EU's Digital Policy from a Constructivist Lens

Why could not Platform Giants Reverse GDPR, DSA, and DMA?

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Abstract

The purpose of the research is to explain the EU's persistence in maintaining a strict digital regulatory policy in the face of multinational platform companies' well-resourced opposition. Platforms such as Amazon, Google, and Meta base their business models on heavy data collection, ultra-targeted advertising, and market dominance. The European Union has opposed these practices by passing three groundbreaking legislations: GDPR, DSA, and DMA. Unsurprisingly, technology platforms have vigorously attempted to reverse or reshape each of the laws during their legislative procedures but failed as the three were passed without significant changes the corporate side would desire. The thesis uses a constructivist theoretical approach and brings legal scholarship into International Political Economy. It argues that it is the European Union's identity as a strict regulatory preferential entity, constructed on domestic and international levels, that has endured platforms' influences. Domestically, the EU institutions are prompted to regulate as they see it as a means of deepening integration. Moreover, Europe's economic capacity, public attitude, and political climate represent further unit-level elements that lead to strict regulatory preference. On the International level, the EU is embracing what Anu Brandford calls the Brussels Effect, denoting the Union's ability to spread its regulations internationally. Official communications of the European Commission show that this global role further incentivizes regulation in Europe.

Keywords: EU's digital policy, platforms, identity, Brussel's Effect

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1. Introduction

Among developed capitalist economies, the European Union is a standout example of being cautious in its technology regulation. This is particularly true of Brussels's approach towards platform businesses. The EU, by enacting the General Data Protection Regulation (GDPR) and its two companion laws, the Digital Services Act (DSA) and the Digital Markets Act (DMA), has directly targeted the business model of platforms, which heavily relies on data collection and market monopolization (Srnicek 2016, 28-30). Platforms like Google, Facebook, Uber, Airbnb, and Spotify are digital intermediaries that connect diverse users. They create network effects, where the more users a platform has, the more value it provides and, consequently, the more people it attracts. This is why these companies are driven to outperform their competitors and dominate the industry. Moreover, a platform that effectively serves as an intermediary requires continuous data collection from users, identifying their "needs" and matching them with suitable advertisers or products (Srnicek 2016, 30, 33-36).

The GDPR has introduced restrictions against platform companies' "untamed" data collection in Europe. On the other hand, the DMA aims to ensure a higher degree of competition in the old continent's digital sector by preventing large companies from abusing their market power and allowing new players to enter the competition. In other words, its primary goal is to prevent the emergence of monopolies. Finally, the DSA obliges platforms to have stricter content moderation and limits their use of targeted advertisement. These three regulations have alarmed major platform companies that resorted all powers to reverse or shape the proposals less hostilely. The GDPR is argued to be the most lobbied regulation in the EU's history, and DMA and DSA have concerned big technology companies so much that Apple, for instance, doubled its lobbying expenditure during the year of negotiations, and Google's CEO personally was calling against DSA's restrictions in the European Commission (CEO 2022). Nonetheless,

the platforms' efforts eventually proved unsuccessful, as the three EU regulations passed with hardly any concessions the companies desired.

The cases of GDPR, DSA, and DMA are the three most important regulations in the European Union's digital policy. They shed light on the general puzzling tendency the thesis aims to account for. Why are major platform companies unable to significantly influence EU digital regulations? What are the key factors determining the EU's resilience to maintain a strict digital regulatory framework in the face of the technology companies' resource-abundant campaigns? The paper's argument is based on a constructivist norm-based explanation. On both unit and system levels, the EU has constructed its identity as an entity favorable to stringent regulations, making platforms' efforts to exercise their instrumental power destined to fail. The thesis supports its position by drawing on Anu Brandford's (2012, 2020) legal theory and interprets it with IR constructivist logic.

Describing the Union's strict regulatory preference, Bradford emphasizes that for decades, regulation has been viewed as a means for deepening European integration, prompting the Commission to seek common rules in competition policy, public health, environment, data privacy, and others. At the same time, the wave of supranational regulation was characterized by "upward harmonization" due to its political feasibility. This means that in order to maintain the impression that harmonization was not happening at the expense of the greater public good, policymakers in Brussels ensured that new proposals for common European rules were typically stricter than what an average EU member state had previously. These domestic elements of the EU's identity are supplemented by the Union's international role. Anu Bradford coined the Brussels Effect, demonstrating that the European Union has become a global standard-setter in regulation. The EU institutions are increasingly aware of this fact. They embrace the identity and are further prompted to generate strict regulations.

Furthermore, the thesis argues that there are other domestic-level elements of the EU's identity that are equally important for constituting the existing regulatory trajectory. The first is *economic capacity* – regulations are costly for the firms' profitability and overall productiveness of the economy. If the EU did not have a high gross domestic output and strong individual purchasing power, it would not be able to afford stringent welfare-driven regulations. Secondly is *public attitude* – Europeans largely favor the strict regulatory framework in various fields, including digital. For instance, in 2016, the year when GDPR was passed, the Eurobarometer showed that 8 out of 10 respondents posited that it is „important" to ensure that online monitoring activities are carried out only with their consent. The final domestic element that the thesis points out is *political climate* – low political polarization and multi-level decision-making process well reflect the public attitude and generate robust and popular regulations.

The paper aims to bring legal scholarship into IPE through constructivism, contributing to understanding the political economy of the EU's regulatory framework and the IR theory itself. Apart from reinterpreting Anu Bradford's perspective, the research goes deeper into the EU's unit-level identity and provides a theoretically informed analysis of the elements less emphasized in previous research. In both cases, showcasing legal research through the lens of identity, norms, and social structure creates a new perspective on the study subject. On the theoretical side, when engaged with IPE, constructivism literature has mostly been interested in international trade or politics of international money and finance (Nelson 2020, 217–25), and the given research intends to add insights into multinational platforms and international regulatory politics in general. Last but not least, the thesis gathers the most important empirics of the EU's digital policy and combines them with in-depth explanations. In doing so, the research's objective is to equip political and business decision-makers with a broad roadmap of the EU's digital policy.

2. Methodology

The thesis uses a qualitative, interpretive analytical framework to answer the research question and support its position. Although widely discussed in the constructivist literature, independent variables - domestic and system-level identities - set out in the argument have not risen from positivist quantitative study. Instead, it is my authorial position that the platform's inability to meaningfully affect the EU's digital policy results from the Union's social practices and (self-)perceptions. The research is based on theoretically constructivist informed analysis to achieve the objective. It is mainly occupied with understanding legal practices on both domestic and unit levels. In this aspect, Anu Bradford's scholarship must be emphasized in uncovering the research puzzle. The thesis moreover analyzes economic, political, and societal elements of the EU's identity that lead to strict regulatory preferences. For that, measurements of each component are put in the context of the Constructivist explanation.

Before moving to the analysis, the thesis discusses the literature on the related subjects of the research topics: what are platforms and their business models; what instruments are at the disposal of platform companies against „hostile" regulations; theoretical postulates of constructivism and its applications in the fields of International Relations and International Political Economy; In the following sections, the paper moves on to empirics. It separately discusses the EU's three most critical digital regulations - the General Data Protection Regulation (GDPR), the Digital Services Act (DSA), and the Digital Market Act (DMA). These sections illustrate the legislative processes and the implications of the three laws on platforms' data gathering and market-dominating business models. Alongside multinational tech companies, vigorous but unsuccessful attempts to reverse and drastically reshape GDPR, DSA, and DMA using various instrumental powers are showcased.

While the constructivist approach, insightful for the EU context, may limit the generalizability of findings, it opens up avenues for future research. The interpretive

epistemology lacks quantitative leverage and statistical validation but is ideally suited for probing complex socio-political phenomena like the EU's regulatory identity. With careful scrutiny, valuable insights about other regions with similar characteristics can be drawn. The arguments presented in this thesis can be a starting point for future studies, both quantitative and qualitative, broadening the understanding of the influence of identity on international regulatory frameworks.

3. Literature review

3.1. Platform Capitalism and Data as a Capital

Before moving to the analysis it is important to define what is meant by major platform companies. According to Nick Srnicek (2016), in the age of the internet, the world has slowly passed the post-Fordist business model and adopted Platform Capitalism which puts a much higher emphasis on data collection than its predecessors(Srnicek 2016, 28–30). Platform Capitalism's major actors are companies such as Google, Facebook, Amazon, YouTube, Apple (to some extent) Uber, Airbnb, and Spotify. At the same time, traditional manufacturing companies like General Electric and Siemens also follow this path. The major characteristic of a platform is that it assumes the role of intermediary between users and providers. For instance, Facebook brings together personal accounts, companies, and advertisers and Uber connects taxi drivers with clients. For the platform to play its role as a connector infrastructure well, it should know the needs of the providers and more importantly those of users. The needs are detected by the data collection about the consumers of platforms, which then is followed by the refinement of the data and the detection of perfect matches of different parties by the platform's software (Srnicek 2016, 28–30).

Several other important characteristics of platforms are relevant to the EU's regulations. Firstly, they generate network effects. This means that the more users a platform has, the higher

the value it provides to all the customers due to the sheer ability to connect more people and also because of having a larger population for data collection. This trait renders technology platforms naturally monopolistic (Srnicek 2016, 30). Whoever invents Facebook first is likely to stay the dominator and kill the competition in the beginning. Moreover, there are further distinctions among platforms. The ones that have the highest need for data collection are advertising platforms. These are companies like Meta and Google, whose primary source of income comes from advertisers that the companies' rich data banks attract (Srnicek 2016, 33–36). On the other hand, there are lean platforms, like Uber and Airbnb, that have an exceptional drive towards dominating the market. They are the ones that own as little as possible for the operation – Uber owns no cars and Airbnb owns no houses. One of the major sources of income for these companies is Venture Capital as at this moment lean platforms generate hardly any profit. Investors hope that one day their supported enterprises will become monopolies in their domain, and then they will become commercially successful (Srnicek 2016, 43–48).

Scholars of International Political Economy (IPE) have stressed the dangers that data-collection-based business models pose for societies and the EU's approach towards platforms was principally shaped by these concerns. For example, Sadowski (2019, 1) argues that today much like companies are expectedly profit-driven, they have also become data-driven. According to him, modern companies treat data as capital – a subject of constant extraction often with little or no regard for consent from the users. The way companies achieve permission to record, use, or sell a person's data is highly problematic. Most of the time, this is done through end-suer licensing agreements (EULA). These are the pages on websites and apps, that make users click „agree" or "disagree" before they access the service. Sadowski points out that EULAs are far from being fair and they do not fulfill their objective. First, because they are one-sided, non-negotiated, and non-negotiable – companies themselves draft them and consumers can not shape the terms. Secondly, EULAs often consist of dubious clauses that for

instance „require users to give up rights to ownership of their data" and they simultaneously are written in a complex way to make users unable to understand it. Sadowski cites a study that concluded that a person would need 76 days, working 8 hours a day, to read all the privacy conditions he or she meets throughout the year (Sadowski 2019, 7).

Some scholars went further in evaluating the dangers posed by data collection and modern digital business practices. Marion Fourcade and Kieran Healy (2016, 16) contend that modern organizations are driven by data imperative, striving to collect data, even when they do not yet know what to do with (it)." Shoshana Zuboff, the author of "The Age of Surveillance Capitalism (2020)," defines surveillance capitalism as a "new economic order" and an "expropriation of critical human rights". She argues that this new form of capitalism is not content with commoditizing our experiences. It also seeks to control and direct our behavior by channeling those experiences through predictive analytics (Zuboff 2018, 14–16). Directing the behavior is well elaborated on by Sadowski (2019), who calls this process data manufacturing. According to him, data is not readily available for obtaining, like oil or other natural resources. Rather often it is companies that are pushing certain behaviors e.g. scrolling on Facebook, to prompt consumers to produce more data (Sadowski 2019, 2). Hence, companies are dedicated to making their products more appealing and addictive not only for profit but also to obtain more information about users.

The above description shows that major platform companies, which base their business models on data collection and dominating an industry, would use every power to avoid restrictions in a market as lucrative as the EU. The following section describes platforms' political toolkits against menacing regulations.

3.2. Platforms' toolkit: Market, Instrumental, and Platform Powers

IPE literature has also well portrayed the means of platforms against regulations. Primarily, as Timo Seidl argues, companies might resort to *regulatory arbitrage* – an attempt to take advantage of gaps in the law to escape the imposed economic burden. Their second option is *regulatory entrepreneurship,* which involves actively trying to change the nature of regulation itself (Seidl 2022, 359)**.** Platforms have resorted to both in the cases of GDPR, DSA, and DMA, but the paper is primarily interested in legislative processes and, hence, companies' regulatory entrepreneurship.

Platform companies possess three types of power to reverse or shape legislation in their favor. According the Collier, Dubal and Carter (2019) the first two are traditional: *structural power* - the threat of disinvesting from the market and taking out the perceived economic benefits to change a proposed regulation; And *instrumental power* – the traditional way of influencing politics through lobbying, alliance formation with other important actors (Collier et al. 2018, 19). Furthermore, Culpepper and Thelen (2020) identified another element in the platform's toolkit – *platform power.* It is expressed in companies' ability to mobilize their large group of customers against the bills. According to Culpepper and Thelen, major platform firms have achieved the scale of monopoly proportions. At the same time, they often benefit from a positive reputation of innovators, building tight and intimate connections with users. Based on these premises, platforms can render their audience as business lobbies (Culpepper and Thelen 2020, 289–91)**.**

Timo Seidl (2019) adds to this knowledge that the success of the regulation might be decided by the size and the diversity of the coalitions the government and platform are going to mobilize against each other. Those coalitions are heavily affected by the narratives and ideational manipulations the two parties will pursue. This is because social actors define

interests based on their interpretation of the outside world. Narratives serve to shape those perceptions. They are „frame bundles" telling stories composed of villains, victims, and heroes, and functioning as magnets leading to forming coalitions (Seidl 2022, 260–62). Seidl illustrates his theory by explaining the case of regulating Uber in New York. Mayor Bill de Blasio twice attempted to impose a cap on the platform failing in 2015 and succeding in 2018. According to the author, Uber reversed the regulation by successfully portraying himself as a defender of minority workers and Blasio as a supporter of the taxi industry, eventually attracting a larger and more influential coalition. In the second case, however, Mayer won the battle by reversing the discourse and emphasizing the company's violation of workers' rights (Seidl 2022, 262–68).

Finally, as Nick Srnicek argued when he defined Platform Capitalism, these corporations are not neutral infrastructures. Instead, they have their own policies and rules, which they in most cases unilaterally design (Srnicek 2016, 31). X, formerly known as Twitter has been changing its content moderation policy based on the leadership it has had (X Safety 2023), and Uber sets the prices of its taxi services according to its view of the market and not impossibly examinable true supply and demand. Again considering the scale the platform has achieved these policies can become the instrument against any regulation that would be perceived as menacing by platforms. For instance, Meta's influence in modern information sharing is immense, and it is not illogical to think that the company will likely use its algorithm to promote the news that favors its interests and drug down those that are not.

3.3. Theoretical framework: unit and system-level Constructivism

The thesis aims to explain the platform's failure to reverse the EU's strict digital policy by using a constructivist framework focusing on the Union's identity at the domestic (unit) and international (system) levels. This section discusses constructivism's general postulates and characteristics as an IR theory. Then, it summarizes the theory's applications within IPE, given

that the research is political-economic in the international aspect. Following that, unit—and system-level constructivist analyses are described separately.

Constructivism, a sociological logic-based theory, has been introduced in the field of International Relations primarily to provide an alternative explanatory toolkit from rationalist Realism and Liberalism. Its most prominent scholar, Alexander Wendt (1992) (1999), established a tradition in IR that does not see agents' (constructivist way of calling actors) interests as given, but rather defined by identities and perceptions. Constructivism is flexible in assigning importance to actors in the International Arena. Hence, if realism would neglect the impact of multi-national platform companies and possibly even the European Union as it is an international organization, this theory is appropriate to be used for explaining the interaction of non-traditional actors (Viotti and Kauppi 2012, 287, 290).

The constructivist theory primarily was used in security studies, opposing dominant realist or liberal assumptions of the system being naturally self-help or cooperative. Nonetheless, throughout time, it has also been adopted to explain issues of International Political Economy. The theory is mainly occupied with "why" questions, explaining the puzzles in politics of international money, finance, international trade (Nelson 2020, 217–25). Rawi Abdelal, who designed the constructivist handbook of IPE, argues that the theory has several distinct logics when applied to this sub-branch of International Relations. Among them, three are relevant to the given thesis (Abdelal 2009, 71–72).

First, unlike rationalist theories, constructivism argues that agents act based on the *meanings* that they assign to certain phenomena. For instance, after becoming independent, Lithuania regarded economic dependence on Russia as detrimental and its dependence on the EU as an opportunity. The US also welcomes the increase of economic ties with Europe while being cautious about doing the same with China. The second crucial element for constructing

how the actor views the world is *cognition* of material changes. An example of this point, according to Abdelal, is how the American population almost automatically assumes that rising inflation is the result of central bankers' misgovernments and not some other potential causes like reduction of supply. Thirdly, constructivism argues that in the face of high economic *uncertainty* lying ahead, agents construct stability by adopting institutions, norms, and conventions based on their identities. This is fundamentally different from realist and liberal approaches which would instead predict calculating probabilities and cost-benefit analyses (Abdelal 2009, 72–74)**.** Thus, to explain the EU's digital policy, one needs to observe how it interprets subjects connected to technology, how it discerns their (potential) changes, and finally, what practices the union has established concerning highly uncertain matters in this field, AI being the most recent and clear example.

The study variable of the thesis is the EU's regulatory identity. Identities are the result of historical processes, which means that they can be changed over time, and they essentially are constitutions of norms, ideas, and perceptions. The construction of identity happens on national and international levels, and accordingly, constructivists are divided into two groups based on the levels of analysis. On the one hand, there are scholars like (Ruggie 1997) (Johnston 1998; 1996; 2008) (Hopf 2002) (Katzenstein 1996; 1997) (Kier 1995; 1997), and (Barnett 1999) who are trying to explain actor's policies on the unit level. This logic implies analyzing domestic dimensions: socio-economic factors, legal frameworks, public opinion, etc. For instance, Katzenstein and Okawara (1993, 85–88) tried to clarify the puzzle of Japan not converting its economic power growth into military might. According to them, the answers lie in the ideational and judicial norms, coupled with the logic of appropriateness created in Japanese society after World War Two. The thesis uses domestic constituents of the EU's identity, similarly, to explain the Union's preference for stronger digital regulations.

On the other hand, constructivist analysis can be conducted on a system level. The most prominent example of this is the work of Alexandre Wendt. In the book "Social Theory of International Politics (1999)", Wendt presents the principles that form identities and interests. Of the two paths distinguished by neorealist Kenneth Waltz: natural selection and cultural selection, Wendt's theory is based on the second (Wendt 1999, 318). The constructivist author offers the following definition of cultural selection: "the transmission of the determinants of behavior from individual to individual, and thus from generation to generation, by social learning, imitation or some other similar process." Thus, cultural selection is what sociologists call "socialization". Alexander Wendt distinguishes two ways of cultural selection in international politics: imitation and social learning (Wendt 1999, 324). The EU's regulatory identity is mainly based on the imitative path of socialization.

According to Wendt, imitation implies the following – the agent assumes a particular role by adopting the type of identity and interests that it perceives as more successful. Success can be "material" and "status" success. The measure of material success in international politics is power, economic opportunities, population, etc. On the other hand, status implies prestige - the achievement of respect from other system elements or the actor's consideration by them in some way. Naturally, material and status successes do not represent solid forms and they can be related to each other or even coincide. It should also be noted that, while not necessary, success is usually in the context of comparing yourself to meaningful others. This is because the agents of international relations are social entities that, like humans, engage in self-comparison (Wendt 1999, 325).

To sum up, the thesis sets out the argument according to which the platform's failure to reverse or reshape GDPR, DSA, and DMA was determined by the strict regulatory identity of the European Union. This identity is portrayed on a domestic level by – observing European public opinion, dominant political ideologies, political system, and market incentives. On the

international level, the research demonstrates how the EU has embraced the metaphor „Brussels Effect," which symbolizes the union's pioneering in regulation for the good of society.

4. GDPR

4.1. Legislative process and implications for platforms

The European Union has a long history of being considered a leader in data privacy regulation. GDPR was meant to serve as an update of the Union's previous regulations, mainly passed in the 1990s and early 2000s. The most important was the 1995 Data Privacy Directive (DPD) which obliged member states to adopt comprehensive data privacy rules by establishing so-called national data privacy authorities, responsible for overlooking those regulations. DPDs main principle entailed that personal data should not have been processed[1] at all except when three large conditions of transparency, legitimate purpose, and proportionality were met. The directive endowed a data subject with the right to be informed when personal data was being collected, something that additionally should only have happened under specified and reasonable purpose with the constrained methodological proportions of this goal (DPD 1995 arts. 6–7).

As ahead as it stood of its time, DPD was directed before the breakthrough of the Internet, when the reality of data collection was completely different. Moreover, unlike its successor GDPR, DPD was directive and not law, creating a situation when every state was formulating its own legislation (Kalyanpur and Newman 2019, 453). Prompted by these

[1] Data procession means "any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction" (art. 2 b).

factors, in 2002, seven years after the directive, the European Commission reviewed the DPD concluding that member states had highly divergent practices. The questionnaire-based revision concluded that „the Data Protection Directive did not sufficiently consider data that is processed online and did not provide clear answers to how the transfer of data that is required for the web to work should be regulated“ (Hildén 2019, 93–94)**.**

After the survey, the European Union needed seven more years before initiating the new regulation to overcome the defects of DPD and tackle the new challenges that resulted from the rise of social networking sites. In 2009 the Commission launched its first public *consultation on the legal framework for the fundamental right to protection of personal data,* to determine if the existing regulatory framework was enough to ensure the privacy policy and if not, what the solutions were. Based on the feedback the Commission published the „Communication on a comprehensive approach to personal data protection in the European Union", leading to the second public consultations series.

This was followed by a continent-wide survey to determine the attitudes on data protection and electronic identity in the European Union, illustrating that 92% of Europeans were concerned about mobile applications collecting their data without consent. Finally, on January 25, 2012, the European Commission officially proposed a new General Data Protection Regulation. From then the legislation went to the negotiations process which gave it the reputation of being the most lobbied in the history of the union, something that is described in detail in the following sub-section. GDPR was finally adopted in April 2016, by the European Parliament and the Council and went into force on the 25th of May 2018 (Hildén 2019, 94–98)**.**

GDPR sets up an ambitious scale. Even if companies are not physically present in the EU, if they interact with European consumers they should comply with the law. The fines for breaching GDPR are significant, €20 million or 4% of the company's global revenue

(whichever is higher), and data subjects have a right to seek further compensation (GDPR 2016, art. 83). Key terms of GDPR are *Personal data* – any information that relates to an individual who can be directly or indirectly identified; *Data processing* – actions performed on data*; Data subject* – the person whose data is processed; *Data controller* – third person, company's owner or an employee who decides why and how personal data will be processed. *Data processor* – third party that processes personal data on behalf of the data controller (e.g. companies such as Tresorit and Proton Mail) (art. 4).

From the point of GDPR's action, companies must „by design and by default" consider data protection (GDPR 2016, art. 25). The major clause is that before processing data, the controller needs to obtain unambiguous, freely given, and specified consent from the subject. Companies must clearly distinguish their request for consent from other matters (art. 7). Data subjects, on the other hand, retain the right to withdraw previously given consent, and companies must keep documentary evidence of the consent (art.7 and 17). Apart from this „lawfulness" and "transparency," the data processing should have a fair purpose that constrains the amount of data the controller can collect (art. 5). Companies need to ensure data security by implementing appropriate technical and organizational measures (art. 32). They have to re-train their staff and update the data privacy policy (art. 24). In the cases when a controller carries out large-scale data processing – and platforms definitely fit this criterion - it is required to appoint a Data Protection Officer(s) imposing an additional bureaucratic burden on companies (art 37).

Hence, GDPR is inherently against the platform's data-driven business model and for this reason, companies diverted their effort to reverse/reshape it during the legislative process. The obligation to receive consent from the data subject was the main threat. Customers opting out of the data collection would hinder important sources of income, such as ultra-targeted advertising. The fact that platforms were obliged to explicitly state the purpose of collecting

and processing data was another hit. First, they would have to avoid any kind of commercial experiment or secret bargain connected to personal data. What's more, no company wants to "warn" the user before accessing their website and scare away or annoy a person who was already easily complying with data-extraction behavior. Meeting the requirements of GDPR also became a bureaucratic cost for the companies as they had to hire an extra person or retrain the staff to ensure data security. Finally, the mere fact of passing a law for the defense of personal data increased public awareness on that topic - by 2019, 67% of Europeans had heard of the GDPR, and 57% (20% more than in 2015) knew that there was a public authority in their country responsible for protecting their rights about personal data (European Commission 2019, 2).

4.2. Platforms' failure to reverse GDPR

Unsurprisingly, platforms have vigorously sought to reverse or reshape GDPR, leading to notable labeling of the legislation as being the most lobbied in the history of the EU. As the name suggests, their primary tool was the traditional instrumental power, lobbying. Lukas Schildberger (2016, 108–27) extensively describes the process, illustrating the developments of the tech companies' campaign on the different levels of the EU, the Commission, Parliament, and the Council. This section draws on Schildberger's work. It separately shows the lobbying process with the three mentioned institutions and, in the end, shows how the platform's efforts could not bring significant results against the EU's regulatory trajectory.

Lobbying, mirroring the GDPR's developmental chronology, begins around the European Commission. As described in the previous sub-section, by the end of the 2000s, the Commission realized the growing challenges of the digital sphere and decided to revise DPD. In 2009-2010, the Commission conducted the first series of consultations on the matter, and following that, the institution concluded the necessity of the policy update. It was during these consultations that the first signs of platform lobbying appeared. The process saw 289 opinions

submitted, of which only 10-15% had no corporate background. The companies were intimidated by the uncertainty that the envisioned regulation posed while being content with the existing status quo. It also should be noted that along with the private sector, the US government was also significantly active, submitting numerous briefings problematizing the strict regulations on data transfer to third countries.

Platforms' strategy was to portray data regulation as devastating to Europe's economy. Along with the opinion submissions, the methods and the lobbying channels varied. Corporate advocates tried to organize personal meetings with the Commission members, including Directorate Generals. They also held public meetings and established links with special associations, task forces, and NGOs, which became more intensive during the lobbying phase with the European Parliament. On the level of the Commission, all these attempts resulted in almost a year-long delay in publishing the proposal and numerous corrections in the document itself. However, those changes were not significant, and as DG Justice Viviane Reding summarized in 2012, „lobbying was fierce, but not efficient at all (Schildberger 2016, 109-113)."

After the Commission's proposal of GDPR in 2012, corporate attention was diverted to the European Parliament. Lobbying in the Parliament led to a staggering 3999 amendments submitted during the formulation process. Here, the tech platforms' traces became increasingly evident as digital technology advocate groups such as DigitalEurope, BITKOM, and Amcham EU became increasingly involved. Conducting personal meetings with MEPs, handing them over sometimes not well-founded studies, the corporate lobbying strategy once again was to show GDPR as menacing as possible. The narrative warned that the proposition would lead to a several percent decrease in the EU's GDP, massive job losses, and higher security risks of matters such as money laundering. The companies coalesced several "independent" think tanks

and NGOs, who would then report accordingly. They also resorted to astroturfing and negatively campaigned against the supporters of a stricter regulatory approach, blaming them for endangering the European welfare.

(Mostly American) Platforms created lobbying groups led by former European high officials or MEPs themselves. The most notable instance was Erika Mann, an erstwhile ten-year serving MEP who became the head of Facebook's lobbying department in Brussels. Another important channel for exercising instrumental power was cross-party groups. The European Internet Forum (EIF), which gathers the European Parliament members from every party and private sector representatives, was responsible for around one-third of amendments made in Strasbourg. Lobbyplag exposed that some MEPs had even submitted the exact copies of companies' proposals as amendments. There were somewhat comical cases, too. Belgian MEP Louis Michel, who submitted 230 amendments, was ranked as the second deputy by rang in terms of siding with the weak regulatory framework as his 150 changes were watering down the proposal. However, it turned out that all of these submissions were made by Michel's assistant without MEP's awareness. This shows that the corporate lobby tried to use every possible access to influence GDPR (Schildberger 2016, 113-116).

Platforms' lobbying with the Parliament was ineffective, much like at the previous level. Proposals that opposed privacy were balanced by those that supported stricter regulations. Eventually, on March 25, 2014, the Parliament accepted the text, which, with the words of rapporteur Jan Philipp Albrecht, was the best data protection regulation in the world, with still some room for improvement (Schildberger 2016, 117).

Platforms saw the most tangible result in lobbying the Council of the European Union and the member-states, delaying the Council's position for the trialogue by 3.5 years. Since the process with member states is relatively opaque, the major source that Schildberger uses to

uncover corporate attitude on this level is individual freedom of information acts of member states, especially those who were the main blockers of the resolution, like Germany and the United Kingdom. In conclusion, the author illustrates that lobbying methods were similar to the two other levels – paper submissions, meeting invitations, and taking advantage of personal contacts. American Chamber of Commerce organized copious consultations across member states' capitals. In a near-to-corruption way, some European politicians responsible for data protection were invited to the United States to get to know the American data protection system and do some sightseeing alongside.

Lobbyists submitted alarmistic, often baseless papers. What was new with the Council, however, was that sometimes, these studies were written by the hands of governments of the member states. According to Schildberger, one of the research projects on the potential outcomes of adopting GDPR, which was ordered by the Government of Germany and provided by the Federal Statistical Office of Germany, was, in reality, drafted by the corporate sector. Its findings perfectly matched the Parliament amendments made by private companies. Additionally, on this level, the private sector easily outcompeted NGOs and other representatives supporting stricter regulations. This is because lobbying with the different member states necessitates enormous resources that hardly any non-profit organization possesses. Because of that, NGOs could only focus on the General Secretariat of the Council, located in Brussels (Schildberger 2016, 118-125).

The relative success of the corporate lobby with the member states resulted in minor corrections of the Council's overall position for the trialogue. Nonetheless, it should be mentioned that the platform's campaign was not the only factor leading to these changes. Big countries, especially Germany and the UK, were worried about the implications of stricter regulations on commercial ties with the United States and the rest of the world. So, they would often block the process. Moreover, the Council is where reaching a consensus often requires

the most concessions. Agreeing on matters is more difficult for the governments of 28 (including the UK) different countries than for the Weberian bureaucrats of the European Commission or for the Members of the European Parliament who have firmly embraced their roles as European officials. Most importantly, even watering down the Council's position on the articles as crucial as conditions for consent and enforcement mechanisms did not change the overall picture. The EU laws are the result of negotiations between three institutions, and the fact remains that „the best data protection regulation of the world" was passed menacing platforms such as Google and Facebook with fines worth billions of Euros in case of the misuse of personal data of the customer.

5. DSA and DMA

The European Union did not stop with GDPR. In 2020, the Commission, led by Ursula Von Der Leyen, initiated two groundbreaking regulations Digital Services Act (DSA), which targets content moderation and restricts targeted advertising, and the Digital Markets Act (DMA), a strict competition law. With this, the EU especially targeted advertising platforms and the companies' general strategy of dominating the market. Corporate response was expectedly intensive, with lobbying again playing a major role. Nonetheless, in 2022, much like in the case of GDPR, DSA and DMA were passed with meaningless influence from technology companies, and since early 2024, both legislations have been fully enforced. The section below illustrates the legislative processes and the implications of DSA and DMA on platforms' business models. The second part discusses how major technology companies campaigned against them and ultimately failed.

5.1. Legislative process and implications for platforms

In 2019, Ursula Von Der Leyen, in her bid to become the president of the European Commission, promised a "new Digital Services Act" that would upgrade the safety of products

and services provided on digital platforms. The proposition aimed to complete a digital single-market finally (Von der Leyen 2019, 13). With the new president at the helm, in December 2020, the European Commission submitted the draft of the DSA and its counterpart DMA to the European Parliament and the Council (European Commission 2020a; 2020b). A year and a half later, in April 2022, European policymakers reached an agreement on the Digital Services Act (European Commission 2022a) and began passing the legislation one by one through different institutions (European Parliament 2022) (European Council 2022). The DSA entered into force on November 15, 2022, but full compliance with the act began on February 17, 2024 (European Commission 2022b). On the other hand, the DMA was concluded by the trialogue in March 2022 and adopted as a law by the Parliament and the Council presidents in September 2022. However, "gatekeepers," type of platforms affected by DMA, had time until March 2024 before they had to comply with the legislation fully (European Parliament 2024).

The Digital Services Act updates the EU's legal framework regarding illegal content moderation on intermediaries. The second major objective of the DSA for improving digital safety is to tame unrestricted targeted advertisements online. Platforms are prohibited from running targeted ads on minors and using sensitive personal information (e.g., religion, sexuality, racial or ethnic origin) to exploit personal vulnerabilities to promote goods and services to customers. They are also supposed to ensure transparency by creating ad repositories and enlisting all the advertisers who have used the platform. Moreover, intermediaries must provide recipients of service information on the main parameters of why and by whom an ad is presented. The commission designated a list of all platforms: "Very Large Online Platforms (VLOPs)" and "Very Large Online Search Engines (VLOSEs)" that would be subject to compliance with the DSA. These are 19 companies with more than 45 million monthly active users in the EU (see Figure 1) (Brodkin 2023).

Figure 1 List of VLOPs and VLOSEs

Very Large Online Platforms (VLOPs)	Very Large Online Search Engines (VLOSEs)
Alibaba AliExpress Amazon Store Apple AppStore Booking.com Facebook Google Play Google Maps Google Shopping Instagram LinkedIn Pinterest Snapchat TikTok Twitter Wikipedia YouTube Zalando	Bing Google Search

The DSA is a source of concern for companies that Nick Srnicek has labeled as advertising platforms. Advertising Platforms are platforms whose income mainly comes from ad fees. Their business model is based on extensive data collection, followed by categorizing the collected information. Finally, with the highly refined data and advanced computer software platform, these companies are ensuring advertisers that their sponsored material will be matched to the best possible target audience. The most prominent advertising platforms include Meta and Google, with the former having 98 percent and the latter about 90 percent of total revenue from running advertisements (Srnicek 2016, 33–36).

DSA has been unpleasant for advertising platforms in several ways. Primarily, like other tech companies, they must pay annual individual fees, which the Commission has introduced to cover €45.2 million cost of running the regulation. This point is something that Meta and TikTok have already appealed against in the General Court (Euractiv 2024). Secondly, the platforms are uncomfortable creating ad repositories and publishing the names of all the

advertisers promoting their products to online customers throughout the year. Amazon, which has appealed against its designation as VLOP primarily has demanded an interim relief from this clause of the DSA, arguing that the obligation of what the EU calls transparent advertising, in fact, "unlawfully limits its freedom to conduct a business (Reuters 2023)." The same point has been contested by Aylo, the parent company of three porn platforms XVideos, Pornhub, and Stripchat. Aylo is suing in the European Court of Justice, claiming that the requirement under Article 39 DSA, which states that a VLOP's advertising repository must be made publicly accessible is illegal (Euractiv 2024b).

Moreover, Digital Services Act poses a challenge to advertising platforms on points that can not be publicly contested by the big companies. Their very business model is based on making services more and more addictive to get to know the customers and then target ads based on individual preferences. Adding an imaginary wall between users and ads that would give a detailed „warning" to the potential buyer about the promoted product is far from the platforms' interest. This is because it can negatively affect the process of sales. Nonetheless, advertising platforms can not publicly discuss this point, as the issue will gain public salience, rendering them even more vulnerable against the EU regulatory framework Kalyanpur and Newman (2019).

The Digital Markets Act (2022) is a competition law establishing contestability in European digital markets. It specifically targets „gatekeepers," large online platforms that have a turnover in the European Economic Area (EEA) equal to or above €6.5 billion in the last three financial years or a market valuation of at least €65 billion" and "at least 45 million monthly active users and more than 10,000 annual active business users in the EU" (art. 2). To prevent gatekeepers from abusing the market power, DMA prohibits them from *self-preferencing* – favoring their own products or services over third parties on their platforms (art. 6); *Data Combination* – using collected data from the company's different platforms to combine and

cross-use it for targeted advertising without explicit user consent (art. 5); *Bundling Services* – forcing users to subscribe to or register additional services for accessing the primary platform service (art. 5). The EU has endowed the Commission with harsh enforcement terms to ensure that platform companies meticulously meet these stringent rules. For non-compliance with the law, gatekeepers can be fined up to 10% of their worldwide annual revenue (art. 30). If they are found in systemic non-compliance, structural measures such as the divestiture of businesses can be taken (art. 18).

Hence, DSA and DMA have targeted particular business models of tech platform companies. It should be noted that all the gatekeepers and the services the law designates (see Figure 2) are/belong to major platform companies. As described in the literature review gaining the dominant position is essential for these companies' profit, and they are skilled at it. Platforms generate network effects. The more people use their services, the more value they provide to society and the more attractive they become on the market. This has rendered them naturally monopolistic, with a special desire to maintain the status quo in the industry and kill the competition in its inception. DMA, on the other hand, is a competition law directing its codes for market equilibrium. In practice, too, the enforcement of the law began with the alarming note for platforms. In March 2024, days after passing the deadline of fully complying with the DMA terms, the European Commission fined Apple with €1.8 Billion, the third biggest fine imposed on a company by the EU, because of breaching music streaming rules and favoring its services over those of third parties in the App Store (European Commission 2024a)**.** Moreover, the European Commission launched further probes against Apple, along with Alphabet and Meta (European Commission 2024b). The consequences DMA and DSA would bring to platforms were not unexpected for the companies, and in parallel to the legislative period, they carried out a well-organized campaign against the laws.

Figure 2 list of gatekeepers and their services designated by the DMA

Company	Online Advertising	Browser	Intermediation	Communication	Operating System	Search Engine	Social Network	Video Sharing
Alphabet	Google	Chrome	Google Maps, Google Play, Google Shopping		Android	Google Search		YouTube
Amazon	Amazon		Amazon Marketplace					
Apple		Safari	App Store		iOS, iPadOS			
ByteDance							TikTok	
Meta	Meta		Meta Marketplace	WhatsApp, Messenger			Facebook, Instagram	
Microsoft					Windows		LinkedIn	

5.2. Platforms' failure to exercise their power 2.0.

As demonstrated in the above sections, when platforms face potential regulations that will negatively affect their business model, they are expected to resort to every means of their disposition to reverse the law or reshape it less hostilely. Particularly, those companies can use three types of power: structural power - the threat of exiting a market to change a proposed regulation; instrumental power – the traditional way of influencing politics through lobbying and weaponizing non-governmental organizations; and platform power - organizing a company's service customers against the bill (Seidl 2022, 359–60). The case of a DSA and DMA has not been an exception to this general observation. Multinational tech companies heavily relied on instrumental power, but their effort was ineffective.

The Corporate Europe Observatory (CEO) reported on the lobbying activities of advertising platforms during the DSA and DMA negotiation period. CEO draws on a set of lobby documents released by the European Commission and the Swedish government. Throughout the drafting period of the laws, the largest tech companies, Google, Facebook, Apple, Amazon, and Microsoft, boosted their spending on EU lobbying (see Graph 1). According to the CEO, combined, these firms spent more than 27 million euros in just one year. The most significant of them was the case of Apple, doubling its expenditure (CEO 2022). Considering that the Commission imposed a €1.8 billion fine on the company days after DMA's

full inaction, it is clear that Apple was directing its resources, particularly against competition law.

Perhaps even more importantly, CEO's report shows how the platforms „jumped on the (DSA's) trialogue process to try to neutralize the EU Parliament's proposals to limit surveillance ads and expand external scrutiny of how the platforms' systems amplify or demote content." This is no surprise as the trialogue, the negotiation process between the three legislative branches of the EU, the Commission, the Council, and the European Parliament, is the most important legislative phase that precedes most supranational laws.

The leading role among advertising platforms was assumed by Google. DSA clauses that bring limitations on targeted advertising have been added by the European Parliament during the trialogue. Google was actively trying to mobilize the Commission and the Council against MEPs on the matter. CEO reports that from early November 2021 to early January 2022, the company had three high-level meetings with the European Commission, where it discussed its malcontents with the proposal on advertising. Sundar Pichai, the CEO of Google, met personally with Margrethe Vestager, the Executive Vice-President of the European Commission, in the first instance. The Commission's notes (see Figure 3) illustrate that Google has explicitly expressed concerns about the European Parliament's initiative to restrict targeted advertising. The technology giant seemed to have adopted a narrative that depicted the ban on targeted advertising as „detrimental to SMEs" and "most problematic for actors such as new publishers."

Graph 1 Increase in lobbying expenditure by Big Tech after the initiation of DSA and DMA

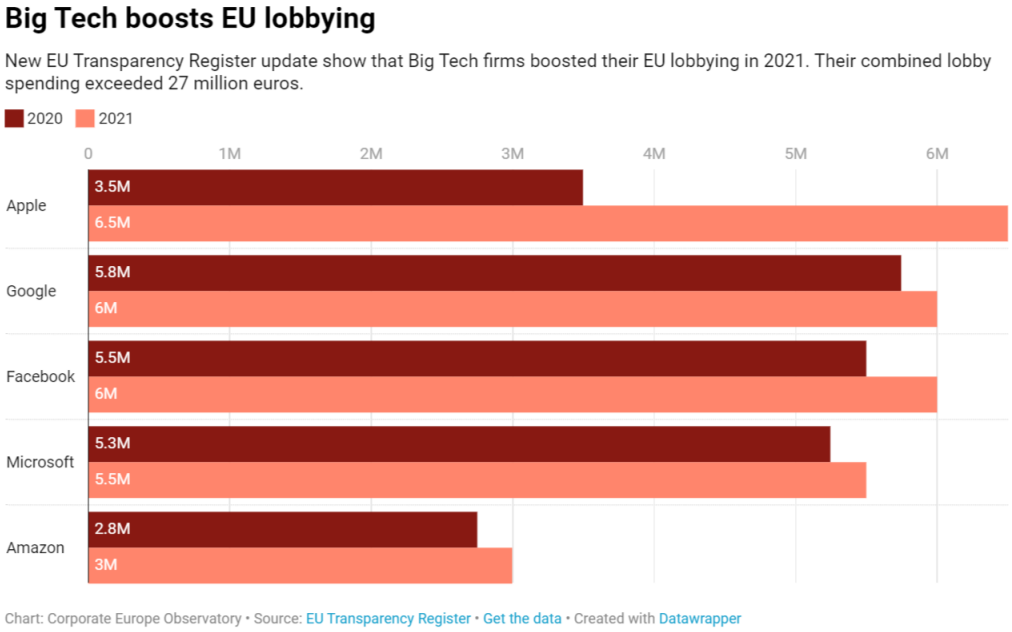
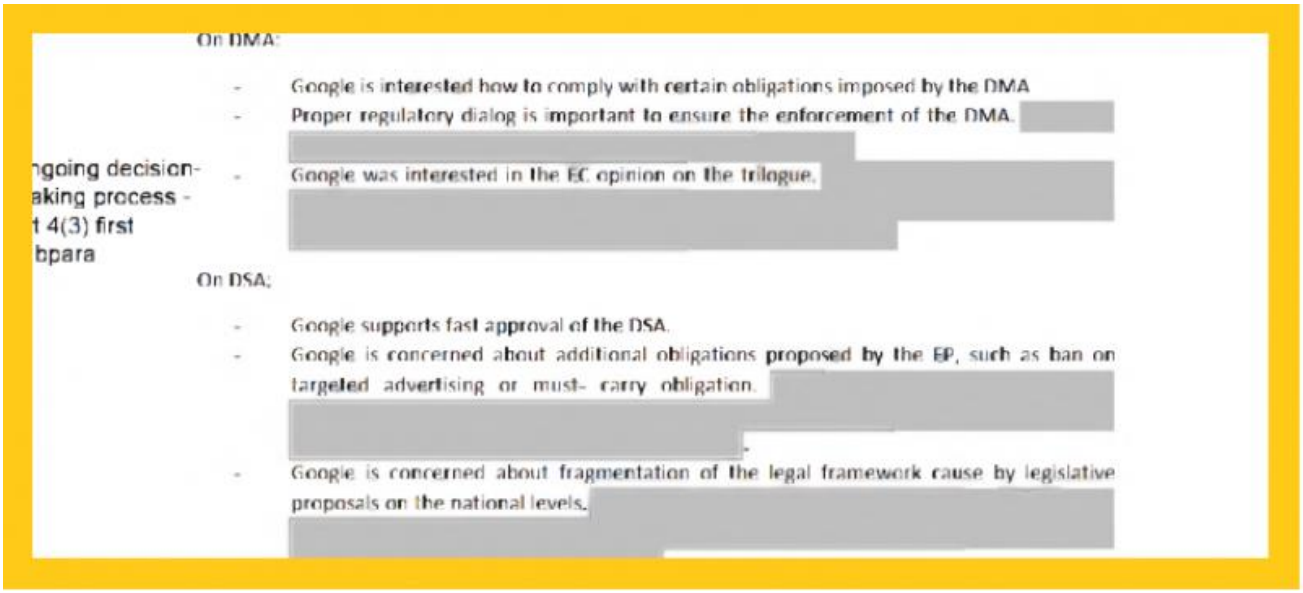


Figure 3 The Commission's note from the meeting of Google's CEO and EU Commission Executive Vice-President



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On DMA:

- Google is interested how to comply with certain obligations imposed by the DMA
- Proper regulatory dialog is important to ensure the enforcement of the DMA.
- Google was interested in the EC opinion on the trilogue.

On DSA:

- Google supports fast approval of the DSA.
- Google is concerned about additional obligations proposed by the EP, such as ban on targeted advertising or must- carry obligation.
- Google is concerned about fragmentation of the legal framework cause by legislative proposals on the national levels.

Apart from lobbying with the Commission, the second strategy for platforms was to influence the Council by mobilizing the member states as they have a key say in this institution. This was confirmed by the Swedish government, which revealed the lobbying documents. According to the Corporate Europe Observatory, Meta emphasized to the Swedish Ministry of Infrastructure the necessity of maintaining the allowance for targeted marketing. In February 2022, Spotify gave a policy suggestion to the Swedish government which was arguing against limits on the banning the targeted advertising on minors in DSA: "A broad ban on tailored advertising to minors could badly affect the development of free streaming services, which are very popular with young people of different ages." The contestation against the Parliament's initiative has been expressed by Schibsted (a Norwegian international media group) and other publishers, such as the European Magazine Media Association (EMMA) and the European Newspapers' Publishers Association (ENPA) (CEO 2022).

On a national level too, Google has been the most proactive actor. From January to the end of March 2022, the platform sent an analysis of various proposals, including its amendments to the (DSA), to the Swedish government. The CEO reported that the company has opposed a ban on targeted advertising for minors and product promotion based on sensitive information.

Despite all these efforts, tech companies' efforts were ineffective. In 2022, after a year-long negotiation, European institutions reached an agreement on DSA and DMA, which included virtually all the restrictions that the major platforms opposed.

6. Constructivist analysis

The following section aims to answer the research question - Why are major platform companies unable to influence EU digital regulations significantly? - using the constructivist

approach. The principal argument is that the EU's strict regulatory framework is determined by the Union's identity, which is constructed on the domestic and international levels. The thesis draws on Anu Bradford's (2012, 2020) legal scholarship. The professor at Columbia University, known for coining the term "Brussels Effect," also outlines the domestic-level elements driving the EU's strict regulatory preferences. They include - a developed economy that can afford to prioritize social and environmental concerns over firm profitability, a European consumer attitude that places high importance on social matters such as environment and food safety, a less polarized political climate that better reflects public preferences, and most importantly, a desire to finish the creation of common European market that encourages harmonized regulations (Bradford 2012, 14–16).

Secondly, Bradford argues that the EU has an identity in the international arena as a pioneer in setting stringent rules. It promulgates laws that are later equally diffused in developing and developed countries. The legal scholar identifies the precise conditions for and the specific mechanism through which this externalization of EU's standards unfolds and calls this ability of the union Brussels Effect. The EU's role is constructed by the historical practice of being a standard setter in international regulation. The European decision-making bodies are increasingly self-aware of the Union's role mentioned above; they embrace it and use it as an additional fuel to double down on regulations (Bradford 2020, 21–24).

Anu Bradford's explanation largely fits the constructivist framework. Describing domestic and international incentives follows Katzenstein's unit-level analysis and Wendtian system-level „social learning" theory. The thesis brings Bradford's explanation into the IPE through constructivism, contributing to understanding the political economy of the EU's regulatory framework and the IR theory itself. Moreover, the research goes deeper into Bradford's argument. It provides theoretically informed insights into the domestic identity

elements – EU's economic capacity, European consumer attitudes, and political climate - that she set out in her earlier (2012) work but, unlike internal market incentive, has not emphasized much in her scholarship.

Hence, the analysis goes as follows. The first part focuses on unit-level identity. The thesis shows Bradford's theory of the internal market motivating the EU's regulatory trajectory. Then, the rest of the domestic identity elements are discussed. The second part analyses the EU's role as an actor that embraces the Brussels Effect. Here, the characteristics of the system-level identity and its influence on strengthening European regulations are portrayed separately. Throughout these sections, the paper identifies the causal mechanisms of how the domestic and unit-level identities lead to the European Union's strict policy framework towards platform companies and technology in general.

6.1. Internal drivers of EU's strict regulatory framework

Market incentives and regulation through upward harmonization

Anu Bradford (2020) argues that the primary determinant of the EU's regulatory trajectory has always been the willingness to deepen integration and construct a single market. At the same time, the harmonization of rules between member states has been upward instead of downward, meaning the common rules, instead of being liberalized, are more stringent than most member states had before. These are the central domestic norms that account for the platforms' failure against the EU's digital policy in a constructivist manner. Below is how Bradford supports her argument, illustrating several policy fields, including digital. At the same time, the section brings this legal analysis into the IPE logic by using the constructivist framework.

The underlying principle of market incentive is clear: harmonized regulations are the bedrock of the single market. Divergent product standards among member states would impede

cross-border trade. This applies equally to the environment, for example, and the subject of this thesis, digital policy. Despite imposing stricter regulations, companies operating under common rules no longer need to navigate the complexities of twenty-seven different states. As Bradford posits, each EU directive or regulation serves two purposes. First, it is specifically tailored to the field it governs, and second, it contributes to creating a single market, a testament to the EU's commitment to market integration.

An example of the above is the chemical safety regulation "REACH." Anu Bradford notes that in its 2001 white paper, the Commission stated that one of the key objectives of the EU's new chemical policy was to "prevent fragmentation of the internal market." The 2003 legislative proposal for REACH stresses in its first recital that the free movement of substances within the *internal market* is crucial for the health and well-being of consumers and workers. Similarly, the 2005 Council's Political Agreement for a Common Position discusses REACH's aim and scope: "The purpose of this Regulation is to ensure a high level of protection of health and the environment as well as the free circulation of substances on the internal market while enhancing competitiveness and innovation (Bradford 2020, 19)."

The EU has also viewed data protection regulations as a means of forming a single market. In 1994, a year before adopting a DPD, in a white paper, the Commission problematized the non-existence of harmonization in this field: "disparities in the level of protection of such privacy rules [which] create the risk that national authorities might restrict free circulation of a wide range of new services between Member States in order to protect personal data." The background behind the legislative process of GDPR has revolved around integrating an internal market. The 2010 Commission Communication on Personal Data Protection that preceded the initiation of the regulation argues that „divergencies between the national laws" hinder „the free flow of personal data within the internal market. "The uncertainty and uneven protection for individuals" under a "fragmented legal environment"

has also been heavily underlined. What is more interesting is that the private sector itself has complained about administrative costs stemming from the lack of harmonization. Therefore, with this logic, even platforms gain some from GDPR (Bradford 2020, 20).

Hence, through internal market incentives, the EU is prone to more regulations as these regulations represent means of integration. Nonetheless, more common rules can not fully account for the strict regulatory preference of the European Union. These regulations could be less strict than those of an average member before, resulting in downward harmonization. Instead, as demonstrated in the case of digital policy, the Union tends to embrace upward harmonization, restricting the rules of the fields in its competencies. This is surprising as usually when many parties are involved in reaching an agreement, the terms water down to become acceptable for everyone. Indeed, some actors would clearly lose because of the EU's high regulatory standards. Individual consumers face growing prices, less wealthy member states are in greater need of fast economic growth, and various industries, platforms being a good example, are hit by each new stringent regulation (Bradford 2020, 11).

Understanding why the EU opts for upward harmonization instead of downward harmonization is essential for comprehending the factors contributing to the research's study subject. In this context, the reasons for upward harmonization act as independent variables. Upward harmonization is an intermediate determinant, and the EU's strict regulatory framework is the final result. The first reason for upward harmonization is that the EU institutions gain legitimacy by restricting the standards in areas such as environment, food safety, and data privacy. As Anu Bradford argues, continuing economic integration on the old continent created a necessity to assure Europeans that this liberalization would not take place at the expense of the greater public good but instead improve the welfare (Bradford 2020, 11).

Secondly, upward harmonization has proven to be a valuable tool for the European Commission, a key integration driver, to meet the level of member states with the strictest rules. It is easier to persuade countries with lower regulatory standards to raise their policies up than to convince those with higher standards to lower them. This argument was illustrated in the EU's health and worker safety regulations. In the 1990s, Western and Northern members with higher labor standards were eager to shield their industries from competition with member states from the south, such as Greece, Ireland, Portugal, and Spain, which had relatively lower standards. The Commission saw the demand as an opportunity, offered the lower regulatory states compensation (enshrined in the structural funds) for the costs of adopting stringent labor standards, and in the end, all members signed the Social Protocol annexed to the Maastricht Treaty of February 1992 (Bradford 2020, 11–12).

Apart from member states, upward harmonization has been a good ground for compromise and has successfully created coalitions of actors that otherwise would oppose each other. For instance, it can attract the private sector by harmonizing rules and NGOs by raising safety standards. This was the case, for instance, during the battle against GMOs on the old continent. In the 1990s, Greenpeace, along with other environmental and consumer non-governmental organizations, found surprising support from European farmers, represented by Eurocoop, and the European retail industry, represented by EuroCommerce. While NGO's motives are clear, farmers' and retailers' positions might seem puzzling at first glance, but the public opposition and the promise of common rules, led those diverse groups of actors to act for upward harmonization, and in 2003, the EU adopted the two regulations – tracing and labeling GMOs and regulating GMO derived food. Similar phenomena can be witnessed in politics, with left and right-wing parties having an easier time finding common ground. Common strict regulations appeal to the socially oriented ideology, while the conservatives enjoy the opportunity of increased trade across the common market (Bradford 2020, 12–13) .

Economic capacity

Meeting high regulatory standards requires considerable costs, and an important domestic element that premises the European Union's regulatory identity is its economic capacity to afford those expenses. With its combined GDP of approximately $17 trillion in 2023, the EU is the second-largest economy after the US (IMF 2023). On the consumer level, the average European in 2022 enjoyed a GDP per capita of about $34000, which is 270% of the world's average (World Bank 2023). This background allowed the Union to support stringent regulations in the face of the potential slowdown of some economic activities. Stringent regulations can impede economic growth. Compliance with heavy environmental standards requires substantial investments in new technologies and changes in companies' and individuals' operational activities. Similarly, data privacy laws impose considerable compliance costs on businesses, potentially impacting the productivity of not only big tech but also small and medium-sized enterprises. Most importantly, regulation has a tangible effect on innovation as, under strict regulatory standards, firms have less room for experimenting, entrepreneurship, and even failure, which is discouraged by the EU's strict bankruptcy laws (Bradford 2024).

It is no coincidence that the European Union's economic growth rate has lagged behind that of the US in recent decades. Enjoying a laxer regulatory environment, America encourages rapid technological innovation and business development. European companies begin with the disadvantaged position to compete with their American counterparts, and as a result, out of the ten largest technology companies by market value today, eight are US-based, and none are European. The EU contributes only in the top 20 with Dutch ASML and German SAP. The picture is even more drastic in the list of the largest 50 technology companies, with only 3 EU-based enterprises (CompaniesMarketCap 2024). The effects of the regulations have a role in

the lower GDP growth rate. European Centre for International Political Economy compared GDP per capita in EU countries and US states from 2000 to 2021, concluding the notable tendency:

The ranking of GDP per capita in 14 EU member states, which together represented 89 percent of EU GDP, was lower in 2021 than in 2000. For instance, France and Germany were as rich as the 36th and the 31st US states in 2000, but twenty-one years later, French GDP per capita was lower than the 48th poorest US state, Arkansas, while German GDP per capita had fallen to become as prosperous as the 38th US state, Oklahoma (Erixon and Guinea 2023, 2).

The above-mentioned information indicates that there is a price for having high, rights-driven regulatory standards, and without its already rich economic background, the European Union would have a hard time following this path.

Public attitude

The essential element of the EU's domestic identity has been European consumer attitudes, which are largely favorable to the strict regulatory framework in various fields such as environmental protection, public health, and data privacy. Public preference significantly affects policymaking, providing another layer of explanation for the Union's strict regulatory preferences.

The influence of the European public attitude in determining the strict regulatory policy is clearly reflected in environmental issues. According to the 2019 Special Eurobarometer, on average, „more than nine in ten (92%) agree that greenhouse gas emissions should be reduced to a minimum while offsetting the remaining emissions to make the EU economy climate neutral by 2050." Moreover, more than half of the respondents considered that the European Union was responsible for fighting against climate change (European Commission 2019, 4).

This public sentiment has been reflected in the EU's adoption of some of the world's most comprehensive and ambitious environmental policies. For instance, the EU's Green Deal aims to make Europe the first climate-neutral continent by 2050, and it has received widespread public and political support.

European public attitude, similarly, is notably cautious about public health matters. Europeans are particularly concerned about animal infections, chemical contamination, and GMOs. 7 out of 10 Europeans worry about pesticide residues, antibiotics, or hormones in meat, fish mercury, and pork dioxins (Bradford 2020, 175). As the Food Safety Eurobarometer says, 50% of Europeans rank food safety among their top three food-buying priorities. More than 60% are worried about GMO containment in Food (Bradford 2012, 33). Regarding chemical safety, the 2017 Eurobarometer showed that 84% of Europeans worry about the health impacts of chemicals in ordinary products, and 90% worry about these chemicals' environmental impacts (Bradford 2020, 194).

These attitudes have been reflected in the regulations. In 2002, the EU passed the General Food Law Regulation (GFLR 2002), which has been constantly updated since then. Among other things, GFLR founded the European Food Safety Authority (EFSA), a body responsible for ensuring food safety in Europe. Brussels has been tough on GMOs notably with its Regulation on genetically modified food and feed (2003). The latter obliges producers to perform safety evaluations and properly notify consumers. The EU, moreover, has passed one of the most ambitious chemical safety regulations, REACH (Registration, Evaluation, Authorisation, and Restriction of Chemicals), calling on companies to register substances they produce and evaluate their risks (2006).

Finally, Europeans have had a similar attitude toward online privacy. In 2016, the year GDPR was passed, the Eurobarometer showed that 8 out of 10 respondents posited that it is

„important" to ensure that online monitoring activities are carried out only with their consent. 90% of Europeans considered that online messages and calls should have been encrypted to avoid external access. Up to 90% of respondents considered that the browser's default settings should prevent information sharing. Moreover, 71% of respondents thought information sharing, even if it helps companies to improve services, was "unacceptable (Brandford 2020, 139)." The above factors indicate that domestic public attitude considerably supports the EU's strict regulatory preferential identity. This is also true in the case of digital policy, providing another layer of explanation of the platforms' inability to reverse or meaningfully affect GDPR, DSA, and DMA.

Political climate

Another domestic element of the EU's regulatory identity is low political polarization and the broad commitment to social issues across the political spectrum. If in other developed capitalist systems, the United States being a clear example, polarization often leads to a standstill and inconsistent policymaking, the European Union has been characterized by a political environment that regularly favors strict regulations in fields such as environment protection, public health, and data privacy.

Political consensus-building in Europe and the adoption of comprehensive regulations are facilitated by an omnipresent multi-party electoral system among the member states. Both left- and right-leaning parties in Europe tend to support strong regulatory measures in key areas, reflecting the societal values of their constituencies. This is especially true in environmental policy. All sides of the European political map supported the ambitious European Green Deal for total decarbonization by 2050. Apart from social-democrats and greens, it benefited from the support of the conservative center-right European People's Party (EPP) (McLoughlin 2024). The same can be said about digital policy and data privacy. GDPR was approved by the

Parliament with 621 votes in favor and 10 against it (EDPS 2014), DSA with 539 votes in favor and 54 against (European Parliament 2022), and DMA with 588 votes in favor and 11 against (European Parliament 2024).

Most importantly, the pro-social regulatory environment in Europe is facilitated by the structure of the EU's political system. The decision-making involves multiple levels of institutions, starting from the European Commission and continuing with the trialogue between the European Parliament, the Council of the European Union, and the Commission again. It brings together different political and national interests, which creates the necessity for a compromise that attracts wide support and displays a broad range of perspectives. In other words, consensus-building requires robust and popular regulations that would overcome objections from any side. The best way to achieve that is to reflect the public attitude, which, as was demonstrated, favors a strict regulatory framework. An example of a policy where the EU's political system played a determinant role in stricter regulations is public health. The European Commission had a softer approach to regulating genetically modified organisms. Nonetheless, the commission's preferences were met with robust opposition from the Council of Ministers and the European Parliament and eventually were reversed in the strictest standards in the world regarding GMOs (Vogel 2012, 45).

6.2. Systemic level identity - the Brussels Effect

The initial drive towards a stricter regulatory framework was determined by the internal common market incentives and the tendency of upward harmonization. These are unit-level constructivist norms. As time progressed, the European Union went further and established its role as a global standard setter in regulation. This phenomenon was named the "Brussels Effect" by Anu Bradford, describing how widely different states adopt the EU's regulatory approaches in various fields. The EU institutions, especially the Commission, embrace this

identity, further motivating them to expand their regulations. This section shows how the Brussels Effect works in practice and then illustrates the way system-level identity leads to the thesis's study subject – the strict European regulatory framework.

The Brussels Effect is the European Union's unilateral ability to regulate the global market by setting standards in diverse fields such as competition policy, environment, public health, and digital space. Today, out of 130 jurisdictions that exercise competition policy laws, most have based it on the European example (Bradford 2020, 99-100). In the field of health regulations, European food legislation has been considered exemplary worldwide. Countries from Asia, the Middle East, North Africa, and Latin America, are increasingly adopting EU standards for food labeling, tracking, warning systems, and GMO regulations (Bradford 2020, 189-192). Moreover, in the field of chemicals, a broad and diverse group of countries like the United States, Japan, South Korea, Switzerland, Turkey, Malaysia, India, Serbia, and others have implemented REACH-like laws. Most notably, REACH has gained a global nature as major multinational companies such as Dow Chemical, Hoffma-La, L'Oreal, Adidas, Nike, Zara, H&M, Ikea, Lego, Mattel, and largest American chemical industry players are adjusting their worldwide production lines according to the standards of this regulation (Bradford 2020, 196-200).

As for digital policy, few regulations have had as much global impact as GDPR. Major platforms such as Meta, Google, Apple, and Airbnb have updated their worldwide data protection policies based on this regulation (Bradford 2020, 142-144). Within the field of digital, another notable example is regulating online hate speech. Throughout the years, the EU has been able to extend its content moderation policy on the global operations of IT giants such as Facebook, Google, and Twitter (now known as X). Until 2024, this has been done by having these corporations sign a voluntary Code of Conduct; nonetheless, from last February, official regulation, DSA has come to power, making European standards in hate speech regulation

obliging by law (Bradford 2020, 156, 163, 165). Of course, the EU can not juristically compel multinational companies to have European standards extended internationally. Instead, what leads them to do so are market powers.

The mechanism of how Brussel's Effect works is as follows: The EU has the second-largest economy in the world and 450 million relatively wealthy consumers. This makes the old continent naturally attractive for multinational companies, which must meet strict regulatory standards to access it. Furthermore, multinational companies can not escape those rules by moving regulatory subjects to another jurisdiction, as the EU mainly regulates inelastic consumer markets. Even though Brussels only regulates its internal market, transnational companies face the growing cost of customizing their activities to different markets, and they are incentivized to standardize their production globally. This phenomenon is also premised on the regulatory competency of the EU's institutions. This differentiates the EU from other actors, such as China, which also has a strict regulatory framework and a large market but can not internationalize its regulations. In other words, European regulators benefit from distinguishable credibility from multinational companies (Brandford 2020, xiv-xv).

Over time, the Brussels effect has itself motivated further strict regulations. This is confirmed by official communications of the European Commission, illustrating (self) perceptions of European decision-making. It is from the mid-2000s that the Commission began bringing up the ability of the EU to externalize its rules. In the working paper on „The External Dimension of the Single Market Review (2007)," the commission acknowledges "[T]he EU is emerging as a global rule maker, with the single market framework and the wider EU economic and social model increasingly serving as a reference point in third countries as well as in global and regional fora." The institution stated that the EU was being emulated in areas such as product safety, food safety, environmental protection, public procurement, financial regulation,

and accounting. Hence, the Union was in a good position to promote its „modern regulatory framework internationally (Bradford 2020, 22).“

The EU's growing emphasis on external matters is reflected in the treaty revisions. For example, the Lisbon Treaty mandates the Union to promote its domestic values and norms internationally. Moreover, Brussels has openly stated its objectives of promoting regulatory preferences through trade agreements. The European Council website states, "[o]ne of the most important aspects of EU’s trade policy is that—alongside protecting European businesses and consumers—it is promoting the EU’s principles and values."

According to Anu Bradford, one of the first domains where the new self-perception intensified changes was in data protection regulation. If, prior to DPD, the focus was on a single market, the international aspect also gained significance from the second half of the 2000s. The European Commission notes in its 2009 communication that the “Union must be a driving force behind the development and promotion of international standards for personal data protection and in the conclusion of appropriate bilateral or multilateral instruments.“ The emphasis was also placed on having strict standards: „[a] high and uniform level of data protection within the EU will be the best way of endorsing and promoting EU data protection standards globally.” Hence, The EU's digital policy is driven by both domestic incentives and international system-level social construct, encapsulated in the Commissioner for Justice's declaration prior to GDPR: "We aim to set the global standard (Bradford 2020, 22-21)."

Anu Bradford provides several hypotheses of the benefits that motivate the European Union to embrace being a global leader in regulatory reforms – „the economic goal of ensuring a level playing field for European industries,“ greater legitimacy for the rules through globalizing them, or geopolitical ambitions (Bradford 2020, 23-24). They can become the subjects of further research, but what remains is that the European Union is increasingly aware

of its role as an international standard-setter and is trying to enhance this identity. Therefore, multinational platform companies or other actors trying to affect the Union's regulatory trajectory face a firm wall strengthened by deep social constructs. These constructs are not inherently given, which means they can change in the future. Nonetheless, an identity resulting from decades-long socialization requires the same amount of social resources for any modification, and the platform's market or instrumental powers are ineffectual in short-term campaigns focused on various legislations separately.

7. Conclusion

The thesis has argued that identity has determined the EU's resilience to maintaining a strict digital regulatory policy in the face of platform Giants' resource-abundant opposition. The most important EU digital laws, GDPR, DSA, and DMA, have endangered platforms' business models of heavy data collection, ultra-targeted advertising, and market domination. This is what has prompted companies such as Alphabet, Facebook/Meta, Apple, Amazon, and Microsoft to resort to lobbying and their platform power on a massive scale to mobilize political and public support against each of those regulations. Nonetheless, the thesis has illustrated that the European Union's identity as a strict regulatory preferential entity, constructed on domestic and international levels, has endured corporate influences, and the three laws have been adopted with no significant change platforms would desire.

The research showed that the primary element of stringent regulatory identity is the domestic – the desire to complete a single market. Official communications, including those before the digital laws, confirm that, over the years, the European Commission has been interested in regulation as a means for deepening integration. To make sure that the proposals benefited from support from the public and large member states, the commission was prompted to pursue upward harmonization, generating stricter laws than an average member state had

beforehand. The thesis has argued that on the domestic level, other elements – economic capacity, public attitude, and political climate are equally important in leading to the research phenomena. Stringent regulations have economic side effects, and rich gross domestic product (per capita) allows the EU to afford (potential) slowdown in sectors such as technology. Public and political fidelity to strict regulations explains why other large actors like the US do not pursue the same path.

Moreover, it has been shown that the EU's strict regulatory framework is also enforced by an international system-level role. Official communications of the Commission, including those that preceded GDPR, indicate that the Union has embraced what Anu Bradford calls Brussel's Effect. The ability to spread the regulations globally has further motivated the EU to pass stringent laws. All these elements created a landscape where the corporate lobby is destined to fail against the EU's regulatory trajectory.

The analysis has focused on the unit and system-level identity to account for the EU's digital regulatory practices. Thus, the thesis has brought legal scholarship into IPE through constructivism, contributing to a better understanding of the EU's regulatory framework and constructivism itself. It has gathered the most important empirics of the EU's digital policy; interpreted the desire to finish the internal market and the influence of Brussels's Effect on the regulatory identity through theory-equipped insights; and stressed domestic elements – economic capacity, public attitude, and political climate that have been less emphasized in previous research. As for constructivism, in IPE, this theory mainly explains political issues in international trade, money, and finance. The thesis has set out an innovative approach that utilizes constructivism in explaining the politics of international regulatory frameworks.

On the practical side, the research implicates the following. As has been outlined, the EU has firmly established itself as a global regulatory power. American technology companies

and the US government would be better off accepting this than trying to reverse their transatlantic ally's position. There can be a beneficial division of labor between the two largest economies, where Americans are innovating in technology, and Europeans are generating sustainable legal frameworks. This trend has already been shown during the last decades and, if embraced, might significantly improve people's lives globally.

Constructivist sociological analysis is ideal for explaining complex phenomena like the EU's regulatory identity. Nonetheless, the thesis has certain limitations. The research successfully outlined the major domestic and international determining elements of the research subject, but the qualitative approach can not provide statistical validation that would indicate the scaled importance of each of them. Moreover, although with careful examination, the thesis can draw valuable insights about other regions with similar characteristics, here too, constructivism is constrained in generalizability. Hence, further research can introduce statistical or relevant qualitative methods that would separately scale already outlined determining factors of the EU's regulatory frameworks and increase the impact of the analysis.

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