

What connects our two findings is the broader argument that the influence of business interests on policymaking depends on a variety of factors (Dür and Mateo 2016), and that chief among them are the specific institutions that already govern an issue, and its salience. Our study thus not only substantively contributes to our understanding of the GDPR, it also encourages scholars of EU policymaking to focus on issue-specific characteristics when trying to understand which interest groups gets what, when and how. Different issue-specific characteristics, our study has shown, can influence a policymaking process at different moments in time. Conversely, internet governance scholars should pay particular attention to existing institutions and salience when trying to understand the politics of data protection. The Cambridge Analytica scandal, for example, played a similar salience-boosting role for California’s recent Consumer Privacy Act as the Snowden revelations did for the GDPR (Confessore 2018). This reminds us that understanding

the GDPR can help us understand how polities across the globe regulate personal data in an increasingly data-driven world economy.

8 References

- Atikcan, Ece Özlem, and Adam William Chalmers. 2018. “Choosing Lobbying Sides: The General Data Protection Regulation of the European Union.” *Journal of Public Policy* 25: 1–22. <https://doi.org/10.1017/S0143814X18000223>.
- Barnard-Wills, David, Cristina Pauner Chulvi, and Paul de Hert. 2016. “Data Protection Authority Perspectives on the Impact of Data Protection Reform on Cooperation in the Eu.” *Computer Law & Security Review* 32 (4): 587–98. <https://doi.org/10.1016/j.clsr.2016.05.006>.
- Bennett, Andrew, and Jeffrey T. Checkel. 2015. “Process Tracing: From Philosophical Roots to Best Practices.” In *Process Tracing*, edited by Andrew Bennett and Jeffrey T. Checkel, 3–37. Cambridge: Cambridge University Press.
- Bennett, Colin J. 2011. “Privacy Advocacy from the Inside and the Outside: Implications for the Politics of Personal Data Protection in Networked Societies.” *Journal of Comparative Policy Analysis: Research and Practice* 13 (2): 125–41. <https://doi.org/10.1080/13876988.2011.555996>.
- Burri, Mira, and Rahel Schär. 2016. “The Reform of the Eu Data Protection Framework: Outlining Key Changes and Assessing Their Fitness for a Data-Driven Economy.” *Journal of Information Policy* 6: 479–511.
- Burton, Cedric, Laura de Boel, Christopher Kuner, Anna Pateraki, Sarah Cadiot, and Sára G. Hoffman. 2016. “The Final European Union General Data Protection Regulation.” *Bloomberg BNA Privacy and Security Law Report*. <https://www.wsgr.com/publications/PDFSearch/bloombergBNA-0116.pdf>.
- Calo, Ryan, and Alex Rosenblat. 2017. “The Taking Economy: Uber, Information, and Power.” *Columbia Law Review* 117: 1623–90.
- Confessore, Nicholas. 2018. “The Unlikely Activists Who Took on Silicon Valley - and Won.” <https://www.nytimes.com/2018/08/14/magazine/facebook-google-privacy-data.html>.
- Convention Européenne. 2003. “Note de Transmission.” european-convention.europa.eu/pdf/reg/fr/03/cv00/cv00744.fr03.pdf.
- Cowles, Maria Green. 1995. “Setting the Agenda for a New Europe: The Ert and Ec 1992.” *Journal of Common Market Studies* 33 (4): 501–26. <https://doi.org/10.1111/j.1468-5965.1995.tb00548.x>.
- Culpepper, Pepper D. 2010. *Quiet Politics and Business Power: Corporate Control in Europe and Japan*. Cambridge: Cambridge University Press.

- Dix, Alexander. 2019. “Former Commissioner for Data Protection in Berlin and Brandenburg. Interview with the Authors.”
- Dür, Andreas, and Dirk de Bièvre. 2007. “Inclusion Without Influence? NGOs in European Trade Policy.” *Journal of Public Policy* 27 (1): 79–101. <https://doi.org/10.1017/S0143814X0700061X>.
- Dür, Andreas, David Marshall, and Patrick Bernhagen. 2019. *The Political Influence of Business in the European Union*. Ann Arbor: University of Michigan Press.
- Dür, Andreas, and Gemma Mateo. 2016. *Insiders Versus Outsiders: Interest Group Politics in Multilevel Europe*. Oxford: Oxford University Press.
- Eising, Rainer. 2009. *The Political Economy of State-Business Relations in Europe: Interest Mediation, Capitalism and Eu Policy-Making*. Routledge.
- European Commission. 2003. “First Report on the Implementation of the Data Protection Directive (95/46/Ec).” <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52003DC0265&from=EN>.
- . 2007. “Communication from the Commission to the European Parliament and the Council on the Follow-up of the Work Programme for Better Implementation of the Data Protection Directive.” <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007DC0087&from=EN>.
- . 2010. “A Comprehensive Approach on Personal Data Protection in the European Union.” <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010DC0609&from=EN>.
- . 2012. “Executive Summary of the Impact Assessment.” <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012SC0073&from=EN>.
- European Council. 2010. “The Stockholm Programme.” <http://www.eurojust.europa.eu/doclibrary/EU-framework/EUframeworkgeneral/The%20Stockholm%20Programme%202010/Stockholm-Programme-2010-EN.pdf>.
- Farrell, Henry, and Abraham L. Newman. 2019. “Weaponized Interdependence: How Global Economic Networks Shape State Coercion.” *International Security* 44 (1): 42–79. <https://doi.org/10.1162/isec%7B/textunderscore%20%7Da%7B/textunderscore%20%7D00351>.
- Fontanella-Khan, James. 2013. “Brussels: Astroturfing Takes Root.” <https://www.ft.com/content/74271926-dd9f-11e2-a756-00144feab7de>.

- FRA. 2009. “The Stockholm Programme: A Chance to Put Fundamental Rights Protection Right in the Centre of the European Agenda.” www.statewatch.org/news/2009/sep/eu-fra-stockholm-programme.pdf.
- González Fuster, Gloria. 2014. *The Emergence of Personal Data Protection as a Fundamental Right of the Eu*. Cham: Springer.
- Hajer, Maarten A. 1993. “Discourse Coalitions and the Institutionalization of Practice: The Case of Acid Rain in Great Britain.” In *The Argumentative Turn in Policy Analysis and Planning*, edited by Frank Fischer and John Forester, 43–76. Durham, N.C.: Duke University Press.
- Hartlapp, Miriam, Julia Metz, and Christian Rauh. 2014. *Which Policy for Europe? Power and Conflict Inside the European Commission*. Oxford: Oxford University Press.
- Haskel, Jonathan, and Stian Westlake. 2017. *Capitalism Without Capital: The Rise of the Intangible Economy*. Princeton: Princeton University Press.
- Hildén, Jockum. 2019. *The Politics of Datafication: The Influence of Lobbyists on the Eu’s Data Protection Reform and Its Consequences for the Legitimacy of the General Data Protection Regulation*. Doctoral Dissertation. Faculty of Social Sciences. University of Helsinki.
- Höpner, Martin, and Armin Schäfer. 2012. “Embeddedness and Regional Integration: Waiting for Polanyi in a Hayekian Setting.” *International Organization* 66 (3): 429–55. <https://doi.org/10.1017/S002081831200015X>.
- Iwaniuk, Jacob, and Nathalie Vandystadt. 2013. “Strong Franco-German Push on Data Protection.” www.library.coleurop.pl/intranet/documents/ep/2013/ep4691__22jul2013.pdf.
- Kalyanpur, Nikhil, and Abraham L. Newman. 2019. “The Mnc-Coalition Paradox: Issue Salience, Foreign Firms and the General Data Protection Regulation.” *Journal of Common Market Studies* 57 (3): 448–67. <https://doi.org/10.1111/jcms.12810>.
- Kauffmann, SYlvie. 2013. “Europe, Lost on the Digital Planet.” <https://www.nytimes.com/2013/10/15/opinion/europe-lost-on-the-digital-planet.html>.
- Kayali, Laura. 2015. “Snowden’s Biggest European Fan Stays Loyal.” <https://www.politico.eu/article/snowdens-biggest-european-fan-stays-loyal/>.
- Klüver, Heike. 2013. *Lobbying in the European Union: Interest Groups, Lobbying Coalitions, and Policy Change*. Oxford: Oxford University Press.

- Kuner, Christopher. 2012. “The European Commission’s Proposed Data Protection Regulation: A Copernican Revolution in European Data Protection Law.” *Bloomberg BNA Privacy and Security Law Report*, 1–15.
- . 2019. “Professor of Law and Co-Director of the Brussels Privacy Hub at the Vrije Universiteit Brussel: Interview with One Author.”
- Leifeld, Philip. 2013. “Reconceptualizing Major Policy Change in the Advocacy Coalition Framework: A Discourse Network Analysis of German Pension Politics.” *Policy Studies Journal* 41 (1): 169–98. <https://doi.org/10.1111/psj.12007>.
- LobbyPlag. 2013. <https://lobbyplag.eu/>.
- Malhère, Manon. 2012. “Executive to Present Reform Proposals in Late January.” http://www.library.coleurop.pl/intranet/documents/ep/2012/ep4346_20jan2012.pdf.
- Mayer-Schönberger, Viktor, and Kenneth Cukier. 2013. *Big Data: A Revolution That Will Transform How We Live, Work, and Think*. An Eamon Dolan Book. Boston: Houghton Mifflin Harcourt.
- Mayer-Schönberger, Viktor, and Yann Padova. 2016. “Regime Change? Enabling Big Data Through Europe’s New Data Protection Regulation.” *Columbia Science and Technology Law Review* 17: 315–35.
- MIT Technology Review, and Oracle. 2016. “The Rise of Data Capital.” http://files.technologyreview.com/whitepapers/MIT_Oracle+Report-The_Rise_of_Data_Capital.pdf.
- Moulonguet, Matthieu. 2016. “What Drives the European Parliament? The Case of the General Data Protection Regulation.” *Bruges Political Research Papers*, no. 47. <http://aei.pitt.edu/73651/>.
- Newman, Abraham L. 2008a. “Building Transnational Civil Liberties: Transgovernmental Entrepreneurs and the European Data Privacy Directive.” *International Organization* 62 (01): 103–30. <https://doi.org/10.1017/S0020818308080041>.
- . 2008b. *Protectors of Privacy: Regulating Personal Data in the Global Economy*. Ithaca: Cornell Univ. Press.
- Nielsen, Nicolai. 2013. “New Eu Data Law Could End up Weaker Than Old One.” <https://euobserver.com/justice/120301>.
- Ovádek, Michal, Nicolas Lampach, and Arthur Dyevre. 2020. “What’s the Talk in Brussels? Leveraging Daily News Coverage to Measure Issue Attention in the European Union.” *European Union Politics* 3: 146511652090253. <https://doi.org/10.1177/1465116520902530>.

- Parker, Richard W., and Alberto Alemanno. 2015. "A Comparative Overview of Eu and Us Legislative and Regulatory Systems: Implications for Domestic Governance & the Transatlantic Trade and Investment Partnership." *Columbia Journal of European Law* 22: 61–100.
- Pasquale, Frank. 2015. *The Black Box Society: The Secret Algorithms That Control Money and Information*. Cambridge Mass.: Harvard Univ. Press.
- Pfeifle, Sam. 2017. "Stefano Rodotà, Former Garante President and Wp29 Chair, 1933–201." <https://iapp.org/news/a/stefano-rodota-former-garante-president-and-wp29-chair-1933-2017/>.
- Pierson, Paul. 1996. "The Path to European Integration." *Comparative Political Studies* 29 (2): 123–63. <https://doi.org/10.1177/0010414096029002001>.
- Pizzetti, Francesco. 2006. "Speech by the President of the Italian Data Protection Authority Presenting the 2005 Annual Report to Parliament." <https://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/1332401>.
- Poulet, Yves, and Serge Gutwirth. 2008. "The Contribution of the Article 29 Working Party to the Construction of a Harmonised European Data Protection System: An Illustration of 'Reflexive Governance'?" http://works.bepress.com/serge_gutwirth/63/.
- Rasmussen, Maja Kluger. 2015. "The Battle for Influence: The Politics of Business Lobbying in the European Parliament." *Journal of Common Market Studies* 53 (2): 365–82. <https://doi.org/10.1111/jcms.12156>.
- Reding, Viviane. 2013a. "Q&A with Viviane Reding." <https://www.nytimes.com/2013/02/03/business/q-and-a-with-viviane-reding.html>.
- . 2013b. "Vice-President Reding's Intervention During Justice Council Press Conference, 6 June 2013." europa.eu/rapid/press-release_SPEECH-13-514_en.htm.
- Rossi, Agustín. 2016. *Internet Privacy in the European Union and the United State: PhD. Thesis*. Florence, Italy: European University Institute.
- Scharpf, Fritz W. 2010. "The Asymmetry of European Integration, or Why the Eu Cannot Be a 'Social Market Economy'." *European Union Politics* 8 (2): 211–50. <https://doi.org/10.1093/ser/mwp031>.
- Schimmelfennig, Frank. 2015. "Efficient Process Tracing: Analyzing the Causal Mechanisms of European Integration." In *Process Tracing*, edited by Andrew Bennett and Jeffrey T. Checkel, 98–125. Cambridge: Cambridge University Press.

Schmidt, Vivien A., and Mark Thatcher. 2014. “Why Are Neoliberal Ideas so Resilient in Europe’s Political Economy?” *Critical Policy Studies* 8 (3): 340–47. <https://doi.org/10.1080/19460171.2014.926826>.

Srnicek, Nick. 2017. *Platform Capitalism*. Cambridge: Polity.

Vandystadt, Nathalie. 2012. “Reding Willing to Be More Flexible on Three Points.” http://www.library.coleurop.pl/intranet/documents/ep/2012/ep4517_29oct2012.pdf.

Vogel, Toby. 2011. “Reding Seeks Overhaul of Data-Protection Rules.” <https://www.politico.eu/article/reding-seeks-overhaul-of-data-protection-rules/>.

Warman, Matt. 2012. “EU Privacy Regulations Subject to ‘Unprecedented Lobbying’” <https://www.telegraph.co.uk/technology/news/9070019/EU-Privacy-regulations-subject-to-unprecedented-%20lobbying.html>.

WP29. 1999. “Recommendation 4/99 on the Inclusion of the Fundamental Right to Data Protection in the European Catalogue of Fundamental Rights. Article 29 Working Party.” <http://ec.europa.eu/newsroom/article29/news-overview.cfm>.

———. 2002. “Fifth Annual Report. Article 29 Working Party.” http://ec.europa.eu/justice/article-29/documentation/index_en.htm.

———. 2004. “Seventh Annual Report. With Assistance of Article 29 Working Party.” http://ec.europa.eu/justice/article-29/documentation/index_en.htm.

———. 2009. “The Future of Privacy. Article 29 Working Party.” <https://www.garanteprivacy.it/documents/10160/10704/WP168++The+Future+of+PrivacY>.

Zuboff, Shoshana. 2019. *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*. Public Affairs.

Appendices

A Concepts

Figure 2 depicts the most commonly used concept categories, aggregated from the policy beliefs which were used in the analysis and which are shown in Table 2 (for the first period) and Table 3 (second period). Figure 2 (in the paper) shows how many statement were made in favor or against the GDPR in seven different concept categories: i) whether the GDPR is too restrictive, inflexible, punitive; ii) whether it is good or bad for growth, innovation; iii) whether it is too broad in scope, too broadly defined, or applies to too many areas/organizations; iv) whether it is good or bad for consumers; v) its geo-economic dimension, especially with regards to the transatlantic relationship; vi) whether it can help create/foster the European digital single market; vii) and whether it protects fundamental rights.

Whether statements were counted as being ‘pro GDPR’ or ‘against GDPR’ depended on their substantive meaning. For example, statements that agreed with the concept ‘GDPR is good for innovation’ were counted as ‘pro GDPR’ because they are very likely made in support of the GDPR. Likewise, statements that disagreed with the concept ‘GDPR protects fundamental rights’ were counted as ‘against GDPR’ because it is very implausible that they were made in support of the GDPR. For example, during the first period there were 20 statements that agreed with (and only few statements that disagreed with) one of the three concepts that make up the fundamental rights frame, namely that the ‘GDPR protects fundamental rights’, that ‘consent requirements are crucial’ and that ‘individuals should not be fully commodified’. Table 2 and Table 3 show the concepts used in the discourse network analysis and how they were aggregated for the first and second time period.

It is important to note that these aggregations – or the assignments of a ‘pro’ or ‘anti’ GDPR sentiment to statements – in no way affected the actors congruence networks in the paper. These were solely based on the underlying concepts and the patterns of joint agreement and disagreement.

Table 2: All concepts with aggregation (in bold) for the first time period with number of statements for or against the GDPR

(Aggregated) Concepts	Pro GDPR	Anti GDPR
Innovation/Growth	13	34
GDPR is good for growth	2	20
GDPR is good for innovation	2	4
GDPR reduces costs for business	5	10
Data Protection and economic concerns can be reconciled	4	0
Fundamental Rights	20	3
GDPR protects fundamental rights	13	1
Consent Requirements are crucial	6	2
Individuals should not be fully commodified	1	0
Market-Creation	12	1
Harmonization is good	5	0
GDPR increases trust	4	0
GDPR helps create a digital single market	1	1
GDPR increases legal certainty	1	0
GDPR increases transparency	1	0
Consumer Issues	3	6
GDPR is good for consumers	0	6
GDPR gives people back control	2	0
GDPR puts individuals first (not companies)	1	0
Restrictiveness/Flexibility	30	64
GDPR is flexible enough and not too restrictive	1	12
GDPR should be a directive (not a regulation)	9	8
Right to be forgotten is too restrictive	8	12
Data protection officer should be mandatory	0	5
High Fines are appropriate	3	8
Legitimate interest should be narrowly interpreted	2	1
Data portability is good and unproblematic	2	0
Harmonization should be on higher (not lower) standards	1	4

Table 2: All concepts with aggregation (in bold) for the first time period with number of statements for or against the GDPR (*continued*)

(Aggregated) Concepts	Pro GDPR	Anti GDPR
One-stop-shop approach is sufficient	0	2
Privacy-by-design is good	2	0
Self-Regulation is not enough	1	2
GDPR should adopt risk-based approach	0	4
Data breach notification rules are appropriate	1	6
Restrictiveness/Scope	11	26
GDPR is balanced and does not apply to broadly	1	5
GDPR should specifically protect small and medium enterprises	4	13
Personal Data should be defined broadly	2	2
GDPR should regulate profiling/targeted advertising	3	2
GDPR should exempt public sector	0	4
GDPR should apply to cloud computing	1	0
Geo-economics	10	12
GDPR is a trade barrier	2	7
European data protection is stronger	2	1
Strong data protection can be a competitive advantage	2	0
Safe Harbour is sufficient	2	2
GDPR should apply to everyone doing business in the EU	2	2
Other	7	3
GDPR responds to public demand/frustration	4	0
GDPR is a necessary update for the digital age	3	0
GDPR should be clear and simple	0	1
GDPR is clear enough	0	2
Total	212	298

Table 3: All concepts with aggregation (in bold) for the second time period with number of statements for or against the GDPR

(Aggregated) Concepts	Pro GDPR	Anti GDPR
Innovation/Growth	16	39
GDPR is good for growth	1	11
GDPR is good for innovation	5	13
GDPR reduces costs for business	10	13
Data Protection and economic concerns can be reconciled	0	2
Fundamental Rights	33	7
GDPR protects fundamental rights	18	2
Consent Requirements are crucial	9	3
Juridical Redress is crucial	4	2
Individuals should not be fully commodified	1	0
GDPR is a necessity not a luxury	1	0
Market-Creation	28	1
Harmonization is good	6	0
GDPR increases trust	7	0
GDPR helps create a digital single market	8	1
GDPR increases legal certainty	7	0
Consumer Issues	17	0
GDPR gives people back control	6	0
GDPR forces companies to be more transparent about the data they hold	11	0
Restrictiveness/Flexibility	50	60
GDPR is flexible enough and not too restrictive	4	6
GDPR should be a directive (not a regulation)	3	6
Right to be forgotten is too restrictive	7	14
Data protection officer should be mandatory	1	0
High Fines are appropriate	1	5
Legitimate interest should be narrowly interpreted	4	2
Data portability is good and unproblematic	1	1
Harmonization should be on higher (not lower) standards	3	0

Table 3: All concepts with aggregation (in bold) for the second time period with number of statements for or against the GDPR (*continued*)

(Aggregated) Concepts	Pro GDPR	Anti GDPR
One-stop-shop approach is sufficient	20	16
Privacy-by-design is good	3	0
GDPR should adopt risk-based approach	0	4
Parental Consent requirement is appropriate	0	6
Restrictiveness/Scope	12	22
GDPR is balanced and does not apply to broadly	1	2
GDPR should specifically protect small and medium enterprises	0	7
Personal Data should be defined broadly	5	2
GDPR should regulate profiling/targeted advertising	5	5
GDPR should exempt public sector	0	6
GDPR should apply to cloud computing	1	0
Geo-economics	116	48
GDPR is a trade barrier	2	6
GDPR is not protectionism	7	8
European data protection is stronger	7	4
European Data should be stored in Europe	2	0
Data protection should be part of trade talks	10	2
Strong data protection can be a competitive advantage	10	2
Safe Harbour is sufficient	45	10
Safe Harbour plus is sufficient	5	7
GDPR should apply to everyone doing business in the EU	16	9
GDPR levels playing field between European and American companies	9	0
There should be an international agreement on data protection	3	0
Other	2	1
GDPR responds to public demand/frustration	1	0
GDPR is clear enough	1	1
Total	545	356

Since the concept “Safe Harbour not sufficient” was the most prominent concept in the second time period even though it does not explicitly concern the GDPR (remember that concepts were also coded when they were closely linked to the GDPR), we plotted the actor congruence network without this concept. As Figure 4 and Figure 5 show, the results are largely the same, only the EPP (and some other parliamentary actors) move somewhat more to the periphery of the network.

Figure 3: Actor congruence network for the second period without the concept 'Safe Harbour not sufficient'

B Comparing density between manually assigned coalitions

If we manually assign nodes/actors to coalitions based on our theoretical/qualitative expectations, we can compare their density. Network density is based on the ratio of the number of edges and the number of possible edges. We would therefore expect the density to be higher for the coalitions than for the overall network (as members of coalitions should agree more with each other than with other actors. With the partial exception of the anti-GDPR coalition in the second time period, these expectations can be clearly confirmed. And even for said coalition, the density score is still clearly higher than for the overall network. Table 4 shows the results for both time periods and the two figures visualize the coalitional assignment.

Table 4: Table comparing density scores

Period	Full Network	Pro-GDPR coalition	Anti-GDPR coalition	Other/no clear affiliation
Density 1st period	0.22	0.51	0.49	0.29
Density 2nd period	0.19	0.56	0.30	0.07

Figure 4: Actor congruence network with manually assigned coalitions for the first time period

C Community Detection Algorithms

Figures 6 to 9 plot the actor congruence networks for the two time periods based on the results of various common community detection algorithms. While these clustering algorithms produce slightly different results, their overall findings are quite similar. They reliably put pro- and anti-GDPR advocates in different clusters, but often split the pro- and anti-GDPR coalitions into various sub-clusters. For example, for the first period, the core GDPR advocates and the countries supporting the GDPR are in separate coalitions but remain distinct from opponents of the GDPR. Overall, the more visual findings reported in the paper are supported by the results of various community detection algorithms.

Leading Eigenvector

Colors indicate cluster membership

Walktrap

Colors indicate cluster membership

Figure 6: Clustering algorithms for the second period

Infomap

Colors indicate cluster membership

Fast & Greedy

Colors indicate cluster membership

Louvain

Colors indicate cluster membership

K-Means

Colors indicate cluster membership

Figure 7: Clustering algorithms for the second period