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The MNC-Coalition Paradox:

Issue Salience, Foreign Firms, and the General Data Protection Regulation

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Abstract: While the EU takes on an increasingly global regulatory role, we have only a limited understanding of how or when foreign firms influence EU regulation. Multinational Corporations (MNCs) have many of the power resources that determine lobbying success. We argue, however, that high salience blunts foreign corporate power. High salience generates legitimacy concerns for EU institutions, creating a political opportunity structure that favors pluralistic participation. Civil society can point to the instrumental power of foreign firms as a means to contaminate business interests writ large, amplifying consumer voices in the process. We label this the MNC-Coalition paradox. We investigate the European Union's General Data Protection Regulation to assess our argument, as the revelations made public by Edward Snowden created an exogenous shock in salience. Highlighting the presence of MNCs, like Google and Facebook, in the lobbying process allowed civil society leaders to delegitimize business preferences and bolster consumer protections. In addition to the theoretical contribution, our evidence sheds light on the policy process behind incredibly important legislation, which will shape fundamental civil liberties and privacy rights not only for Europeans but globally.

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What role does business play in the EU policy-process? Considerable work on interest group influence shows that firms have a host of resources that put them at a comparative advantage in shaping economic regulation. With their expertise, organizational infrastructure, and deep pockets, business groups are generally able to sway policymakers, making Directives and Regulations fall in line with their interests. Such findings only bolster EU critic claims that the supranational space is nothing more than a neoliberal Trojan horse, plagued by a democratic deficit.

While this literature has become increasingly nuanced and empirically sophisticated, illustrating the various ways these power resources interact, and can even be curbed by consumer advocates, it has largely focused on the role of European firms. This disregards both the theoretical frameworks and empirical reality that find *foreign* firms are prominent lobbyists in EU regulation (Bernhagen & Mitchell, 2009; Rasmussen & Alexandrova, 2012). The EU has become a key global regulator in areas ranging from accounting and financial regulation to environmental and food safety standards (Bach & Newman 2007). This makes foreign business associations like the American Chamber of Commerce (Rasmussen & Alexandrova, 2012, p. 614), or transnational lobbying coalitions like the International Swaps and Derivatives Association, fixtures in Brussels debate. Understanding the role that foreign firms play in EU policy-making becomes particularly important when we consider the fact that the EU chooses to take on a global regulatory role in consumer oriented issue areas

(Bradford, 2012) where civil society's resources rarely match those of large European and foreign firms.

The ability of both domestic and foreign firms to shape specific EU policy outcomes is surely multicausal. In this article, we shine a spotlight on the ways in which issue salience and firm country of origin shape business power. First, we build on an important literature from Comparative Politics that is receiving increasing attention in the EU context – policy salience – to better understand lobbying dynamics (Jones & Baumgartner, 2005). We argue that European institutions and policy-makers are concerned with, and very much guard, their political legitimacy (Schmidt, 2013). While organized business may be able to exert instrumental power in moments of 'quiet politics', these tools are muted (Culpepper, 2010), and even a hindrance, as EU officials and politicians must minimize the perception that they are captured by concentrated interests (Moravcsik, 2002). Civil society groups, then, are given greater political voice in the policy process, creating a foundation that checks otherwise unfettered business power.

Second, the *global* nature of firms can raise important legitimacy concerns that further undercut traditional power resources. During times of high salience, by emphasizing the apparent threat of foreign MNC power infringing on European sovereignty, civil society can link the presence of large, multi-national firms in the lobbying process to discredit business interests writ large. Ironically, resources that make firms powerful during periods of quiet politics become liabilities when cast under the public spotlight, diminishing the power of both non-EU and EU based corporations alike. We label this the MNC-Coalition

paradox. Ultimately, increased salience can serve as a channel to pacify the democratic deficit that often confronts EU policy-making.

To evaluate these expectations, we examine lobbying of the European Union's General Data Protection Regulation (GDPR). The GDPR, which was adopted in 2016 and enters into force in 2018, is the most significant revision of data privacy regulations in Europe and globally since the adoption of the European Privacy Directive in 1995. It has far-reaching implications for national and global firms, including creating a host of costly consumer protection measures on the data supply chain and provisions that substantially increase the cost of transferring personal data outside of the European Union. With their vast financial and informational resources, one would expect such firms to once again "capture" the EU. Crucially, Edward Snowden leaked secret documents that revealed extensive surveillance of data held by large multinational technology companies in the midst of the lobbying process, catapulting the GDPR from a relatively obscure technical debate into the public spotlight. The Snowden revelations allow us to observe firm and civil society interventions during periods of low and high salience. While we provide indicators of a shift in policy priorities before and after the revelations, we recognize the highly contingent nature of the policy process and the particular aspects of the salience shock. Our theoretical argument, then, focuses on the nature of the lobbying dynamic rather than any specific policy output and caution against overly broad generalizations. Empirically, the case offers detailed insight into the development of a critical piece of legislation, which will have profound effects on the development of fundamental civil liberties and privacy rights in Europe and globally.

More generally, the article sheds light on a relatively under researched topic in EU policymaking – the role of foreign firms. We go beyond analyzing when foreign firms target the EU, and find that multinational influence is not just limited to the outcome of the policy but further alters the bargaining tactics of conventional lobbying players, European firms and European civil society groups. This suggests the need for a broader research agenda that examines the nature of EU global policy-making (Newman & Posner 2015; Newman 2018). As the EU becomes a global actor in economic domains from the environment to consumer protection, research needs to investigate how third parties will seek to shape EU policy. Differential access for firms is one threat to EU legitimacy, differential access for *foreign* firms should make us question the basis of the EU’s authority, especially as it may flame today’s populist fires.

The many forms of (European) Business Influence

As the EU has become more institutionalized, research seeks to understand the precise mechanisms behind corporate power. Much of this agenda can be broken up into scholars that either focus on firm resources or on more contextual factors.

First, numerous scholars argue that financial resources and expertise dictate a firm’s policy influence (Bouwen, 2002; De Bruycker, 2016). Research illustrates how money spent on lobbying correlates with European policy outcomes (Coen, 2007; Dür, Bernhagen, & Marshall, 2015) while more qualitative analysis of bodies like the Transatlantic Business Dialogue highlight

the importance of organizational capacity in shaping legislation (Cowles, 2001). Lobbying is usually concentrated at the Commission level and also regularly targets European Parliament elite (Bouwen, 2002; Marshall 2010). Even the deepest pockets, however, struggle when faced with collective action problems or internal conflicts of interest. Building off Mancur Olson, some argue that the concentrated nature of firm organization provides advantage over more diffuse civil society competition (Coen, 2007). Yet when internal divisions plague the business community, this prevents any one group from dominating, leading to policy stalemates and even EU autonomy (Jabko, 2006). Such splits are often a function of the nature of legislation at play. The degree of conflict and complexity work to bolster business power (Dür, 2008).

Movement to the transnational level can, nonetheless, also catalyze civil society leading some to argue that the multi-layered nature of the EU strengthens consumer protection (Pollack, 1997). Given that the tactics employed by social movements often fall beyond the formalized nature of European policy formulation, consumer groups still struggle to coordinate transnationally (Imig, 2001). A newer strain of literature highlights how information, group cohesion, and, the strength of consumer preferences all condition ultimate interest group success (Dür et al., 2015). This work recognizes that studies of business power should be embedded within the larger policy-making process, which includes a broad range of actors and is often punctuated by contingent events. While these are important steps towards improving our theories of the EU policy process, they tend to downplay the role that non-EU actors may play in policy formulation.

Such an approach can generally be justified by the findings of the few studies that do examine foreign firm influence. For example, analyzing the behavior of 2000 European and non-European firms, Bernhagen and Mitchell (2009) find that differences in national culture and institutions wash away as companies lobby the EU. Firm size is the strongest predictor of trying to influence Commission outcomes. Their insights corroborate Comparative work that illustrates the importance of foreign firms adapting their non-market strategies to the local institutional contexts (Hansen & Mitchell, 2001), and generalize research within American politics examining foreign firm influence in the US legislative process. Concerns around foreign, and in particular, Japanese control of the American economy sparked research examining foreign lobbying in the US that found non-American firms mimicking their local competitors (Rehbein, 1995).

When expanding the analysis beyond Political Action Committees, Hansen and Mitchell (2000) find that multinationals generally avoid overt forms of political activity as they are weary of the public backlash that might arise from visible, foreign influence on the American political system. We directly build on this insight, shifting the conversation on the role of foreign firms in the EU away from when firms choose to lobby at the supranational level to instead focus on how these efforts rearrange traditional negotiation dynamics.

Issue Salience and...

Drawing on recent work in American and Comparative Politics, we explore the role that issue salience can play in altering the lobbying status quo. In

particular, we argue that during periods of high salience diffuse interests gain new political voice from the very sources of traditional business power – money, lobbying, and organization.

Issue salience is generally defined as the level of importance the public assigns to a public policy domain in any specific period of time (Pagliari, 2013; Wlezien, 2005).¹ Given the complexity of modern governance, citizens or civil society groups can only pay attention to a limited number of issues. Business is often in the position to shape public policy outside of the public spotlight and, as such, can exercise its power resources without scrutiny. But when an issue is thrust into the spotlight, it activates accountability mechanisms that force decision-makers to distance themselves from direct business support.

Specifically, pressure to defend broad interests over concentrated interest groups increases (Soroka & Wlezien, 2005), and incentivizes politicians to step directly into a policy process that is otherwise delegated to bureaucrats or the private sector (Pagliari, 2013). This offers consumer groups and NGOs a larger role in policy-making as politicians become more receptive to their demands. For example, studying corporate governance regulations in France, Germany, Japan and the Netherlands, Culpepper (2010) illustrates that managers were able to direct the policy process via the aforementioned capture mechanisms during periods of low salience. But in Japan, the one case where the issue moved to the public spotlight, managers were forced to take a backseat and work through political parties.

¹ We acknowledge the difficulty of specifying a single public in the European context. We look to work on salience in the EU, which suggests the importance of multiple publics including politically active citizens as well as national elites (Beyers et al. 2017).

Moreover, such issue salience creates a space for transnational civil society groups in the legislative process as they raise the costs of non-responsiveness for transnational bureaucrats (Greenwood, 2007). They may do this by activating national publics and national politicians to the actions of transnational decision-makers. While such theorizing is becoming increasingly accepted in EU studies, some scholars argue that increased salience can actually create room for governments to exercise their own prerogatives by choosing between those business group interests that best fit the state's goals (Woll, 2013). Others assert that increased salience, while brewing conflict, inevitably privileges the voices of the largest coalitions (Klüver, Braun, & Beyers, 2015). Salience can have differential impacts on the business community – with smaller, nationally oriented firms that are seen as more legitimate defeating their transnational “big business” counterparts (Keller, 2016).

This recent theorizing, coupled with numerous empirical examples, illustrate that policy salience is no panacea for pluralistic participation or pro-consumer reform. For example, Kastner (2017) finds that as the initial salience of the financial crisis receded, industry groups were able to team up with non-financial firms to blunt implementation of a financial transaction tax. In other words, we still need to further clarify how and when salience affects domestic and transnational outcomes, and recent work suggests who forms the lobbying coalition is key to understanding outcomes under high salience.

The MNC-Coalition Paradox

In addition to the general responsiveness dynamic, we argue that lobbying by foreign firms helps specify the effects of policy salience by creating new challenges for business interests. We label this the MNC-Coalition Paradox. The democratic deficit within transnational policy-making institutions can cut two ways for large, international firms. On the one hand, the general opacity opens up a window for instrumental power. Firms with technical expertise, including large multinational corporations, are often invited into the policy-making process in order to assist in policy development. On the other hand, the democratic deficit raises the stakes for legitimacy attacks against EU institutions. European bureaucrats have become increasingly concerned over the critique that the EU is a Trojan horse for neo-liberalism, in which the Single Market Project is viewed as a pro-MNC initiative. Similarly, European Parliamentarians must demonstrate their connection to domestic constituencies and defend against the claim that they have fallen victim to the Brussels swamp.

Given this bureaucratic need to maintain legitimacy, political salience may lead officials to practice what Mitchell (1997) labels “calculated heroism,” championing consumer causes due to doubts around business’s legitimacy. This turns the presence of foreign firms into a political resource for public interest groups and a liability for industry lobbies. Much of the early public debate on global business power highlighted how the growth of firms operating in multiple jurisdictions would degrade sovereign decision making and undermine the public interest. In keeping with recent work on the importance of framing for EU lobbying outcomes (Klüver, Mahoney, & Opper, 2015), civil society groups use

the specter of these concerns to bolster their cause. This should be particularly effective when the issue at hand is a unifying and partisan, rather than particularistic, concern that directly confronts consumer experiences (Smith, 2000).

While the interests of nationally rooted firms and MNCs frequently vary, NGOs group the variety of business interests into a monolithic whole that must be curbed. This new frame may delegitimize the preferences and recommendations of business groups, be they large or small, European or foreign. The rhetorical weapon pushes transnational policymakers to diminish their ties with business in general, curbing the influence of otherwise powerful European and transnational commercial associations. Evidence of MNC influence on legislation contaminates the positions of business groups writ large. Rather than more organized groups winning salient battles, organizational links hurt all the members of a commercial community, independent of their national base.

The Case of the GDPR

In January 2012, the European Commission released a draft of the General Data Protection Regulation (GDPR), which sought to modernize rules dating back to the early 1990s regulating the collection, storage and transmission of personal information (The European Parliament and The Council of the European Union, 2016). The EU has long been considered at the forefront of privacy regulation, especially compared to its American counterparts who rely on a web of fragmented, sectoral rules along with corporate self-governance. The EU's reputation was built around the 1995 Data Privacy Directive (DPD), which

required all Member States to adopt comprehensive data privacy rules monitored and overseen by independent regulatory agencies known as data privacy authorities (Newman, 2008). These regulations have far reaching implications for fundamental rights and at the same time for business strategies, shaping the development of sectors from cloud computing to artificial intelligence.

Upgrading from a Directive to a Regulation ensures that all EU countries adopt the same provisions – a stark contrast to the DPD where countries formulated their own legislation based off the model law. Critics argued that business actively located in certain member states that followed ‘light touch’ regulation, with Ireland becoming a poster-child for such variation. Other than cross-national harmonization, the GDPR moves the setting of data related regulation from an informal network of national bureaucrats, “The Article 29 Working Group”, to a European Data Protection Board with stronger enforcement capabilities. Most controversially, the rules of the GDPR will apply to all data collection and transfers on European citizens regardless of whether or not the firm in charge of the data is physically present in the EU – a profound increase in EU jurisdictional authority. Notably, the regulation formalizes the “right to be forgotten” that allows European citizens to erase chosen segments of their digital footprint.

It is no surprise that foreign technology firms have sought to shape the legislation. Companies as large as Amazon and IBM are concerned with the financial toll of complying with these new regulations while data brokers such as Experian or Acxiom fear a fundamental erosion of their core business.

Complicating dominant theories on EU agenda setting, American firms and the

US government engaged the policy process before any public release of a bill (McNamee, 2016). Setting the grounds for debate was not enough for Silicon Valley's elite. Instead, they imported many of the tactics that have brought them substantial success at home into the EU's transnational setting. Google and Facebook hired former European Commission officials, Antoine Aubert and Erika Mann respectively, as their key representatives in Europe while John Vasalla, former VP of European Affairs, leads up Microsoft's efforts to influence the new regulation (Johnson, 2013). A number of European firms looked at the GDPR as a favorable shift given the high costs of complying with variegated rules, but this exercise of American instrumental power incentivized European business to join the watering down process (McNamee, 2016).

Consumer advocates saw this onslaught as swift and, possibly, lethal for the GDPR's consumer protections. Speaking in early 2013, MEP and pro-privacy advocate Jan Albrecht noted that, "Throughout the last year there has been a massive campaign from the side of AmCham [American Chamber of Commerce], which organized events throughout Europe and met with many MEPs in Brussels and Strasbourg" (Dembosky & Fontanella-Khan, 2013). Albrecht along with civil society actors wrote a 215-page report outlining their critiques of the first draft and their hopes for where to take the GDPR. He warned, "...since January when my report was published, lobbyists, especially from Silicon Valley, have stepped up their campaign to water down the EU privacy regulation" (Dembosky & Fontanella-Khan, 2013). The fears and frustrations of European privacy regulators were encapsulated by Jacob Kohnstamm, Head of the Article 29 Working Group: "You're not going to change your fourth amendment because of

a business model in Europe are you?” (Dembosky & Fontanella-Khan, 2013). Up through early 2013, it appeared that foreign industry had deployed its lobbying tools to alter the policy proposal, with tech companies ready to “breathe a sigh of relief” (Whittaker, 2013).

Lobbying in Periods of Low vs High Salience

Mid-way through the legislative process, in June 2013, the General Data Protection Regulation received a salience shock due to the revelations made public by Edward Snowden. A former Central Intelligence Agency analyst and contractor at the National Security Agency (NSA), through an army of American and foreign journalists, released documents detailing the US’s global surveillance regime. Not only was the US spying on its greatest geopolitical adversaries, regularly attempting hacks of key Chinese firms, universities, and government agencies, but the NSA was also monitoring the communications of allies including tapping European Union buildings and Angela Merkel’s phone calls. Some shrugged at these revelations as standard spying practices but few denied the importance and, potential illegality, of the civilian surveillance program that was at the heart of the whistleblowing, PRISM.

Formally referring to SIGAD US984XN, the PRISM program allowed the NSA a backdoor into the data collected by major American tech companies like Google, and Facebook, giving the government agency access to the data and communications of millions of American citizens. The NSA was collecting, and

storing “billions of communications records per day”, from e-mails to phone calls and even locational metadata (ProPublica, 2013)

But American authorities were not the only ones exposed. The UK’s Government Communications Headquarters (CGHQ) were working in tandem with the NSA, regularly utilizing PRISM to collect information on UK citizens. The leak revealed that the British agency was even tapping into fiber optic cables that form the backbone of the internet (BBC News, 2014). Over a dozen other foreign intelligence agencies appear to have aided, and gained from, the program that was the core of US counter-intelligence.

Based off a news analysis of the Factiva database, the graph above plots the number of articles containing the words “data” and “privacy” in major European news outlets during GDPR negotiations. We choose these two words as articles mentioning “data” would generally cover issues pertaining to the GDPR while “privacy” directly relates to consumer concerns.² Light grey bars represent months of low-salience while black bars illustrate high-salience months. Although the initial release of the Regulation garnered some attention, data privacy was a peripheral part of public debate.

[Figure 1 Here]

² Literature on salience has not come to a consensus on how to define the European public (Beyers, Dür, & Wonka, 2017). We assume that EU officials care most about the opinions of politically engaged citizens and national level elites, whose views will shape the effectiveness of their institutions. In line with recent work, we expect that press coverage then gives us a window into how the political stakes of the GDPR evolved over time.

Snowden's effects on public discourse were immediate and long-lasting, shifting the ground of the GDPR debate. The number of articles in the European press covering privacy tripled compared to the month before the whistleblowing, while the average number of articles in the 6 months post-Snowden, compared to the 6 months pre-shock, nearly doubled. His actions created a host of secondary tremors like "the right to be forgotten" cases, and the Max Schrems suit against the Safe Harbor agreement, ensuring the GDPR's salience throughout the remaining negotiations. The latter is notable as even when issues become salient, one of the most effective tactics for business is to stall, waiting for a return of "quiet politics."

Methodologically, the case of the GDPR also offers important evidence to evaluate our claims through the Lobbyplag database (LobbyPlag, 2013c). There exists a paucity of data on actual firm intentions and influence, forcing most studies to correlate the amount of money spent by a firm on lobbying with the perceived gains from the final legislation. This is regarded as one of the largest problems for systematic inference on the importance of lobbying. Understanding the effects of global firms on the GDPR, however, is far more tractable due to efforts by European non-profits OpenDataCity and europe-v-facebook. To make the policy process more transparent, the groups created LobbyPlag, a database that tracks the 3100 amendments that were proposed as alterations to the GDPR, identifying the lobbyist who wrote the amendment, the MEP who attached it, and its substantive effects on privacy.

To further reconstruct the negotiation dynamic, we surveyed every article on the GDPR available through the Factiva and GoogleNews databases. We

supplemented this by analyzing online posts by major consumer privacy advocates, position papers by key think tanks and business associations, and additional interviews provided by key players in the legislative process to various technology trade magazines.

Since legitimacy concerns are brought to the fore during moments of high salience, we generally expect that civil society will be provided greater room for participation than in periods of low salience. But, as noted earlier, salience is no silver bullet. Although European bureaucrats and politicians should become more receptive to the demands of privacy advocates they will still need to compete with the substantial power resources of multinational and domestic firms. We see the primary impact of salience as going beyond pluralistic participation and toward pluralistic outcomes without guaranteeing complete victory by consumer groups.

Moreover, when analyzing legislation, we need to take into account the inevitably unpredictable nature of the process. Our salience shock is a microcosm of this. At the same time, when dealing with EU Regulations, and the vast number of actors involved who may conform to our assumptions to varying degrees, there will inevitably be empirical results that cannot be predicted a priori. We thus focus the analysis on the ways in which shifts in salience altered the negotiating dynamic. Ultimately, we use the case to help build our theory of salience and foreignness rather than provide a definitive test of it.

We start by analyzing two of the most contentious aspects of the legislation – (1) fines for violations, and (2) the rules on notifying consumers of data breaches. We chose these topics based off a list of the ten most important issues

identified by consumer advocates (Albrecht, 2015), narrowing to two issues with high economic stakes and divergent preferences between civil society and business interests. Companies, be it MNCs or small firms, have strong incentives to water down penalties, making this a *crucial* case for our argument. Second, we focus on the effects of notifications for breaches since it is an issue where both civil society and business groups went against the initial GDPR draft's recommendations. Next we process-trace the changes in behavior of key players in the negotiation process.

Our evidence demonstrates a noticeable shift in the negotiating dynamic after the Snowden revelations as well as the important role foreignness played in the civil society strategies. In the words of Joe McNamee, Executive Director of the European Digital Rights association, "The bare essentials appear to have been salvaged from the lobby storm"(McNamee, 2015).

Enforcement Penalties

Under the original Data Privacy Directive, national legislation determined the extent of possible financial sanctions. Given the variation in enforcement penalties across member states, real regulatory arbitrage opportunities existed. The GDPR set out to not only harmonize rules, but also to harmonize punishment. Article 79 of the first draft, issued in 2012, stated that fines could be levied as high as 1 million Euros or 2% of an enterprise's global revenue, whichever was higher. For Facebook and Amazon, the latter could amount to

billions of dollars, pushing global corporations to spend millions on their burgeoning European lobbying arms.

As per Lobbyplag, Microsoft attempted to set the fine at the 2 million level while dropping any global revenue related punishments. The American Chamber of Commerce was even more audacious, asking solely for a cap at 500,000 Euros. Such fines would apply to both foreign and European MNCs and the latter were quick to join the lobby effort (LobbyPlag, 2013b). EuroISPA, Europe's largest trade association for internet services providers, made almost the exact same request as the Chamber of Commerce while the European Banking Federation attempted to make punishment levels ambiguous (LobbyPlag, 2013b).

Such demands were quickly reflected in the amendments proposed by numerous Members of the European Parliament. MEPs Axel Voss and Alexander Alvaro from Germany attempted to eliminate the entire paragraph, while others like Ewald Stradler of Austria proposed raising the burden of proof to show malicious intent on the part of the violator (LobbyPlag, 2013b). These dynamics changed as the GDPR received more public attention. The Parliament soon adopted the language proposed by MEPs Cornelia Ernst and Mari-Christine Vergiat, raising the global revenue level to 5%. Eventually, the fines were raised as high as 25 million Euros for smaller companies in various versions of the draft. As salience increased following the Snowden shock, drafts continually had higher penalty values.

The end result was a compromise, but one that goes against conventional expectations. Violations have been split into two categories. The higher bracket, which includes violations of basic data processing, incorrect handling of sensitive

data, and, notably, third party transfers, can be as high as 20 million Euros or 4% of global annual revenue, whichever is higher. More common day-to-day infractions have been capped at 10 million or 2% of global annual revenue. While the latter provides an important safety-net for business when it comes to their more frequent lapses, the end result has clearly been a large victory for civil society advocates. This conclusion becomes stronger when we consider the demands of Microsoft and the American Chamber of Commerce pre-Snowden, and the inclusion of third party transfers, which disproportionately affect global firms, in the higher penalty group.

Data Breach Notification

The original Data Privacy Directive did not include clear rules regarding data breach notification, when personal data held by a firm is lost or stolen. Since the mid-1990s, individual member states have adopted various data breach rules, creating legal frictions across the internal market as firms and customers are not always located in the same jurisdiction. One goal of the GDPR was to require such data breach notification for all member states and to harmonize the rules surrounding it. Firms, however, saw the harmonization effort as an opportunity to lower any cumbersome national stipulations. Given the massive volatility in stock prices created by even the smallest whisper of leaks or breaches, lobbying was substantial.

Article 31 of the initial draft proposed by the European Parliament mandated that any breach related to personal data needed to be reported to the relevant supervisory authority within 24 hours. As per Lobbyplag, businesses

across sectors and continents provided a united front. Microsoft, the American Chamber of Commerce, Eurofinas (the mortgage housing association group), and the European Banking Federation all attempted to completely remove any specifics around the reporting timeframe (LobbyPlag, 2013a). The groups frequently argued that both the supervisory authority and consumers would be inundated with irrelevant information leading to a “breach fatigue” in no one’s interest. These positions were pushed by 4 different MEPs. At the same time, each of the business representatives attempted to insert clauses which specified that notifications should only be mandatory when dealing with high risk breaches – a notion never specified by any of the groups.

Even civil society groups took issue with the 24-hour limit. They were willing to provide some leeway to business but were determined to have a firm deadline. Eventually a 72-hour limit was chosen – a position propounded by European Digital Rights (EDRi) and brought up by 5 different MEPs, which, judging by Lobbyplag output, was a direct response to early efforts by business groups to leave the paragraph ambiguous (LobbyPlag, 2013a).

The end result pushed the law towards the position of consumer advocates. The final draft reflects almost the exact word choice of EDRi. Moreover, the legislation rejected changes proposed by Microsoft and the American Chamber of Commerce, which would have shifted the language towards harm, as opposed to infringing on liberties. Such a change would have severely restricted the use of data breach notifications.

Industry Pressure Blunted

Other than the cases for sanctions and notification, civil society was able to garner a number of important victories across the issues identified as crucial by consumer rights advocates. A list of five additional core pieces of the legislation and their outcomes is listed below.

[Table 1 Here]

The results generally moved from pro-business to pro-consumer protection but important exceptions exist. Some regulatory measures have loopholes for national governments to legislate around. For example, a clause was put in allowing national governments to lower the age for parent approval from 16 to 13. This change will help some national business groups but create a fragmented set of rules for MNCs. The unpredictability of the legislative process, and its many veto points, inevitably creates such variance. Overall, while global technology firms shaped early drafts, in the words of Covington & Burling lawyer Monika Kuschewsky “what remains is the stick, but not the carrot” (Robinson, 2016).

Saliency, Legitimacy costs, and the MNC-Coalition Paradox

Although a number of the key drafters of the legislation felt defeated by the Silicon Valley cabal come early 2013, the high saliency environment was seen as creating a new political opportunity structure. As Claude Moraes, a British

MEP, succinctly put it, “Snowden revelations gave us a chance to react”(Grande, 2014). In the following section, we trace the particular responses of national officials, EU bureaucrats, and European civil society in the wake of the change in salience.

Elected Officials

Salience forced politicians accountable to voters into expressing views that were defined as in the public interest. Germany, and Angela Merkel, had tried to avoid making any clear statements on the Regulation. This tone changed after Snowden, boasting that Germany would be taking “a very strict position” on the GDPR, and even attacking against American companies and the country that is generally seen as the EU’s privacy renegade: “if Facebook is registered in Ireland, then it falls under Irish jurisdiction, consequently we need a common European agreement” (Eddy & Kanter, 2013).

A former Senior Department of Commerce official recalled that during a significant meeting he was “surprised at the mildness of the Snowden revelations” to a European official – the person had “a sort of everybody does it” reaction (former senior Department of Commerce official, 2016). But one’s private position does not always lead to similar public action, particularly under the spotlight. Snowden’s revelations generated media stories highlighting MEPs literally copy-and-pasting tech company amendments while statements like Merkel’s put a number of pro-industry advocates under considerable scrutiny. None more so than Sean Kelly of Ireland who ranked in the top 15 pro-industry MEPs according to Lobbyplag, proposing some 91 amendments to the first GDPR

draft. In line with our expectations, he was quick to alter his record in public to maintain some semblance of legitimacy. In remarks at The National Data Protection Conference, he offered a narrative that made the lobbying pre-Snowden seem like it was an equal opportunity affair:

I for one was always transparent in my meetings with lobbyists. I met, amongst others, Google, Facebook and IBM on the one hand, and the European Digital Rights Initiative, the American Civil Liberties Union and many senior US and EU government officials as well as virtually all EU data protection authorities on the other. I counted more than 200 meetings alone, in additions to the 100s of hours spent drafting and negotiating the text with my MEP colleagues (SK Office, 2014).

His statements belie the results of Lobbyplag, which demonstrate his close association with the preferences of industry, but fit squarely with how we should expect MEPs to react in times of high salience.

Effects on the Bureaucrats running Wild

We expect that bureaucrats also have strong incentives to guard their legitimacy under conditions of high salience. Viviane Reding was central in formulating the first draft of the GDPR and was the first to actually introduce the legislation into debate. While many civil-society leaders saw her as on their side, many had criticized the initial draft as weak and still living in a world where companies needed to be assuaged at the expense of their consumers. The Snowden shock, however, pushed Reding firmly into the civil-society camp, leading her to take a number of positions that capitalized on the new political environment. Nowhere was this more evident than in the treatment of global firms. As Cameron Kerry, who was General Council at the US Department of Commerce at the time, wistfully noted:

EU Commission Vice-President and Justice Commissioner Viviane Reding had been pragmatic about maintaining trade and innovation and blunting private sector anxiety about proposals in the Commission regulation and, in October 2012, was forceful in declaring that ‘Safe Harbor will stay’. But last July, she declared that ‘maybe Safe Harbor is not so safe anymore’ (Kerry, 2014, p. 6).

This sharp turn reflected a new center of gravity in European opinion. The Commission and Reding, in particular, were ready to lay down the gauntlet:

...our American friends who are keen on doing business in Europe would see their fortunes increase vastly if, instead of investing millions into lobbying against European laws, they invested this money into a new business model that abides by European laws (Reding, 2014).

The MNC-Coalition Paradox

In late 2013, little substantive progress was made in actually passing the new legislation. The Snowden effect appeared to be receding, with the Commission set to soon revert to its pro-MNC bias. But throughout the remaining year of negotiations civil society leaders instead exploited legitimacy concerns focusing on MNC involvement to bolster the consumer-oriented provisions of the legislation. Peter Hustinx, the European Data Protection Supervisor, explicitly called on MEPs “to guard against undue pressure from industry and third countries to lower the level of data protection that currently exists,” singling out “a coalition mixing Transatlantic business interests” (Williams, 2014).

Moreover, MEPs, who took center stage in GDPR negotiations such as Jan Albrecht, leveraged similar attacks. Despite the fact that almost every component of the Regulation was set to target European businesses directly, global firms became mainstays in Albrecht’s press releases and speeches. Facebook and

Google were the only companies explicitly listed in his influential list of the ten most important issues of the GDPR, which was released in both 2013 and 2015 (Albrecht, 2013, p. 1, 2015, p. 2). While Albrecht attempted to move the legislation up during the late 2013 high salience moments, this shift was, as noted, halted by a surge of corporate lobbying. This involved not only the likes of Google and Facebook but also a concerted effort by European business associations shepherded by American organizations like the Department of Commerce (McNamee, 2016). When asked about the causes of the delay by a German reporter, Albrecht pinned the major pressure and delay on “the internet giants of Silicon Valley” (Deutsche Welle, 2014), echoing the specter of MNC advantage in other public settings (Deutsche Telekom, 2014, p. 22).

While the GDPR has extraterritorial provisions that affect global companies, European firms were nonetheless the primary players affected by the regulation. Other than the US tech elite targeted by Albrecht and company, players as varied as the European Banking Federation and EuroIPSA were some of the most vocal players in trying to water down the Regulation — civil society was now able to choose which set of business groups to attack in order to curb business interests wholesale.

This sparked frustration among lobbyists from European trade associations. Sébastien Houzé, secretary general at the Federation of European Direct and Interactive Marketing (FEDMA), has repeatedly stated that the debate following Snowden left no room for domestic oriented firms to explain their positions. “When we have the conversation around data protection, we have seen it was driven by the extreme,” he said. ‘On the one hand, you have privacy

activists with the nice Snowden stories about NSA spying and hacking and all those frightening stories. On the other hand, you had the right to be forgotten. Just in between, there was nothing” (Carson, 2015). Moreover, he felt that, no matter what they tried, consumers were grouping European firms into same bucket as the demonized multinationals (Carson, 2015).

Similar sentiments were expressed by Federico Do Nascimento Costa, who helped set up the European Data Coalition, representing the interests of 19 large European firms. He went on record stating that the waves of pro-privacy victories following Snowden, particularly the ECJ’s decision, were posing huge problems for industry in general. European politicians had taken on a “blind goal, without consequence” in their attempts to make the GDPR represent the public interest. He blamed this, and the broader struggles of national and European business in shaping the revamped legislation, as a function of the contamination of the coalition. “There’s a prejudice against industry, which is that we are all in favor of lowering the standard; that we are simply playing to the tune of American companies. But that’s not the case” (Carson, 2015).

While business groups dominated early discussions, a former Senior Department of Commerce official summarized, “...along comes Mr. Snowden and everything goes into a tailspin.” He noted that “..the Parliament was having a very difficult time coming to an agreement on the legislation and then the logjam broke.” The new consensus was that the Europeans would do whatever they could “to stick it to United States and the American companies.” (former senior Department of Commerce official, 2016)

Conclusions

Over the past two decades, the EU has taken on a prominent role in global regulatory politics (Bach & Newman 2007; Bradford, 2012). This makes the design of EU policy critical to not just domestic firms, but also for their foreign counterparts. Work on the effectiveness of interest group strategies in Brussels has made substantial strides in theorizing and illustrating the power resources that allow businesses to regularly sway regulation in their favor, but has paid limited attention to the new foreign stakeholders in this process. Those that have analyzed foreign firm influence tend to focus on who chooses to lobby rather than how they impact the bargaining positions of conventional interest groups, or legislative outcomes more generally.

We correct this deficit by investigating the effects of foreign firm lobbying during the negotiation of the General Data Protection Regulation. From India to the United States, the GDPR will generate tremendous adjustment costs that reshape both business strategy as well as the balance between consumer rights to privacy and corporate profits. The stakes were high and, given the various power resources at Silicon Valley's disposal, the Regulation looked as though it would conform to corporate America's whims, in particular. Yet, the final outcome was a substantial compromise with civil society advocates championing many of the final provisions.

While we acknowledge the complexity and unpredictability of policy making, we stress the important role that policy salience played in the negotiation's dynamics. In times of low salience, MNCs, much like domestic firms, pushed EU regulation to fit their economic interests. But high salience has

the potential to rearrange the deck, creating the space for civil society groups to exert new political influence over transnational policy-making. The presence of foreign firms in the lobbying process, at least in the case of the GDPR, created a new framing tool for civil society to delegitimize MNC preferences, contaminating business group lobbying more broadly. Exercising MNC power can inadvertently tame both domestic and foreign firms. We label this the MNC-Coalition paradox and expect it to be especially important in policy-making settings like the EU, where transnational bodies must protect their own legitimacy in order to maintain their political authority. Instrumental power can then be weaponized by civil society.

The empirical analysis also highlights several scope conditions and help elucidate why the current literature on salience and lobbying in the EU have come to such divergent conclusions. Privacy is an area where both civil society groups and EU bureaucrats had developed substantial capacity (Newman 2008). Once Edward Snowden put the GDPR under the spotlight's harsh glare, these groups were ready to take advantage of the new opportunity structure. Such institutionalized mobilization is relatively rare, particularly when compared to issues like financial regulation where salience appears to have recently had limited effects (Kastner 2017).

Furthermore, these groups were able to use information uncovered by the leaks to keep attention on the Regulation long after the initial shock. For example, the 'Safe Harbor' lawsuit filed by Max Schrems generated as much, if not more, press coverage than the initial reports on US spying. The ruling by the European Court of Justice in 2015 occurred nearly two years after the Snowden

event. EU negotiations regularly span multiple years, and the GDPR example illustrates that salience needs to be maintained for a considerable period of time.

At the same time, our qualitative evidence demonstrates the importance of geopolitics in creating an environment conducive to national level politicians raising the stakes against foreign firms. While this limits the generalizability of our claims, such a shock has important implications in the EU context given the increasing ownership and investment by firms from other potential adversarial jurisdictions like China or Russia. More generally, it suggests an important next step for work examining how civil society and business interact in global policy making.

Finally, the article underscores the transnational nature of European politics. While considerable work has highlighted the multilevel, transnational politics within Europe, our evidence suggests that the European project is also global (Newman & Posner 2015; Farrell & Neman 2016; Newman 2018). Firms from the US, Brazil, China and other economies large and small are affected by EU rules. These players are not simply policy takers but have the means and motive to engage in non-market strategies abroad. Our evidence suggests that such transnational business power is not monolithic and calls for more attention to the conditions under which the European Union is more or less responsive to it. The findings to such a research agenda will not only shed light on contours of specific legislation but to the accountability and legitimacy of the European Union in an age of globalization.

References

- Albrecht, J. P. (2013, October 17). General Data Protection Regulation in 10 Points. Retrieved from http://www.janalbrecht.eu/fileadmin/material/Dokumente/131016_Data_protection_press_briefing_final_Engl..pdf
- Albrecht, J. P. (2015, January 7). EU General Data Protection Regulation State of play and 10 main issues. Retrieved from https://www.janalbrecht.eu/fileadmin/material/Dokumente/Data_protection_state_of_play_10_points_010715.pdf
- Bach, D. and Newman, A. (2007) The European Regulatory State and Global Public Policy: Micro-institutions, macro-influence. *Journal of European Public Policy* 14(6): 827-46.
- BBC News. (2014, January 17). How the US spy scandal unravelled. Retrieved from <http://www.bbc.com/news/world-us-canada-23123964>
- Bernhagen, P., & Mitchell, N. J. (2009). The determinants of direct corporate lobbying in the European Union. *European Union Politics*, 10(2), 155–176.
- Beyers, J., Dür, A., & Wonka, A. (2017). The political salience of EU policies. *Journal of European Public Policy*, 1–12.
- Bouwen, P. (2002). Corporate lobbying in the European Union: the logic of access. *Journal of European Public Policy*, 9(3), 365–390. <https://doi.org/10.1080/13501760210138796>
- Bradford, A. (2012). The brussels effect. *Northerwestern University Law Review*, 107, 1–68.

- Carson, A. (2015, October 15). As GDPR Looms, Industry Worries. Retrieved April 8, 2016, from <https://iapp.org/news/a/as-gdpr-looms-industry-worries>
- Coen, D. (2007). Empirical and theoretical studies in EU lobbying. *Journal of European Public Policy*, 14(3), 333–345.
- Cowles, M. G. (2001). The transatlantic business dialogue and domestic business-government relations. *Transforming Europe: Europeanization and Domestic Change*, 159–179.
- Culpepper, P. D. (2010). *Quiet Politics and Business Power: Corporate Control in Europe and Japan*. Cambridge University Press.
- De Bruycker, I. (2016). Pressure and expertise: explaining the information supply of interest groups in EU legislative lobbying. *JCMS: Journal of Common Market Studies*, 54(3), 599–616.
- Dembosky, A., & Fontanella-Khan, J. (2013, February 4). US tech groups criticised for EU lobbying. *Financial Times*. Retrieved from <http://www.ft.com/intl/cms/s/0/e29a717e-6dfo-11e2-983d-00144feab49a.html#axzz452uI9TxU>
- Deutsche Telekom. (2014). *Data Privacy and Data Security Report 2014* (pp. 22–23).
- Deutsche Welle. (2014, May 13). Power struggles delay EU data protection reform | European Elections 2014 | DW.COM | 13.05.2014. Retrieved April 7, 2016, from <http://www.dw.com/en/power-struggles-delay-eu-data-protection-reform/a-17631222>

- Dür, A. (2008). Interest groups in the European Union: how powerful are they? *West European Politics*, 31(6), 1212–1230.
- Dür, A., Bernhagen, P., & Marshall, D. (2015). Interest Group Success in the European Union When (and Why) Does Business Lose? *Comparative Political Studies*, 48(8), 951–983.
<https://doi.org/10.1177/0010414014565890>
- Eddy, M., & Kanter, J. (2013, July 15). Merkel Urges Europe to Tighten Internet Safeguards - The New York Times. Retrieved April 7, 2016, from http://www.nytimes.com/2013/07/16/world/europe/merkel-urges-europe-to-tighten-internet-safeguards.html?_r=0
- Farrell, H. and Newman, A. (2016) The New Interdependence Approach: Theoretical development and empirical demonstration. *Review of International Political Economy* 23(5): 713-36.
- former senior Department of Commerce official. (2016, January 22). Interview [Phone].
- Grande, A. (2014, March 12). EU Parliament Backs Privacy Reform, Bashes NSA Spying - Law360. Retrieved April 7, 2016, from <http://www.law360.com/articles/517796/eu-parliament-backs-privacy-reform-bashes-nsa-spying>
- Greenwood, J. (2007). Organized civil society and democratic legitimacy in the European Union. *British Journal of Political Science*, 37(02), 333–357.
- Hansen, W. L., & Mitchell, N. J. (2000). Disaggregating and explaining corporate political activity: Domestic and foreign corporations in national politics. *American Political Science Review*, 94(4), 891–903.

- Hansen, W. L., & Mitchell, N. J. (2001). Globalization or national capitalism: Large firms, national strategies, and political activities. *Business and Politics*, 3(1), 5–19.
- Imig, D. R. (2001). *Contentious Europeans: Protest and politics in an emerging polity*. Rowman & Littlefield. Retrieved from https://books.google.com/books?hl=en&lr=&id=g4ZpsMoZPIYC&oi=fnd&pg=PR7&dq=imig+tarrow+contentious&ots=eAqFjm1ZTR&sig=XQpJ8GDcCjLhLd_zx3ii1-uj-k4
- Jabko, N. (2006). *Playing the market: a political strategy for uniting Europe, 1985–2005*. Cornell University Press. Retrieved from https://books.google.com/books?hl=en&lr=&id=9sKqQt1KiAC&oi=fnd&pg=PR9&dq=jabko+2006&ots=-R_JfP7kM4&sig=aSGZJSgkwSBwS9v7Xz_VUoEnCWY
- Johnson, B. (2013, January 28). Gigaom | A brief guide to tech lobbyists in Europe. Retrieved April 7, 2016, from <https://gigaom.com/2013/01/28/a-brief-guide-to-tech-lobbyists-in-europe/>
- Jones, B. D., & Baumgartner, F. R. (2005). *The politics of attention: How government prioritizes problems*. University of Chicago Press. Retrieved from https://books.google.com/books?hl=en&lr=&id=HPYdDVu_ghMC&oi=fnd&pg=PR7&dq=baumgartner+jones&ots=nPkSjejdoy&sig=nDoO3xXxIPUI6ulutCJdANvLgko

- Kastner, L. (2017). Business lobbying under salience—financial industry mobilization against the European financial transaction tax. *Journal of European Public Policy*, 1–19.
- Keller, E. (2016). Noisy business politics: lobbying strategies and business influence after the financial crisis. *Journal of European Public Policy*, 1–20.
- Kerry, C. (2014). Missed Connections: Talking With Europe About Data, Privacy, And Surveillance. *Washington: Center for Technology Innovation at Brookings*. Retrieved from http://www.brookings.edu/~media/research/files/papers/2014/05/20%20europe%20privacy%20surveillance%20kerry/kerry_europefreetradeprivacy.pdf
- Klüver, H., Braun, C., & Beyers, J. (2015). Legislative lobbying in context: towards a conceptual framework of interest group lobbying in the European Union. *Journal of European Public Policy*, 22(4), 447–461.
- Klüver, H., Mahoney, C., & Opper, M. (2015). Framing in context: how interest groups employ framing to lobby the European Commission. *Journal of European Public Policy*, 22(4), 481–498.
- LobbyPlag. (2013a). LobbyPlag: Browse Laws. Chapter IV, Section 2, Article 31, Paragraph 1. Retrieved April 7, 2016, from <http://browse.lobbyplag.eu/>
- LobbyPlag. (2013b). LobbyPlag: Browse Laws. Chapter VIII, Article 79, Paragraph 4. Retrieved April 7, 2016, from <http://browse.lobbyplag.eu/>
- LobbyPlag. (2013c). LobbyPlag: Governments Rating. Retrieved June 9, 2016, from <http://lobbyplag.eu/governments>

- Loveless, M., & Rohrschneider, R. (2008). Public perceptions of the EU as a system of governance. Retrieved from <http://edoc.vifapol.de/opus/volltexte/2011/2481/>
- McNamee, J. (2015, December 16). Data Protection Package - The bare essentials appear to have been salvaged from the lobby storm. Retrieved April 7, 2016, from <https://edri.org/data-protection-package-the-bare-essentials-appear-to-have-been-salvaged-from-the-lobby-storm/>
- McNamee, J. (2016, October 26). Interview [E-mail].
- Mitchell, N. J. (1997). *The conspicuous corporation: Business, public policy, and representative democracy*. University of Michigan Press.
- Moravcsik, A. (2002). Reassessing legitimacy in the European Union. *JCMS: Journal of Common Market Studies*, 40(4), 603–624.
- Newman, A. (2008). *Protectors of Privacy: Regulating Personal Data in the Global Economy*. Ithaca: Cornell University Press.
- Newman, A. (2018). Global European Union Studies: Sometimes normal is a little weird. *Journal of European Public Policy* 25(7): 959-68.
- Newman, A. and Posner, E. (2015). Putting the EU in its Place: Policy strategies and the global regulatory context. *Journal of European Public Policy* 22(9); 1316-35.
- Pagliari, S. (2013). Public Salience and International Financial Regulation. Explaining the International Regulation of OTC Derivatives, Rating Agencies, and Hedge Funds. Retrieved from <https://uwspace.uwaterloo.ca/handle/10012/7344>

- Pollack, M. A. (1997). Representing diffuse interests in EC policy-making. *Journal of European Public Policy*, 4(4), 572–590.
- ProPublica. (2013, August 5). FAQ: What You Need to Know About the NSA’s Surveillance... [text/html]. Retrieved March 10, 2018, from <https://www.propublica.org/article/nsa-data-collection-faq>
- Rasmussen, A., & Alexandrova, P. (2012). Foreign Interests Lobbying Brussels: Participation of non-EU Members in Commission Consultations. *JCMS: Journal of Common Market Studies*, 50(4), 614–631.
- Reding, V. (2014, May 20). Overcoming the Gulf in U.S. and European Business “Civilizations.” Retrieved April 7, 2016, from <http://www.theglobalist.com/overcoming-the-gulf-in-u-s-and-european-business-civilizations/>
- Rehbein, K. A. (1995). Foreign-owned Firms’ Campaign Contributions in the United States: An Exploratory Study. *Policy Studies Journal*, 23(1), 41–61.
- Robinson, D. (2016, January 20). EU removes carrot but keeps stick in data laws. *Financial Times*. Retrieved from <http://www.ft.com/intl/cms/s/2/9d774734-a4b1-11e5-a91e-162b86790c58.html#axzz452uI9TxU>
- Schmidt, V. A. (2013). Democracy and legitimacy in the European Union revisited: input, output and “throughput.” *Political Studies*, 61(1), 2–22.
- SK Office. (2014, January 28). GDPR Speech for the National Data Protection Conference - Seán Kelly. Retrieved April 7, 2016, from <http://www.seankelly.eu/news-and-events/199-gpdr-speech-for-the-national-data-protection-conference>

- Smith, M. A. (2000). *American business and political power: public opinion, elections, and democracy*. University of Chicago Press.
- Soroka, S. N., & Wlezien, C. (2005). Opinion–Policy Dynamics: Public Preferences and Public Expenditure in the United Kingdom. *British Journal of Political Science*, 35(04), 665–689.
<https://doi.org/10.1017/S0007123405000347>
- The European Parliament and The Council of the European Union. (2016). *REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016* (Official Journal of the European Union). European Union. Retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&qid=1465409996045&from=en>
- Whittaker, Z. (2013, March 7). EU under pressure for new data, privacy law changes; U.S. tech firms breathe sigh of relief | ZDNet. Retrieved April 7, 2016, from <http://www.zdnet.com/article/eu-under-pressure-for-new-data-privacy-law-changes-u-s-tech-firms-breathe-sigh-of-relief/>
- Williams, C. (2014, December 6). Europe declares war on Silicon Valley - Telegraph. Retrieved April 7, 2016, from <http://www.telegraph.co.uk/finance/newsbysector/mediatechnologyandtelecoms/digital-media/11276603/Europe-declares-war-on-Silicon-Valley.html>
- Wlezien, C. (2005). On the salience of political issues: The problem with “most important problem.” *Electoral Studies*, 24(4), 555–579.
<https://doi.org/10.1016/j.electstud.2005.01.009>

Woll, C. (2013). Lobbying under pressure: the effect of salience on European Union hedge fund regulation. *JCMS: Journal of Common Market Studies*, *51*(3), 555–572.

- Albrecht, J. P. (2013, October 17). General Data Protection Regulation in 10 Points. Retrieved from http://www.janalbrecht.eu/fileadmin/material/Dokumente/131016_Data_protection_press_briefing_final_Engl..pdf
- Albrecht, J. P. (2015, January 7). EU General Data Protection Regulation State of play and 10 main issues. Retrieved from https://www.janalbrecht.eu/fileadmin/material/Dokumente/Data_protection_state_of_play_10_points_010715.pdf
- Baumgartner, F. R. (2007). EU Lobbying: A view from the US. *Journal of European Public Policy*, 14(3), 482–488.
- Bernhagen, P., Dür, A., & Marshall, D. (2015). Information or context: what accounts for positional proximity between the European Commission and lobbyists? *Journal of European Public Policy*, 22(4), 570–587.
- Bouwen, P. (2002). Corporate lobbying in the European Union: the logic of access. *Journal of European Public Policy*, 9(3), 365–390.
<https://doi.org/10.1080/13501760210138796>
- Bradford, A. (2012). The brussels effect. *Nw. UL Rev.*, 107, 1.
- Bunea, A., & Baumgartner, F. R. (2014). The state of the discipline: authorship, research designs, and citation patterns in studies of EU interest groups and lobbying. *Journal of European Public Policy*, 21(10), 1412–1434.
- Carson, A. (2015, October 15). As GDPR Looms, Industry Worries. Retrieved April 8, 2016, from <https://iapp.org/news/a/as-gdpr-looms-industry-worries>

- Chalmers, A. W. (2013). Trading information for access: Informational lobbying strategies and interest group access to the European Union. *Journal of European Public Policy*, 20(1), 39–58.
- Coen, D. (2007). Empirical and theoretical studies in EU lobbying. *Journal of European Public Policy*, 14(3), 333–345.
- Cowles, M. G. (2001). The transatlantic business dialogue and domestic business-government relations. *Transforming Europe: Europeanization and Domestic Change*, 159–179.
- Culpepper, P. D. (2010). *Quiet Politics and Business Power: Corporate Control in Europe and Japan*. Cambridge University Press.
- De Bruycker, I. (2016). Pressure and expertise: explaining the information supply of interest groups in EU legislative lobbying. *JCMS: Journal of Common Market Studies*, 54(3), 599–616.
- De Bruycker, I. (2017). Framing and advocacy: a research agenda for interest group studies. *Journal of European Public Policy*, 24(5), 775–787.
- Dembosky, A., & Fontanella-Khan, J. (2013, February 4). US tech groups criticised for EU lobbying. *Financial Times*. Retrieved from <http://www.ft.com/intl/cms/s/0/e29a717e-6dfo-11e2-983d-00144feab49a.html#axzz452uI9TxU>
- De Ruyt, J., & Vos, S. (2015, January 5). The EU data protection regulation after 3 years of negotiation. Retrieved April 7, 2016, from <https://www.insideprivacy.com/international/european-union/the-eu-data-protection-regulation-after-3-years-of-negotiation/>

- Deutsche Telekom. (2014). *Data Privacy and Data Security Report 2014* (pp. 22–23).
- Deutsche Welle. (2014, May 13). Power struggles delay EU data protection reform | European Elections 2014 | DW.COM | 13.05.2014. Retrieved April 7, 2016, from <http://www.dw.com/en/power-struggles-delay-eu-data-protection-reform/a-17631222>
- Drezner, D. W. (2008). *All Politics Is Global: Explaining International Regulatory Regimes*. Princeton, N.J.; Woodstock: Princeton University Press.
- Dür, A. (2008). Interest groups in the European Union: how powerful are they? *West European Politics*, 31(6), 1212–1230.
- Dür, A., Bernhagen, P., & Marshall, D. (2015). Interest Group Success in the European Union When (and Why) Does Business Lose? *Comparative Political Studies*, 48(8), 951–983.
<https://doi.org/10.1177/0010414014565890>
- Eddy, M., & Kanter, J. (2013, July 15). Merkel Urges Europe to Tighten Internet Safeguards - The New York Times. Retrieved April 7, 2016, from http://www.nytimes.com/2013/07/16/world/europe/merkel-urges-europe-to-tighten-internet-safeguards.html?_r=0
- Eising, R. (2004). Multilevel governance and business interests in the European Union. *Governance*, 17(2), 211–245.
- Fleischer, P. (2014, January 8). Privacy...?: Turning our Backs on 2013. Retrieved April 7, 2016, from <http://peterfleischer.blogspot.com/2014/01/turning-our-backs-on-2013.html>

- Gilpin, R. G. (1975). *US power and the multinational corporation*.
- Grande, A. (2014, March 12). EU Parliament Backs Privacy Reform, Bashes NSA Spying - Law360. Retrieved April 7, 2016, from <http://www.law360.com/articles/517796/eu-parliament-backs-privacy-reform-bashes-nsa-spying>
- Greenwood, J. (2007). Organized civil society and democratic legitimacy in the European Union. *British Journal of Political Science*, 37(02), 333–357.
- Imig, D. R. (2001). *Contentious Europeans: Protest and politics in an emerging polity*. Rowman & Littlefield. Retrieved from https://books.google.com/books?hl=en&lr=&id=g4ZpsMoZPIYC&oi=fnd&pg=PR7&dq=imig+tarrow+contentious&ots=eAqFjm1ZTR&sig=XQpJ8GDcCjLhLd_zx3ii1-uj-k4
- Jabko, N. (2006). *Playing the market: a political strategy for uniting Europe, 1985–2005*. Cornell University Press. Retrieved from https://books.google.com/books?hl=en&lr=&id=9sKqQt11KiAC&oi=fnd&pg=PR9&dq=jabko+2006&ots=-R_JfP7kM4&sig=aSGZJSgkwSBwS9v7Xz_VUoEnCWY
- Johnson, B. (2013, January 28). Gigaom | A brief guide to tech lobbyists in Europe. Retrieved April 7, 2016, from <https://gigaom.com/2013/01/28/a-brief-guide-to-tech-lobbyists-in-europe/>
- Jones, B. D., & Baumgartner, F. R. (2005). *The politics of attention: How government prioritizes problems*. University of Chicago Press. Retrieved from https://books.google.com/books?hl=en&lr=&id=HPYdDVu_ghMC&oi=fn

d&pg=PR7&dq=baumgartner+jones&ots=nPkSjejdoy&sig=nDoO3xXxIPU
I6ulutCJdANvLgko

- Kastner, L. (2017). Business lobbying under salience–financial industry mobilization against the European financial transaction tax. *Journal of European Public Policy*, 1–19.
- Keller, E. (2016). Noisy business politics: lobbying strategies and business influence after the financial crisis. *Journal of European Public Policy*, 1–20.
- Kerry, C. (2014). Missed Connections: Talking With Europe About Data, Privacy, And Surveillance. *Washington: Center for Technology Innovation at Brookings*. Retrieved from http://www.brookings.edu/~media/research/files/papers/2014/05/20%20europe%20privacy%20surveillance%20kerry/kerry_europefreetradeprivacy.pdf
- Klüver, H., Braun, C., & Beyers, J. (2015). Legislative lobbying in context: towards a conceptual framework of interest group lobbying in the European Union. *Journal of European Public Policy*, 22(4), 447–461.
- Klüver, H., Mahoney, C., & Opper, M. (2015). Framing in context: how interest groups employ framing to lobby the European Commission. *Journal of European Public Policy*, 22(4), 481–498.
- LobbyPlag. (2013a). LobbyPlag: Browse Laws. Chapter IV, Section 2, Article 31, Paragraph 1. Retrieved April 7, 2016, from <http://browse.lobbyplag.eu/>
- LobbyPlag. (2013b). LobbyPlag: Browse Laws. Chapter VIII, Article 79, Paragraph 4. Retrieved April 7, 2016, from <http://browse.lobbyplag.eu/>

- LobbyPlag. (2013c). LobbyPlag: Governments Rating. Retrieved June 9, 2016, from <http://lobbyplag.eu/governments>
- Loveless, M., & Rohrschneider, R. (2008). Public perceptions of the EU as a system of governance. Retrieved from <http://edoc.vifapol.de/opus/volltexte/2011/2481/>
- Luo, Y., & Mezias, J. M. (2002). Liabilities of foreignness: Concepts, constructs, and consequences. *Journal of International Management*, 8(3), 217–221.
- Mazey, S., & Richardson, J. J. (1993). *Lobbying in the European community*. Oxford University Press.
- McNamee, J. (2015, December 16). Data Protection Package - The bare essentials appear to have been salvaged from the lobby storm. Retrieved April 7, 2016, from <https://edri.org/data-protection-package-the-bare-essentials-appear-to-have-been-salvaged-from-the-lobby-storm/>
- Meyer, D. (2013, June 13). U.S. secretly watered down Europe's proposed privacy rules, report claims. Retrieved April 7, 2016, from <https://gigaom.com/2013/06/13/u-s-secretly-watered-down-europes-proposed-privacy-rules-report-claims/>
- Miard, K. (2014). Lobbying during the revision of the EU Emissions Trading System: does EU membership influence company lobbying strategies? *Journal of European Integration*, 36(1), 73–89.
- Moravcsik, A. (2002). Reassessing legitimacy in the European Union. *JCMS: Journal of Common Market Studies*, 40(4), 603–624.
- Newman, A. (2008). *Protectors of Privacy: Regulating Personal Data in the Global Economy*. Ithaca: Cornell University Press.

- Pagliari, S. (2013). Public Salience and International Financial Regulation. Explaining the International Regulation of OTC Derivatives, Rating Agencies, and Hedge Funds. Retrieved from <https://uwspace.uwaterloo.ca/handle/10012/7344>
- Persson, T. (2007). Democratizing European chemicals policy: do consultations favour civil society participation? *Journal of Civil Society*, 3(3), 223–238.
- Pollack, M. A. (1997). Representing diffuse interests in EC policy-making. *Journal of European Public Policy*, 4(4), 572–590.
- Princen, S. (2007). Agenda-setting in the European Union: a theoretical exploration and agenda for research. *Journal of European Public Policy*, 14(1), 21–38.
- Rasmussen, A., & Alexandrova, P. (2012). Foreign Interests Lobbying Brussels: Participation of non-EU Members in Commission Consultations. *JCMS: Journal of Common Market Studies*, 50(4), 614–631.
- Rasmussen, M. K. (2015). The battle for influence: the politics of business lobbying in the European Parliament. *JCMS: Journal of Common Market Studies*, 53(2), 365–382.
- Reding, V. (2014, May 20). Overcoming the Gulf in U.S. and European Business “Civilizations.” Retrieved April 7, 2016, from <http://www.theglobalist.com/overcoming-the-gulf-in-u-s-and-european-business-civilizations/>
- Robinson, D. (2016, January 20). EU removes carrot but keeps stick in data laws. *Financial Times*. Retrieved from

- <http://www.ft.com/intl/cms/s/2/9d774734-a4b1-11e5-a91e-162b86790c58.html#axzz452uI9TxU>
- Rucht, D. (2002). Chapitre 2. The EU as a Target of Political Mobilisation: Is there a Europeanisation of Conflict? In *L'action collective en Europe. Collective Action in Europe* (pp. 163–194). Presses de Sciences Po (PFNSP). Retrieved from <http://www.cairn.info/l-action-collective-en-europe-collective-action-in--978272460855-page-163.htm>
- Sandholtz, W., & Zysman, J. (1989). 1992: recasting the European bargain. *World Politics*, 42(01), 95–128.
- Schmidt, V. A. (2013). Democracy and legitimacy in the European Union revisited: input, output and “throughput.” *Political Studies*, 61(1), 2–22.
- SK Office. (2014, January 28). GPDR Speech for the National Data Protection Conference - Seán Kelly. Retrieved April 7, 2016, from <http://www.seankelly.eu/news-and-events/199-gpdr-speech-for-the-national-data-protection-conference>
- Soroka, S. N., & Wlezien, C. (2005). Opinion–Policy Dynamics: Public Preferences and Public Expenditure in the United Kingdom. *British Journal of Political Science*, 35(04), 665–689.
- The European Parliament and The Council of the European Union. (2016). *REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016* (Official Journal of the European Union). European Union. Retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&qid=1465409996045&from=en>

- Whittaker, Z. (2013, March 7). EU under pressure for new data, privacy law changes; U.S. tech firms breathe sigh of relief | ZDNet. Retrieved April 7, 2016, from <http://www.zdnet.com/article/eu-under-pressure-for-new-data-privacy-law-changes-u-s-tech-firms-breathe-sigh-of-relief/>
- Williams, C. (2014, December 6). Europe declares war on Silicon Valley - Telegraph. Retrieved April 7, 2016, from <http://www.telegraph.co.uk/finance/newsbysector/mediatechnologyandtelecoms/digital-media/11276603/Europe-declares-war-on-Silicon-Valley.html>
- Wlezien, C. (2005). On the salience of political issues: The problem with “most important problem.” *Electoral Studies*, 24(4), 555–579.
- Woll, C. (2013). Lobbying under pressure: the effect of salience on European Union hedge fund regulation. *JCMS: Journal of Common Market Studies*, 51(3), 555–572.
- Young, A. R. (2015). The European Union as a global regulator? Context and comparison. *Journal of European Public Policy*, 22(9), 1233–1252.

Interviews

Former senior Department of Commerce official. (2016, January 22). Interview [Phone].

McNamee, J. (2016, October 26). Interview [E-mail].

Figure 1

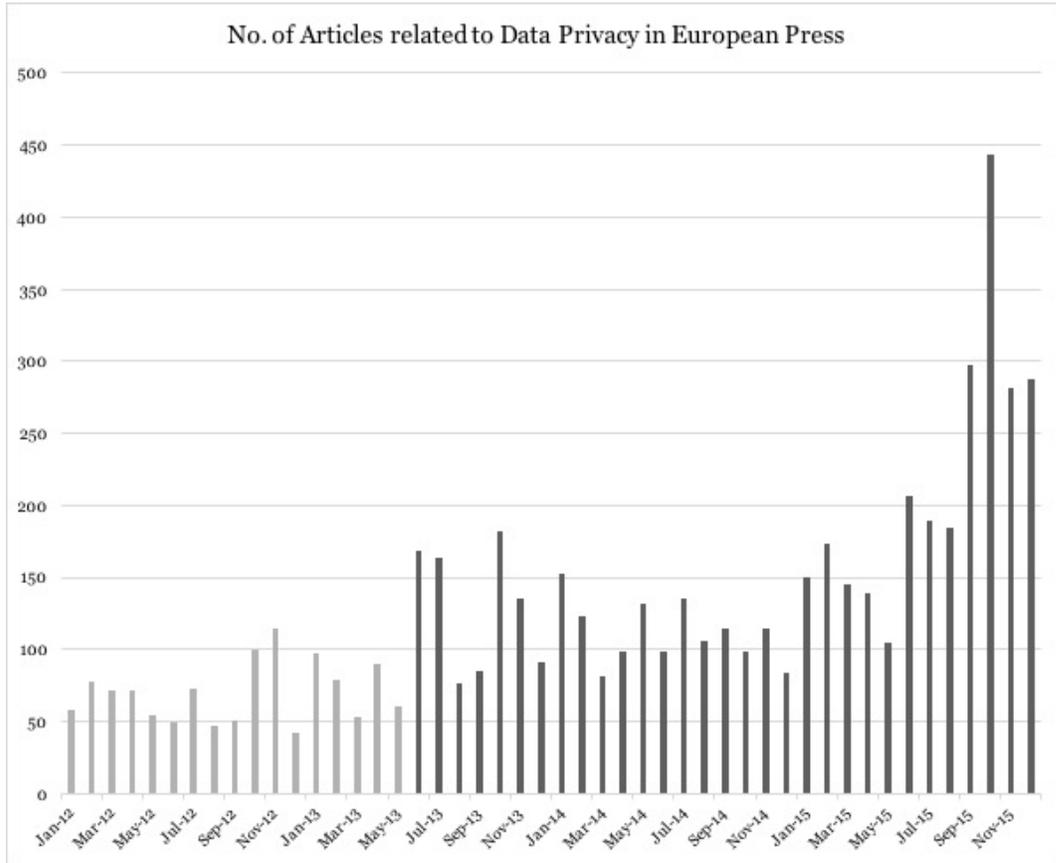


Table 1

Table 1: Evolution of Core Issues in GDPR

<i>Issue</i>	<i>Pre-Snowden GDPR Draft</i>	<i>General Business Position</i>	<i>General Civil Society Position</i>	<i>Final GDPR Policy</i>
Data Protection Office (Article 9, 35, 37)	Companies with more than 250 employees, or dealing with sensitive data, require an exclusive DPO.	Making DPOs optional. Reduction in contracting requirements with specific DPO.	Increase designations for “special data” requiring DPOs	Maintenance of 250 minimum and increase in “special data” definition. Reduction in rules governing contracts with DPO
Parental Consent (Article 8)	Consent needed for teens under 16	Removal or reduction of age restriction	Formalizing the 16 years restriction	16-year requirement but with options for States to reduce it to 13
Right to Erasure (Article 17)	Right to obtain or remove personal data from data holders	Removal of provision/of personal data	Formalizing the the right	Formalized the right based off ECJ case
Data Portability (Article 18)	Right to transfer data between services providers	Removal of provision/ make specific to platform type	Ensure portability, specifically make data interoperable	Ensures portability including across platforms
Consent (Article 7)	Must be freely and actively given	Removal of any a priori notification	Prerequisite to any collection	Prerequisite to any collection