

PROMOTING THE EUROPEAN UNION’S DATA PRIVACY NORMS TO THE UNITED STATES: DIVERSIFYING THE INTERLOCUTORS

Step 1: Settling down the research area

The group for this research project was randomly put together by the Civica team at the end of October. We decided to create a Whatsapp group for fast and easy communication. The seminar instructors pre-selected several broad research topics from which we had to select one. By means of vote, we decided on the topic:

“How do you assess the role of the EU, and EU diplomacy in particular, in the global governance of the Internet? What have been the areas of the most and least effective EU contribution in this area? Can the EU become a global leader in promoting and institutionalizing norms of responsible state behaviour in cyberspace? If yes, under what conditions?”

Subsequently, we narrowed the topic down to a particular research question for our policy brief. First, we met our instructor Xymena Kurowska and discussed different research ideas. At the end of the meeting, we decided to focus our work on the EU’s General Data Protection Regulation (GDPR), however, not settling on a specific research question.

At our next team meeting without our supervisor, we discussed different issues and sub-topics relevant to the governance of the internet and specifically to the GDPR. At the end of this stage, we reached an agreement on the research area with the following draft questions.

- How do you assess the role of the EU, and EU diplomacy in particular, in the global governance of the Internet?
- What have been the areas of the most and least effective EU contribution in this area?
- Can the EU become a global leader in promoting and institutionalizing norms of responsible state behavior in cyberspace? If yes, under what conditions?

Step 2: Specification of the topic

In the second group meeting, considering our shared knowledge background in international relations, we decided to focus on how GDPR and data privacy norms influence bilateral diplomatic relations of the European Union (EU). However, we did not settle down which bilateral relations we should go deep into, and our options included relations with China, Russia, India, Eastern European countries such as Turkey and the United States. All our members shared their thoughts on this problem via WhatsApp in the following days.

Topics Set	Bilateral Relation with...	Questions under the Topic
A	China / Russia	<ul style="list-style-type: none"> ● Western norms learned by Eastern countries ● Developed countries’ norms learned by developing countries
B	India	<ul style="list-style-type: none"> ● Contain questions both from topic A and C

C	Eastern Europe (e.g. Estonia)	<ul style="list-style-type: none"> ● Big countries & Small countries ● The role of big countries and the role of small countries within alliance
D	The United States	<ul style="list-style-type: none"> ● Both are Western and democratic actors with complete but distinctive legal systems ● Difference between 2 norms systems ● Competition? Cooperation

Taking into consideration the feasibility and research interests of members, our group finally decided to study the GDPR and data privacy protection norms in the context of EU-US relations. In addition, we specific our research on “How can the EU promote the institutionalization of data privacy norms in its relations with (the US)?”.

Step 3: Theoretical consideration

Multinational corporations (MNCs), sometimes called transnational corporations (TNCs) or multinational enterprise (MNE), have been viewed as significant actors in international relations since the 1970s. According to realism, MNCs affiliate to sovereign nations and they cannot be accounted as independent international actors. In *US Power and the Multinational Corporation* (1975), Robert Gilpin argued that the MNCs are an essential tool for realization of American hegemony, but they are still subordinate to nations. Although this argument denies the independence of MNCs, it explains MNCs’ roles and functions are not limited in markets. Thus it further contributes to the discussion about the interaction between MNCs and nation states. Stephen Kobrin (2009) asserted that MNCs contribute to weak national sovereignty and the decline of national control. What’s more, they will not only cause conflicts among countries about jurisdiction, but also lead to problems about extraterritoriality. His argument firstly pointed out that MNCs, as non-national actors, will reframe sovereignty, which go beyond the theory of Gilpin.

Compared with realism which emphasizes the functions of nations, liberalism focuses more on the operations and blue prints of MNCs. In 1971, Joseph Nye and Robert Keohane published their co-work *International Organization*. They primarily proposed a new approach: *World Politics, in researching transnational relations* (1971). This new approach goes beyond the assumption of ‘sovereignty nations as the only actor in international relations’, and it broadens international relations research by taking more non-state actors into analysis. Besides, Thomas Risse-Kappen, the author of *Transnational Actors and World Politics*, provides a theoretical and empirical framework for transnational actors study. In addition, Susan Strange, as a representative of the English School in International Political Economy, pointed out the ambiguity of the power boundary in *The Diffusion of Power in the World Economy*. This work further introduces that the execution of power will not be strained within national borders under globalization. More specifically, the international business activities of MNCs enable them to become the new ‘super power’ in world affairs, therefore revealing the challenges faced by national power. John M. Stopford and Strange jointly

co-authored *Rival States, Rival Firms* (1991). In this book, they introduce a triangle model, which illustrates the gaming between corporations and nations. Stopford further argued the advantageous position of MNCs in international negotiation (1998). As he mentioned, nowadays, MNCs are enjoying the excess profit in the distribution of international profits because of the marketization, while nations have to follow their wishes in order to access technological externality, promotion in employment rate and tariffs. Thomas L. Friedman(2006) focuses on new characteristics of MNCs after the Cold War. He argued that the globalization system after the bipolar system empowers MNCs beyond national borders.

In our case, the analysis of MNCs shaping the international norms is twofold: first, MNCs, with their home countries' legal characteristics, will bring change to the host countries and therefore challenge/shape their regulations; second, the cross-border activities of MNCs enable them to compete with home/foreign national governments in shaping international norms. In global data privacy governance, there are no united regulations and norms worldwide. Global digital governance appears in fragmentation and division because every country settles their rules according to their national interests. The core of American digital governance norms emphasizes on the open market, mobility, intelligent right protection and market-oriented. In contrast, the EU's GDPR stresses the importance of human rights and customers' privacy which forbiddens data usage within the EU countries without government authorization or being up to privacy protection standards. To protect the rights of European customers, GDPR needs to be enacted to regulate the domestic and foreign firms actions about private data collection and usage (Sassen, 2003). Companies natively pursue value maintenance and they will manage their deployment to gain further advantages (May, 1975). Therefore, when American MNCs enter the European market, they unavoidably encounter distinctive norms. In this case, the global activities of American MNCs with their technological advantages and influences, on one hand, will continually influence American government diplomacy, on the other hand, will challenge the promotion of GDPR standards and norms in global digital governance (N. Behrman, 1975). Beyond Europe, corporations with multinational networks effectively often act as arbitrageurs between various regulatory regimes, not least by transmitting legal standards from the core country out into the network, reflecting end-user market regulations.

Step 4: Discussion on the research structure and the presentation outline

The outline of the presentation was drafted right after we settled down the research questions, but it was not carefully gone through and polished until the next meeting. In the third group meeting, we refined the presentation structure and assigned parts to group members for materials collection.

During the second meeting with our supervisor, Ms. Riaseta represented our group, delivered the presentation to Ms. Kurowska. Her comments reminded us of important realities we should concern in policy recommendations, which included but were not limited to:

1. As long as there is mass surveillance in the US, any framework (of adequacy)will be incompatible to the EU GDPR.

2. A single data privacy regime will make it easier for the private sector to navigate.
3. GDPR has made EU companies non-competitive in the US.
4. EU-US are important trade partners for each other, which makes it hard to focus only on GDPR.

With the precious feedback from Ms. Kurowska, the final research structure presented as follows. As it is shown, part 1 and part 2 are background research, which were assigned and finished by each member before the presentations. In the next step, our work is concentrated on part 3.

1. Problem introduction: Difference between EU's(GDPR) and USA's norm systems, mainly argue and make comparison from the EU prospective, includes but not limited to:

To answer: How do you assess the role of the EU, and EU diplomacy in particular, in the global governance of the Internet?

- a. Introduction to GDPR and the impact to other countries
- b. US has its own model - no comprehensive approach
- c. GDPR has affected the US companies
- d. How the US government reacts to demands from companies (in diplomacy)

2. Existing policies options and their pros & cons

To answer: What have been the areas of the most and least effective EU contribution in this area?

- a. Talk about the failure of the EU-US Privacy Shield, the ECJ and others European institutions' positions, and perspective from the US
- b. More positive aspects: EU-US Data Protection Umbrella Agreement

3. Political proposals as alternative solutions and recommendations on the solution implementation: To improve GDPR's influence

To answer: Can the EU become a global leader in promoting and institutionalizing norms of responsible state behavior in cyberspace? If yes, under what conditions?

Step 5: Member assignments and research methods clarification

We decided to focus on the secondary diplomacy tracks inspired by the paper "Quiet Conversations" by EU Cyber Direct. The policy recommendations' main part consists of a policy paper and policy brief. The policy paper introduces the existing research on GDPR and its advance in private data protection. Besides, this part casts light on how American big tech firms, key stakeholders of data governance globally, will be prevented from surveillance on private data under the strict regulations of GDPR. To solve the potential conflicts, as elaborated in the policy brief, the EU needs to take a more strategic approach in promoting its data privacy principles and leverage secondary forms of diplomacy, where data privacy experts and private sector stakeholders are represented. In addition, the recommendations

also indicate that these secondary tracks of diplomacy will only be effective if it is paralleled by consistent messaging on the official side of diplomacy.

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Authors: Group 2: Arash Sabzevari, Arnachani Riaseta, Lukas Wiehler, Marjolaine Jacques, Run He, Vojtěch Balon