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The Role of Privacy in Forming the European Union's Normative Power through Regulation

Master's Thesis

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Declaration

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Annotation

The question of privacy has long been an integral part of the debate on human rights and fundamental values, which national governments should ensure. The rapid technological development of last decades brought the topic of privacy protection even more to display mainly because of the rising digital economy and new challenges that are connect with it. This thesis discusses the role of privacy, as a fundamental right, in forming the European Union's role as a global power, specifically, the thesis builds on two theories: The Normative Power Europe and The Brussels Effect. Digital economy of the European Union has been growing exponentially over the last two decades. Given the increased importance of the digital economy since the 1990s the European Union started to gradually implement laws to regulate the flow of the personal data online. These new regulations often had influence on global markets and big tech companies operating on the European single market but residing outside of Europe. Apart from analyzing the development of the European data protection laws, and the role that was played by the European Courts in forming the European global power, the thesis overviews the debate surrounding the incentives to introduce new regulations to protect the right private life of European citizens.

Anotace

Otázka soukromí je již dlouho nedílnou součástí debaty o lidských právech a základních hodnotách, které by měly vlády jednotlivých států svým obyvatelům zajistit. Rychlý technologický rozvoj posledních desetiletí přinesl téma ochrany soukromí ještě více na odiv, a to především kvůli rostoucí digitální ekonomice a novým výzvám, které jsou s ní spojeny. Tato práce pojednává o roli soukromí jako základního práva při formování role Evropské unie jako globální mocnosti, konkrétně práce staví na dvou teoriích: Normativní síla Evropské unie a Bruselský efekt. Digitální ekonomika Evropské unie v posledních dvou desetiletích exponenciálně roste. Vzhledem k rostoucímu významu digitální ekonomiky začala Evropská unie od 90. let 20. století postupně zavádět zákony regulující tok osobních údajů online. Tyto nové předpisy měly často vliv na globální trhy a velké technologické společnosti působící na jednotném evropském trhu, ale sídlící mimo Evropu. Kromě analýzy vývoje evropských zákonů o ochraně osobních údajů a role, kterou v ohledu utváření globální síly Evropské unie sehrály evropské soudy, práce podává přehled o debatě evropských představitelů týkající se podnětů k zavedení nových zákonů ohledně právo na ochranu soukromého života evropských občanů.

Keywords

European Union, Normative Power Europe, Brussels Effect, privacy, data protection, digital economy, fundamental human rights, norms

Klíčová slova

Evropská unie, Normativní síla Evropské unie, Bruselský efekt, soukromí, ochrana osobních údajů, digitální ekonomika, základní lidská práva, normy

Název práce

Role ochrany soukromí při formování normativní síly Evropské unie prostřednictvím regulací

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Introduction

The question of privacy has long been an integral part of the debate on human rights and fundamental values, which national governments should ensure. However, the rapid technological development in the past decades made the issue of privacy an even bigger topic across the globe. At the center of this development is the internet. The internet is based on technological protocols and algorithms rather than legal rules, it was also designed based on distributed networks and not to be under the control of a single state's jurisdiction. It also grants people the right to freely express themselves online and to create content or offer services. Despite all the positive impacts that the internet and global digital economy have brought, it fundamentally changed the question of privacy protection.

The digital economy of the EU has been growing exponentially over the last two decades. According to the latest Digital Agenda for Europe, in 2030 there should be 20 million ICT specialists deployed in the EU and more than 90% of all companies should reach a basic level of digital intensity.[1] The new technological paradigms like the Internet of Things (IoT), Big data systems, and new communicational channels, are fueling and transforming the business world. At the center of this development are the personal data of the internet consumers, which are now being compared to the most valuable commodities in the world. They are also often used as a currency and as a bargaining tool for some of the big tech companies focusing on data processing. Given the increased importance of the digital economy, the EU started to implement laws to regulate the flow of personal data online in reference to the question of privacy protection, which should not only be applied in the "offline" world but in the "online" world as well. These new regulations often influenced global markets and big tech companies operating in the European single market but residing outside of Europe.

The followed research operates with a research question: *To what extent has the rise of global technology companies helped to increase the EU's global role as a normative power through regulation*? To answer the question this thesis presents a comprehensive analysis of the development of the European data protection policies. The analytical part of the thesis is divided into three different periods during which the European policies arguably aimed to influence the global understanding of privacy as a fundamental right. It starts with the initial phase from the 1990s, when the first proposals of the European laws, focusing on the question of privacy online, were introduced. The next phase is circumscribed by the ratification of the Lisbon Treaty and the debate on the new more comprehensive regulation on data protection, the so-called GDPR. Finally, this thesis looks at the most recent debate

[1] European Parliament, "Digital Agenda for Europe", *Fact Sheets on the European Union* (January 2022), 3, https://www.europarl.europa.eu/ftu/pdf/en/FTU_2.4.3.pdf (accessed on 25.7.2022).

on privacy protection online and the argued breaking point that the GDPR represented for the European Union as a global standards setter in the digital area.

From the general perspective, the conceptual framework of this thesis builds upon the concept of privacy in the age of digital information, which is closely linked to the issue of data protection. However, to understand the context it is necessary to also analyze the origins of the concept in connection to the historical development of this topic. Privacy as a fundamental right is enshrined in many international treaties focusing on human rights. Even though the European Union (EU) was built upon the question of the common market, and economic cooperation, over time even the EU has started to focus more on fundamental values, which should be protected in the member states so that the freedoms of European citizens are protected.

This thesis is built on two main, inter-related theories, and it proposes a combination of the two when answering the research question. Firstly, it deals with the notion of the Normative power Europe, a theory that outlines ways how the EU can impact global policies by using its soft power and the idea of the fundamental norms and values that the EU represents in international relations. Secondly, it looks at the theory first introduced by Anu Bradford in 2012, the Brussels Effect. This theory explains how certain European policies show signs of extraterritorial reach, and therefore, the proposed regulations might help the EU to become a global standard setter in a particular area.

The approach used in this research builds on the debate on privacy protection in the EU and more importantly on the introduced directives and regulations on this topic in which privacy is mentioned as a fundamental right, and which contributed to the European idea of privacy protection. Among the most important authors that contributed to the conceptual and theoretical framework used in this thesis are for example, Ian Manners with his article *"Normative Power Europe: A Contradiction in Terms?"*[2], Roger Clarke and his chapter "What's Privacy?"[3], and most importantly, Anu Bradford with her breakthrough book "The Brussels Effect"[4]. This research will be included in the existing debate within the group of authors, who argue that in some cases, like the digital economy, the European Union can exploit its market and regulatory power to become a global norm setter.

[2] Ian Manners, "Normative Power Europe: A Contradiction in Terms?", *The Journal of Common Market Studies* 40, no.2, (2002), http://www.ebscohost.com/ (accessed on 13.3.2022).
[3] Roger Clarke, "What's privacy?", in *Privacy and Information Rights,* ed. Justin Healey (Thirroul: Spinney Press, 2012).
[4] Anu Bradford, *The Brussels Effect: How the European Union Rules the World* (New York: Oxford University Press, 2020).

1 Conceptual framework

This chapter introduces some basic knowledge regarding the concept of privacy. Firstly, it introduces the theories and definitions of privacy, it describes this concept as a very complex one that is studied in many different fields. Therefore, when exploring this concept, it is essential to review it from multiple standpoints and perspectives, and also to take into consideration various topics that privacy influences. Secondly, the focus is on the conceptualization of privacy in the age of digital information and the issues that come with a technological boost over the last couple of decades, and what that is doing to the idea of privacy as a fundamental right and European value.

1.1 Conceptualizing privacy

Privacy is an interdisciplinary concept whose definition varies and changes depending on the field of study, subject area, and different perspectives. Therefore, it is almost impossible to create a single definition that would fit most cases. Privacy thus suffers, after all as many other interdisciplinary concepts, from the definitional ambiguity. It depends highly on individual life experiences, values, and self-awareness.[5] Lately, the issue of privacy continues to be used and analyzed in courts, the political sphere but also by the media press. Even though the topics of these debates are most often the question of information privacy, the issue can be also viewed from perspectives of physical constraints, territorial restriction, or the problem of surveillance. Concerns about personal privacy issues have been present in societies for many centuries. In the first complex legal testaments in ancient Greece and Rome, the question of privacy was closely linked to the process of urbanization. With more people living in small communities the notion of intimacy was first described with the regard to private or public life.[6] Based on the historical evidence the right to privacy has emerged in many different forms and dimensions all over the world. In some countries, the focus was on everyday life situations such as "gossipy" newspapers, whereas in others like in England the idea was concentrated around the government's involvement in people's lives. This is a similar case to America, where the issue of privacy was included in the Bill of Rights and its Fourth Amendment preventing the government's illegal abuse of the citizens.[7]

As far as the legal perspective on the issue of privacy is concerned the first comprehensive view can be traced back to 1890 when two American lawyers Samuel D. Warren and Louis D. Brandeis published their article *The Right to Privacy* in Harvard Law Review. The authors presented the issue of

[5] James Pomykalski, "Discovering Privacy- or the Lack Thereof", *Information Systems Education Journal* 15, no. 1 (2017): 4, https://eric.ed.gov/?id=EJ1135734 (accessed on 28.6.2021).
[6] Raymond Wacks, *Privacy: A very short introduction* (Oxford: Oxford University Press, 2010), 32.
[7] Daniel Solove, *Nothing to hide: the false tradeoff between privacy and security* (New Haven: Yale University Press, 2011), 4.

privacy protection as a valuable social interest, which needs to be preserved in modern society, and also provided the then famous legal definition of privacy as a "right to be left alone".[8] Even though this article was published more than a century ago it remains quite current, and it is widely recognized by many lawyers and scholars. Their reasoning and arguments in the article prevailed and supreme courts all over the United States started to adopt the phenomenon of privacy protection. This then triggered actions in most American states which incorporated the 'right to privacy' into their state law.[9] Despite the fact that many legal rules have changed since the end of the 19th century it is still valid to mention the article by Warren and Brandeis because of its claim that the concept of privacy is in a need of a better definition and recognition across the research disciplines.

Over the last century, there have been quite a lot of different theories of privacy, amongst which two authors and their inputs stand out and that is the work of Alan Westin and Irwin Altman. Their research in the 1960s and 1970s, respectively, stood the test of time and give us two major perspectives on the issue of privacy.[10] For Westin, privacy is one of the most fundamental aspects of human natural behavior, he sees the origins of what we now call privacy issues in animal instincts. Therefore, the initial desire comes from the individual's protection from both the other individuals but also from authorities, all this in regards to the information about them and how it is communicated with the outside world.[11] Despite this, Westin argues that this issue can't be simply explained by natural needs or human instincts but more likely it is an ongoing process that "the privacy is neither self-sufficient state nor an end in itself… it is an instrument for achieving individual goals of self-realization".[12] Altman on the other hand focuses a bit more on behavioral mechanisms that regulate individual privacy and also analyses the question of group privacy.[13]

Even though in most Western democratic societies, privacy is considered as something that comes together with basic human rights and values like independence, freedom of speech, and such, a combination of pressure from national governments, commercial interests, and some press media causes the decrease of individual's right to be left alone.[14] Despite a large level of attention on the issue of privacy in recent decades, there is still a need for a comprehensive and all-accepted definition. Conceptualization of privacy would help define the true scale of the privacy issue in the modern world.

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[8] Samuel Warren and Louis Brandeis, "The Right to Privacy", *Harvard Law Review* 4, no. 15 (1890): 193, https://www.stetson.edu/law/studyabroad/spain/media/Wk3.Stuart.Day1-1-THE-RIGHT-TO-PRIVACY-(excerpt).pdf (accessed on 28.6.2021).
[9] Wacks, *Privacy: A very short introduction*, 57.
[10] Stephen Margulis, "Three Theories of Privacy: An Overview", in *Privacy Online: Perspectives on Privacy and Self-Disclosure in the Social Web,* eds. Sabine Trepte and Leonard Reinecke (Berlin: Springer-Verlag, 2011), 9.
[11] Alan Westin, *Privacy and Freedom* (New York: Ig Publishing, 2018 - Copyright@1967), 24-25.
[12] Ibid, 44.
[13] Margulis, "Three Theories of Privacy", 11.
[14] Jon Mills, *Privacy: the lost right* (Oxford: Oxford University Press, 2008), 305.

One of the critiques of this fragmentation of definitions is Adam Moore who argues that law sometimes proves ineffective when facing the larger privacy protection issues that simply go beyond the known barriers. A very important aspect of this is for Moore the question of ambiguity of law in the question of what kind of information is public in regards to the protection of privacy in the public information.[15]

Some scholars avoid providing one definition of the concept of privacy and rather tend to focus more on its complexity and suggest taking an approach that more relates to a different field of study and perspective. Roger Clarke distinguishes between five different perspectives that create the whole picture of individual privacy. Amongst these are approaches; *philosophically, psychologically, sociologically, economically, and politically.*[16] In order to have sufficient and working privacy protection incentives, there needs to be a balance between these perspectives, thus a broader conceptualization of this phenomenon is necessary.[17] Clarke also points to the process he refers to as the "debasement of the legal concept". Following this logic, the world's data protection and privacy laws have taken the route that has been highly motivated not by human rights protection but rather by the facilitation of the government's economic interests and in favor of large private enterprises. Therefore, he calls for the privacy laws debates to be dominated not just by the pragmatic or utilitarian approach but also by sociological and philosophical trends.[18]

Different concepts of privacy are not only crucial for legal scholars and researchers but on the same level also for economists as they help to predict and control the flow of the market and define the relationship between the consumer and the market. Nonetheless, the attention to this topic did not rapidly increase until the late 1970's when the process of globalization connected different parts of the world and the world market was much more united. One of the first economists to raise the question of privacy in the sense of market functioning was Richard Posner. He studied the effect of privacy issues on the consumer's behavior in the market decision-making process, arguing that an unequal distribution of accessible information about the buyer may have serious consequences on competitiveness policies. He also points out that this lack of controlled flow of information based on vague privacy laws may backfire on the low-class workers, who would suffer from the information overload.[19] A similar approach has George Stigler, who focuses on the economic effects of privacy policies on market functioning. He argues that it is crucial to find the balance between how much

[15] Adam Moore, "Privacy: Its Meaning and Value", *American Philosophical Quarterly* 40, no. 3 (2003): 218, https://www.jstor.org/stable/20010117 (accessed on 29.6.2021).
[16] Roger Clarke, "What's privacy", 1.
[17] Ibid, 1.
[18] Ibid, 4.
[19] Richard Posner, "The Economics of Privacy", *The American Economic Review* 71, no. 2 (1981): 406-407, https://www.jstor.org/stable/1815754 (accessed on 29.6.2021).

information about the individual is available to others. The lack of such a system increases the risk of information compensation with different sources that will be utilized in the market.[20] Other economists like Jack Hirshleifer argue that the economic study of the market in the sense of privacy could be quite limited based on other aspects that are present. He draws attention to the fact that when studying the concept of privacy, we need to keep in mind that not every human being is acting according to the so-called "economic man". With this logic, the economists have not done a great job considering the question of ethics and the human desire for privacy, which goes back to their human nature.[21]

For the purposes of this thesis the concept of privacy is viewed as a fundamental right, which is enshrined in many international treaties and legal documents considering basic human rights and values. Privacy is recognized in The Universal Declaration of Human Rights (UDHR) proclaimed by the United Nations General Assembly in Paris in 1948 as a common standard for human rights in all member nations. Article 12 of the UDHR claims that '*no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.'*[22] A similar definition was also adopted in The European Convention on Human Rights (ECHR) drafted in 1950 by the Council of Europe. Article 8 (1) states that *'everyone has the right to respect for his private and family life, his home and his correspondence.'*[23] Even the European Union itself has included privacy as a fundamental right in its Charter of Fundamental Rights of the European Union, which has the status of primary law document since the Lisbon Treaty recognition in 2009 in Article 6 (1)[24]. The right to privacy is enshrined in the Charter in relevant Article 7, which largely copies the previous legal recognition in ECHR. Article 8 on the other hand presents a new phenomenon in the question of privacy in the digital world – the new fundamental right of EU citizens to data protection.

Article 8 of the Charter provides:

1. Everyone has the right to the protection of personal data concerning him or her.

[20] George Stigler, "An Introduction to Privacy in Economics and Politics", *The Journal of Legal Studies* 9, no. 4 (1980): 628, https://www.jstor.org/stable/724174 (accessed on 29.6.2021).
[21] Jack Hirshleifer, "Privacy: Its Origin, Function, and Future", *The Journal of Legal Studies* 9, no. 4 (1980): 651-652, https://www.jstor.org/stable/724176 (accessed on 29.6.2021).
[22] United Nations, "The Universal Declaration of Human Rights", *General Assembly resolution 217 A* (December 1948), https://www.un.org/en/about-us/universal-declaration-of-human-rights (accessed on 17.7.2022).
[23] Council of Europe, "Convention for the Protection of Human Rights and Fundamental Freedoms", (November 1950), https://www.echr.coe.int/documents/convention_eng.pdf (accessed on 17.7.2022).
[24] The Union recognizes the rights, freedoms, and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.[25]

1.2 Privacy in the age of digital information

With a rapid advance in technology, storing capacity, and data availability, privacy protection has become a much more complex issue and the biggest focus is on the informational dimension. Both personal and territorial privacy is being challenged by advanced communication technologies and new tracking devices like surveillance cameras in public and private spaces.[26] With an increase in online interactions as a replacement for physical contact, we lose a clear sense of boundaries between what is private and what may be used or exploited by others. Then questions like "who is reading my blog?" or "who can see my activities on an internet search?" become more and more unclear.[27] The largest actor in the modern age of information is undoubtedly the internet. By simply being on the internet, we reveal quite a lot about ourselves. On the lowest level, it is the IP address, which essentially shows the physical location of the device as part of the institution or provider that the device is connected to. Using online browsers, which after all is the most typical thing people do on the internet, we reveal much more about our identification. With the right code in JavaScript, it is fairly easy to locate the particular computer or mobile phone out of million users.[28]

A crucial role in regards to the question of privacy in the digital world is played by the social media environment. This topic has been addressed by many legal scholars in the relation to the biggest actors in this industry. Mostly because in many cases, it is essential to disclose a certain amount of information about the user to gain the benefits of this new communicational tool. Some social networks are even built on the idea of information sharing between the consumer and for example

[25] Charter of Fundamental Rights of the European Union 2012/C, 326/02, *Official Journal of the European Union* C 326/391, 26.10.2012, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN (accessed on 17.7.2022).
[26] Bernhard Debatin, "Ethics, Privacy, and Self-Restraint in Social Networking", in *Privacy Online: Perspectives on Privacy and Self-Disclosure in the Social Web,* eds. Sabine Trepte and Leonard Reinecke (Berlin: Springer-Verlag, 2011), 48.
[27] Alessandro Acquisti, Laura Brandimarte, and George Loewenstein, "Privacy and human behavior in the age of information", *Science* 347/6221 (2015): 512, https://search.ebscohost.com/login.aspx?authtype=shib&custid=s1240919&direct=true&db=edsjsr&AN=edsjsr.24745782&site=eds-live&scope=site&lang=cs (accessed on 29.6.2021).
[28] Brian Kerninghan, *Understanding the Digital World. What you need to know about computers, the internet, privacy, and security* (Princeton: Princeton University Press, 2017), 265.

companies that advertise or recruit on that particular network.[29] Nevertheless, it wasn't until the Facebook introduced News Feed function in 2006 that the discussion about privacy issues on social media sparked. This new function meant that users' behaviors and activities became more publicly displayed to their digital "friends". This really elicited the debate about privacy and data protection in these types of communication technologies.[30] They often exploit the fact that these services are free of charge. Therefore, default settings are the most important tool used by different online entities to force information disclosure from their users. Settings or rules of the network also use design features that are likely to frustrate or even confuse the users into revealing private information.[31]

The study of privacy in a digital age is by many scholars often closely linked with the question of surveillance and even though the fields of research and perspectives differ, there is one thing that the scholars tend to agree on; the concept of privacy is inadequate to contain the issue of increased surveillance.[32] As Kevin Haggerty and Richard Ericson argue "the proliferation of surveillance makes privacy rights more important, their practical effects are increasingly limited".[33] The biggest critique of the privacy laws in regards to surveillance is based on the argument that the issue is too individualized. Privacy is thus focused on reinforcing the rights of the individuals, rather than on communication, socialization, and increasing trust.[34] The issue of trust is crucial in this context because in the question of social media it is mostly large private companies, which are using the information about their users for their profit. Whereas in the case of surveillance the key role is played by national governments. A specific example is the increasing number of video surveillance used in public spaces all over the world. This has drawn much attention amongst legal scholars for example in the United States these types of monitoring the citizens are outside of the jurisdiction of the Fourth Amendment[35], which should protect the people from unreasonable searches and seizures by the government.

In the age of digital information, privacy is frequently balanced against security, which is prioritized in most cases. When there is a possible threat to national security, the question of privacy is often in a clash of interests. As Daniel Solove points to this problem, he calls for a system, which

[29] Nicole Ellison, et. al., "Negotiating Privacy Concerns and Social Capital Needs in a Social media Environment", in *Privacy Online: Perspectives on Privacy and Self-Disclosure in the Social Web,* eds. Sabine Trepte and Leonard Reinecke (Berlin: Springer-Verlag, 2011), 20.
[30] Ibid, 23.
[31] Acquisti, "Privacy and human behavior", 512.
[32] Colin Bennett, "In Defence of Privacy: The concept and the regime", *Surveillance and Society* 8, no. 4 (2011): 485, https://ojs.library.queensu.ca/index.php/surveillance-and-society/article/view/4184 (accessed on 29.6.2021).
[33] Kevin Haggerty and Richard Ericson, "The New Politics of Surveillance and Visibility", in *The New Politics of Surveillance and Visibility,* eds. Kevin Haggerty and Richard Ericson (Toronto: University of Toronto Press, 2006), 32.
[34] Bennett, "In Defence of Privacy", 486.
[35] Solove, *Nothing to hide*, 175.

would effectively control the security programs and ensure that the treatment of information is in a balanced and controlled manner.[36] Personal privacy is after all a key aspect of mankind and needs to be protected both by the individual behavior in the digital arena and by institutional systems in place. Based on such a rapid technological advance in recent decades it is also necessary to look at the relationship between privacy and power. Currently, governments and large technology companies know more about their citizens or users than ever before. The so-called "intelligence agencies", which keep the massive amount of information data possess power both over the market and other aspects of everyday life.[37]

New technologies have brought with them new incentives on how to address the issue of the right to privacy in the digital world. In many examples, the most discussed issue has become the debate about data protection. The European Union in this case stands as a prime example of approaching data protection as a fundamental right and value that all EU citizens have. At first, this might have been seen as a surprise move based on the fact that unlike the Council of Europe the origins of the European integration are in economic cooperation rather than the human rights question.[38] Nowadays, as mentioned in the previous part of this thesis, the Charter of Fundamental Rights of the European Union in Article 8 legally underpins the right to data protection next to the right to privacy as a fundamental right and therefore a value that the EU ought to protect. For some authors, the debate on data protection has taken over the debate on privacy, and to have a globally agreed concept on this issue is a "necessary utopia" but to have such rules is indispensable not only for correctly protecting the fundamental rights but also because any changes affecting the data protection have an impact on democracy and status of society.[39] The next chapter hence describes the potential that the European Union has in influencing the global debate on privacy and data protection.

[36] Solove, *Nothing to hide*, 207.
[37] Carissa Véliz, *Privacy is Power: Why and how you should take back control of your data* (London: Bantam Press, 2020), 28-29.
[38] Maria Tzanou, *The Fundamental Right to Data Protection: Normative Value in the Context of Counter-Terrorism Surveillance* (Portland: Hart Publishing, 2017), 16.
[39] Stefano Rodota, "Data Protection as a Fundamental Right", in *Reinventing Data Protection?,* eds. Serge Gutwirth et al. (Brussels: Springer Dordrecht, 2009), 78.

2 Theoretical and methodological framework

This chapter lays the theoretical background of this thesis. It identifies the conditions and different mechanisms that the European Union uses to externalize its jurisdiction standards to third countries. Firstly, it briefly introduces the so-called "normative power" that the EU poses to spread the values and norms through its legislative actions, in this case, its perception of protection of privacy in the digital age. Secondly, it examines the "Brussels effect" theory, which contributes to the debate on the regulatory power that the EU utilizes.

2.1 Normative power Europe

> 'What makes power hold good, what makes it accepted, is simply the fact that it doesn't only weigh on use a force that says no, but that it traverses and produces things, ...'(Foucault,1984)[40]

With this quote, Michel Foucault contributed to the debate about the role of 'soft' power in international politics. It negates the argument, that to have significant power and influence in the international arena it is necessary for the unit to have a strong military impact. On the contrary, for some international actors, the capabilities of a strong military and defense system are virtually impossible to achieve so they are pushed to find different ways how to influence other actors. EU is arguably in this regard the biggest actor with essentially no eminent military power, but still, it finds ways how to impact global policies. One of the very frequently referred to theory about the EU's role in the global system is built on the promotion of core values and norms that the EU represents.

The majority of the scholars focusing on "Normative power Europe" are building their arguments on the work by British researcher Ian Manners who introduced this concept in 2002 in his article *Normative Power Europe: A Contradiction in Terms?.* However, the idea of the EU using its soft power to influence international politics goes back to the 1970s and to work by François Duchêne on "civilian power" Europe.[41] Ian Manners presented a new point of view on what kind of an actor the EU truly is. The concept of NPE is based on the fact that the EU has developed, throughout the series of declarations and legal frameworks, a certain normative framework. Manners here identifies five "core" norms that create fundamental principles and values that the EU is trying to spread when acting as an NPE and four "minor" norms that are usually used in achieving the ultimate goals. These norms are *peace, liberty, the rule of law, human rights, democracy, social solidarity, anti-discrimination,* and

[40] Michel Foucault, "The Truth and Power: Interview with Michel Foucault," *The Foucault Reader,* ed. P. Rabinow (New York: Pantheon Books, 1984): 61.
[41] Henrik Larsen, "The EU as a Normative Power and the Research on External Perceptions: The Missing link", *The Journal of Common Market Studies* 52, no.4, (2014): 897, http://www.ebscohost.com/ (accessed on 13.3.2022).

sustainable development.[42] By projecting these values to its legislation the EU is actively promoting the core norms and thus exercising its normative power in international relations. These values are both featured in the documentation and rhetoric of EU representatives.[43]

> In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.[44]

For any international actor to be described as a normative power it needs not only to distinguish its values and norms that it wants to enforce on other players, but it also needs to implement a specific set of consistent methods by which it can diffuse these normative principles in its international relations. Manners suggests six basic factors that shape this diffusion. First, such a method is *contagion* describing the unintentional spreading of EU norms to other political actors. *Informational* diffusion is a process based on strategic and declaratory communications. *Procedural* diffusion is the result of the institutionalization of a relationship between the EU and a third party. EU can use this method in a sense of either an inter-regional cooperation agreement or the membership in the Union itself, where it can use the conditionality of the acceptance. *Transference* involves the diffusion of norms through the exchange of goods, trade, aid, or technical assistance that the EU uses in international relations. Such a transference of norms can be thus achieved through substantial financial means, both in positive (financial rewards) and negative connotations (economic sanctions). *Overt diffusion* occurs when the EU is using its physical presence in third countries with the mission delegations or embassies of its member states. The final method that Manners describes is a *cultural filter* that affects the influence of normative principles and learning in third states and organizations. It is based on the interplay between the construction of knowledge and the creation of social and cultural norms. The diffusion of democratic norms and human rights in non-democratic countries is a good example of this method.[45]

Given the lack of military power, soft diplomacy is according to some authors crucial for the EU in forming its role in the world. Mostly based on the fact that it is the economy, where the EU can

[42] Ian Manners, "Normative Power Europe", 242.
[43] Charlotte Bretherton and John Vogler, *The European Union as a Global Actor* (New York: Routledge, 2006), 42-43.
[44] Treaty of Lisbon, Article 2.
[45] Ian Manners, "Normative Power Europe", 244-245.

ultimately match the United States, it is necessary to utilize this power in the future.[46] Soft diplomacy can be in this regard defined as a method of communication, which is built upon economic, financial, and other institutional means in order to export values, norms, and rules that are implied in the agreements and that aim to achieve a long-term cultural influence in the targeted area.[47] European institutions have long focused on the role the Union played in the international promotion of human rights and democratic principles. A side of the values of democracy and rule of law it is the human rights that are amongst the most visible and explicit political norms promoted in external communication.[48]

To distinguish whether any international actor can be described as a normative power it is crucial, according to Manners, to examine its *normative impact* and thus the results that the use of the above-mentioned methods of diffusion of normative principles have on other political actors. EU's impact on the promotion of its core values and principles can be difficult to examine. Manners again offers several factors that the political actor should embrace while promoting a specific principle in order to have a chance to be effectively promoted to third parties. These are; *clarity* of the promoted principle*, simplicity* of action taken by the promoter, *consistency* of the promotion to avoid contradictive statements, *holistic* understanding of the broader problematic into which the principle interferes, *partnership* in building productive relations with other international actors, and finally, the *timescale* of the promotion.[49]

Although the European Union has a history of practicing the promotion of its normative principles in international politics, there are some challenges and limitations that its normative power possesses. EU politics in the past had a tendency to copy examples from some of the other international actors. This mostly applies to the issues of defense and security policies but can be relatable to other fields as well. In general, it is argued that the use of EU material incentives and physical force has tended to follow the example of the world powers and therefore, the EU did not harness the potential that its normative power offers. According to Manners, in order to better prepare for the challenges of the 21st century, the EU should make more creative efforts to tackle the current global threats and should start using normative power more justifiably.[50] The question of the legitimacy of the EU's normative

[46] Filippo Andreatta, "Theory and the European Union's International Relations", in *International Relations and the European Union,* eds. Christopher Hill and Michael Smith (Oxford: Oxford University Press, 2005), 35.
[47] Franck Petiteville, "Exporting 'values'? EU external co-operation as a 'soft diplomacy'", in *Understanding the European Union's External Relations,* eds. Michele Knodt and Sebastiaan Princen (Oxford: Routledge, 2003), 134.
[48] Ibid, 132.
[49] Ian Manners, "The Concept of Normative Power in World Politics", *Institut for Internationale Studier/ Dansk Center for Internationale Studier og Menneskerettigheder* (2009): 4, https://rucforsk.ruc.dk/ws/portalfiles/portal/38384152/Ian_Manners_the_concept_of_normative_power_in_world_politics_DIIS_Brief_2009.pdf (accessed on 16.3.2022).
[50] Ibid, 5.

power was addressed by Chris J. Bickerton, who has argued that throughout history, the EU had a hard time justifying the norms and values that it wanted to promote on the global level. Both scholars and analysts noted that what passed for normal in the EU's opinion was not always normal for every other international actor.[51]

Whilst utilizing its normative power, the EU has always relied on its economic position in the world and trade relations. Despite this logic of thinking, the literature on EU trade policies has been long dominated by the question of rational choice and a political economy based on the self-interest of an actor and thus to a large extent neglected the normative dimension of the EU trade relations.[52] Although, there are scholars who focused on the bridge between these two perspectives and who considered the European trade relations in correlation with the normative principles. Jan Orbie argues that, since the 1990's the discourse around the EU trade policies has devoted much attention to the promotion of European values like democracy, human rights, etc. Before that, the main objectives behind the EU trade policies were based on economic interests and gain.[53] A former Trade Commissioner Pascal Lamy often used the term "harnessing globalization" while describing this new discourse of the pursuit of normative objectives. In his speech before the European Parliament in November 1999, he raises the issue of whether the established rules for the trade negotiations are still suitable for the then current international legal order.

> "It is no longer only economic interests that are in question, but also values, the concept of society, of what is desirable and of what is risky. Health, environment, the quality of life, culture are henceforth stakes that must be reconciled with open and competitive markets. Regarding development, human rights, social and environmental standards, the European Union brings with it values that have the aim of becoming universal."[54]

The growing economy of the European Union has ensured that in many respects the EU is understood as a global power and in trade policies it developed a strong capacity to act and influence other political actors that have trade interests in Europe. To some degree, these exclusionary practices and possibly aggressive pursuit of market opening are incompatible with the idea of the European Union being an actor built on values and norms. Nevertheless, the EU is continuously showing that it is prepared to

[51] Chris J. Bickerton, "Legitimacy Through Norms: The Political Limits to Europe's Normative Power", in *Normative Power Europe: Empirical and Theoretical Perspectives,* ed. Richard G. Whitman (New York: Palgrave Macmillan, 2011), 40-41.
[52] Jan Orbie, "Promoting Labour Standards Through Trade: Normative Power or Regulatory State Europe?", in *Normative Power Europe: Empirical and Theoretical Perspectives,* ed. Richard G. Whitman (New York: Palgrave Macmillan, 2011), 166.
[53] Jan Orbie, "The European Union's Role in World Trade: Harnessing Globalization?", in *Europe's Global Role: External Policies of the European Union,* ed. Jan Orbie (Aldershot: Ashgate, 2008), 54.
[54] Pascal Lamy, cited in *Bulletin Quotidien Europe* No. 7590, (10. 11. 1999), 3 https://archives.eui.eu/en/fonds/444582?item=AGE-622 (accessed on 16.3.2022).

use its economic instruments to pursue and promote values like human rights and others.[55] When the EU member states are capable of finding a consensus among themselves and manage to cooperate on a certain issue, the power of the whole is formidable. It can be most clearly seen on international platforms like the World Trade Organization by advocating itself as an alternative to the American hegemony, the EU is also trying to reinforce its social normative goals.[56] Market size on its own does not guarantee the large economy to sufficiently influence global standards and promote its regulations and norms to other political entities. For this to effectively happen and to become a regulatory power an international actor needs to have further characteristics, therefore, the next chapter focuses on the theory that explains what tools the EU has so it can become a global regulatory power.

2.2 The Brussels Effect

The rise of what scholars now call the regulatory state in Europe was closely linked to the creation of the single market. National governments have devolved some of their powers to the new European institutions, regulatory agencies, and others so that the transition towards the single market would be as smooth as possible. Meanwhile, the policymakers on the European level have developed the institutional resources and capabilities to define and monitor the regulatory policies across the single market so that it could establish the political authority to effectively control the access of third parties into the single market.[57] Consequently, the US hegemony in the area of standard setting was endangered. In an example of the farming industry, the views of many Americans were captured in an article in the *Wall Street Journal* in 2002: 'Rules, Regulations of Global Economy Are Increasingly Being Set in Brussels'. Brandon Mitchener here reflects on the fact that "even though the American market is bigger, the EU, as the jurisdiction with the tougher rules, tends to call the shots for the world's farmers and manufacturers."[58] This chapter examines the theory, which explains this rise of the regulatory power through the so-called Brussels effect.

The Brussels effect theory examines a phenomenon where certain norms or regulations, which are set by the European institutions impact the global economic and social activities of other political entities or even of private corporations. This term was first introduced by Columbia Law School Professor Anu

[55] Charlotte Bretherton and John Vogler, *The European Union as a Global Actor* (New York: Routledge, 2006), 88.
[56] Michal E. Smith, "Implementation: Making the EU's International Relations Work", in *International Relations and the European Union,* eds. Christopher Hill and Michael Smith (Oxford: Oxford University Press, 2005), 173.
[57] David Bach and Abraham L. Newman, "The European regulatory state and global public policy: micro-institutions, macro-influence", *Journal of European Public Policy* 14, no. 6 (September 2007): 828 https://www.tandfonline.com/doi/pdf/10.1080/13501760701497659 (accessed on 6.4.2022).
[58] Brandon Mitchener, "Rules, Regulations of Global Economy are Increasingly Being Set in Brussels", *Wall Street Journal* (April 23, 2002) https://www.wsj.com/articles/SB1019521240262845360 (accessed on 6.4.2022).

Bradford in 2012.[59] In her article, Anu Bradford explains how and why the rules and regulations presented in Brussels have infiltrated aspects of economic activities outside of Europe using the process that she describes as "unilateral regulatory globalization". Practice when a state is able to externalize its regulatory rules outside its borders using market tools and when consequently this regulation becomes a global standard.[60]

The Brussels Effect theory as described by Anu Bradford is building on a work by a University of California, Berkeley, Professor David Vogel. Vogel focuses on the dynamics of globalization and its effect on regulatory policies in the global economy.[61] He uses the example of the state of California to explain how a single state with stricter regulatory standards influenced the rest of the market in the United States. Vogel argued that the so-called "California effect" occurred in many examples throughout the second half of the last century. For instance, it could be illustrated on the 1970 Clean Air Act that brought up the issue of automobile emissions, when the national authorities permitted California to enact stricter rules on emissions standards than the rest of the United States, consequently California did exercise this option. The other states were thus given the option of choosing whether to follow the national or the stricter California standards.[62] In the discussion about the global regulatory changes on the other side of the "California effect" is the "Delaware effect". Whilst the case of a large market with the willingness to apply stricter regulation rules in certain areas has a potential to impact other political actors to follow the stricter rules, the case of the state of Delaware represents the exact opposite phenomenon. The Delaware effect is often used in explaining the devolution in regulatory standards in the United States as simply the *race to the bottom*[63] to attract corporations from other states on low tax requirements and other benefits. Delaware has become the winner of the race to be the most attractive place for foreign businesses.[64] The expansion of the market scope beyond the existing borders ultimately creates a problem for the regulators from more demanding regimes to adjust to lower regulatory jurisdictions. On the other hand, the expansion of rules from high-regulatory regimes creates a problem for foreign companies, which come under

[59] See Anu Bradford, "The Brussels Effect", *Northwestern University Law Review* 107, No. 1, Columbia Law and Economics Working Paper No. 533 (2012), https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2967&context=faculty_scholarship (accessed on 30.3.2022).
[60] Ibid, 3.
[61] See David Vogel, *Trading Up: Consumer and Environmental Regulation in a Global Economy* (Harvard: University Press, 1995).
[62] David Vogel, "Trading up and governing across: transnational governance and environmental protection", *Journal of European Public Policy* 4, No. 4 (December 1997): 561 https://www.tandfonline.com/doi/abs/10.1080/135017697344064 (accessed on 30.3.2022).
[63] David Vogel and Robert A. Kagan, "An Introduction", in *Dynamics of Regulatory Change: How Globalization Affects National Regulatory Policies,* eds. David Vogel and Robert A. Kagan (California: University of California Press, 2002), 2.
[64] Bradford, "The Brussels Effect", 5.

pressure as they have to face new issues of different taxes and standards across the markets. These additional costs are likely to prompt foreign firms to support the tightening of standards in their original jurisdictions. Therefore, it is argued that in a globalized world the race to the top phenomenon is more likely to occur than the example of Delaware and its effort to race to the bottom.[65]

According to Anu Bradford, several conditions have to be met for the Brussels effect to occur, these conditions are linked to five elements, which underline this theory – *market size, regulatory capacity, stringent standards, inelastic targets,* and *non-divisibility.* All of these elements have to be fulfilled at the same time so that the regulatory power of the particular political entity can be viewed as the Brussels Effect.[66]

The element of *market size* is quite self-explanatory, although it is a relative concept, in which the extent of any given state's market power has its limitations related to its attractiveness for third states. To adequately measure the market size of the state it is essential to look at the attractiveness of its consumer market when compared to other alternative markets in the world.[67] The traditional market size and power theories and definitions such as the ones offered by William G. Shepherd in the 1970s[68] usually refer to a market participant's ability to influence aspects like the price or quality of a certain product in the marketplace using its position in the system. The market size in case of the international relations combines the aspects of the internal market, the importance of import and export, the consumer market, and adjustability to modern technologies and industrial changes that change the global economy.

Although the size of the regulatory entity's market remains at the foundation of its ability to influence foreign standards it is by far the only aspect needed to examine, hence, Anu Bradford argues there are other important conditions that need to be met. *Regulatory capacity* refers to an ability to promote and impose individual regulations, this requires the actor to have working institutions and resources to develop its regulations on a level that consequently can be promulgated to third states' jurisdiction.[69] Regulatory capacity is often connected to another aspect of the Brussels Effect phenomenon, the *stringent standards.* Even a large market with a developed institutional background cannot successfully externalize its stricter regulations without a political will to do so. In this sense,

[65] Abraham L. Newman and Elliot Posner, "International interdependence and regulatory power: Authority, mobility, and markets", *European Journal of International Relations* 17, no. 4 (2010): 602 https://journals.sagepub.com/doi/pdf/10.1177/1354066110391306 (accessed on 6.4.2022).
[66] Bradford, *The Brussels Effect,* 25.
[67] Bradford, *The Brussels Effect,* 25.
[68] See William G. Shepherd, *Market Power and Economic Welfare: An Introduction* (New York: Random House, 1970).
[69] Bradford, *The Brussels Effect,* 31.

wealthier countries are more likely to show domestic preference towards stringent rules, because they can ultimately better prepare for its consequences on the economy and social guarantees of their citizens.[70]

For these stringent rules to be effectively applied as global standards they need to be aimed at *inelastic targets.* These refer to products, which are in any way responsive to regulatory changes, therefore, they are tied and dependent on a regulatory regime in which they are being sold or used.[71] Finally, the last conditional element that Anu Bradford lists for the Brussels Effect to occur is the *non-divisibility* in the standard setting on a global level. A new global standard emerges only when corporations voluntarily decide to adopt stricter regulations for their products to their global operations. A company has a much higher motivation to adopt a new global standard when its production is non-divisible across the markets. Hence the benefits of a uniform standard have to exceed the costs of foregoing potential production changes.[72]

In a situation, where all the above-mentioned requirements are met the Brussels Effect is likely to occur, but the aftermath is not always the same in different countries and jurisdictions, therefore, Anu Bradford also draws a distinction between the *de jure* and *de facto* aspects of her theory. The *de facto* Brussels Effect would occur when companies from third countries decide to comply with the EU standards even if they are still producing their products for their domestic or other foreign markets, where the standards are less strict. This ultimately converts the certain EU rule into a global rule, which is implemented willingly by companies across the world. By contrast, the *de jure* Brussels effect describes the events, when a third country legislature decides to incorporate the EU standards into their domestic legislation.[73]

The Brussels effect theory contributes to the larger debate on globalization and its impact on the harmonization of regulations in the global political economy. In general, it is argued that governments that possess larger internal markets, and therefore, can develop a significant economic power, remain the most important actors in developing policy convergence and extraterritorial regulations. When states act in unity the policy harmonization is more likely to happen through the market and coercive power. On the other hand, when actors fail to agree, policy convergence will take place.[74] Andreas

[70] Bradford, *The Brussels Effect,* 37.
[71] Ibid, 48.
[72] Ibid, 53-54.
[73] Bradford, „The Brussels Effect“, 6.
[74] Daniel W. Drezner, “Globalization, harmonization, and competition: the different pathways to policy convergence”, *Journal of European Public Policy* 12, No.5 (October 2005): 842 https://www.tandfonline.com/doi/full/10.1080/13501760500161472 (accessed on 30.3.2022).

Goldthau and Nick Sitter argue, that in many cases the EU's ability to externalize its policies is based on its soft power with a hard edge.

Table 1.

	Coercion	*Attraction*
Targeted	Hard power (target: governments)	Soft power with a hard edge (target: governments and firms)
Non-targeted	Passive hard power (target: none)	Soft power (target: none)[75]

The upper right cell in Table 1. represents a situation, where the attractiveness of a certain regulation is complemented with a targeted approach towards a particular company or a group of companies that govern the access on market. Both the EU and the U.S. use their economic power in this sense, meaning that the companies from third countries have to oblige to the regulatory rules to gain full access to their markets. For the EU this type of soft power is its - arguably sometimes even its only - policy tool to use when trying to influence third states' policies and regulations.[76] It is argued that to some extent third countries often align with EU legislation, not because of the explicit request by the EU authorities but because their companies fear the negative impacts in case their country does not oblige to the new standards.[77]

The Brussels Effect - defined as the EU's unilateral power to influence or regulate global markets by introducing new standards in different policy areas is generally argued to be a passive process based on internal regulations. However, EU law often has an extraterritorial reach formed by the direct intent of aiming at foreign companies. Joanne Scott coins this effort as "territorial extension" of some EU law, indicating that in many cases the regulatory technique of extending the EU law to be applied in foreign markets is based on a territorial connection between the third state and the EU. Joanne Scott illustrates this phenomenon with an example of an EU regulation for the protection of animals. By applying this

[75] Andreas Goldthaum and Nick Sitter, *A Liberal Actor in a Realist World: the European Union regulatory state and the global political economy of energy* (Oxford: Oxford University Press, 2015), 114.
[76] Ibid, 115.
[77] Sandra Lavenex, "The power of functionalist extension: how EU rules travel", *Journal of European Public Policy* 21, no. 6 (2014): 891, https://www.tandfonline.com/doi/full/10.1080/13501763.2014.910818 (accessed on 4.5.2022).

regulation also on imported animals, the EU sets a new rule on the certification of such animals outside its borders, thus it gives rise to a territorial extension of the particular policy.[78]

There are more ways in which can norms and regulations travel across different legal systems, in this sense the Brussels Effect contributes to the debate about policy diffusion. As described in Fabrizio Gilardi's work on this topic, there is a consensus on three different pathways of policy diffusion. First, 'learning' is a process where one legal system is using the experience of other countries when assessing the consequences of the new regulation on its domestic policies. Second, 'competition' is defined as a model, which occurs when individual units react or anticipate one another when formulating domestic policies, tax competition is an example of this policy diffusion mechanism. Third, 'emulation' is in contrast with the learning mechanism, which involves the adoption of the new regulation because it is considered to be normatively and symbolically correct, therefore, the decision behind the policy is not driven by the objective potential consequences.[79] Another possible way in which can policies travel is through the coercion phenomenon, which could be usually identified through conditionality, for the EU it would mean the accession requirements that need to be met by the candidate country before the process of the accession even starts.[80] Bradford uses mostly emulation as a term that overarchingly involves all the aspects of copying or using parts of the content of EU regulation and the administration behind it, but the decision is also based on normative roots of the particular policy. In general, Bradford's theory is more focused on the outcomes of the policy diffusion rather than the transfer process itself.[81]

Even though the initial article on the Brussels effect appeared in a legal journal, it is not restricted to a legal analysis. On contrary, the global reach of the EU law is argued to be quite an interdisciplinary topic that includes economic, political, social, and other factors as well. Instead of the analysis of the legal process of the extraterritorial reach of the EU law, Bradford analysis regulations, which demonstrate the appearance of the Brussels Effect in practice, indicating that to examine whether the regulation in question launches the Brussels Effect, factors from political science, economy and social trends need to be discussed. This approach might arguably downplay the role of law and judicial review in the process.[82] However, the European Court of Justice (ECJ) remains to be a significant part of the

[78] Joanne Scott, "The Global Reach of EU Law", in *EU Law Beyond EU Borders: The Extraterritorial Reach of EU Law,* eds. Marise Cremona and Joanne Scott (Oxford: Oxford University Press, 2019), 24.
[79] Fabrizio Gilardi, "Four Ways We Can Improve Policy Diffusion Research", *State Politics and Policy Quarterly* 16, no. 8 (2016): 9-10, https://journals.sagepub.com/doi/pdf/10.1177/1532440015608761 (accessed on 27.4.2022).
[80] Goldthaum and Sitter, *A Liberal Actor in a Realist World,* 115.
[81] Ioanna Hadjiyianni, "The European Union as a Global Regulatory Power", *Oxford Journal of Legal Studies* 41, no. 1 (2021): 249, https://academic.oup.com/ojls/article/41/1/243/6017945?login=true (accessed on 27.4.2022).
[82] Ibid, 252.

process of the global reach of EU law, the globalization of some of the regulations also brought up a new dimension to the role of the Court. And even though, the Brussels effect is not a 'court-centric' theory, the Court nowadays appears as the most commonly used to check up on the global impacts of the EU law.[83]

By tracking and empirically demonstrating the EU's ability to influence the global regulatory standards, Bradford portrays the EU as a significant and resilient global regulator. The Brussels effect theory thus shapes an understanding of EU power in the context of contemporary societies and the globalized world, which extends far beyond its military and normative power. This so-called regulatory power is driven by its capacity to regulate market forces. Although Bradford argues that the Brussels effect mirrors the resilience of the EU's global regulatory efforts and is likely to occur in many more examples, she also recognizes that it is only 'the second-best alternative', where in an ideal system "all governments would regulate their economies and coordinate, as needed, internationally. However, when all these assumptions do not hold, the Brussels Effect becomes a less objectionable, and more necessary – second best – alternative.[84]

2.3 Method and research design

Since the research in this thesis focuses on understanding the impact that the question of protection of privacy had in forming the European Union's normative global power by analyzing both the legislative and legal documents, and the debate in the respective European institutions, the research is by nature *qualitative.* As mentioned by Bryman qualitative research usually emphasizes the patterns and language over the collection of data and quantification of the results.[85] The research also uses the *inductive* approach[86] as it is not the aim of the thesis to test the existing theories and models but rather to search for patterns and tries to understand the processes behind certain European policies and approaches towards the question of privacy as a fundamental right in three different time periods.

This thesis uses two methodological approaches to sufficiently answer the research question. When analyzing the legislative and legal documents the most appropriate approach is the *qualitative content analysis,* which comprises of searching out the underlying themes, and which analyses the chosen documents for similarities and differences.[87] Secondly, the research uses *analysis of discourse* to understand the reasoning behind the crucial European legislation that has an impact on the EU's global

[83] Elaine Fahey, *The Global Reach of EU Law* (London: Routledge, 2016), 52.
[84] Bradford, *The Brussels Effect",* 253.
[85] Alan Bryman, *Social Research Methods 4th edition* (Oxford: Oxford University Press, 2012), 380.
[86] See Ulla H. Graneheim, Britt-Marie Lindgren and Berit Lundman, "Methodological challenges in qualitative content analysis: A discussion paper*", Nurse Education Today* 56 (2017): 2, https://www-sciencedirect-com.ezproxy.is.cuni.cz/science/article/pii/S0260691717301429 (accessed on 20.7.2022).
[87] Bryman, *Social Research Methods,* 557.

role as a normative power. This type of discourse analysis is identified by its prime actors[88], in our case the European politicians and members of the institutions, which has the transnational element – the European Commission and the European Parliament. To answer the research question in place, the analysis of the discourse is focused on the mentioning of the global tech companies in the debates on new privacy protection standards.

The individual cases of legislative and legal documents were selected based on their significance on the topic of privacy so that this thesis can correctly analyze the change in the way how the European Union presents itself in the matter of protection of privacy as a fundamental right and international norm. This thesis applies the proposed conceptual and theoretical framework to the EU's global role in a sense of the promotion of the protection of privacy in the digital world. As far as the time perspective is concerned, the research is targeted at crucial documents since the first directive focused on the question of data protection adopted in 1995. In terms of analyzing the discourse and the overarching debate on digital privacy in the European institutions, the time framework of this part is closely linked to the adoption of the essential legislations and to the debate prior to that.

[88] Teun A. van Dijk, "What is Political Discourse Analysis", *Belgian Journal of Linguistics* 11 no. 1 (January 1997): 12-13, https://e-l.unifi.it/pluginfile.php/909651/mod_resource/content/1/Van%20Dijk%20Waht%20is%20political%20discourse%20analysis.pdf (accessed on 19.7.2022).

3 Analytical part

The development of privacy protection dates back to the beginning of the last century as mentioned in Chapter 1. Nevertheless, the question of privacy in the age of digital information is closely linked to the issue of data protection both within the national jurisdictions and internationally. This chapter thus provides an analytical overview of the general development of the European data protection laws and regulations as well as the debate surrounding this decision-making process. When applying the conceptual framework as well as the aforementioned theories of the EU as a global normative power through regulations this thesis looks at the development of the EU data protection legislation in the context of the rise of global digital companies, which use the data as a business tool.

3.1 First generation of the European Data Protection (the 1980s – 2009)

It is not the aim of this thesis to go through the detailed history of the privacy protection debate in Europe or other international legislations, which would impact the way the EU protects the privacy of its citizens. Nevertheless, to understand the decision-making process as well as the overall position of the EU towards this issue it is essential not to forget the historical legislation to understand the background of the EU's position nowadays. In Europe, the need to address the issue of privacy protection in regards to the new technologies really spiked up as the Cold War developed into a conflict, where government surveillance was a big concern. According to some authors, the 1970s signified the 'Golden age of privacy', where for the first time in many years people felt in control of their private information before government or business interventions.[89] There were even efforts to globally define the international privacy standards based on the Guidelines on the Protection of Privacy and Transborder Flows of Personal Data adopted by the Organization for Economic Co-operation and Development (OECD). Although the motivation behind these Guidelines mainly originated in the growing concerns that the national governments would start restricting the movement of personal data and thus would create unbalanced trade barriers between markets. The Guidelines aimed at supporting the market and economic stability of its member states. The preface of the Guidelines states that:

> 'OECD Member countries considered it necessary to develop Guidelines which would help to harmonize national privacy legislation, and while upholding such human rights, would at the same time prevent interruptions in international flows of data…… there is a danger that disparities in national legislations could hamper the free flow of personal data across frontiers; these flows have greatly increased in recent years and are bound to grow further with the widespread introduction of new computer and

[89] Avner Levin, "Has the Era of Privacy Come to the End?", *Canadian Journal of Law and Technology* 15 no.1 (2016): 19-20, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3101025 (accessed on 18.7.2022).

> communications technology. Restrictions on these flows could cause serious disruption in important sectors of the economy, such as banking and insurance.'[90]

The Guidelines provided a set of principles, which were later reflected in many relevant data protection frameworks around the world but as such were never legally binding.[91] The OECD decided to revisit these guidelines in the early 2010s to reflect the new challenges in the efforts to protect consumers' privacy in the digital area. Even though the Guidelines significantly contributed to the debate on privacy protection, and also helped to establish the 21st century framework on data protection, in comparison to other legislations adopted by the European Union, they seem to focus more on economic stability and thus ultimately provide lower protection for the consumers.[92]

Only a couple of months after the adoption of the OECD Guidelines the Council of Europe adopted its Convention 108 for the Protection of Individuals concerning Automatic Processing of Personal Data.[93] The definitions and general principles adopted in this document are almost identical. The biggest difference is that Convention 108 is the first legally binding multi-national instrument on the protection of privacy in a form of data protection.[94] Although, the Convention leaves room for the member states to derogate from the rules in a way more suitable for the national rules its adoption resulted in widespread adoption of data protection rules across Europe. European Commission was once again facing the question of whether the resulting national legislation could create a market barrier and in the 1980s and early 1990s when the biggest aim of the European Economic Community (EEC) was to successfully establish the rules for the single market. It was not until the early 1990s that the EU decided to adopt its own legislation, which would help to harmonize the free flow of data between the member states, whilst providing safeguards for the protection of privacy for its citizens.

The formal involvement of European institutions was quite limited at these early stages of European data protection development. After the European Commission introduced that the new data protection legislation should be adopted on the basis of the single market elements the discussion

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[90] OECD, "OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data" preface (September 1980), https://www.oecd.org/sti/ieconomy/oecdguidelinesontheprotectionofprivacyandtransborderflowsofpersonaldata.htm (accessed on 18.7.2022).

[91] Monika Kuschewsky, "The new privacy guidelines of the OECD: what changes for businesses?", *Journal of European Competition Law and Practice* 5 no.3 (2014): 146, (https://academic.oup.com/jeclap/article/5/3/146/1825876?login=true (accessed on 18.7.2022).

[92] Dominik Horodyski, "2013 OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data as an Example of Recent Trends in Personal Data Protection", in *Collective human rights in the first half of the 21st century,* eds. Magdalena Sitek, Peter Terem and Marta Wójcicka (Józefow: Alcide De Gasperi University of Euroregional Economy, 2015), 264.

[93] Council of Europe, "Convention 108 for the Protection Individuals with regard to Automatic Processing of Personal Data", https://rm.coe.int/1680078b37 (accessed on 18.7.2022).

[94] Cécile de Terwangne, "Is a Global Data Protection Regulatory Model Possible?" in *Reinventing Data Protection*, eds. Serge Gutwirth et al. (Brussels: Springer Dordrecht, 2009), 182.

began to grow. The proposed text by the Commission set out several ambitious goals in the sense of privacy protection.[95] After further amendments and an extensive critique from the Council, the common position was agreed upon in the following years leading up to the adoption of the Data Protection Directive (DPD) in October 1995.[96] According to the Directive all member states had to adopt data protection laws, which would offer the same level of privacy protection to their respective citizens.[97] The DPD showed extraterritorial signs by including the rules of transfer of data to third countries. Alongside the recognition of the fact that the 'cross-border flows of personal data are necessary to the expansion of international trade Article 56 mentions that 'the transfer of personal data to a third country which does not ensure an adequate level of protection must be prohibited'.[98]

Following the adoption of the DPD, many countries outside of Europe decided to introduce their own data protection regulations in accordance to get the "adequacy decision" by the European Commission.[99] These regulations in many cases included the specific high level of privacy protection set out by the DPD, such as the case of the Personal Information Protection and Electronic Documents Act (PIPEDA) passed in 2000 in Canada.[100] Following the introduction of the PIPEDA, the European Commission in 2001 determined that the Canadian legislature provides an adequate level of privacy protection, hence enabling the free flow of data between this country and the EU.[101] The interesting was the case of the United States and the so-called "safe harbor" agreement, which was put in place by the US Department of Commerce to provide a higher level of protection for personal data transfer from the U.S. to EU countries. In 2000, the European Commission decided to recognize the new

[95] Communication from the European Commission of 13. September 1990 on the protection of individuals in relation to the processing of personal data in the Community and Information security (COM (1990) 314 final).
[96] David Erdos, *European Data Protection Regulation, Journalism, and Tradition Publishers: Balancing on a Tightrope?* (Oxford: Oxford University Press, 2019), 39-40.
[97] René Mathieu et al., "Measuring the Brussels Effect through Access Requests: Has the European General Data Protection Regulation Influenced the Data Protection Rights of Canadian Citizens?", *Journal of Information Policy* vol 11 (2021): 305, https://doi.org/10.5325/jinfopoli.11.2021.0301 (accessed on 15.7.2022).
[98] Directive of the European Parliament and Council of 24 October 1995 on the protection individuals with regard to the processing of personal data and on the free movement of such data (95/46/EC), *Official Journal EU* L 281.
[99] The details of the adequacy were specified in the European Commission press release in 1998, which stated: "The adequacy of data protection safeguards concerning transfers to non-EU countries will be considered case by case. Adequacy will not necessarily require a non-EU country to apply legislation similar to the EU's Directive. Alternative systems, such as voluntary arrangements applied by industry, or binding contractual clauses between the parties concerned by the data transfer, may be considered adequate if they are effectively applied and offer sufficient safeguards concerning data subjects' rights, including rights of redress." See European Commission, "Directive on personal data protection enters into effect", (October 1998 (IP/98/925)), https://ec.europa.eu/commission/presscorner/detail/en/ip_98_925.
[100] René Mathieu et al., "Measuring the Brussels Effect through Access Requests", 305.
[101] Decision of the European Commission of 20. December 2001 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data provided by Canadian Personal Information Protection and Electronic Documents Act (C (2001) 4539).

provision as adequate.[102] The safe harbor followed a sectoral approach towards the issue of privacy and data protection as it was optional for U.S. companies to join. The negotiation of the safe harbor led to the first dispute between the United States and the European Union over the question of privacy. Whilst the U.S. approach to privacy has always been solely based on self-regulation or no-regulation at all, by adopting the DPD the EU provided extensive rights and obligations as far as data protection and state institutions are concerned.[103]

It was at this period of the early 1990s when the EU experienced the rise of its regulatory power, which is closely linked to the construction of the single market and the creation of new political institutions such as regulatory agencies, courts, and ombudsmen. Thus arguably the EU's capacity to promulgate rules and ensure compliance with the EU's new regulations was significantly raised.[104]

Despite the fact that, at the time of the introduction of the DPD, the EU is still prior to the declaration of the Charter of Fundamental Rights[105], the reasoning behind the adoption of the DPD is based on the protection of fundamental rights and specifically the right to privacy within the single market. Therefore, it is arguably at this point when the EU first started to include the question of fundamental rights of the citizens for data protection actively contributing to the fostering and preserving the right to privacy as a core norm when dealing with third countries. This phenomenon can also be witnessed when looking at the political discourse at that time regarding the need for new data protection laws.

The questions of privacy and data protection were most often used in the debates about consumer rights within the growing single market and private companies were viewed as a partner in achieving and preserving these rights. The general agreement amongst the European representatives at the time was that the right to privacy is a right shared by all consumers online and, therefore, had to be secured by European laws and regulations to avoid illegal seizure and computer-related crimes. Commission members, like Erkki Liikanen, a member of the European Commission for Enterprise and the Information Society,[106] or António Vitorino,[107] member of the European Commission for Justice and Home Affairs, thus argued that to achieve secure cyberspace there needs to be a right balance between

[102] European Commission, "Data protection: Commission adopts decisions recognising adequacy of regimes in US, Switzerland and Hungary", (IP (2000) 865), https://ec.europa.eu/commission/presscorner/detail/en/ip_00_865.
[103] Henry Farrell, "Constructing the International Foundations of E-Commerce–The EU-U.S. Safe Harbor Arrangement", *International Organization* 57 (Spring 2003): 285 https://doi.org/10.1017/S0020818303572022 (accessed on 18.7.2022).
[104] David Bach and Abraham L. Newman, "The European regulatory state", 828.
[105] The Charter was declared in 2000 and came into force in 2009 along with the Treaty of Lisbon.
[106] See his speech: Erkki Liikanen, "The EU Regulation for Cyber Space", *Kangaroo Group Conference on Barriers in Cyber Space* (19 September 2000), Brussels, (SPEECH/00/319).
[107] See his speech: António Vitorino, "The Internet and the changing face of hate", (26 June 2000), Berlin, (SPEECH/00/239).

law enforcement agencies, internet providers, and data protection authorities, this cooperation seemed to be indispensable to fight new digital challenges.

The biggest focus was on electronic communication companies, which at the time had access to a lot of personal data from their customers. The first Directive on e-Privacy, which applied to the processing of personal data with the new technologies in telecommunication services came in 1997 and it provided specific requirements for providers of such services in terms of personal data like traffic and billing data, contact information, call forwarding and other specific sectors which came with technical features of this sector.[108] The Directive was then amended a couple of times to incorporate the newest technological trends like 'cookies' or marketing service promotions.

Building on the DPD legislation private companies were advised to create their own privacy policies, but the growing concern was that many of these newly formed digital companies, which operate only online, did not follow their internal policies, or did not even disclose one.[109] This is also the time when companies like Yahoo[110] and Google[111] started operating in the American market and also in Europe. Even though, the debate about the new regulations and rules for data protection was centered around the question of security[112], Commissioners such as António Vitorino used the case of Yahoo, and its dispute with French authorities over anti-semitic content, as an example of potentially harmful activities on the internet and the reason why there needs to be a wide agreed international cooperation.[113]

The ending of what this thesis argues is the first generation of data protection policies in the EU was marked by a lot of debates on the issue of privacy both in the European Parliament and the Council. Privacy was now seen more in connection with market rules as opposed to a strictly security-related issue. One of the more controversial examples discussed was the merger between Google and DoubleClick in 2006. According to the so-called Merger Regulation[114] the European Commission is obliged to control the reorganizations of companies so that they are in line with the requirements of

[108] Directive of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector (97/66/EC), *Official Journal of the European Communities* L 24/1.
[109] Frits Bolkenstein, "Is Europe ready for the new economy?", (27 March 2000), Breukelen, (SPEECH/00/101).
[110] This internet search company was founded in 1994.
[111] Google search was officially launched in 1998.
[112] European Commission highlighted protection of privacy as one of the cornerstones of its 2005 action plan for freedom, justice and security. See European Commission, "Commission agrees 5 year Roadmap for Freedom Justice and Security" (May 2005 (IP/05/245)), https://ec.europa.eu/commission/presscorner/detail/en/ip_05_546.
[113] António Vitorino, "The Internet and the changing face of hate".
[114] See Council Regulation on 20 January 2004 on the control of concentrations between undertakings (04/139/EC), *Official Journal of the European Union* L 24/1.

the competition rules in the European single market. In case of the Google and DoubleClick, members of the European Parliament raised a concern about the potential consequences this merger can have on the personal data protection of European citizens.[115] Despite this debate, the European Commission agreed to the merger, arguing that the proposed concentration is unlikely to result in the elimination of competition and thus it is in line with the competition policies.[116] The Commission explained its approach on the fact that the legislation to protect privacy online in force at the time was applied with the reference to the territory in which a provider is established, therefore, it limited the reach of the EU rules. Therefore, it was at this point when the Commission officially started to consider the European legislation on privacy as a potential example for other countries and as such, it had to meet the strongest rules because they could be applied in a broader geographical context.

As the EU institutional direction began to shift from one based on economic principles to a more political union the arguments to legally bind European fundamental rights to the primary law began to rise. The Charter of the Fundamental Rights of the European Union proclaims common European values one of which is also the right to privacy and for the first time also the right to data protection. Although the initial European digital policies declared their fundamental roots in the Charter, since the ideas of the European Constitution failed to be fulfilled, the Charter remained legally ambiguous. The change came with the Treaty of Lisbon, which finally recognized the Charter as a primary law of the EU. Another important provision was the abandonment of the pillar structure due to which the data protection rules were divided between the first (common market and commercial purposes) and the third pillar (justice enforcement purposes).[117] With the provisions from the Treaty of Lisbon Article 16 of the Treaty of Functioning of the European Union (TFEU) now implemented a more effective system to protect personal data with a clearer division of competencies.

> 'The European Parliament and the Council, ….., shall lay down the rules relating to the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies, and by the Member States when carrying out activities which fall within the scope of Union law, and the rules relating to the free movement of such data. Compliance with these rules shall be subject to the control of independent authorities. '[118]

[115] 18. European Union, *Parliamentary debate on Data Protection and consumers' rights,* European Parliament, 10 March 2008, https://www.europarl.europa.eu/doceo/document/CRE-6-2008-03-10-ITM-018_EN.html.
[116] Commission decision of 11 March 2008 declaring a concentration to be compatible with the common market and the functioning of the EEA Agreement, COMP/M.4731 (C(2008) 927 final).
[117] Diana Alonso Blas, "First Pillar and Third Pillar: Need for a Common Approach on Data Protection?", in *Reinventing Data Protection*, eds. Serge Gutwirth et al. (Brussels: Springer Dordrecht, 2009), 234.
[118] The Treaty of the Functioning of the European Union 26 October 2012, *Official Journal of the European Union* C 326/47.

European courts have also played an important role in the first generation of the European data protection rules. In accordance with Article 8 of the ECHR, the European Court on Human Rights (ECtHR) functioned both as a self-contained system of data protection and as a provider of guidelines for the ECJ to specify the fundamental rights of the EU.[119] As the Convention does not provide modern terms in communication the Court had to apply broad interpretations. A prime example of such an approach is the case law *Copland vs the United Kingdom,* in which the ECtHR ruled that 'telephone calls from business premises are prima facie covered by the notions of "private life" and "correspondence" for the purposes of Article 8 §1'.[120] In cases like this, the ECtHR applies a broad interpretation of private life, as mentioned in Article 8, to various parts of human life and thus it overcomes the notion of private life in a sense of the private house or intimate personal life. It even recognizes privacy protection for firms and businesses, even though, that was a non-mandatory element of the then data protection legislation[121] like in the case law *Société Colas Est et autres c. France* .[122]

Before the ratification of the Lisbon Treaty several judgments, in connection to privacy protection, were pronounced also by the ECJ, they were mostly related to the question of the interpretation of the DPD rather than on specific companies. The ECJ decided to interpret the DPD in a sense of an internal market harmonization tool, which fosters fundamental rights, therefore, any breach of privacy would imply a breach of the Directive.[123] For example in a case judgment of *Österreichischer Rundfunk* in 2003, which was a preliminary ruling on the compatibility of the Directive with Community law of Austrian entities, regarding the publication of salaries of persons. ECJ in this case rejected the argument that the data protection legislation applies only to questions related to the common market issues and thus is applicable in the publication to the case of a person's salary.[124] Nevertheless, the crucial rulings of the ECJ, which would eventually even impact the extraterritoriality of the EU's legislation on privacy protection, came after the ratification of the Lisbon Treaty.

[119] P. de Hert and S. Gutwirth, "Data Protection in the Case Law of Strasburg and Luxemburg: Constitutionalisation in Action", in *Reinventing Data Protection*, eds. Serge Gutwirth et al. (Brussels: Springer Dordrecht, 2009), 15.
[120] European Court on Human Right judgment from 3 April 2007, *Copland vs the United Kingdom*, no. 62617/00, §41.
[121] P. de Hert and S. Gutwirth, "Data Protection in the Case Law of Strasburg and Luxemburg", 17.
[122] ECtHR in this case recalled that the term "home" had a broader connotation than the word "domicile" and thus agreed that the rights guaranteed by Article 8 also applied to other business registered premises. See European Court on Human Rights judgment from 16 April 2002, *Société Colas Est et autres c. France,* no. 37971/97, §40.
[123] Maria Tzanou, *The Fundamental Right to Data Protection,* 48-49.
[124] European Court of Justice judgment from 20 May 2003, *Österreichischer Rundfunk,* C-465/00, EU:C:2003:294, §41.

3.2 Second generation of the European Data Protection (2009 – 2018)

Second generation of the European data protection development is bordered on one side by the ratification of the Lisbon Treaty as an important primary law document, which legally binds data protection as a fundamental right of the EU, and on the other by the point when the General Data Protection Regulation (GDPR) became directly applicable in May 2018.

Based on the Lisbon Treaty the European Commission started to formulate the new data protection regulation, which would repeal the DPD. In 2012 the Commission proposed such regulation for the protection of individuals. The explanatory memorandum of the proposal stated reasons why the EU needs reform in data and privacy protection. The Commission listed motivations behind such reform as the rapid technological developments, the scale of data flown and collected, and the need to gain trust in the online environment so the economic development in this key area would not be in jeopardy.[125]

Similar to the case of the DPD, the initial proposal was followed by several years of discussion on the exact version. The European Parliament played a key role in the debate and it ultimately wanted the GDPR to be one of the most comprehensive regulations that the EU had at the time. Whilst the Parliament proposed hundreds of amendments to the draft, it adopted its position quite quickly in early 2013, more difficult and longer path was taken by the Council as the opinions differed across the EU member states. The Council presented its position in late 2015, the final GDPR text was then agreed upon in April 2016.[126] So quite ironically, although the motivations behind the new regulations were to reflect the rapid technological developments and new challenges in the area of privacy protection online, it took four years to come into force with the real effect in six years. The GDPR maintained the essential scope of privacy protection as presented in the DPD but sought to respond to the concern of the insufficient harmonization across the member states and more importantly it provided a wider geographical scope. The GDPR is a complex legislative document consisting of a total of eleven chapters, ninety-nine articles, and more than a hundred and seventy recitals in the introductory

[125] Proposal of the European Commission on 25 June 2012 for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (COM (2012) 011 final)

[126] David Erdos, *European Data Protection Regulation, Journalism, and Tradition Publishers: Balancing on a Tightrope?* (Oxford: Oxford University Press, 2019), 48.

part.[127] And is often described as the 'most contested law in the EU history' as it took many years and thousands of amendments to finalize.[128]

The concept of the new privacy protection legislation is based again on the premises of the 'fundamental rights of natural persons and in particular their right to the protection of personal data'.[129] The key new provisions in this sense are: (1) the expansion of jurisdictional reach, which now can be applied to the non-European based companies that process personal data of European citizens; (2) the obligation to notify consumers of potential data breaches within one day; (3) a need to provide consent before the personal data are collected; (4) a duty of the company to erase data when demanded by the consumer; the so-called right to be forgotten.[130]

Another important aspect of the proposed GDPR was the strengthening of the enforcement of the rules. Under the DPD, all the enforcement capabilities and imposing of potential fines were under the jurisdiction of different member states and their respective data protection authorities. Member states' legislature should have adopted appropriate measures in order to ensure the correct implementation of the Direction as well as the provision regarding fines and penalties for companies, which would violate such rules. In practice, most member states' authorities had quite modest maximum fines in this regard. The highest possible fines were set out by Spain and the United Kingdom national data protection authorities, which could fine a company at 600 000 euros and 500 000 euros, respectively. The United Kingdom issued the highest possible fine only once, in 2018, to Facebook in the case related to the Cambridge Analytica case.[131] The case is further discussed in the next part of the thesis. Also, the willingness of the national authorities to fine a certain company were quite low since it could essentially jeopardize the future activities of the company in the member state. For example, the Netherlands' national data protection authority could impose a maximum administrative fine of 4 500 euros and only for a certain violation of data processing activity.[132] Under the GDPR the enforcement options have grown substantially. According to Article 83, the possible infringements of

[127] Regulation of the European Parliament and of the Council on 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, *Official Journal of the European Union* L 119/1.
[128] Julia Powles, "The G.D.P.R. Europe's new privacy law, and the future of the global data economy", *The New Yorker* (May 25, 2018), https://www.newyorker.com/tech/annals-of-technology/the-gdpr-europes-new-privacy-law-and-the-future-of-the-global-data-economy (accessed on 20.7.2022).
[129] GDPR, Article 1 (2), 32.
[130] Michael L. Rustad and Thomas H. Koenig, "Towards a Global Data Privacy Standard", *Florida Law Review* 71, no. 2 (March 2019): 375-376, https://heinonline.org/HOL/P?h=hein.journals/uflr71&i=381 (accessed on 20.7.2022).
[131] René Mathieu et al., "Measuring the Brussels Effect through Access Requests", 308.
[132] Ibid, 308.

the provisions could result in fines of 'up 20 million euros, or in case of the undertaking, by up to 4% of the total annual turnover' of the company.[133]

Ever since the GDPR was agreed upon in the European institutions it was seen as a regulation, which would essentially change the global understanding of privacy protection online. Its strict wording regarding the international data transfers was a result of a long-discussed issue with the growing internet economy such as the one in Silicon Valley. Data controllers and companies themselves were facing the option of either accepting the new set of standards applied by the biggest single market in the world or limiting their activities in the EU altogether. Even before the GDPR came into effect in 2018, some third countries started to discuss the introduction of similar rules regarding privacy protection. [134]

Lobbying behind this particular legislative act was exceptionally fierce and long, making the process of preparing the GDPR very combative. Big companies, which had built their business models on the processing of personal data advocated for a self-regulation system including internal rules and industry codes on data collection, thus trying to minimize burdens on the industry as such. On the other hand, consumers and data protection authorities called for the highest possible protection, increasing the capabilities of such authorities and maximizing the fines for the violations. The companies from the United States were particularly active in the debate, companies like Microsoft, Intel, and Cisco have all submitted comments during the consultation phase.[135] Big digital companies were also more frequently used in the debate in European institutions and were used as a reason why the EU needs such a strong regulation as the GDPR. Viviane Reding, the then vice-president of the Commission, and one of the persons behind the initial proposal by the Commission, often expressed her concerns about the large (mostly) American tech companies, which operated in the European market but ignored the privacy rules as declared by the Charter. For instance, in her speech in March 2011 in the European Parliament, she used the example of Twitter as a private company, which is used by many European citizens but is essentially above the EU law.[136] Viviane Reding also admitted that it was a deliberate intention of the new regulation to promote the European data protection standards globally.[137]

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[133] GDPR, Article 83 (5)(b), 83.
[134] Jan Philipp Albrecht, "How the GDPR Will Change the World", *European Data Protection Law Review* 3 (2016): 288-289, https://heinonline.org/HOL/P?h=hein.journals/edpl2&i=313 (accessed on 20.7.2022).
[135] Anu Bradford, *The Brussels Effect,* 138.
[136] 19. European Union, *Parliamentary debate on US subpoenas and EU data protection rules,* European Parliament, 23 March 2011, https://www.europarl.europa.eu/doceo/document/CRE-7-2011-03-23-ITM-019_EN.html.
[137] Viviane Reding, "Privacy matters – Why the EU needs new personal data protection rules", (30 November 2010), Brussels, (SPEECH/10/700).

It was not only the big American companies that the European institutions had disputes with. In 2015 ECJ invalidated the Safe harbor agreement between the EU and U.S. in the case law *Schrems vs. Data Protection Commissioner.*[138] The dispute was over the action taken by the George W. Bush presidency and the secretive PRISM program of the National Security Agency (NSA) during which the NSA collected records of millions of phone calls without the consent of the users. Big tech companies like Facebook or Google were cooperative during this program and helped to collect the data. Based on this disclosure of surveillance, the ECJ concluded that U.S. data privacy laws do not provide adequate protection, and therefore, it is not in line with the European rules in this regard. American social media company Facebook also appeared in another high-profile scandal, which would spike up the debate on further strengthening the privacy protection policy in the EU. In 2018, the British consulting company Cambridge Analytica was accused of using unauthorized personal data obtained from Facebook in political campaigns including the U.S. presidential election in 2016 and the Brexit referendum campaign in the United Kingdom the same year. Highly publicized scandals like these further fueled the distrust of both the European representatives and citizens, in the big tech companies, which process personal data.[139]

Alongside the GDPR, in 2016, the European Commission also launched the new EU-U.S. Privacy Shield, an amendment framework of the safe harbor agreement that had been introduced in the first phase, the so-called Safe harbor 2.0. The aim of this framework was to provide stronger protection for transatlantic data flows by introducing the principles of - strong obligations on companies handling personal data, clear safeguards and transparency obligations on the U.S. government access, effective protection of individual rights, and an annual joint review mechanism.[140] Despite the initial agreement, many European privacy advocates criticized this framework as being too pragmatic and that it is largely based on the current U.S. privacy policy. European Parliament eventually asked Commission to suspend the Privacy Shield due to the lack of cooperation from the U.S. authorities and inadequate protection that this framework offers to European citizens.[141]

European courts continued to play a crucial role in facilitating the extraterritorial reach of the European data protection legislation. Firstly, by the interpretation of the 'adequacy' of the third country's

[138] See European Court of Justice judgment from 6 October 2015, *Maximillian Schrems vs. Data Protection Commissioner,* C-362/14, EU:C:2015:650.
[139] Anu Bradford, The Brussels Effect, 141.
[140] European Commission, "European Commission launches EU-U.S. Privacy Shield: stronger protection for transatlantic data flows", (July 2016 (IP/16/2461)), https://ec.europa.eu/commission/presscorner/detail/en/IP_16_2461.
[141] Chris Cwalina et al., "The European Parliament asks for the suspension of the privacy shield", *Data Protection Report* (17 July 2008), https://www.dataprotectionreport.com/2018/07/european-parliament-asks-for-suspension-privacy-shield/ (accessed on 20.7.2022).

national privacy protection rules as it was seen in the ruling on the U.S. Safe Harbor invalidation. Secondly, after the Lisbon Treaty, the ECJ embraced a broad interpretation of the geographical scope of the data protection laws and with a couple of essential rulings, it was trying to ensure effective data protection by covering the data processing of the parent company located outside of Europe and its connection to its subsidiary in the EU.

Arguably, one of the most crucial judgments, which would then effectively alter the whole debate on the question of privacy online, was the 2014 case of *Mario Costeja and Agencia Espaňola de Protección de Datos vs. Google Spain.*[142] The dispute, in this case, began when Mario Costeja González requested Google Spain to erase personal data about him for the reason that this data was being used for unauthorized publishing in the Spanish newspaper La Vanguardia. The Spanish National High Court then subsequently issued an order for a reference in the ECJ, stating that the Court must interpret the DPD to answer this particular case of data protection.[143] The outcome of the ruling was that the internet search provider, in this case, Google Inc., is 'obliged to remove from the list of results, … , the basis of a person's name links to web pages, published by third parties and containing information relating to that person, … , also in a case, … , when its publication in itself on those pages is lawful'.[144] The ruling was later claimed to be the first case of the so-called *right to be forgotten* rule*,* one of the key principles, which is later implemented also in the GDPR. As far as extraterritoriality is concerned this case is unprecedented because of its direct ruling against Google Inc., therefore, basically extending the scope of the European law to servers in California. *Google Spain* provided another incentive for the European representatives to use in the debate on the need to adopt a globally accepted privacy protection policy as soon as possible. Safeguarding the fundamental rights of the European citizens was at the core of this debate as well as the adaptation of privacy law for the globalized economy, which the digital tech companies symbolize.[145]

The second generation of the European data protection meant a significant breaking point in the question of how the EU treats privacy as a fundamental right. The legal anchorage of privacy by the Lisbon Treaty provided the European institutions with a lot of incentives and abilities on how to promote privacy as a core norm. This phase provided a thorough debate on the topic of how the EU should regulate privacy online and to what extent the new policies should have an extraterritorial

[142] European Court of Justice judgment from 13 May 2014, *Google Spain SL and Google Inc. vs. Agencia Espaňola de Protección de Datos and Mario Costejo González,* C-131/12, EU:C:2014:317.
[143] Ioannis Iglezakis, "The Right to Be Forgotten in the Google Spain Case (Case C-131/12): A Clear Victory for Data Protection or an Obstacle for the Internet?", *International Conference on Information Law* (26 July 2014): 5, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2472323 (accessed on 20.7.2022).
[144] C-131/12, *Google Spain vs. Costejo,* ruling 2.
[145] Martine Reicherts, "The right to be forgotten and the EU data protection reform: Why we must see through a distorted debate and adopt strong new rules soon", (18 August 2014), Lyon, (SPEECH/14/568).

impact. Even though the debate on the new regulation was highly contentious and contested by many global political actors the resulting GDPR, arguably, signified a big step to promote EU norms (in this case privacy online as a fundamental right) in global sense. A crucial role was played by the enormous rise of big tech companies in this time period and the increase of the digital economy as one of the most important industries in Europe. Scandals and court cases of companies like Facebook, Google, or Microsoft were often used in the discussion as the reason why the EU must adopt the new regulation under which the European authorities can apply the law to companies that are based outside of Europe.

3.3 Third generation of the European Data Protection (2018–present day)

As the GDPR came into effect on 25 May 2018, given its legislative status, most of the rules within the Regulation became directly applicable at the national level. Nevertheless, some parts of it still required member states to further implementation. Whilst most of the EEA states were able to implement GDPR by the mid-2018 deadline, there still remain many countries in Europe, which were more reluctant towards this regulation and haven't adopted proper national implementation.[146] The last EU country to implement parts of the GDPR is Croatia.[147]

The GDPR is a prime example on which Anu Bradford presents the Brussels effect. The EU meets all of the factors and principles, as mentioned in Chapter 2, that need to be met in order for the actor to become a global standard setter. The EU is the third largest economy in the world right behind China and the United States with a gross domestic product of approximately $17 trillion.[148] The EU is also arguably the world's biggest consumer market with the combination of a population of 447 million and high GDP per capita. Regulatory capacity and a capability to impose stricter rules on companies, which the European institutions and authorities possess in case of the data protection laws are also developed to a degree when it's translated the market power into actual regulatory influence on third countries. By harmonizing the rules within the EU the data protection legislation also gained the last condition that Anu Bradford mentions, the non-divisibility of standards under which the companies tend to access global standards when there is not much differentiation amongst the targeted markets.

The pivotal role in deploying the European privacy policies is still being played by the judicial reviews. One of the much-anticipated judgments was the one between *Google and CNIL*[149]. Anu Bradford

[146] David Erdos, *European Data Protection Regulation,* 51.
[147] "GDPR Countries 2022", GDPR Advisor, https://www.gdpradvisor.co.uk/gdpr-countries (accessed on 21.7.2022).
[148] "GDP (current US$)", The World Bank, https://data.worldbank.org/indicator/NY.GDP.MKTP.CD (accessed on 21.7.2022).
[149] European Court of Justice judgment from 24 September 2019, *Google Inc. vs Commission nationale de l'informatique et des libertés,* C-507/17, EU:C:2019:772.

herself, in 2019, foresaw this case as arguably 'the most important development regarding the divisibility of privacy policies'.[150] In this case, the ECJ had the determine whether the European courts have the authority to evaluate, and order the global search engines located outside of Europe, to follow the "right to be forgotten" rule. Following the *Google Spain* ruling, which did not clarify the exact obligation of the data controller on erasing the personal data of their customers, The French Data Protection Authority (CNIL) required universal agreement on the delisting - removing the search results from all domains despite the location of the user. Even though the Court decided to take side with Google, and it ruled that search engines are not obligated to automatically de-list links globally, it specifically permitted the national courts and authorities to rule on de-referencing at a global level. Consequently, the Court acknowledged the competence of these entities to balance the right to privacy and data protection when dealing with global search engines.[151] This ruling presents another prime example of when the ECJ used the interpretation of particular European privacy law to ultimately promote the norm to non-European companies and thus is also represents the ultimate emergence of the Brussels Effect in the issue of privacy protection as a global standard.[152]

As the new European data protection approach expressed by the GDPR certainly intended to set a global standard for privacy as mentioned by the then European Commissioner for Justice Věra Jourová,[153] data protection agencies across the world started debating new legal frameworks, which would emphasize the GDPR principles. One of such organizations was The American Law Institute (ALI). ALI is a private organization composed of American leading law professors that proposes legislative reforms. Their project, *Principles of Law: Data Privacy* published in 2020 aimed to guide the protection of data privacy in the American law system. There are undisputable parallels between the proposed framework by ALI and the GDPR. The rules set out in the ALI document are generally in line with the European approach towards privacy as a fundamental norm and human right.[154] Even the leading technology companies in ICT such as *Amazon Web Services, Google Cloud, Facebook,* and *Twitter* agreed to voluntarily implement the GDPR rules.[155] During Facebook's founder and CEO Mark Zuckerberg's testimony before the U.S. Senate Committees in 2018 about Facebook's involvement in the Cambridge Analytica scandal, Zuckerberg was asked a question by one of the U.S. Senators,

[150] Anu Bradford, *The Brussels Effect",* 146.
[151] Mary Samonte, "*Google vs CNIL:* The Territorial Scope of the Right to be Forgotten under EU Law", *European Papers* 4, no. 3 (January 2020): 843, https://www.europeanpapers.eu/en/europeanforum/google-v-cnil-territorial-scope-of-right-to-be-forgotten-under-eu-law (accessed on 21.7.2022).
[152] Ioanna Hadjiyianni, "The European Union as a Global Regulatory Power", 259.
[153] European Commission, "Statement by Vice-President Ansip and Commissioner Jourová ahead of the entry into application of the General Data Protection Regulation", (24 May 2018 (Statement/18/3889), Brussels, https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_18_3889.
[154] Michael L. Rustad, "Towards a Global Data Privacy Standard", 385-386.
[155] Michael L. Rustad, "Towards a Global Data Privacy Standard", 391-393.

whether he believes that the European regulations should be applied in the U.S. Zuckerberg stated 'I think it's certainly worth discussing whether we should have something similar in the U.S. But what I would like to say today is that we're going to go forward and implement that, regardless of what the regulatory outcome is.'.[156] The clear tendency of the big tech companies to participate in the adaption of the new rules set out by the GDPR is another example of the Brussels effect that the European data policies ultimately had on third parties.

The introduction of the GDPR and its extraterritorial reach on companies, and national legislation all over the world, has even more spiked up the debate on the new European laws regarding the issue of privacy in the digital economy and other modern technologies. European Commission's proposal for a *Regulation of Artificial Intelligence* (AI Act) is an example of such legislation, which is described to impact data protection and privacy laws on a global scale. Even though, the AI Act would not apply directly to controllers and processors of personal data online it would apply any time when such data are being used in any AI systems. As Paragraph 15 of the proposal states 'Aside from the many beneficial uses of artificial intelligence, that technology can also be misused and provide novel and powerful tools for manipulative, exploitative, and social control practices. Such practices are particularly harmful and should be prohibited because they contradict Union values'.[157] As far as the potential impact of the AI Act on non-European businesses is concerned it is clear that any company outside of Europe, which is involved in AI, and has business activities in the EU, will be obliged to implement the AI principles on its internal operations. Provisions applied will vary based on the different type of the AI practices of the particular provider whether it is classified as 'prohibited AI systems', 'high risked AI systems' or 'nonregulated at all'.[158] The AI Act is currently in the legislative process in the EU and it will become a law once both the Council and European Parliament agree on a common version. The Biden administration has already given a positive position on this new regulation stating that "The U.S. welcomes the EU's new initiatives on artificial intelligence. We (the United States

[156] "Transcript of Mark Zuckerberg's Senate hearing", *The Washington Post* (10 April, 2018), https://www.washingtonpost.com/news/the-switch/wp/2018/04/10/transcript-of-mark-zuckerbergs-senate-hearing/ (accessed on 21.7.2022).
[157] Proposal of the European Commission on 21 April 2021 for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence and amending certain Union legislative acts (COM (2021) 206 final).
[158] Graham Greenleaf, "The 'Brussels Effect' on the EU's 'AI Act' on data privacy outside Europe", *Privacy Laws and Business International Report* 171, no. 1 (2021): 3, https://www.privacylaws.com/media/3490/int171.pdf (accessed on 21.7.2022).

Government) will work with our friends and allies to foster trustworthy AI that reflect our shared values".[159]

Arguably even bigger impact on setting the global standards for privacy will have the EU's proposed *Digital Services Act (DSA)*[160] and *Digital Markets Act (DMA)*[161]. The 2020 proposal by the European Commission intended to amend the e-commerce directive; the DSA intended to strengthen the European single market and clarify the responsibilities of the digital services, the DMA on the other hand should tackle the economic power of large online platforms (LoPs). Both regulations are expected to have a large transformative impact on big U.S. tech companies and their business models based on the processing of personal data of European citizens.[162] One of the driving forces behind the DSA package was arguably the negative trend of Europe's percentage share of large global tech companies, this percentage dropped from 50 percent in 1995 to 16 percent in 2016, signifying that nowadays Europe lacks global digital platforms of compelling size.[163] LoPs are specifically mentioned in the briefing of this regulation as they are one of the key subjects of this law. These companies will be required, amongst other provisions, to assess the systematic risks stemming from their operation once a year and the European Commission will provide enhanced supervision over the LoPs and can intervene with an infringement process if any of these provisions were violated.[164] Members of the European Parliament were particularly critical towards the big tech companies located outside of Europe when arguing the new Regulation. The most used argument amongst the advocates of the DSA and the DMA was based on a need to take back control from the tech giants and the establishment of a level and fair playing field for the businesses across the world.[165] Given the scope of the agreed provisions in the proposed regulations and in regard to the direct targeting of big tech companies, the DSA and DMA might be the most contested and controversial privacy protection law that the EU intends to put in place and also another example of the potential emergence of the Brussels Effect.

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[159] White House National Security Advisor Jake Sullivan (@JakeSullivan46), "United States welcomes the EU's new initiatives on artificial intelligence…", Twitter, 21 April 2021, https://twitter.com/jakesullivan46/status/1384970668341669891?lang=en (accessed on 21. 7. 2022).
[160] Proposal of the European Commission on 15 December 2020 for a Regulation of the European Parliament and of the Council on a Single Market for Digital Services and amending Directive 2000/31/EC (COM (2020) 825 final).
[161] Proposal of the European Commission on 15 December 2020 for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (COM (2020) 842 final).
[162] Meredith Broadbent, "The Digital Services Act, the Digital Markets Act, and the New Competition Tool: European Initiatives to Hobble U.S. Tech Companies", *Center for Strategic and International Studies* (10 November, 2020): 3, https://apo.org.au/node/309351 (accessed on 21.7.2022).
[163] Ibid, 10.
[164] European Parliament, "Briefing: Digital Services Act", *European Parliamentary Research Service* (March 2021): 7, https://www.jukkarannila.fi/docs/EPRS_BRI(2021)689357_EN.pdf (accessed on 21.7.2022).
[165] 15. European Union, *Parliamentary debate on Digital Services Act and Digital Markets Act*, European Parliament, 4 July 2022, https://www.europarl.europa.eu/doceo/document/CRE-9-2022-07-04-ITM-015_EN.html.

Conclusion

The concept of privacy protection can be viewed from many different perspectives, mainly because of the complexity of the concept itself. In approximately the last two decades the debate on the issue of privacy has significantly grown because of the technological developments in areas like communication, e-commerce, digital economy, and overall, access to information. In the age of information privacy often comes hand in hand with the issue of data protection and the question, to what extent people's personal data are safe in the digital world and what the national governments do to protect this fundamental human right. By analyzing three different development phases of the European data protection policies, this thesis attempted to answer the research question; *To what extent has the rise of global technology companies helped to increase the EU's global role as a normative power through regulation*?

By connecting the two theoretical approaches, which focus on the EU as a global power, this thesis analyzed the role of privacy in forming the EU's normative power through regulation. It is clear from the conducted research that over the last two decades the EU used its regulations to promote on global scale the European perspective on what the privacy protection in the digital area should look like. Only few other regulations had such a massive extraterritorial reach as the GDPR. This thesis concludes that the rise of global tech companies, and the concerns that these companies have gained too much power by processing personal data of their consumers, were one of the strongest driving forces behind the most recent European policies regarding the privacy protection.

The first attempt to harmonize the European data protection laws was the 1995 Data Protection Directive. Although it the Directive clarified the approach towards privacy protection, in regards to technological developments, it did not largely influence the global market in this sense. There are two main reasons why the DPD did not show signs of the Brussels Effect. Firstly, because the DPD ultimately fails to completely harmonize the rules within the EU. DPD as a directive "only" requires member states to individually implement the laws on the national level, hence it allowed for more differentiated interpretation of the rules. Secondly, the DPD does not provide the extraterritorial reach of the European law that the GDPR was able to provide. The turning point came with the ratification of the Lisbon Treaty, under which the right to privacy was for the first time legally bound in the EU's primary law.

The first decade of the 21st century saw the introduction of many (mostly North American-based) global tech companies, therefore the question on how they operate in Europe also gained on importance. The debate on the new European data protection laws, in the second analyzed time period, has already been heavily influenced by the operation and scandals of digital tech companies

like Google, Facebook and others. The arguments on why the EU needs stricter privacy protection rules are often based around these companies and their role in the data processing. A pivotal role in this sense was played by the European courts, which more often ruled on the cases related to the issues with global communication companies. Arguably the biggest ruling in this regard was the *Google Spain,* case law which dealt with the issue of erasing personal data from the search engine. The "right to be forgotten" ruling of the Court signified a turning point on the extraterritorial interpretation of the European laws regarding data protection by companies located outside of Europe.

With the help of the GDPR, the EU was able to promote the European perspective on privacy protection on tech companies, which were not otherwise bound by the European laws and regulations. Given the latest proposals on the potentially even more influential regulations, whether it is the AI Act, or the DSA regulation package, which directly targets big U.S. tech companies, we are most likely going to witness another emergence of the Brussels Effect in the topic of data protection. Based on the conducted research this thesis argues that the rise of big technology companies had crucial effect on the way how the EU promotes its core norms and values through comprehensive regulations with extraterritorial reach. Ever since these companies started influencing the global markets in the first decade of the 21st century, the EU reacted to this new challenge by introducing more strict regulations regarding the data protection. This essay claims that the EU portrayed itself as a global norm setter in the question of privacy. Taken to consideration the GDPR and the strong position of the European Courts, the EU successfully managed to impact the global understanding of privacy protection in the digital economy. An interesting topic for future research papers in this topic will be the example of the currently discussed regulations like the DSA, the DMA, or the AI Act, all of which have serious potential to have even bigger impact on the functioning of the big tech companies all over the world.

Shrnutí

Na pojem ochrany soukromí lze nahlížet z mnoha různých úhlů pohledu, a to především kvůli složitosti samotného pojmu. Přibližně v posledních dvou desetiletích se debata o problematice ochrany soukromí výrazně rozrostla v důsledku technologického rozvoje v oblastech, jako je komunikace, elektronické obchodování, digitální ekonomika a celkově přístup k informacím. Ve věku informací jde soukromí často ruku v ruce s otázkou ochrany údajů a s otázkou, do jaké míry jsou osobní údaje lidí v digitálním světě v bezpečí a co vlády jednotlivých států dělají pro ochranu tohoto základního lidského práva

Propojením dvou teoretických přístupů, které se zaměřují na Evropskou unii jako globální mocnost, tato práce analyzovala roli soukromí při formování normativní síly Evropské unie prostřednictvím regulace. Z provedeného výzkumu je zřejmé, že v posledních dvou desetiletích Evropská unie využívala své regulace k tomu, aby na globálním měřítku prosazovala evropský pohled na to, jak by měla vypadat ochrana soukromí v digitální oblasti. Jen málo jiných nařízení mělo tak masivní globální dosah jako GDPR. Tato práce dochází k závěru, že vzestup globálních technologických společností a obavy, že tyto společnosti získaly příliš velkou moc, díky zpracování osobních údajů svých spotřebitelů, byly jednou z nejsilnějších hnacích sil nejnovějších evropských politik týkajících se ochrany soukromí.

S pomocí GDPR se Evropské unii podařilo prosadit evropský pohled na ochranu soukromí u technologických společností, které jinak nebyly vázány na evropské zákony a předpisy. Vzhledem k nejnovějším návrhům na potenciálně ještě vlivnější regulace, ať už se jedná o zákon o umělé inteligenci, nebo o balíček nařízení DSA, který je přímo zaměřen na velké americké technologické společnosti, budeme s největší pravděpodobností svědky dalšího nástupu bruselského efektu v tématu ochrany osobních údajů. Na základě provedeného výzkumu tato práce tvrdí, že vzestup velkých technologických společností měl zásadní vliv na způsob, jakým EU prosazuje své základní normy a hodnoty prostřednictvím komplexních regulací s globální působností. Od chvíle, kdy tyto společnosti začaly v prvním desetiletí 21. století ovlivňovat globální trhy, reagovala Evropská unie na tuto novou výzvu zavedením přísnějších předpisů týkajících se ochrany údajů. Tato esej tvrdí, že Evropská unie se v otázce ochrany osobních údajů představila jako globální tvůrce norem. S ohledem na GDPR a silné postavení evropských soudů se EU úspěšně podařilo ovlivnit globální chápání ochrany soukromí v digitální ekonomice.

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Master's Thesis Summary

ZÁVĚREČNÉ TEZE MAGISTERSKÉ PRÁCE NMTS
Závěrečné teze student odevzdává ke konci Diplomního semináře III jako součást magisterské práce a tyto teze jsou spolu s odevzdáním magisterské práce do SIS předpokladem udělení zápočtu za tento seminář.
Jméno: Bc. Matěj Hejtmánek
E-mail: 82232245@fsv.cuni.cz
Specializace (uveďte zkratkou)*: ES
Semestr a školní rok zahájení práce: Summer 2020/2021
Semestr a školní rok ukončení práce: Summer 2021/2022
Vedoucí diplomového semináře: Prof. JUDr. PhDr. Ivo Šlosarčík, Ph.D., LL.M.
Vedoucí práce: Mitchell Young, M.A., Ph.D.
Název práce: The Role of Privacy in Forming the European Union's Normative Power through Regulation
Charakteristika tématu práce (max 10 řádek): The question of privacy has long been an integral part of the debate on human rights and fundamental values, which national governments should ensure. The rapid technology development of last decades brought the topic of privacy protection even more to display mainly because of the rising digital economy and new challenges that are connect with it. This thesis discusses the role of privacy, as a fundamental right, in forming the European Union's role as a global power, specifically, the thesis builds on two theories: The Normative Power Europe and The Brussels Effect. In more detail this thesis looks at the role of big technology companies and their impact on how the European Union presents itself regarding the issue of privacy protection.
Vývoj tématu od zadání projektu do odevzdání práce (max. 10 řádek): This thesis was initially supposed to analyse how capable is the newly adopted digital policies of the European Union to address the future of privacy and data protection in the context of growing digital economy and it aimed to contribute to the debate on the need for even more influential regulations in this area. Though, the current topic of this thesis is based on the same principles of privacy and growing digital economy, its focus shifted more towards the understanding on how the European Union can impact the global standards in the question of privacy protection and what is the role of the rising big technology companies in this sense.
Struktura práce (hlavní kapitoly obsahu): - Introduction - 1 Conceptual framework - 2 Theoretical and methodological framework - 3 Analytical part - Conclusion
Hlavní výsledky práce (max. 10 řádek):

The empirical research of this thesis focused on the development of the European data protection policies. Based on the conceptual and theoretical framework the thesis concludes that the rise of big technology companies had crucial effect on the way how the EU promotes its core norms and values through comprehensive regulations with extraterritorial reach. This thesis also claims that the EU portrayed itself as a global norm setter in the question of privacy. Taken to consideration the GDPR and the strong position of the European Courts, the EU successfully managed to impact the global understanding of the privacy protection in the digital economy.

Prameny a literatura (výběr nejpodstatnějších):

Secondary literature

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Regulation of the European Parliament and of the Council on 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, *Official Journal of the European Union* L 119/1.

Etika výzkumu:**

Jazyk práce:

English

Podpis studenta a datum

2. 8. 2022		
Schváleno	**Datum**	**Podpis**
Vedoucí práce		
Vedoucí diplomového semináře		
Vedoucí specializace		
Garant programu		

* BAS – Balkánská a středoevropská studia; ES – Evropská studia; NRS – Německá a rakouská studia; RES – Ruská a eurasijská studia; SAS – Severoamerická studia; ZES – Západoevropská studia.

** Pokud je to relevantní, tj. vyžaduje to charakter výzkumu (nebo jeho zadavatel), data, s nimiž pracujete, nebo osobní bezpečnost vaše či dalších účastníků výzkumu, vysvětlete, jak zajistíte dodržení, resp. splnění těchto etických aspektů výzkumu: 1) informovaný souhlas s účastí na výzkumu, 2) dobrovolná účast na výzkumu, 3) důvěrnost a anonymita zdrojů, 4) bezpečný výzkum (nikomu nevznikne újma).