P&I
POLICY & INTERNET

Regulating the European Data-Driven Economy: A Case Study on the General Data Protection Regulation

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In recent years, data have become part and parcel of contemporary capitalism. This has 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) in 2016 is puzzling. Why did the EU adopt a regulation that strengthens data protection despite intensive lobbying by powerful business groups and the EU's supposed neoliberal bias? We make two arguments to explain this outcome. First, we use process tracing to show how issue-specific institutions played a crucial role during the agenda-setting stage (1990s–2009) and policy formulation stage (2009–2012). They triggered and structured the drafting process by strengthening the position of data protection advocates within the European Commission. Second, we use discourse network analysis to show that the Snowden revelations of 2013 fundamentally changed the discursive and coalitional dynamics during the decision-making stage (2012–2016). The salience shock it produced "saved" the GDPR from being watered down, by incentivizing policymakers to distance themselves from business interests and by exposing the geo-economic dimension of data protection. This article thus offers a comprehensive explanation of the GDPR, while contributing to the literature on the political economy of data protection.

KEY WORDS: data protection, GDPR, discourse network analysis, historical institutionalism, Snowden, digital capitalism

近年来，数据已成为当代资本主义的重要部分。这使得个人数据需求的不断上涨和数据保护基本法之间产生了摩擦。以此为背景，欧盟在2016年采纳的《通用数据保护条例》(GDPR)令人困惑。为何欧盟在采纳一项加强数据保护的条例时仍然允许强大的商业集团进行游说，以及欧盟所谓的新自由主义偏见?我们提出两项论证以解释这一结果。首先我们使用过程追踪来展示特定议题制度如何在议程设置期间(1990年至2009年)和政策制定期间(2009年至2012年)发挥关键作用。这些制度通过加强数据保护倡导者在欧盟委员会中的地位，进而触发并建构了草案过程。其次，我们使用话语网络分析显示，2013年斯诺登泄密事件从根本上改变了决策期间(2012年至2016年)的话语动态和联盟动态。该事件产生的强烈冲击通过刺激决策者远离商业利益并暴露数据保护的地理-经济维度，让GDPR"免于"被反对。因此本文对GDPR进行一项全方位解释，并对有关数据保护的政治经济文献作贡献。

关键词： 数据保护, GDPR, 话语网络分析, 历史制度主义, 斯诺登, 数字资本主义

doi: 10.1002/poi3.246

En los últimos años, los datos se han convertido en parte integrante del capitalismo contemporáneo. Esto ha creado tensiones entre la creciente demanda de datos personales y el derecho fundamental a la protección de datos. En este contexto, la adopción por parte de la UE del Reglamento General de Protección de Datos (GDPR) en 2016 es desconcertante. ¿Por qué la UE adoptó una regulación que fortalece la protección de datos a pesar del cabildeo intenso por parte de poderosos grupos empresariales y el supuesto sesgo neoliberal de la UE? Hacemos dos argumentos para explicar este resultado. Primero, utilizamos el rastreo de procesos para mostrar cómo las instituciones de temas específicos desempeñaron un papel crucial durante la etapa de establecimiento de la agenda (1990- 2009) y la etapa de formulación de políticas (2009-2012). Activaron y estructuraron el proceso de redacción al fortalecer la posición de los defensores de la protección de datos dentro de la Comisión Europea. En segundo lugar, utilizamos el análisis de la red del discurso para mostrar que las revelaciones de Snowden de 2013 cambiaron fundamentalmente la dinámica discursiva y de coalición durante la etapa de toma de decisiones (2012-2016). El sobresalto que produjo "salvó" al GDPR de ser diluido, al incentivar a los políticos a distanciarse de los intereses comerciales y al exponer la dimensión geo-económica de la protección de datos. Por lo tanto, este artículo ofrece una explicación completa del GDPR, al tiempo que contribuye a la literatura sobre la economía política de la protección de datos.

PALABRAS CLAVE: protección de datos, GDPR, análisis de redes de discurso, institucionalismo histórico, Snowden, capitalismo digital

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) data[1] and the technical and organizational ability to extract value from them (Haskel & Westlake, 2017). Data are described as a "raw material (…) to be extracted, refined, and used in a variety of ways" (Srnicek, 2017, p. 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, p. 2). Although some hope that this process will boost innovation and productivity (Mayer-Schönberger & 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 rights 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 & Rosenblat, 2017; Pasquale, 2015).

It is against this background that, in 2016, the European Union adopted the General Data Protection Regulation (GDPR), after 4 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 & 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 4 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. Although 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, p. 3) that powerfully links the collection 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, p. 14) to strengthen data protection in Europe. Drawing on a variety of sources from primary documents to expert interviews, we process to trace the drafting of the GDPR from the early agenda-setting stage (1990s–2009) to the policy formulation stage (2009–2012). Although others have studied why interest groups choose to lobby for or against the GDPR (Atikcan & 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 (2012–2016), had the Snowden revelations not boosted the salience of data protection. Although 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 & 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. Here, we also show how the Snowden revelations not only incentivized policymakers to distance themselves from business interests, but also exposed the geopolitical dimension of data protection in a world of weaponized interdependence (Farrell & Newman, 2019). We conclude with a brief sketch of the theoretical relevance of our findings and avenues for future research.

EU Policymaking and Economic Interests

There is an influential strand of literature that argues that EU policymaking 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 favors market-enforcing over market-restricting integration (Höpner & Schäfer, 2012); or because neoliberal ideas have taken hold in Brussels (Schmidt & Thatcher, 2014). A related strand of literature argues that business interests have an inherent advantage in EU policymaking, as they not only command more money but also more expertise (Dür & 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 policymaking. Dür, Marshall, and Bernhagen (2019, p. 5) find "no clear business dominance in the policy-making process of the contemporary EU", partly because the Commission's growing focus on product and process regulations increasingly pitches it against business interests (Dür et al., 2019, pp. 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, p. 216). However, she also finds interest group influence to be "considerably larger during the policy-formulation than during the decision-making stage" (Klüver, 2013, p. 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 policymaking. 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 & Alemanno, 2015).

Focusing on such issue-specific institutions thus allows us to specify the causal mechanisms by which they constrain or enable certain interest groups in EU policymaking. 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, & Rauh, 2014, pp. 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 this proposal, for example by controlling which positions are heard (Hartlapp et al., 2014, p. 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 (Newman, 2008a).

Issue salience refers the importance of an issue "to the average voter, relative to all other political issues" (Culpepper, 2010, p. 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 and the member states are directly accountable to their electorates (Dür & Mateo, 2016). For example, business groups are more successful in the European Parliament 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 and "quiet politics". Conversely, "business power goes down as political salience goes up" (Culpepper, 2010, p. 177; Kalyanpur & Newman, 2019).

The Politics of Data Protection in Europe

How can we explain the origins of European data protection legislation? Using an institutionalist framework, 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).

Although 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 analyses 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 & Schär, 2016, p. 480); of the lead committee and rapporteur in the European Parliament (Hildén, 2019; Moulonguet, 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 & Schär, 2016, p. 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 U.S.) business lobbyists (Hildén, 2019; Kalyanpur & Newman, 2019; Rossi, 2016). Although we believe that these studies all point in the right directions, we want to investigate some of these claims more systematically, complementing, and adding to these findings.

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 & 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 so, 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). Although 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.

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 the actor Facebook, and that Facebook agreed with this statement (other actors can refer to the same concept but disagree with it). To reflect the relevance of both U.S. 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 to be 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, pp. 177–178).

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. Before analyzing how this both triggered and structured the drafting of the GDPR, we will therefore look at how data protection was constitutionalized in the first place.

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

Three legal events that occurred before the policy-formulation stage decisively influenced the GDPR (see also, González Fuster, 2014). First, the 1995 directive created a strong legal precedent for the GDPR. It made 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, & 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, p. 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, p. 3). Its chairman Stefano Rodotà was appointed member of the drafting convention of the Charter (WP29, 2002, p. 23) and the WP29 prides itself on having made a "major contribution" to anchor data protection in the charter (WP29, 2002, p. 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, p. 9). Although 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, p. 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.

The Policy Formulation Stage (2009–2012)

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, pp. 18–19). However, this program 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, p. 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. Although 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, pp. 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, p. 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, p. 4). These "new legal possibilities" were seized by the Directorate General Justice and Consumers (DG JUST), which, under the auspices of Viviane Reding, become lead DG for the formulation of the GDPR (European Commission, 2010, p. 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, p. 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 et al., 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 was 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, p. 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.

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

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) (pp. 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 contains three subparagraphs on enforcement (p. 22)	Contains 16 subparagraphs on investigative and corrective powers (Art. 58§1,2)
Extend legislative advisory powers. WP29 should be able to address its opinions to 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

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 purely market-based logic (Hartlapp et al., 2014, pp. 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 was 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.

The Decision-Making Stage (2012–2016)

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 European Parliament's position more fundamental-rights oriented. As the European People's Party'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, p. 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 European Parliament's position towards more data protection (Kayali, 2015; Moulonguet, 2016, pp. 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, pp. 3–4; European Commission, 2012, p. 2).

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, pp. 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) U.S. businesses (Fontanella-Khan, 2013; Kalyanpur & Newman, 2019, pp. 453–454; Rossi, 2016, pp. 42–45). In the European Parliament alone, a record number 3999 amendment proposals were filed (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, pp. 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 & Newman, 2019, pp. 457–458).

The Commission's proposal also received a "cool reception from member states" (Vandystadt, 2012), some of which opposed it "fiercely" (Rossi, 2016, p. 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 United Kingdom 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, pp. 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 & Newman, 2019, pp. 455; Rossi, 2016, p. 42). The "salience shock" (Kalyanpur & Newman, 2019, p. 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, p. 61).

Although "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 & Newman, 2019, p. 456). They made it much more difficult for U.S. 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 & Newman, 2019, p. 462). The revelations also empowered data protection advocates, finally giving them "a chance to react" (Kalyanpur & Newman, 2019, p. 460).

As a result, positions in the European Parliament shifted considerably (Rossi, 2016, pp. 62–65). In October 2013, the LIBE committee overwhelmingly adopted 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 (Moulonguet, 2016, p. 9). It shows that even when industry lobbyists are united, their influence in the European Parliament 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 & Schär, 2016, p. 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 European Parliament in December 2015. The GDPR, in a version that reflected a compromise between the Council and Parliament 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 the decision-making stage, and thereby "saved" core elements of the Commission's original proposal, which were on 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 policymaking 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 centers 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

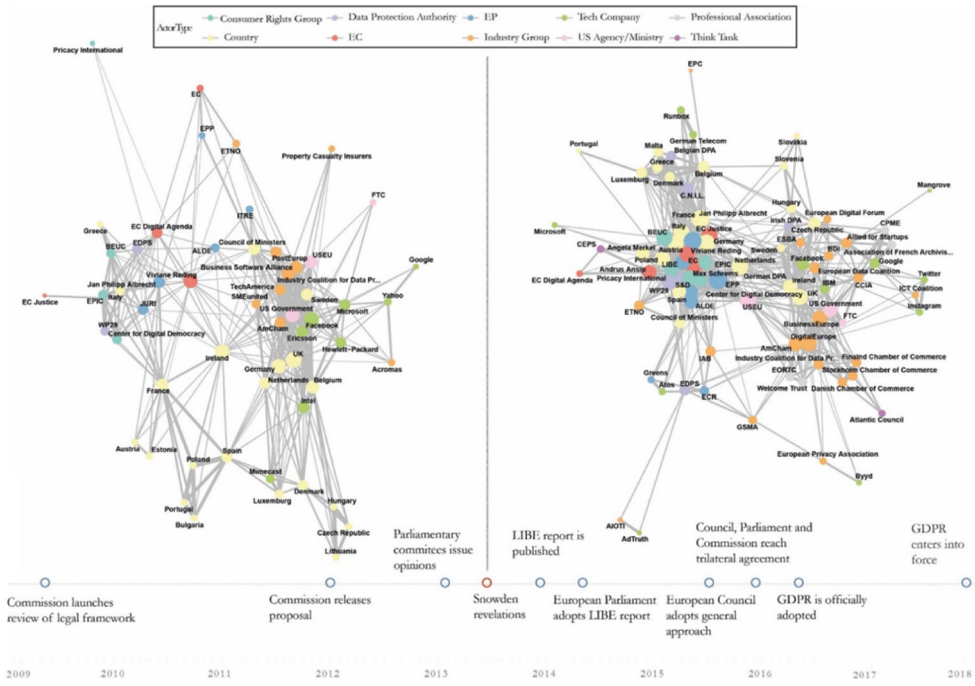

Figure 1. Timeline of the GDPR Plus Actor Congruence Networks for the Period Before (left) and After Snowden (Right). *Note*: Node size represents degree centrality (square-rooted). Edge size represents edge weight. Average activity normalization was applied and duplicates were removed by week to avoid overrepresentation of central actors. The "pro-GDPR" coalition is on the left, the "anti-GDPR" coalition on the right.

(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, U.S. government actors, and again some member states, most notably Germany and the United Kingdom. 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 against the GDPR, which is again mainly composed of tech companies, industry groups, U.S. government actors, and

some member states, most notably the United Kingdom 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, and 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 U.K.'s opposition" (Iwaniuk & 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 focused on the coalitional form, but ignored the content of the discourse. Figure 2 depicts the most common frames used by actors in favor of or in

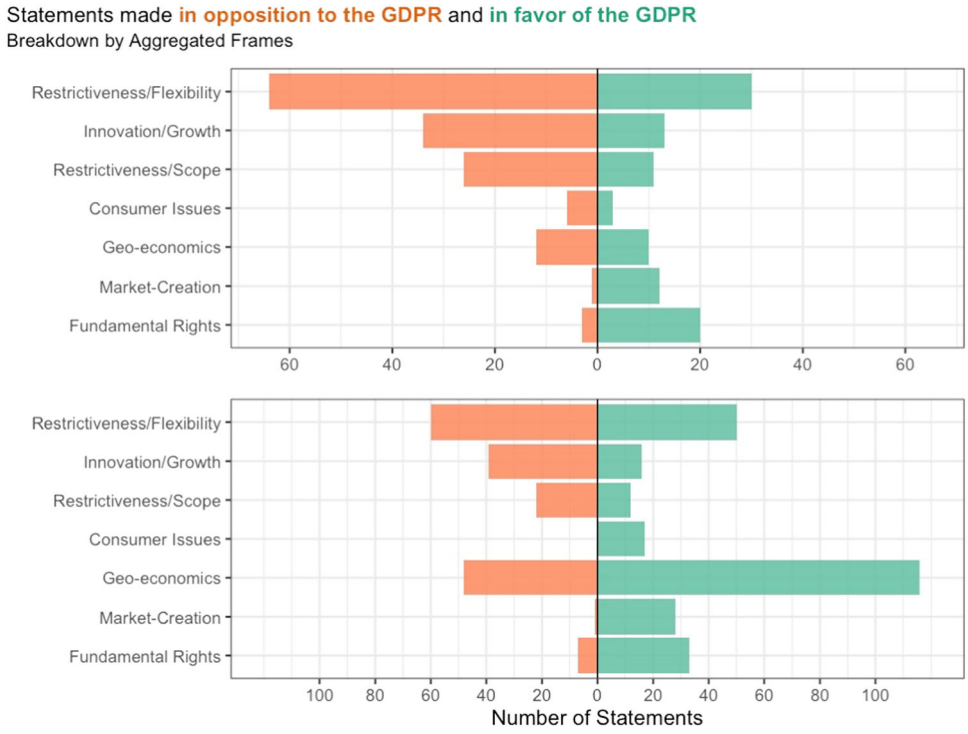

Figure 2. Aggregated Concepts, Before (Top) and After (Bottom) Snowden.

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.

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 & 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 & 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.

Conclusion

We have made two arguments in this article. 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 (e.g., the creation of DPAs and 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 & Padova, 2016, p. 318) in this regard.

Second, we have shown 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 & 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 & 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 get 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.

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Notes

1. While digital data have become more important across the board, we focus on the regulation of personal data, that is, information relating to an identified or (directly or indirectly) identifiable individual (González Fuster, 2014; GDPR Art. 4 §1).
2. We 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.
3. Articles 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, & 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.
4. One study shows that it was mainly retail and finance firms that lobbied for retaining the old directive, while other firms were in favor of a new regulation (Atikcan & 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 burden (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, pp. 130–131). Others have argued that data protection was initially not very high on the agenda of many European firms. It was only later that U.S. lobbying efforts "incentivized European business to join the watering down process" (Kalyanpur & 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 suggests that their influence on the content of the proposal was limited (Hildén, 2019, p. 152).
5. It can be argued that the anticipated backing by the European Parliament, which had signaled

support for comprehensive data protection in response to the Stockholm Programme, allowed the Commission to draft a more comprehensive proposal (Dix, 2019).

6. The data on which these networks are based, as well as the R code to plot them, are provided in the Supporting Information.
7. These 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 Supporting Information 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 Supporting Information Appendix B.
8. For details on these frames and how they were aggregated, see Supporting Information Appendix A.

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Supporting Information

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