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Corporate Lobbying in the European Union

The Access of major US IT Companies to the EU General Data Protection Regulation

Master Thesis

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Abstract

Until the 1990s, private business lobbying in the European Union had been a largely unresearched field. Consequently, the need for a more comparative theoretical framework in order to gain a better understanding of the way business interest groups reach out to the European decision-makers has been constantly stressed. Although since then considerable progress has been made, the main focus in the European literature has been on business and industry-related associations, rather than individual firms. As one of the most prominent approaches, Pieter Bouwen established a *Theory of Access* that explains the varying access of European business interests to the major EU institutions. On the basis of a supply and demand scheme, Bouwen argues that interest groups have to provide certain informational goods to successfully exert influence on political outcomes. Following this, the respective EU institution will give the most access to the private interest that controls its most demanded good, or as Bouwen calls it, the institution's *"critical resource"*. However, his scheme seems to neglect the increasing role of third country, and especially American companies in policy fields related to new technologies. The aim of this study is therefore to narrow the existing knowledge gap and to better understand the decisive factors, which determine the access of non-European business interests to the three main EU institutions. On the basis of an in-depth case study, the access of the major US IT companies (Facebook, Google and Microsoft) to the decision-making process on the General Data Protection Regulation, proposed by the European Commission in January 2012, has been examined and tested against Bouwen's theoretical framework. As a result, the predictions, which derive from the Theory's assumptions, could not be confirmed. In particular the fact that the ranking of demanded goods by the three EU institutions (European Commission, European Parliament and the Council) differed in each case from Bouwen's assumptions, can be regarded as the decisive element in this context. Furthermore, the increased importance of *Expert Knowledge* as an access good to the Parliament and the Council appeared to have secured greater influence of the companies on the decision-making and draft positions of these institutions. Whereas its reduced importance in the case of the Commission resulted in a relatively limited access. This has led to the conclusion that Bouwen's exchange model should be modified, once non-European business interests start to engage in EU lobbying activities. The author therefore recommends further research on this subject.

Acknowledgements

It had been clear to me for a long time that my final research project will deal with corporate lobbying, as I used to work in this area before starting the IPM Master's programme at the Erasmus University. Then, at the point where I had to choose a concrete topic, I wanted to examine a recent and largely unresearched case to ensure its relevance. I therefore selected the case of the General Data Protection Regulation which has been subject to extensive lobbying activities since the European Commission tabled its proposal in January 2012. My special interest has been furthermore sparked by the fact that, as one could learn from numerous media reports, in particular American business interests have been playing a major role with regard to the decision-making process. From the very beginning, however, I had been aware of the fact that it was not going to be an easy task, since the legislative procedure is not yet concluded and especially private firms usually attempt to keep their lobbying efforts out of the public domain.

To this end, I would like to express my deepest gratitude to my first supervisor, Prof. Markus Haverland, for his excellent guidance, advice and patience over the past few months. I am also most grateful to my second supervisor, Stéphane Moyson, whose final comments were of greatest help for the successful conclusion of this work. Furthermore, I would like to thank the members of my thesis working group, who were always willing to help and give their best suggestions. It would have not been possible to finish my thesis without the support of the kind people around me.

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List of Abbreviations

CIA:	Central Intelligence Agency
COD:	Ordinary legislative procedure
CON:	Congruence analysis approach
DAPIX:	Working Group on Information Exchange and Data Protection
DPA:	Data Protection Authority
DG:	Directorate General
EC:	European Commission
EK:	Expert Knowledge
EP:	European Parliament
EU:	European Union
EUI:	European University Institute
GDPR:	General Data Protection Regulation
IDEI:	Information about the Domestic Encompassing Interest
IEEI:	Information about the European Encompassing Interest
MEP:	Member of the European Parliament
NSA:	National Security Agency
USA:	United States of America

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I. Introduction

1.1 Introduction

On 25 January 2012, the European Commission (EC) published a comprehensive proposal on reforming the overall legislative framework of data protection in the European Union (EU). This reform project, which had been intended to replace the existing framework - known as the 1995 EU Data Protection Directive - soon, became one of the most lobbied legislative initiatives in recent years.

However, not only since ongoing media reports have revealed intimate details of the US National Security Agency's (NSA) global surveillance practices, followed by a heated debate on whether ex-CIA contractor Edward Snowden should be seen as an American hero or a villainous traitor, it became widely accepted that in the age of the internet and rapid digitization data protection and privacy issues are of concern for both affected businesses and European citizens. The consequence is thus clear: renewing laws that had been adopted two decades ago, an practical eternity in this context, appears necessary and carefully thought through to ensure the best possible protection of personal rights (e.g. The Guardian, 2013; European Commission, 2014a).

Now, particularly in these sensitive policy areas, recurrent concerns are raised that private interests could endanger independent and objective decision-making. For this reason, many attempts have been made in the past to better understand how these groups gain access to the responsible EU institutions. As one of the most prominent approaches, Pieter Bouwen developed a *Theory of Access* that explains the different degrees of access on the basis of a supply and demand scheme, arguing that interest groups have to provide certain informational goods to successfully exert influence on political outcomes. This would also mean: no demand, no access. But, can as be as simple is that? Yet, it seems that some multinational companies achieve their goals by just hinting keywords like job cuts, relocation or disclosures. Is sufficient market power therefore the only true access good to Brussels? Or is even a new theory needed, once non-European business interests start to constantly engage in EU lobbying activities? This work aims to provide initial answers to these questions.

1.2 Research aim and research question

More and more studies indicate that interest groups in the EU, and in particular large private corporations, have shifted from a reactive lobbying to pro-active strategies. Recent lobbying battles - the proposed EU *General Data Protection Regulation* (GDPR) as the leading example - seem to confirm that those companies are also the actors which put direct lobbying strategies into practice most vigorously. The related literature, however, has been rather vague until today on how these

strategies are in particular implemented within the companies, and at the same time, introduced and pursued in Brussels. The aim of this research is therefore, based on examining the lobbying activities of the major US IT companies carried out with regard to the adoption of the new Regulation, to narrow the existing knowledge gap and to better understand the decisive factors which determine the access of private business interests to the EU decision-making process. Against this background, the research question is as follows:

Does Bouwen's Theory of Access explain the access of the major US-based IT corporations to the EU decision-making process on the General Data Protection Regulation?

The research will be conducted through a **congruence analysis approach** (CON). In this context, several predictions, which derive from Pieter Bouwen's *Theory of Access,* will be empirically tested in order to provide a clear and pertinent answer to the underlying research question.

1.3 Theoretical and societal relevance

Socially relevant research furthers the understanding of social and political phenomena, which affect people and make a difference with regard to an explicitly specified evaluative standard (Lehnert et al., 2007). The EU has been regularly confronted with the demand for more transparency and democracy of its decision-making processes. Since lobbying and interest representation are crucial parts of the European civil society, there is a societal relevance to understand how interest groups influence the EU policy outcomes and what role they play at the multinational stakeholder level. By examining how large transnational corporations gain access to a specific policy area, this research could therefore not only contribute to the debate on the Union's democratic legitimacy and a better understanding of the EU policy-making procedures, but stands also in line with the ongoing EU lobbying transparency debate, which focuses in particular on private business lobbying.

The intrinsic interest for this case derives from the fact that protecting personal data and information of EU citizens has become more and more important, in times where the development of digital technologies and the rapid advent of the internet are blurring the borders between our *"off" and "online"* lives. It is thus hardly surprising that the debate on adopting a new European Data Protection regime have attracted considerable attention not only within the European society, but also on the part of the leading US-based information technology companies, whose core business would be directly affected from a new EU-wide legislation, since the proposed Regulation, which replaces all existing national laws on data protection and privacy in EU countries, would be also applicable to companies not based in the EU when their processing activities are related to either offering goods or services to individuals in the EU (irrespective of whether payment is required) or

monitoring individuals in the EU (European Commission, 2012a).[1] Hence, the underlying research objective corresponds to the work of Lehnert et al. (2007), stating that the researcher should try to find out what effects the answer to his research question might have on the affected.

Furthermore, this work is *theoretical* relevant for two main reasons. First, whereas scientific research on corporate lobbying in the USA has produced a set of robust findings over the last decades, until the end of the 1990s much less was known about the determinants of business political action within the EU. Scholars on both sides of the Atlantic have therefore highlighted the need for a more comparative research framework in order to gain a better understanding of the way private business interest groups reach out to the European decision-makers. Although some advances have been made in that direction since the beginning of the new millennium, which include several studies on lobbying success, comparisons of interest group activity in Washington and Brussels, and theory-driven, systematic (qualitative and quantitative) analyses of influence-seeking behaviour, the main focus in the European literature has been on business associations, rather than private corporations (Beyers, 2004; Eising, 2004, 2007). Against this background, the present work is aimed at determining the leading drivers of corporate lobbying success in a sensitive policy area, which might also provide new insights into how corporate lobbying in Brussels generally works, or at least a new approach to analyse corporate lobbying strategies.

Secondly, Pieter Bouwen's Theory of Access will be tested against a case which involves mainly non-European private business interests (companies). Testing his hypotheses could not only lead to new results, since the characteristics of US-based IT corporations are not covered by Bouwen's definitions. But, it could also shed new light on the foundations of the underlying exchange theory and resource dependency theory which form the core of Bouwen's approach. Here, the question arises whether the applied informational exchange model is still valid when non-European business interests, who might supply different access goods, are involved in the legislative process. According to Lehnert et al. (2007, p. 25), a research is theoretically relevant if it can *"contribute to the specific scientific discourse and to the advancement of the knowledge produced by it"*. In other words, this research aims at contributing to the discourse of EU corporate lobbying by empirically testing an existing theory under largely unresearched conditions, namely, the engagement of US business interests within the EU lobbying system. As a result, this could lead to a revised and partly new theoretical framework, since only Bouwen's Theory of Access offers, until today, an elaborated model on EU lobbying.

[1] In Chapter 7.1 the involved US-based IT corporations will be identified.

1.4 Research structure

The present work is structured as follows. Chapter II will provide relevant background information on interest representation in the European Union by illustrating possible routes to influence the EU decision-making process. In addition, the *ordinary legislative procedure* (COD) will be briefly presented. Chapter III is dedicated to give an overview of current trends and developments related to European business lobbying, which will allow a better understanding of the underlying case in relation to associated studies and the present state of research. Chapter IV will present the theoretical framework of this work. Starting with a short introduction of classic interest representation theories and their contemporary limitations, the detailed description of Bouwen's Theory and formulation of several predictions based on his assumptions will form the starting point for the subsequent analysis. Chapter V will present the research design and the methodology of examination, including the discussion of available methods, as well as a step-by-step illustration of the overall research process. Chapter 5.3 will in particular describe the process of data collection. The following Chapter VI will introduce the reader to the case under examination of adopting a new legislative framework for the protection of personal data in the European Union. After explaining the current state of EU legislation on data protection, the decision-making process on drafting a new EU-wide data protection regulation (GDPR) will be outlined to obtain the necessary knowledge for the analysis. Then, Chapter VII (*Analysis*) will apply the previously determined methodological steps and analyse the collected empirical data. The chapter concludes with the revision of the predictions formulated in Chapter 4.3. Finally, Chapter VIII will give an answer to the central research question, followed by a reflection on the limitations of this project. As a last point, recommendations for future research will be made.

II. Background: Lobbying in the European Union

As the different access points to influence EU decision-making constitute the basis for this work and the analysis in Chapter VII, the following section is dedicated to briefly summarize possible lobbying routes to the three examined EU institutions. In addition, Chapter 2.2 will give a short overview of the ordinary legislative procedure, which has been serving as the legislative framework for the GDPR dossier.

Together with the dynamic development of European institutions the amount of interest groups at the European level has been also increased (Eising, 2001, p. 473; Kohler-Koch, Conzelmann et al., 2004, p. 231). The private actors acting could be divided in two groups: business interests and non-business interests. Both can be influential in shaping EU decision-making, either through formal

consultation or by acting as sources of information, expertise and mediation between other (often institutional) actors (Warleigh, 2003, p. 22). For the objective of this work, only business interests are of significance, which can include individual firms, national or European industry associations, as well as temporal and subject-related networks. The next section will outline how these actors might approach EU policy-makers.

2.1 Routes to access - whom to lobby?

The distinctive features of the European Union are its multi-level context and the way how it shapes interest representation, and how the EU institutions are actually dependent on outside interest groups (Greenwood, 2007, p. 21). There is a highly structured environment in which private and public interests interact and where institutions try to channel their contribution to systemic input and output legitimacy. The roles of interest groups span from issue framing and agenda setting, contributory thinking, detailed input to drafts, consideration of measures and policy implementation, as well political participation. The relationship between interest groups on one side and the EU institutions on the other side can be described as an interdependency which explains the growth of the European lobbying system and the expansion of the Union's competencies. Actors who aim at participating in the EU policy-making process can choose between different "*routes*" of influence; while the national route generally refers to the use of national contacts and national governments, the European route supposes direct targeting of the EU institutions (Ibid.). However, EU lobbying is a difficult task, as it requires not only financial and personal resources, but also a profound knowledge of the institutions themselves. Each institution has different ways of dealing with external input, therefore, the interest groups need to adapt to the prevailing structures.

2.1.1 European Commission

Due to its central role in the legislative process, the Commission is a crucial venue for lobbying activities at the EU level. As an agenda-setter, it has the formal right to initiate legislation and is thus responsible for the drafting of legislative proposals, which requires a substantial amount of technical and political information (Bouwen, 2002, p. 15). Against this background and because of its lack of internal resources, the Commission needs input from interest groups in form of external expertise and information; this interaction can vary from ad-hoc meetings to formalized arrangements (Eising, 2001, p. 455). It should be noted that lobbyists are usually aware of the fact that as long as no formal documents are produced during the formulation stage of the legislative process, changes to proposals can be made much easier than at the level of public political discussion (Bouwen, 2009, p. 20).

More precisely, EU legislation originates from the Commission's responsible Directorate General (DG) where civil servants draft the respective acts. Hence, approaching technical civil servants can be crucial for influencing EU policies. As already mentioned, the Commission's civil servants shall be relatively open to external interest groups, since they are supposed to draft technical and expertise-based legislative proposals in order to portray the EU decision making as successful as possible and increase the Union's competencies (Koeppl, 2001, p. 75f.).

2.1.2 European Parliament

Since the European Parliament (EP) has recently gained more legislative power, it has become increasingly attractive to interest groups and lobbyists in Brussels. The Parliament has a competence to amend the Commission's proposals. These amendments, however, are in most of the cases not the result of independent work, as they are partially initiated in consultation with Commission officials, and partially by external pressure or in co-operation with interest groups. Interest groups can serve as a source of information for the Parliament in the same way that they do for the Commission, enabling it to maintain a certain degree of independence from the other EU institutions (Michalowitz, 2002, p. 46).

The most significant lobbying targets in the EP are the specialized standing committees, where most of its legislative work takes place. They can therefore be seen as an efficient venue for influencing policy outcomes (e.g. Greenwood, 2007; Bouwen, 2004). First, the respective proposal is forwarded to a leading committee, which appoints the so called *Rapporteur* to prepare a draft report. Since the Rapporteur can draw upon the resources of his own political group, both he and his political group are usually targeted by interest groups and lobbyists. As a next step, amendments to the proposal are discussed and adopted during plenary sessions, making attempts to influence the policy-making process more difficult. With regard to the information demanded by the Parliament, it can be said that it is in general less technical, because, at this stage, the Commission has already drafted a detailed technical proposal. The MEPs are thus more concerned with reflecting a European perspective on how the new legislation would influence Europe and its citizens as a whole (e.g. Greenwood, 2007, pp. 36ff.).

2.1.3 Council of the European Union

The Council of the European Union (commonly known as the *"Council"*) is widely regarded as the least accessible EU institution. Hence, the measured lobbying activities are rather low, especially in comparison to the Commission and the Parliament. According to Hayes-Renshaw (2009, p. 70), this is because of the Council's *''long-standing and often repeated reputation of being the most secretive and least accessible of the EU institutions''*. However, while the Council is supposed to be less

accessible than the two other institutions, Hayes-Renshaw argues that it is not completely *"inaccessible"*. Instead, interest groups or lobbyists can target them at a number of different levels and entry points (Ibid.). The general recommendation would be to lobby them as early as possible. According to Mazey and Richardson (2001), interest groups might secure representation in Council working groups when there are appropriate circumstances which suit a national government. To influence the Council decisions, interest groups can also lobby national governments, requiring information about the *"needs and interests of the domestic market"*. This might furthermore facilitate the bargaining process among the member states (Bouwen, 2002, p. 16).

The following subchapter will give a brief overview of the EU's *ordinary legislative procedure* (COD), as it has been serving as the legislative framework for drafting the General Data Protection Regulation.

2.2 The ordinary legislative procedure (COD)

With the *Lisbon Treaty* taking effect on 1 December 2009, the ordinary legislative procedure (COD) became the main legislative procedure of the EU´s decision-making system. Its predecessor, the co-decision procedure, was introduced by the *Maastricht Treaty on European Union* (1992), and extended and made more effective by the *Amsterdam Treaty* (1999).

The new procedure authorizes the European Parliament as a co-legislator at the Council's side. Over time, it has also become the most widely used legislative procedure. The Treaty of Lisbon therefore confirms this trend by changing its name and establishing it as a common law procedure. Continuing from previous Treaties, the Treaty of Lisbon also extends the ordinary legislative procedure to new policy areas.[2]

The modalities of the ordinary legislative procedure are the same as those of the former co-decision procedure. They are described in Article 294 of the *Treaty on the Functioning of the EU*. The Council and the Parliament are placed on an equal footing in a wide range of areas, such as economic governance, immigration, energy, transport, environment and consumer protection. The two institutions adopt legislative acts either at first reading, or at second reading. If, following the second reading, the two institutions have still not reached agreement, a *Conciliation Committee* is convened. In addition, the voting rule under the *ordinary legislative procedure* is qualified majority. In order to

[2] For further information see file "Extension of voting by qualified majority and the ordinary legislative procedure". Retrieved 8 May 2014, from http://europa.eu/legislation_summaries/institutional_affairs/treaties/lisbon_treaty/ai0015_en.htm

facilitate decision-making and strengthen the effectiveness of the procedure, the Treaty of Lisbon has also laid down a new definition of a qualified majority[3] (European Union, 2014a).

III. European Business Lobbying: Trends and Figures

As the main part of the literature review, the following section will outline the main developments related to business lobbying in the European Union. Whereas Chapter 3.1 describes a shift towards a system dominated by direct lobbying activities, Chapter 3.2 illustrates two major characteristics of European business interest representation that have been recently taken up in the literature. Overall, the literature review is dedicated to provide a better understanding of the examined case, particularly in relation to similar studies and the present state of research.

3.1 Direct lobbying activities on the rise

Several studies (e.g. Berkhout and Lowery, 2010; Bernhagen and Mitchell, 2009; Broscheid and Coen, 2003) indicate a shift from a collective, respectively indirect interest representation in Brussels, towards a system based on *direct* lobbying, which refers to attempts to influence a legislative body through direct communication with a member or employee of a legislative body, or with a government official who participates in formulating legislation (IRS, 2014). It is thus hardly surprising that today around 40 per cent of detected lobbying activities towards the European Parliament and the European Commission consist of individual actors: firms (24%), think tanks (45%), public authorities (11%), law firms, public relations companies etc. (Berkhout and Lowery, 2008; Coen, 2009).

Since the mid-1980s, in particular private corporations have concentrated their resources on direct lobbying strategies, such as the establishment of government affairs and external relations departments within the corporate structure, the inauguration of EU liaison offices (representative offices) in Brussels, or the accreditation to the Union's lobbying transparency registers (Bernhagen and Mitchell, 2009). Until 2003, over 350 companies established direct lobbying structures (Coen, 2007a; 2009). Furthermore, Wonka et al. (2010) found 493 firms that were engaging in EU interest representation practices via their government affairs offices.

As mentioned above, another indicator of direct lobbying is the accreditation of interest groups to the European Parliament: 4051 individual lobbyists and 1797organisations were accredited in mid-2011 with a large majority of business interests, representing about 50 percent of the registrants.

[3] For further information about the new definition of qualified majority, see file "The Council of the European Union. Retrieved 8 May 2014, from http://europa.eu/legislation_summaries/institutional_affairs/treaties/lisbon_treaty/ai0008_en.htm

The trend towards direct lobbying towards the EP is also confirmed by Coen (2007b), who states that approaching MEPs and parliamentary civil servants has nearly doubled between 1994 and 2005, especially in those policy areas where the former co-decision, respectively the *ordinary legislative procedure*, is prevailing.

The rise of direct lobbying practices in the EU sphere has a consequence that is also of significance for the scope of this research: the professionalization of corporate government (external) affairs departments (Coen, 1998). Thus, by the mid-1990s, the majority of these departments *"had developed the strategic capacity to provide sophisticated peak level coordination over their subdivisions, cross-border holdings and subsidiaries"* (Coen, 1998, p. 80). Consequently, also due to the need to speak with one voice to European public authorities, firms have undergone a process of centralisation of power, which contradicts the tradition of political autonomy of subsidiaries. A 1996 survey carried out within a project of the *European University Institute* (EUI), which was analysed by Coen (1998), confirms this trend: 75 per cent of the respondents emphasise the strong ties emerged between the company government affairs departments and the subsidiaries.

3.2 Reputation and "European identity" building

Another new trend in European lobbying has been characterised by a stronger focus on reputation, transparency and the so called *"European identity building"*. There are, for example several studies (e.g. Vannoni, 2013; Burson-Marsteller, 2009; Van Schendelen, 2010) that indicate the importance of publicly engaging in a number of policy fields to enhance their reputation at the European level. In this context, a prominent tool used by private actors is *"transversal lobbying"*. In order to build creditability and a good reputation, these groups bound up coalitions or issue-related networks with other parts of civil society. These alliances allow business actors to gain credibility in exchange of expertise and privileged access (Greenwood, 2011).

Furthermore, direct lobbying towards the European institutions, especially the Commission, has been mainly achieved through "*European identity building"*, meaning that in interest has to have a European *"character"* to be regarded (Vannoni, 2013; Bouwen, 2004; Burson-Marsteller 2009). Following Bouwen (2004), *"European encompassing interests"* are those with the highest access rate to the European Commission. This is confirmed by Bouwen (2004) and Eising (2007), stating that European associations are better represented at the Commission than, for example, national associations. As already mentioned, interest groups and in particular private business actors have shifted from a reactive lobbying to pro-active strategies by creating coalitions in order to place their interests under the auspices of an European umbrella (Coen, 2007a). This has also been shown by several case studies. For instance, successful lobbying approaches have been particularly identified in

policy areas such as financial services and telecommunications, where interest groups targeted the EC by representing European interests. The contrary has been found in agriculture and textile where economic interest represented a more protectionist approach (Woll, 2009). In addition, Mahoney (2004) finds a positive correlation between the level of an organisation (Euro-groups and umbrella organisations with the highest access rates) and participation in the Commission consultative committees. Consequently, one could argue, drawing on the underlying "*logic of access*", that *European identity-building* (and the capacity of a firm to engage in alliances and groups at the European level) might serve as a catalyst for getting access to the EU decision-making process (Vannoni, 2013).

To conclude, the European business and corporate lobbying system has, according to the related literature, undergone significant developments in the last decades, including a stronger engagement in direct lobbying activities and a new emphasis on European identity-building and credibility. It will be therefore interesting to see whether these attributes also apply to the specific case of the US information technology companies, which have engaged in EU lobbying activities in the case of the General Data Protection Regulation.

IV. Theoretical Framework

The next chapter will present the theoretical framework of this work. After a short introduction of classic theories of interest representation and their contemporary limitations, the detailed description of Bouwen's *Theory of Access*, as well as the formulation of several predictions that derive from his assumptions will provide the starting point for the subsequent analysis.

4.1 Classic theories of interest representation

Since scientific research became popular, pluralism and corporatism have been the traditional ideal reference points to understand interest intermediation structures (Hix and Høyland, 2011; Michalowitz 2002).

An ideal pluralist paradigm always contains one interest group on each side of every argument (Hix and Høyland, 2011, p. 159). Furthermore, the central requirement for a pluralistic system to function is that interest groups must have equal access to the decision-making process (Ibid., p. 160). However, these groups can hardly mobilize the same amount of resources, biasing the access to policy makers. Against this background, neo-pluralist approaches claim that this inherent distortion in classic pluralistic approaches can be overcome if bureaucrats start providing interest groups with financial means; thereby ensuring a level playing field (Ibid., p. 161). There is also is the idea of a so

called *"elite pluralism"* arrangement, which means that some European interest groups have acquired an insider position over time. In this context, private, respectively business interest groups have an advantage over "*diffuse"* interests with regard to the provision of information to the EU decision-makers. This generally results from greater financial resource and a high reputation (Coen 1997; Dür and de Bièvre 2007; Coen and Richardson 2009, p. 152).

A well-known criticism of the pluralist paradigm can be found in the "Theory of Collective Action" by Mancur Olson (1971). Olson emphasizes that the abilities for large and small interest groups to organize themselves are uneven:

> *"The smaller groups – the privileged and intermediate groups – can often defeat the large groups – the latent groups – which are normally supposed to prevail in a democracy. The privileged and intermediate groups often triumph over the numerically superior forces in the latent or large groups because the former are generally organized and active while the latter are normally unorganized and inactive" (Olson 1971, p. 128).*

In other words, benefits are more easily acquired by smaller interest groups due to higher degrees of organization. However, understanding membership in European umbrella federations, for instance, deviates to a certain extent from Olson`s view since they encompass different organizations such as firms, national associations and NGOs (Greenwood and Cram, 1996). In addition, the incentives for joining these federations or associations are not only related to economic benefits. Membership can also be explained by lower transaction and information costs, as well a greater policy certainty (Ibid.).Here, McLaughlin and Jordan (1993) deduce the rationality of collective action at the EU level from the associated costs of non-membership, arguing that firms without representation have to pay a higher price for equivalent information (Greenwood 2011, p. 68).In addition, a number of public interest groups in Brussels draw funding from various Directorate Generals (DGs) of the EC, which would also counter Olson's criticism of pluralist approaches (Greenwood, 2011, p. 3; Hix and Høyland, 2011, p. 161).

4.1.1 Contemporary limitations with regard to the EU system

Although it was attempted to establish a stronger corporatist approach in the EU's decision making procedures, as laid down in the Treaty of Rome by granting interest groups a formal standing in the Economic and Social Committee, it never became prevalent due to the consultative character and the relatively weak position of the Committee in the Union's policy-making process (Eising, 2007, p. 385; Hix and Høyland, 2011). Moreover, the EU clearly lacks the means to intermediate across sectors to the same degree as corporatism presumes (Streeck and Schmitter, 1991). It can also be

observed that formerly predominant class structures such as business and labor have eroded and new cleavages emerged (Hix and Høyland 2011, p. 161). As Michalowitz emphasizes, a major problem of applying these two concepts is that the characteristics of the EU differ substantially from those of the national state (Michalowitz, 2002, p. 37). Hence, at the EU level, the basic element of both theories – the state – does not exist. Michalowitz therefore argues that research should concentrate on single decision-making stages, analyzing patterns of interaction, which could be at some stages pluralist and at other stages corporatist (Michalowitz 2002, p. 42ff.):

> *"The structure of relations between the EU institutions and organized interests are, on the one hand, due to the active shaping of the institutions themselves and, on the other hand, very largely dependent on the legislative conditions of the procedures. […] It can be discerned that generally the Commission tends towards corporatist behavior whilst the Parliament tends to be pluralist. The Council can be characterized as closed or, as far as interaction with interest groups is concerned, rather corporatist.[…]In the EU decision-making pluralism and corporatism can co-exist"* (Michalowitz, 2002, p. 50).

Following Michalowitz's argumentation, it can thus be concluded that the preferences of EU decision-makers, as well as the incentives to enter into dialogue with interest groups require a separate examination for different sectors and stages of the policy-making process in order to better understand interest representation at the EU level. The following chapter will introduce Pieter Bouwen's *Theory of Access,* which represents until today the only systematic approach to measure the effectiveness of lobbying, respectively the access of interest groups to the different EU institutions. Whereas earlier studies have mainly focused on the European Commission, Bouwen also studies the European Parliament and the Council. Therefore, considering that examining the access of private business interests to the EU decision-making process requires a comprehensive theoretical framework, including a simultaneous investigation of the tree main institutions to fully understand the logic of interest representation, and defined mechanisms of interaction, as they are unrolled in Bouwen's supply and demand scheme of informational goods, the Theory of Access appears to be most suitable for the objective of this research. In addition, as the decisive reason for choosing Bouwen's framework, he examines not only collective action but also individual firm action and third party interest representation, which differs from traditional studies on lobbying that tend to focus on collective action, neglecting other organizational forms (e.g. Olson, 1971).

4.2 Bouwen's Theory of Access

In his theoretical framework, Bouwen links the organizational characteristics of private interest representation with its capacity to provide access goods in order to gain access to the EU institutions (Bouwen, 2002, p. 6; Bouwen, 2004, p. 359). The objective of his work is thus to unfold the key access determinants for the three major EU institutions. In this context, Bouwen emphasizes the importance of distinguishing the terms *access* and *influence*, as they have a different scope. Whereas access does not necessarily mean exerting influence, since it is possible to gain access without exerting influence (Bouwen, 2004, p. 337), excising influence on the EU decision-making process without access is impossible. Hence, examining access is likely to be a good indicator of influence. However, with regard to the operationalisation of access applied in this work, which is of crucial importance for the analysis in Chapter VII, it should be emphasized that *access* has been defined as the companies' influence on the (preliminary) legislative outcomes of the three EU institutions in the case of the General Data Protection, examined and evaluated through the combination of the methods of preference attainment and process-tracing, which has been carried out on the basis of a comprehensive analysis of related documents and semi-structured interviews.[4] It thus becomes apparent that the concepts of access and influence intertwine in the present case.

Exchange and *resource dependency* theories form the core of Bouwen's approach. He therefore argues that the relationship between business interest groups and the three major EU institutions should be viewed as an exchange relationship between two groups of interdependent organizations that carry out implicit or explicit cost-benefit analyses in order to decide with whom to interact (Bouwen, 2004, p. 339). The crucial resource required by private actors is access to the European institutions. In return, the EU institutions demand resources, the so called "*access goods*", that are crucial for their own functioning.

Bouwen defines three types of access goods, which have one common characteristic, namely that information is the basic good, since it is the most important resource in the exchange between business interests and the EU institutions. They can be specified as follows:

1. Expert Knowledge (EK):

   "*This is the expertise and technical know-how required from the private sector to understand the market. This kind of information is indispensable in developing effective EU legislation in a particular policy area. Example: The technical expertise provided by Barclays Bank to help EU officials and politicians understand the particularities of new capital adequacy rules for commercial banks (Bouwen, 2004, p. 340).*"

[4] The applied research design methodological framework will be further described in Chapter 5.

2. Information about the European Encompassing Interests (IEEI):

> *"This is the information required from the private sector on the European Encompassing Interests (EEI). In Bouwen's sectoral approach, the EEI relates to the aggregated needs and interests of a sector in the European the so-called internal market. Example: The information provided by the European Banking Federation on the needs and interests of its members with regard to new capital adequacy rules for commercial banks (Ibid.)."*

3. Information about the Domestic Encompassing Interest (IDEI):

> *"This is the information required from the private sector on the Domestic Encompassing Interest (DEI). In Bouwen's sectoral approach, the DEI concerns the needs and interests of a sector in the domestic market. Example: the information provided by the Belgian Bankers' Association on the needs and interests of its members with regard to new capital adequacy rules for commercial banks (Ibid.)."*

The importance of *Expert Knowledge* in the EU decision-making process has been widely acknowledged before in the literature (Van Schendelen 1993; Radaelli 1995; Pappi and Henning 1999). The two *"encompassing"* access goods, however, have not been previously identified. Therefore, Bouwen (2004) explains the meaning of the concept of a *"encompassing interest"* in the following way:

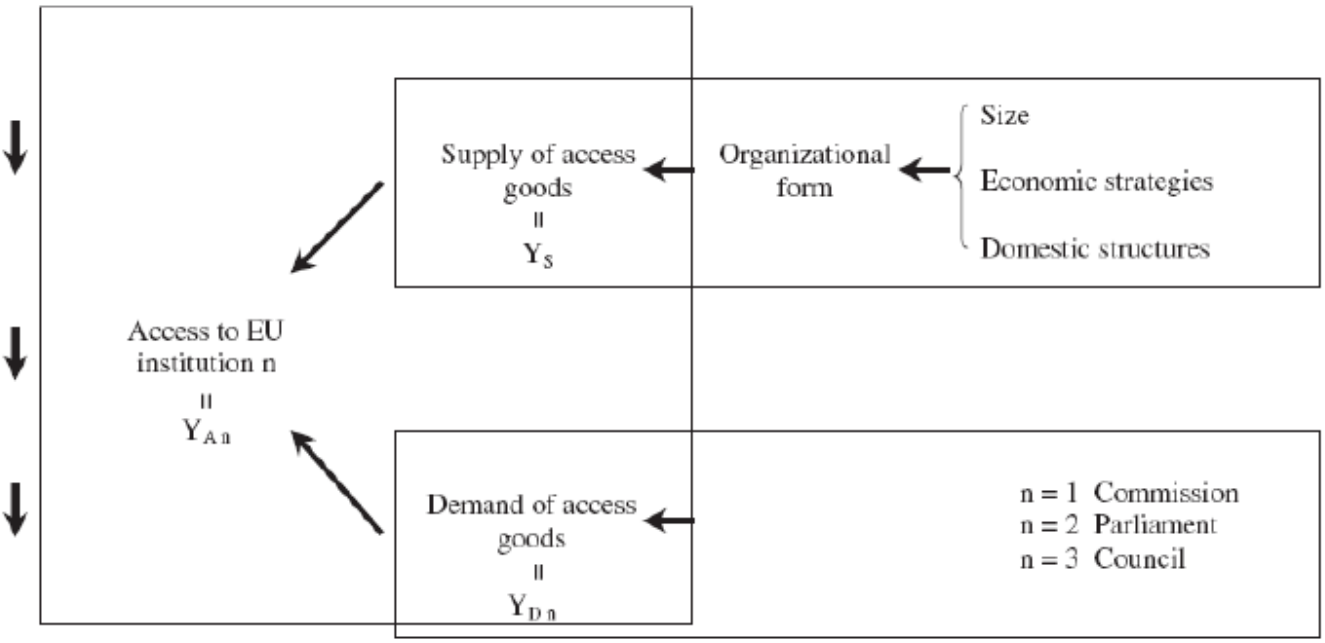
> *"An interest is more encompassing when more interested parties are involved in the formulation of the interest. So, an aggregation of individual interest or interested parties has to take place. When this aggregation of interests takes place at the national sectoral level, the Domestic Encompassing Interest is involved. When it takes place at the European sectoral level, we speak of the European Encompassing Interest (Bouwen, 2004, p. 341)."*

To gain access to the EU institutions, providing access goods is, according to Bouwen, a fundamental condition for business interests. In this context, the highest degree of access is attained by the actor who can provide the critical resource or critical access good of the respective institution. A good is considered critical if it is required by the institution for fulfilling its role in the legislative process (Ibid.)

Following these assumptions and an empirical test in the EU financial services sector based on 126 exploratory and semi-structured interviews, Bouwen establishes a ranking of dependencies for each of the three EU institutions and identifies the respective critical resource. This will be of a crucial importance for the operationalisation of the theory and the formulation of the predictions in the

further course of this work. The next paragraph will therefore explain the foundations of Bouwen' supply and demand model in more detail.

Figure 1. The supply and demand scheme of access goods



Source: Bouwen, 2004, p. 342.

The dependent variable **Y_{an}** (access to EU institution n) indicates the extent to which business interests have access to EU institution n. The supply of access goods (**Ys**) and the demand for access goods (**YDn**) are the independent variables. Consequently, in order to explain the variation of Y_{An}, both Y_S and Y_{Dn} have to be examined (Bouwen 2004, p. 342).

The supply of access goods

The provision of access goods is crucial for private actors (business interests) in establishing an exchange relation with the targeted EU institutions. As already mentioned, not all private interests have the same capacity to provide access goods (Bouwen, 2004, p 341).

Table 1. Organizational form of interest representation

	Individual action	**Collective action**	**Third party action**
National level	Individual national action	National association	National consultant
European level	Individual European action	European association	Brussels consultant

Source: Author's own illustration, based on Bouwen, 2004, p. 342.

Against this background, three important variables determine the organizational form that a company chooses for its lobbying activities. Size is a first important variable. Whereas large corporations have enough resources to lobby individually, smaller players often have to rely on collective action to be able to undertake political action at different levels in the EU multi-level system. A second major factor is a firm's economic strategy. The different market strategies of national niche companies and large multinational firms require different political strategies. The domestic institutional environment of the firm is the third important variable that needs to be studied in order to understand the national and European lobbying activities of private business interests. A close working relationship between state administrative elites and private interests at the national level might, for example, create a form of hierarchical interaction that undermines the incentives of private interests to act directly at the European level. In addition, while the organizational form of the business interest representation determines the kind of access goods that can be provided, two other variables have an important impact on the quantity and the quality of the supplied access goods. These are the number of layers that constitute the organizational form and the complexity of the internal decision-making process: "*The more layers are involved in the provision of the access good, the slower and less flexible the access goods can be supplied. […] The more complicated the internal decision-making process is, the slower and less flexible is the provision of access goods (Bouwen, 2002, p. 10)".*

Table 2 shows how the respective organizational form and the two variables introduced above influence the actors' ability to provide access goods:

Table 2. Supply of access goods

	Best provided access good	**Ranking of capacities to provides access goods**
Individual firm	EK	EK > IDEI > IEEI
European association	IEEI	IEEI > EK > IDEI
National association	IDEI	IDEI > EK > IEEI
Consultant	(EK)	

EK: Expert knowledge; IDEI: Information about the Domestic Encompassing Interest; IEEI: Information about the European Interest

Source: Author's own illustration, based on Bouwen, 2004, p. 343.

Individual firms, for instance, are particularly good at providing *Expert Knowledge*, since they are directly active in the market. In contrast to small firms, large corporations have enough resources to act individually both at the national and the EU level.[5] Against this background, their lobbying strategies can be regional, national or European. When a firm's domestic market share is considerable, it can provide, to a certain extent, *Information about the Domestic Encompassing Interest* (IDEI). Large firms with a European strategy can also provide *Information about the European Encompassing Interest* (IEEI). However, according to Bouwen, it is difficult for most of these companies to claim that they provide full Information about the European Interest, since they only have a relatively small share within the single market (Bouwen, 2004, p. 343). With regard to the analysis unit of this research (major US IT corporations) this assumption might be put into question.

Associations by contrast, are, according to the theory, not as good as individual firms at providing *Expert Knowledge* (EK), since they have in general fewer resources and have to deal with a wider range of issues. Furthermore, because of their multi-layered organizational structure, associations are too distant from the *"market reality"* (Bouwen, 2004, p. 344). However, *European associations* can provide good quality Information about the European interest as they are specialized in building consensus positions by channelling the different opinions of their member associations. A similar reasoning can be applied to *national associations*. They represent the national sectoral interest and are therefore able to provide high-quality *Information about the Domestic Encompassing Interest* (Ibid.).

Consultants at the national or the EU level have, according to Bouwen, have a very limited capacity for providing access goods. He argues that because they do not represent their own interests, they cannot provide the two encompassing access goods. Moreover, the consultants' capacity to provide expert knowledge depends on if they are specialized in a particular policy area (Ibid.).

The demand for access goods

The formal powers of each institution in the EU legislative process and the timing of their intervention in the process largely determine the institutions' demand for access goods (Bouwen, 2004, p. 344). According to Bouwen, the EU institutions are interested in the three access goods to varying degrees. In this context, a number of dependencies can be identified, which results in a *"ranking of dependencies"* on the part of every institution (Jacobs, 1974, p. 50; cited in Bouwen, 2004). Since their demand for access goods is based on the institution's role in the legislative process,

[5] Considering the unit of analysis of this research (major US IT corporations), only large firms are of importance in the context of Bouwen's theoretical framework.

the largest dependency will correspond to the demand for the access good that is *"most critical for the fulfilment of the formal legislative role"* (Bouwen, 2004, p. 345).

Table 3. Demand for access goods

	Critical resource	Ranking of dependencies
European Parliament	IEEI	IEEI > IDEI > EK
European Commission	EK	EK >IEEI > IDEI
Council of Ministers	IDEI	IDEI > IEEI > EK

Source: Author's own illustration, Bouwen, 2004, p. 345.

The European Commission is considered to be the most supranational institution in the EU decision-making process, working on the promotion of common European interests, as well as promoting its own position (Rometsch and Wessels 1997, p. 214; cited in Bouwen, 2004, p. 346). Bouwen argues that the Commission needs *Information about the European Encompassing* Interest in order to play its role as a *"promotional broker"* in the legislative process (Bouwen, 2004, p. 346). The Commission's critical resource, however, is *Expert Knowledge*. As the agenda-setter, the EC has the formal right to initiate legislation, and is thus responsible for drafting of legislative proposals, which requires a substantial amount of expertise. Because of understaffing and severe budget constraints, the EC is said to be dependent on external resources for obtaining the necessary expertise in order to be able to propose legislation. *Information about the Domestic Encompassing Interest*, by contrast, is not defined as a primary interest to the EC, since the domestic private interests and the interests of most member states with regard to the issues at stake have not yet been identified at this early stage of the legislative process. In some cases, however, when the Commission has to amend its own proposals to achieve a compromise in the Council and the Parliament, the domestic interest of a particular member state might become crucial (Bouwen, 2004, p. 346f.).

The European Parliament particularly needs information which allows assessing the legislative proposals made by the European Commission. As a directly elected supranational assembly, it is the Parliament's task to evaluate the legislative proposals from a European perspective (Kohler-Koch, 1997, p. 12; cited in Bouwen, 2004, p. 345). The specific information that is required for this assessment is *Information about the Encompassing Interest*. This access good is the Parliament's critical resource, since it provides encompassing private sector information about needs and interests in the EU internal market. In addition, the Members of Parliament also need *Information about the Domestic Encompassing Interest* to increase their chances for re-election. The Parliament's demand for *Expert Knowledge* is, according to Bouwen, rather limited. Although it does need some basic expertise, the Commission has, at this stage of the legislative process, already drafted a

detailed and often highly technical proposal with the help of comprehensive expertise (Bouwen, 2004, p. 345f.).

The Council of the European Union is the most intergovernmental institution in the EU legislative process. The influence of national interests prevails in the Council, and it is therefore decisive for the member states for identifying their national or domestic interests. Consequently, member states normally have a very strong demand for *Information about the Domestic Encompassing Interest*. It therefore constitutes the Council's critical access good (Bouwen, 2004, p. 347). The Council is also interested in information about the European sector, since its secretariat and presidency, which embody a sense of collective purpose and commitment, give the Council a *"supranational flavour"* (Würzel, 2002, p. 273; cited in Bouwen, 2004, p. 347). It can be furthermore noted that the legislative proposals have already been technically elaborated at an earlier stage, leading to the result that the demand for *Expert Knowledge* is substantially reduced. At this later stage, the Council is more interested in information that can facilitate the bargaining process among the member states. As a result, Bouwen ranks it as the information the Council is least dependent on (see Table 3).

Combining supply and demand

The analysis of the supply side has shown that the private interests presented above can provide each of the three access goods to varying degrees. On the demand side, the EU institutions are to a certain extent interested in the three access goods. In order to sufficiently combine both sides, it is however also necessary to consider insights from the *Resource Dependency Theory*. In this context, Pfeffer (1982) argues that organizations will be more responsive to the demand of the group or organization in its environment that controls its largest dependency. In other words, the respective EU institution will give more access to the private interest that controls the institutions critical resource (Bouwen, 2004, p. 348). Using this *"logic of access"*, Bouwen formulated a number of specific hypotheses about the access of the different actors to the decision-making process by combining the EU institutions' ranking of dependencies (see Table 3) and the ranking of capacities to provide access goods on the part of the different organizational forms (see Table 2). Table 4 gives an overview of the generated hypotheses:

Table 4. Overview of Bouwen's hypotheses

1. Access to the European Commission	Individual firms > European associations > national associations
2. Access to the European Parliament	European associations > national associations > individual firms
3. Access to the Council of the European Union	National associations > European associations> individual firms

Source: Author's own illustration, based on Bouwen, 2004, p. 349.

Next, deriving from Bouwen's theoretical assumptions and his supply and demand scheme, the author has formulated several predictions in order to provide a clear and pertinent answer to the central research question. It should be stressed here that, contrary to the demand side of Bouwen's model (the demand of access goods by EU institution n, variable YDn), the supply side (variable Ys), namely the types of access goods that are provided by the three case study companies, as well as their ability to provide them, have been assumed on the basis of Bouwen's theoretical framework (see Figure 1). Thereby, the author could secure the feasibility of this approach at each stage in the research process.

4.3 Predictions

European Commission

The EC's demand for access goods

1. According to Bouwen, the European Commission is dependent on external resources to obtain the necessary expertise to be able to propose legislation. If this applies, it can be expected that expert knowledge has been the most demanded access good by the Commission during the legislative process on the General Data Protection Regulation.
    a. It can be furthermore expected that the Commission has had a strong demand for Information *about the European Encompassing Interest* (the second most important access good) in order to identify common European interests and to play its role as a *"legislative broker"*.
    b. The Commission's demand for *Information about the Domestic European Interest* is to be expected rather low (the third most important access good), since domestic private interests and the interests of most of the member states with regard to the issues at stake have not yet been identified at this early stage of the legislative process.

Access to the EC

2. Since individual firms are, according to Bouwen, particularly good at providing *Expert Knowledge* to the EU decision-makers, it can be expected that, compared to the two other EU institutions, the major US-based IT corporations have had the highest degree of access to the European Commission during the decision-making process on the General Data Protection Regulation.
    a. In addition, it can be expected that the US-based IT corporations have secured their access to the European Commission by engaging in European business associations.

According to Bouwen, European associations best provide *Information about the European Encompassing Interest,* which is the second most important resource for the Commission.

European Parliament

The EP's demand for access goods

3. According to Bouwen, the *European Parliament* particularly needs information allowing assessing the legislative proposals made by the European Commission from a European perspective. The specific information required for this assessment is information about needs and interests in the EU internal market; the *European Encompassing Interest*. Against this background, it can be expected that this access good has been the Parliament's critical resource during the decision-making process on the General Data Protection.
    a. It can be furthermore expected that *Information about the Domestic Encompassing Interest* has been the second most important access good for the Parliament, since the MEPs need this type of information in order to increase their chances for re-election.
    b. If Bouwen's theory applies, the Parliament's demand for *Expert Knowledge* should be rather limited, as the Commission has, at this stage of the legislative process, already drafted a detailed and often highly technical proposal with the help of detailed expertise.

Access to the EP

4. Bouwen argues that it is rather difficult for individual firms to provide *Information about the European Encompassing Interest*, since they only have a relatively small share within the European single market. It can therefore be expected that the major US-based IT corporations have had, compared to the access to the EC, a relatively low degree of access to the European Parliament.
    a. Thus, it can also be expected that these corporations have mainly gained access to the Parliament through indirect means; namely by engaging in European associations which, according to Bouwen, best provide *Information about the European Encompassing Interest*.

Council of the European Union

The Council's demand for access goods

5. According to Bouwen, it is crucial for the representatives of the member states in the Council of the European Union to identify the needs and interest of their domestic market. Consequently, he describes *Information about the Domestic Encompassing Interest* as the Council's critical resource. It can therefore be expected that it has been the most demanded access good by the Council during the legislative process on the General Data Protection Regulation.
    a. It can furthermore be expected that the Council has had a strong interest in *Information about the European Encompassing Interest* (the second most important access good), since its secretariat and presidency, which embody a sense of collective purpose and commitment, give the Council, according to Bouwen, a "supranational flavour".
    b. In addition, as the legislative proposal has already been technically elaborated at this stage of the decision-making process, the Council's demand for *Expert Knowledge* from private interest groups should be substantially reduced (the third most important access good).

Access to the Council

6. If the Theory of Access applies to the case, it can be furthermore expected that the major US-based IT corporations have had the lowest degree of access to the Council; as it is rather difficult for non European companies to provide *Information about the Domestic Encompassing Interest.*
    a. Against this background, it can be also expected that these corporations have mainly gained access to the Council by engaging in European business associations which, according to Bouwen, best provide information about the second most important access good (*Information about the European Encompassing Interest*) for the Council.

V. Research Design and Methodology

The following chapter is dedicated to describe the research design and methodology that will be used in the further course of this work in order to give a clear and pertinent answer to the central research question. First, after discussing the available types of research designs, it will be explained why the *congruence analysis approach* (CON) has been chosen as the most suitable and feasible design for this research. In the second part of this chapter, the research methodology for analysing and explaining the access of the US-based IT corporations to the three EU institutions during the decision-making process on the proposed Data Protection Regulation will be discussed. This includes the selection of an appropriate method, which specifically allows better understanding and tracing the access to the three institutions, the identification of suitable sources of evidence, as well as the description of the subsequent data collection process in order to be able to empirically test the predictions formulated in the previous chapter. Finally, the last part of this chapter reflects on the limitations and obstacles encountered during the process of data collection.

5.1 Discussion of available designs

This section will contrast two types of research designs: the cross-sectional design as an example for a quantitative design and the qualitative case study design. The intention is to set out the reasons why the *congruence analysis approach* (CON) - a specific case study type - has been chosen as the design applied to the examined case.

5.1.1 Cross-sectional design

According to Gschwend and Schimmelfennig (2007, p. 11), the cross-sectional design, as a type of a large-N design, strengthens the belief in generality and average strengths of causal effects, however, it is at the expense of not explaining any single case in detail. It furthermore requires a careful selection of controlled independent variables, and the subsequent regression analysis is conducted on the collected empirical data in order to estimate the result. The aim is to investigate whether there are correlations between one dependent variable and the various identified independent variables. One of its most powerful characteristics is the statistical control of confounding variables, in particular when the relationship of interest cannot be easily separated from other effects (Graddy, 1998, p. 379). As it is stated by Vaus (2001, p. 172), the cross-sectional design *''relies on existing differences rather than examining of interventions''*. In addition, contrary to a time series design, data is collected at one point of time. The next paragraph will illustrate the required steps if a cross-sectional design had to be chosen for this work.

First, it would be necessary to determine the number of cases. As mentioned above, the units of analysis for this research are the major US-based information technology companies. Their definition is based on the current *Global 2000* list for publicly traded companies of the *Forbes Magazine* (Forbes Magazine, 2013). After filtering the list by industry (including all relevant categories such as "Software & Programming", "Internet & Catalogue Retail", "Computer Services", "Computer Hardware") and by country (United States), excluding companies which do not participate in the European market, the number of observed cases (N) would be 25. Although N is relatively small, there would be no point in extending the number of observed IT companies due to two facts: First, a participation in the European market is a self-explanatory prerequisite with regard to the underlying research question. Secondly, it can be assumed that US information technologies companies outside the Global 2000 do not have sufficient resources to seriously influence the EU decision-making process on data protection. Neither should N be reduced, since the sample represents , to a great extend, the associated population of major US-based information technology companies, which usually guarantees a high external validity, as it is easier to generalize from the sample to the population than, for example, within experiments. It also reduces the likelihood of the so called *Type II errors*, meaning that there would be less difficulties to reject the null hypothesis.

However, applying cross-sectional designs can lead to difficulties in identifying the time sequence of events, and thus to a problem of identifying the causal direction of the observed variables (Vaus, 2001, p. 173). For this research project, the problem of temporarily ordering could be solved through arguments drawn from the related theories and previous findings. It is widely stated that the access of private business interests to the EU decision-making processes is facilitated by various lobbying activities. A reverse causality (Y leads to X) can therefore be ruled out with sufficient certainty. Furthermore, the existing body of theoretical and empirical knowledge also helps to select further relevant independent variables, which are related to plausible causal relationships (Kellstedt & Whitten, 2007, p. 93; Vaus, 2001, p. 180). It is thus possible to overcome two major threats to internal validity: excluding relevant variables (*omitted variable bias*) and including irrelevant variables, which can increase standard errors leading to inefficient observations.

But, although the selected sample for the cross-sectional design should represent the population of US-based IT companies to a large extent, a comprehensive desk research has shown that many of those companies (especially the smaller ones) have not sufficiently engaged in lobbying activities on the General Data Protection Regulation to generate statistically significant results. Consequently, a small-N design appears to be the only suitable and feasible approach with regard to the underlying case.

5.1.2 The case study

Buttolph et al. (2008) point out that case studies allow an in-depth investigation of a single individual group or event in order to explore underlying explanations of the causal relation. They are therefore suitable for examining the development and evaluation of public policies, as well as the characteristics of political phenomena. However, there are two approaches to conduct a case study: either a co-variational design which is driven by co-variation, comparing at least two cases, or a congruence analysis, which typically looks at one specific case, attempting to establish congruence between theoretical expectations and observations within the chosen case (Blatter & Haverland, 2012).

5.1.3 Selecting one design

To give a pertinent answer to the central research question of this work, an in-depth scrutiny of the lobbying activities of the involved US-based IT corporations on the new General Data Protection Regulation is required. Since this phenomenon represents one specific case, the *congruence analysis approach* (CON) has been chosen as the applied research design. Based on a small-N research, the CON *"provides empirical evidence for the explanatory relevance or relative strength of one theoretical approach in comparison to other theoretical approaches"*(Blatter and Haverland, 2012, p. 144). Internal validity within the individual case is ensured by congruence; consequently, the causal analysis is based on the degree of congruence between the theoretical expectations (predictions) and empirical observations, whereas alternative explanations are based on the degree of non-congruence between these two elements. The possibility of ruling alternative explanations out depends on certain indicators, such as the number of predictions, the precision and certainty of predictions, the subtleness of the pattern of predictions, and the degree of uniqueness of predictions.

Against this background and in consideration of the several predictions which have been already formulated on the basis of Bouwen's Theory of Access, the CON appears as the most appropriate qualitative design, allowing an in-depth comparison between one of the prevailing theories in the area of EU lobbying and the empirical data on a case, respectively a policy regulation, that has not yet been examined. It should be emphasized here that applying only one theory within the congruence analysis framework has been a deliberate decision. Although Blatter and Haverland (2012, p. 147) stress that *"good theory-oriented social science is a three-cornered fight involving empirical information and (at least) two different theories"*, the specific approach of this research, namely examining the access of non-European corporate interests to the three main EU institutions on the basis of the prevailing theoretical framework for explaining the access of European business

interests to theses bodies, justifies the omission of a second theory. Against this background, it becomes also less important to regard the second - *"horizontal"* - element of control which is described by Blatter and Haverland, as the fact that *"a theory must show not only that its implications correspond to empirical observations but also that it has a higher level of empirical congruence than other theories"* (Ibid.). Instead, it is much more important to check whether Bouwen's Theory of Access is still valid, once non-European interest groups (individual firms) are involved in the EU decision-making processes. Moreover, the *"vertical"* element of methodological control, namely the comparison of theory-based propositions and concrete predictions with empirical evidence, which secures the internal validity of this research, is still given by the fact that the predictions have been deduced from Bouwen's Theory of Access and will be, at a later stage, compared with empirical observations on the case of US corporate lobbying activities that occurred in the course of the proposed Regulation.

The external validity of congruence analyses is however limited, since generalizing the results to the whole population is not possible. But, a generalization to the theory - the so-called *"theoretical generalization"*- by selecting crucial cases for the respective theoretical discourse is possible (Blatter and Haverland, 2012, p. 81). The intrinsic importance of the underlying case has already been outlined in Chapter 1.3.

5.2 Discussion of the method

Next, after choosing the CON as the applied research design, it is necessary to discuss the available methods for measuring the access of the US-based IT corporations to the three EU institutions. In this context, Dür (2008, 2009) published a couple of articles which provide a good overview of these methods and their constraints. It should be emphasized that although Dür mainly uses the term *"influence of interest groups"* in his work and not access, the underlying methodological procedures can also be applied to this research, since exerting influence on the EU decision-making process without access is impossible (Bouwen, 2004, p. 337). As a consequence, examining access is likely to be a good indicator for influence and therefore underlies the same method of analysis. At the end of this section, one method will be selected and operationalized with regard to the central research question.

5.2.1 Process-tracing

Process-tracing as a qualitative assessment of interest group influence, based on detailed knowledge about a specific case, has been the most frequently used approach in the European context. (Dür, 2008, p. 562; 2009, p. 16). The method attempts to identify the causal chain and causal mechanism

between an independent variable (or variables) and the outcome of the dependent variable. To measure interest group influence, scholars scrutinize interest groups' preferences, their attempts to exert influence, their access to decision-makers, decision-makers' responses to these attempts, the degree to which the groups' preferences are reflected in outcomes, as well as statements of (dis-)satisfaction with the respective outcome (Ibid.). If well-designed, studies using process-tracing have two major strengths. First, it becomes possible to gain a good knowledge of nearly all factors that influence a political decision. This enables taking into consideration several competing explanations of an outcome before determining whether or not the influence exerted by specific interest groups had an independent effect on the outcome. Secondly, process-tracing is often built upon semi-structured interviews, which can give insights into developments that are not traceable through document analyses or surveys.

However, studies using process-tracing sometimes face certain challenges. For instance, even when using all sources that are available for a specific case, it often appears unlikely to cover all steps of a causal process. As a consequence, researchers may conclude that no influence was exerted, since they find no evidence for one of the links in the causal chain when encountering a lack of sources (Ibid.). Process-tracing can furthermore lead to biased findings if too much weight is given to drawing inferences from the level of interest group activity to the actual influence (Dür, 2008, p. 564).

5.2.2 The "attributed influence" method

As a second available method, researchers can try to measure *"attributed influence"* by asking interest groups and lobbyists to assess their own and/or other groups' influence, or by inviting experts or observers to evaluate the influence of different groups (Dür, 2009, p. 17). Often carried out on the basis of surveys, the attributed influence method contains several drawbacks. There are, for instance, difficulties in designing suitable surveys, establishing the population from which a sample of respondents is taken and ensuring a sufficiently high response rate. Furthermore, the reliability can be restricted, since self-estimation might be biased (exaggeration or playing down of influence); resulting either from overrating the own activities or, in case of downplaying, to avoid the creation of counter-lobbies that may try to contain the perceived influence of a specific actor. Estimating the influence of other interest groups can also be strategic: minimizing the role of other actors to reduce their importance or inflating it to create a public *"headwind"*. When asking experts, they might simply repeat the findings of academic studies or base their answers on widely accepted beliefs, for example, that *"big companies are more powerful"*. Consequently, only a few surprising findings will occur. In addition, surveys generally do not uncover what kind of influence was exerted, hence, specific characteristics might be neglected (Dür, 2008, p. 565f.).

5.2.3 Assessing the degree of preference attainment

The third method compares the outcomes of political decision-making processes with the ideal points of actors. The main advantage of assessing the degree of preference attainment is that influence can be detected even if nothing visible happens, for example, when the lobbying activities take place behind closed door or *"structural power is at work"*, since influence by definition should be visible in policy proposals or final legislative outcomes that are publicly available. In addition, it is possible to study a relative large number of cases, allowing, if well-designed, for generalizations of the findings. However, like the two methods introduced above, this method also poses some problems. First, the determination of preferences might be troublesome for certain policy fields. Moreover, it remains unclear through which channel or institution the influence was exerted (*"black boxing of the process"*) and there might be a difficulty to control for alternative factors explaining a coincidence between preferences and outcomes. When quantifying the degree of influence, it is important to keep in mind that there might be situations where interest groups manage to influence one specific aspect of legislation, but not the rest of it. Consequently, interest groups can be successful in lobbying all issues that are highly salient to them and unsuccessful on the issues that are less salient to them. Therefore, a disaggregation of political decisions to very specific issues is recommendable, which is, however, very often not an easy task (Dür, 2008, p. 567ff.).

5.2.4 Selection and operationalisation of the chosen method

The forgoing discussion has shown that all three methods of measuring interest group influence come with inherent strengths and weaknesses which are difficult to remove. Hence, it is useful to combine certain parts of them in order to tackle the methodological shortcomings and increase the probability of achieving valid results. Dür (2008, p. 569) calls this approach *"methodological triangulation"*.

The objective of this research is to examine whether Bouwen's *Theory of Access* explains the access of the US-based IT companies to the EU decision-making process on a new General Data Protection Regulation and, as a second goal, to check whether Bouwen's main assumptions concerning the supply and demand of access goods apply to a case where non-European business interests are involved. Hence, combining process-tracing, which enables an in-depth assessment of the different points of access and the determination whether or not the influence exerted by specific interest groups had an independent effect on the outcome (the major advantage over the two other methods), with the assessment of preference attainment, in particular to identify the preferences of the involved companies and measure their degree of access to the three institutions, appears to be the most appropriate approach. The combination of both methods may also correct the biases of

underestimating, respectively overestimating the influence of interest groups. Whereas process-tracing tends to conclude that no influence was exerted in the case of missing sources and incomplete causal chains, the method of assessing preference attainment, on the other hand, is subject to the black boxing of the decision-making process, not allowing to detect selection effects and strategic behaviour.

The *"attributed influence"* method has not been taken into account, since it generally neglects specific characteristics of the lobbying process which is a crucial precondition for carefully conducting small-N studies and, in particular, congruence analyses. Moreover, applying a method which is mainly based on self-estimation and perceptions rather than the measurement of actual influence seems to be inadequate for the purpose of this research, as the review of the validity of Bouwen's theoretical framework requires a robust evidence base.

The verification of the predictions that have been formulated in order to answer these questions requires information on four main aspects:

1. **Which companies (interest groups[6]) have been relevantly involved in the decision-making process on the General Data Protection Regulation?**
2. **Which access goods (resources) have been demanded by the three EU institutions in the course of the decision-making process on the General Data Protection Regulation?**
3. **What have been the preferences of the involved US-based IT companies with regard to the outcome of the decision-making process on the General Data Protection Regulation?**
4. **At which point of the decision-making process on the General Data Protection Regulation (to which of the three EU institutions) have these companies gained (the best) access?**

Against this background, the following table will present an overview of the required data sources and the associated methodological steps:

[6] In case of companies that have influenced the decision-making process only through indirect lobbying activities (e.g. through associations).

Table 5. Overview of the methodological approach

Methodological Steps	Data Sources
1. Identification of the involved companies	Documentation on the public and stakeholder consultations which were held between December 2009 and January 2011; corporate press releases, websites, policy and position papers; working group reports; newspaper and journal articles
2. Identification of the EU institutions' demand for access goods (critical resources)	Interviews
3. Identification of the companies' preferences and strategic objectives	Documentation on the public and stakeholder consultations; corporate press releases, websites, policy and position papers and public statements
4. Evaluating the companies' degree of access to the three EU institutions (identification of main access points)	See 1-3
5. Review of the predictions	See 1-4

Source: Author's own illustration.

5.3 Data collection

The following sub-chapter will illustrate the process of data collection, which not only includes the clarification of what kind of data sources has been used and how it has been collected, but also the author's reflection on limitations obstacles encountered during this process. The work of Yin (2009), who discusses six major sources of evidence for case studies (documentation, archival records, interviews, direct observations, participant observations and physical artifacts) will serve as the theoretical foundation of this section. With regard to the objectives of this research, documentation and interviews have been chosen as the two sources of evidences applied to the underlying case.

5.3.1 Documentation

According to Yin (2009, p. 85f.), relevant documents can include, e.g. memoranda, written reports of meetings and events, administrative documents such as legislative proposals and other internal records, formal studies, newspaper articles, as well as any other form of documentation in the mass media. It should be emphasized at this point that, for case studies in general, *"the most important*

use is to corrobate and augment evidence from other sources" (Ibid.). In the context of the present research, this would mean that the documents associated to the EU legislative process on the proposed Regulation can provide specific information in order to validate the collected information from the interviews. However, since the applied methodology of process-tracing and preference attainment explicitly requires the use of corporate position papers and the different draft proposals and opinions, documentation is of particular importance for this research. At the same time, the author is aware of certain limitations and biases. For instance, the phenomenon of a reporting bias, meaning that specific information might be selectively revealed or even suppressed, and the fact that some documents might be written for other purposes than those of the underlying case study, which could lead to an overreliance on documentation (Ibid.).

To test the formulated predictions as best as possible, the following documents have been used during the course of the research: official EU documentation on the legislative process (including reports from the public and stakeholder consultations, press releases, EC working group reports, draft opinions of the standing committees of the EP, as well as Council conclusions on the communication from the EC to the EP), corporate press releases and policy/position papers, newspaper and journal articles, as well as public statements and relevant websites. The official EU documents have been mainly extracted from the *Legislative Observatory* data base of the European Parliament and the Commission's official website on data protection in the European Union, while the information on the companies' preferences and strategic objectives have been derived from their websites (press releases, position papers). In addition, the online database *Factiva* which contains business information and news from newspapers, trade journals, magazines and newswires like *Reuters* and *Associated Press*, as well as the websites *EUobserver* and *EurActiv* have served as the main leverage points of the desk research. *EUobserver* is an independent online newspaper which covers EU politics on a wide range of topics. It also publishes opinion pieces and blogs on current debates (EUobserver, 2014). *EurActiv* is an online media portal providing EU policy news in 12 languages. The EurActiv network consists of journalists who work either autonomous or on integrated international platforms (Euractiv, 2014).

Since both the required data of the companies and most of the relevant EU documents have been available during the research process, the feasibility of this approach was at no point threatened. However, to close all informational gaps interviews have been chosen as an additional source of evidence, since the robustness of scientific findings generally depends on the completeness of the collected empirical data.

5.3.2 Interviews

Interviews are an essential source of case study evidence, since they might help overcome possible information gaps resulting from incomplete documentation of the examined case (Yin, 2009, p. 92). Particularly in the course of tracing lobbying activities, interviews can be of great value, as lobbying in general tends not to be publicly visible. Therefore, well-informed respondents can provide important insights into a specific case. They can also lead the way to the prior history of this case, which might help to identify other relevant sources of evidence. However, according to Yin, interviews should always be considered as *"verbal reports"*, subjected to the common problems of biases, inaccurate articulation or a poor ability of the respective respondents to recall certain situations (Ibid.). Since the author is aware of these limitations, the approach of this work is to corrobate data from semi-structured interviews and surveys with evidence from a document analysis.

Semi-structured interviews

As the objective of this research is to gain in-depth information about the lobbying activities of US-based IT corporations in the context of the decision-making process on the General Data Protection Regulation and, at the same time, to examine whether Bouwen's Theory of Access is valid for this case, semi-structured interviews have been chosen as a methodological instrument for collecting relevant data.[7] This type of interviews is generally designed in a more fluid and flexible way than, for example, structured interviews or surveys, combining closed questions with open-ended questions. Semi-structured interviews are carefully designed to generate the interviewees' perspectives, perceptions and understanding of the topic of interest. In this context, the interviewer should follow certain techniques, such as to avoid taking a leading position during the interviews or imposing certain meanings, as well as encouraging the creation of a comfortable and relaxed conversation (Zorn, 2009). Furthermore, the author has followed several guidelines for conducting the interviews in order to secure the collection of valid in-depth information:

- Careful planning of the interview, including the consideration of different ways to arrange the questions.
- Providing an overview of the purpose and intended uses of the interview data to the interviewee, as well as getting the permission for voice-recording or note-taking.
- Acquiring some background information about the interview such as his or her job title, responsibilities and the affiliation with the company/organisation. This often helps to "warm up" the interviewee.
- Preparing questions that focus on specific facts or other items relating to the case of interest

[7] In two cases, the author had to opt out for surveys.

- To get more in-depth answers, generalizations should be avoided by using probes such as *"Can you give an example of that?".* In addition, remaining silent once the interviewees pause can sometimes encourage them to continue elaborating on certain aspects. It might also be also helpful to avoid interrupting relevant answers
- Thinking carefully about how to end the interview. Asking the interviewees if there is anything else they want to add, can be a powerful tool, especially after the voice recorder was turned off.
- Asking the interviewee if he or she allows to be contacted at a later date in case of additional questions (Ibid.)

Population sampling and response rates

To bring a clear added value, four relevant populations for conducting the semi-structured interviews have been identified: EU representatives of the three examined institutions (EP, EC and the Council), representatives of the three case study companies (Facebook, Google and Microsoft), and representatives of associations related to the IT sector, as well as government officials of the member states' Permanent Representations in Brussels. Whereas the identification of the companies' preferences, which is of crucial importance for conducting the method of preference attainment, has been possible on the basis of analysing the corporate position papers and draft recommendations, identifying the EU institutions' demand for access goods and their critical resources in order to test Bouwen's hypotheses, could only be achieved by talking to involved decision-makers and stakeholders. It therefore has been of minor concern that none of the three companies was available for an interview, although the author attempted to get in touch with them several times. It should be furthermore noted that asking company representatives about their access, respectively influence on the decision-making process, as usually done in the framework of the *"attributed influence"* method, could have led to certain biases. For instance, the reliability could have been restricted, since self-estimation might be biased (exaggeration or playing down of influence); resulting either from overrating the own activities or, in case of downplaying, to avoid the creation of counter-lobbies that may try to contain the perceived influence of a specific actor (Dür, 2008, p. 565f.).

With regard to the three EU institutions, it was only possible to schedule interviews with representatives of the European Parliament, since no representative of the two other institutions was available, neither for a telephone-based or personal interview, nor for filling in a short survey. However, the interviews with representatives of associations which have been involved in the

examined case, as well as with a representative of the Permanent Representation to the EU of a large EU member state, could fill this informational gap to a large extent.

In view of the population sampling, it can be said that the author attempted to talk to decision-makers and stakeholders who have been directly involved in the decision-making process. Meaning that in the case of the Parliament, for example, only members, respectively substitute members of the involved committees have been interviewed. Against this background, particularly the Committee on Civil Liberties, Justice and Home Affairs (LIBE) was of great interest, as it has been the lead committee for this dossier. According to Bouwen, the specialized committees represent the EP's most important point of access (Bouwen, 2004, p.22). The same applies to the population of the industry-related associations. Here, the author attempted to interview representatives of associations that have at least one of the three case study companies as their members (e.g. Business Europe and TechAmerica Europe).

To sum up, the author is fully aware of the fact that the overall sample is too small to lay the foundations for a quantitative analysis, allowing generalizations about the entire population. However, as already mentioned, the purpose of the interviews has rather been to close the data gaps deriving from an inadequate documentation of the case. Hence, by combining both types of data collection, a qualitative in-depth assessment of the examined case should be enabled.

VI. The case: A new General Data Protection Regulation

The following chapter will introduce the case under examination of adopting a new legislative framework for the protection of personal data in the European Union. First, the current state of EU legislation on data protection will be explained, including a short presentation of the 1995 EU Data Protection directive. Afterwards, the decision-making process on drafting a new EU-wide data protection Regulation will be outlined to obtain the necessary knowledge for the subsequent analysis.

6.1 Data protection in the European Union: background and foundations

The respect for fundamental rights describes one of the cornerstones of the European Union. The *European Convention on Human Rights*[8] and Article 8 of the *Charter of Fundamental Rights of the European Union*[9] explicitly recognize the fundamental right to the protection of personal data. However, until 1995 European cross-border legislation on data protection was missing. Then, the

[8] In order to access the entire Convention, see http://conventions.coe.int/treaty/en/Treaties/Html/005.htm
[9] In order to access the entire Charter, see http://www.europarl.europa.eu/charter/pdf/text_en.pdf

same year saw the adoption of the *"Directive 95/46 of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data"(Data Protection Directive 95/46/EC*) to provide a regulatory framework guaranteeing secure and free movement of personal data across the national borders of the EU member states and, in addition, to establish a basic protection with regard to personal information wherever it is stored, transmitted or processed.[10] Coming into effect in October 1998, the Directive contained 33 articles in 8 chapters and has been complemented by other legal instruments, such as the 2002 *e-Privacy Directive (2002/58/EC)* for the communications sector, as well as specific rules for the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (*Framework Decision 2008/977/JHA)* (EPIC, 2014).The next subsection will present the Data Protection Directive of 1995 in greater detail.

6.1.1 EU Data Protection Directive (95/46/EC)

Directive 95/46/EC applies to data processed by *"automated means"* (e.g. a computer database of customers) and data contained in or intended to be part of *"non automated filing systems"* (traditional paper files). It does not apply to *"the processing of data by a natural person in the course of purely personal or household activities"*, or *"in the course of an activity which falls outside the scope of Community law, such as operations concerning public security, defence or State security"* (European Union, 2014b). The Directive determines the basic elements of data protection that EU member states must transpose into national law. Each state is responsible for the regulation of data protection and its enforcement within its jurisdiction. In this context, it is to provide one or more independent public authorities responsible for monitoring the application of law within its territory of the provisions adopted by the member states. Moreover, a working group *(Article 29 Working Party*) on the "*Protection of Individuals with regard to the Processing of Personal Data"* has been set up, composed of representatives of the national supervisory authorities, representatives of the supervisory authorities of the Community institutions and bodies, and a representative of the Commission (Ibid.).

The guidelines laid down by the Directive relate to, for example, the data quality, the legitimacy of data processing, specific categories of processing (it is forbidden to process personal data revealing e.g. racial or ethnic origin, political opinions, data concerning health or sex life), the data's subject right of access to the data, or the confidentiality and security of data processing. Furthermore, every person shall have the right to *"judicial remedy"* for any right guaranteed him or her by the national

[10] The Directive 95/46/EC is available under http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31995L0046

law applicable to the processing in question. In addition, any person who has suffered damage resulting from unlawful processing of their personal data is entitled to receive compensation from the liable controller of the data. With regard to data processing to third countries, the Directive provides that transfers of personal data from a EU member state to a third country are authorised, as long as they meet an *"adequate"* level of protection to the one prescribed by the directive's provisions. The Directive also aims at encouraging the drafting of national and Community codes of conduct which are supposed to contribute to the proper implementation of the national and Community provisions (Ibid.).

6.2 Drafting a new EU General Data Protection Regulation

In 2003, public consultations, carried out to evaluate Directive 95/46/EC with governments, institutions, business and consumer associations, and individual citizens, spoke against a revision of the existing regulatory framework. Seven years later, however, the Commission concluded that the EU needs a more comprehensive and coherent policy on the fundamental right to personal data protection. In this context, the EC published a Communication on *"A comprehensive approach on personal data protection in the European Union"* (European Commission, 2010a). In its *"Proposal for a regulation of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)"*, which followed on 25 January 2012, the Commission further described the need for reform in the light of today's rapid technological development which has changed the overall socio-economic conditions within Europe:

> *"The current framework remains sound as far as its objectives and principles are concerned, but it has not prevented fragmentation in the way personal data protection is implemented across the Union, legal uncertainty and a widespread public perception that there are significant risks associated notably with online activity (European Commission, 2012a)".*

The following three subchapters are intended to give an overview of the legislative process, as it has been taken place until today.

6.2.1 2009 - 2011: years of consolidation and consultation

In May 2009, the Commission officially started the process of reviewing the general EU legal framework on the protection of personal data. In this context, three main policy objectives were formulated:

- Modernise the EU legal system for the protection of personal data, in particular to meet the challenges resulting from globalisation and the use of new technologies;
- Strengthen individuals' rights, and at the same time reduce administrative formalities to ensure a free flow of personal data within the EU and beyond;
- Improve the clarity and coherence of the EU rules for personal data protection and achieve a consistent and effective implementation and application of the fundamental right to the protection of personal data in all areas of the Union's activities (European Commission, 2014a).

To achieve these goals, the EC organised a stakeholders' conference on data use and protection in May 2009. As a follow up to the conference, a wider public consultation ("*Consultation about the future legal framework for the fundamental right to protection of personal data in the EU*") was launched in July 2009 on the website *"Your voice in Europe"*. The Commission's aim was to obtain views and comments on *"the new challenges for personal data protection and any issues to consider in this review of the existing legal framework*" (European Commission, 2010b). The consultation gained 168 responses: 127 from individuals, business organisations and associations, as well as 12 from public authorities[11]. The business organisations included major US-based IT companies such as *eBay, Microsoft, Yahoo and Intel Corporation*. The consultation was concluded in December 2009. In addition, on 1 July 2010, the Commission held a series of targeted consultation meetings with the objective to *"consult non-public sector stakeholders on a range of issues pertaining to existing data protection rules, identify problems and discuss possible solutions"* (European Commission, 2010c).

On 4 November 2010, the Commission released a strategic Communication outlining its key objectives and preliminary proposals for the revision of the Directive 95/46/EC. Here, the Commission announced a strategy to "protect individuals' data in all policy areas, including law enforcement, while reducing red tape for business and guaranteeing the free circulation of data within the EU". This strategy paper, together with a further public consultation running until January 2011, was supposed to lay the foundations for a final revision of the existing regulatory framework on data protection (European Commission, 2010d).

Finally, on 25 January 2012, the Commission proposed a comprehensive reform of the Union's 1995 data protection rules, *"to strengthen online privacy rights and boost Europe's digital economy"* (European Commission, 2012b). The next paragraph on the details of the two proposals will show that the Commission in particular intended to strengthen the data usage and protection rules for

[11] The summary of replies to the public consultation is available under http://ec.europa.eu/justice/news/consulting_public/0003/summary_replies_en.pdf

companies not based in the EU, which should be seen as an explanation why the American high-tech companies have already played an active role during the consultation stage.

6.2.2 EC proposals to Parliament and Council

The Commission's draft reform included a policy Communication setting out the Commission's objectives and two legislative proposals: a **Regulation** (COM(2012)0011) setting out a general framework for data protection in the EU and a **Directive**[12] (COM(2012)0010) *"on protecting personal data processed for the purposes of prevention, detection, investigation or prosecution of criminal offences and related judicial activities"* (Ibid.).[13]

The key propositions of the reform included:

- A single set of rules on data protection that shall be valid across the EU. By adopting a standardized regulation the member states' national laws on data protection would be supplanted.
- An increased responsibility and accountability for companies that process personal data. For instance, companies and organisations must notify the national supervisory authority in case of series data violations (breaches) as soon as possible.
- EU rules must apply if personal data is handled abroad by companies that active in the EU market and offer their services to EU citizens. In addition, people can refer to the data protection authority in their country, even their data is processed by a company based outside the EU.
- Independent national data protection authorities will be empowered to fine companies that violate EU data protection rules. According to the new draft regulation, this can lead to penalties up to €1 million or up to 2 per cent of the global annual turnover of a company.
- People will be able to delete their online data if there are no "legitimate grounds" for retaining it in order to better manage data protection risks (*"right to be forgotten"*) (Ibid.).

In line with the terms of the *ordinary legislative procedure*, the two proposals were passed on to the European Parliament and the EU member states (meeting in the Council) for discussion. The following subchapter will shortly summarize the legislative procedure since then.

[12] The proposed Directive COM (2012)010 is available under http://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/com/2012/0010/COM_COM%282012%290010_EN.pdf

[13] Although the proposed EU data protection reform also included a Directive, as it was mentioned above, it was mainly the Regulation Com (2012)0011 (commonly known and referred to in this work as the General Data Protection Regulation) that have been subjected to considerable lobbying efforts. Therefore, it will be the subject of examination in the further course of this work.

6.2.3 The legislative procedure since 2012

On 16 February 2012, one month after the legislative proposal for the GDPR was published, the Committee on Civil Liberties, Justice and Home Affairs (LIBE) was announced as the responsible Committee in Parliament. In the same context, Jan Philipp Albrecht (Greens/EFA) was appointed as the lead *Rapporteur*. On 16 January 2013, Albrecht published a draft report on the Commission's Proposal, which was followed by the submission of approximately 4,000 amendments proposed by MEPs from the four Committees that were consulted for opinion. 91 of these amendments were integrated into a compromise text which was adopted by the LIBE committee on 21 October 2013 and tabled for plenary one month later.[14] On 14 March 2014, the EP adopted its *"legislative resolution on the proposal for a regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)"* by 621 votes to 10 with 22 abstentions in first reading, following the ordinary legislative procedure (European Parliament, 2014a).

The positive plenary vote means the position of the EP is in force. This consolidation has been essential to fix Rapporteur Albrecht's work in the run-up to the European elections in May 2014. It makes it also more difficult for newly elected MEPs to change the proposal afterwards and ensures that the EP can build on work done during the next legislative period. As the next step, the Council has to define its 1st reading position in order to enter negotiations with the two other institutions. The next meeting of the member states' Justice Ministers is supposed to take place in June 2014. To become law the proposed Regulation has, according to the rules of the COD, to be adopted by the Council (European Commission, 2014b).

As it could be already derived from the original proposal tabled by the Commission, the EU institutions are emphasizing the need for stricter rules with regard to the territorial scope of the new legislative framework (in particular international data transfers) and administrative sanctions in case of data breaches by private entities; with certainty key issues for the US information technology companies. However, a detailed examination of the Proposal's main elements, as well as the particular stances and preferences of the case study companies will follow in Chapter VII.

To conclude this section, the following tables will give an overview of key players and events during the legislative process:

[14] The final Report is available under http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2013-0402+0+DOC+PDF+V0//EN

Table 6. Overview of key players

Institution	Committee / DG	Key actors
European Parliament	• Civil Liberties, Justice and Home Affairs (LIBE, *lead committee*)	• Jan Philipp Albrecht (Greens/EFA) • Axel Voss (EPP) • Dimitrios Droutsas (S&D) • Alexander Alvaro (ALDE) • Timothy Kirkhope (ECR) • Cornelia Ernst (GUE/NGL)
European Parliament	• Economic and Monetary Affairs (ECON)	The Committee decided not to give an opinion
European Parliament	• Employment and Social Affairs (EMPL)	• Nadja Hirsch (ALDE)
European Parliament	• Industry, Research and Energy (ITRE)	• Seàn Kelly
European Parliament	• Internal Market and Consumer Protection (IMCO)	• Lara Comi (EPP)
European Parliament	• Legal Affairs (JURI)	• Marielle Gallo (EPP)
Council of the European Union	• Justice and Home Affairs (JHA)	• Rafael Fernandez-Pita y Gonzales (*DG*) • Roland Genson • Hans Nilsson
European Commission	• DG Justice	• Viviane Reding (*Commissioner*) • Francoise Le Bail (*DG*) • Marie-Helene Boulanger • Thomas Zerdick • Nicolas Dubois • Horst Heberlein • Irina Vasiliu • P.Silva

Source: Author's own illustration, based on data of the EP's *Legislative Observatory.*

Table 7. Overview of key events

Date	Event
25 January 2012	Legislative Proposal for a GDPR published
16 February 2012	LIBE announced as the responsible Committee, 1st reading/single reading
25 October 2012	1. Debate in Council
16 January 2013	LIBE Draft Report published
28 January 2013	IMCO Opinion published
26 February 2013	ITRE Opinion published
04 March 2013	EMPL Opinion published
25 March 2013	JURI Opinion published

06 June 2013	2. Debate in Council
07 October 2013	3. Debate in Council
21 October 2013	Adoption of the Draft Report in LIBE Committee, 1st reading/single reading
22 November 2013	Committee Report tabled for plenary, 1st reading/single reading
06 December 2013	4. Debate in Council
03 March 2014	5. Debate in Council
11 March 2014	Debate in Parliament
12 March 2014	Adoption of the Parliament's position, 1st reading/single reading
Status quo	Awaiting the Council's 1st reading position; budgetary conciliation convocation

Source: Author's own illustration, based on data of the EP's *Legislative Observatory.*

VII. Analysis

In order to give a pertinent answer to the central research question and to evaluate the predictions derived from Bouwen's Theory of Access, this chapter is dedicated to apply the methodological steps, which have been selected and operationalized in Section 5.2.4, to the case under examination. First, the involved US-based IT companies will be identified to determine the sample of this research. Secondly, the companies' preferences and positions with regard to the proposed legislation will be identified. Then, the identification of the different access goods and critical resources demanded by the three EU institutions is supposed to enable testing Bouwen's theoretical framework in the context of this case from its foundations. As the main part of this chapter, by comparing the specific preferences of the companies with the positions and legislative outcomes of the three institutions, the companies' degree of access to the different stages of the decision-making process will be assessed. Finally, on the basis of these findings, the predictions which have been formulated in Chapter 4.3 will be reviewed.

7.1 Identification of the involved companies

In the following sub-chapter the US-based IT companies which have been - to a relevant extent - involved in the EU decision-making process on drafting the General Data Protection Regulation will be shortly introduced. Based on the analysis of related documents (e.g. official responses to the Public Consultation in 2009, position papers), media coverage and the conducted interviews, as well as their particular importance for the policy field of data protection - the core business would be directly affected from a new EU legislative framework in all three cases - and their outstanding position on the European market, three companies have been selected: **Facebook Inc., Google Inc., and Microsoft Corporation**. It should, however, be noted that also some other American technology

companies officially published amendments or statements with regard to the proposed Regulation, for example, Intel Corporation, Cisco Systems Inc. or Yahoo! Inc. But, in order to contain the scope of this research within a feasible framework and secure the overall relevance, they have not been taken into account.

7.1.1 Facebook, Inc.

Facebook, Inc. (*Facebook*) was incorporated in July 2004 and is headquartered in Menlo Park, California. People use Facebook to stay connected with their friends and family, to discover what is going on in the world around them, and to share and express what matters to them to the people they care about. Developers can use the Facebook Platform to build applications and Websites that integrate with Facebook to reach its global network of users and to build personalized and social products. It offers advertisers a combination of reach, relevance, social context and engagement. The company competes with, e.g. Google, Microsoft and Twitter (Reuters, 2014a).

7.1.2 Google Inc.

Google Inc. (*Google*), incorporated on 22 October 2002, is a global technology company based in Mountain View, California. Google's business is primarily focused on key areas, such as search, advertising, operating systems and platforms, enterprise and hardware products. It generates revenue primarily by delivering online advertising which is called AdWords. The auction-based advertising program delivers ads to search queries or Web content. With AdWords, advertisers create text-based ads that then appear beside related search results or Web content on its Websites and on thousands of partner Websites in its Google Network, which is the network of third parties that use its advertising programs to deliver relevant ads with search results and content. Google also generates revenues from Motorola by selling different kind of hardware products. The company competes with Facebook, Twitter, Yahoo, Microsoft, eBay and Amazon (Reuters, 2014b).

7.1.3 Microsoft Corporation

Founded in April 1974, Microsoft Corporation (*Microsoft*) is engaged in developing, licensing and supporting a wide range of software products and services. The company operates in five segments: Windows & Windows Live Division (Windows Division), Server and Tools, Online Services Division (OSD), Microsoft Business Division (MBD), and Entertainment and Devices Division (EDD). Its products include operating systems for personal computers (PCs), servers, phones, and other intelligent devices; server applications for distributed computing environments; productivity applications; business solution applications; desktop and server management tools; software development tools; video games, and online advertising. Microsoft also designs and sells hardware,

including the Xbox 360 gaming and entertainment console, Kinect for Xbox 360, Xbox 360 accessories, and Microsoft PC hardware products. Furthermore, the company offers cloud-based solutions that provide customers with software, services and content over the Internet by way of shared computing resources located in centralized data centres. Cloud revenue is earned primarily from usage fees and advertising. Microsoft competes with Nintendo, Sony, Apple, Google and BlackBerry (formerly known as Research In Motion) (Reuters, 2014c).

It is furthermore important to be aware of the companies' organizational structures in Brussels, since a possible engagement in indirect lobbying activities has been taken up in the predictions formulated above. In particular the coverage of association memberships plays a vital role in this context. Based on data from the *EU Transparency Register*, an initiative that is operated by the Commission and the European Parliament, these aspects have been taken into account in the next chapter, which presents the companies' preferences and strategic objectives with regard to the decision-making process on the Proposal.

7. 2 Identification of the companies' activities and strategic objectives

First, it should be emphasized that, unlike numerous traditional policy areas, the identification of preferences in the context of data protection is clearly dominated by subtle differences in the wording of individual legal articles, rather than concrete numbers or yes/no propositions. However, this aspect should not adversely affect the comparison of the legislative outcome with the ideal points of the companies, as they, in most cases, explicitly refer to propositions and definitions that could be tracked in at least one of the legislative proposals or draft reports of the EU institutions.

7.2.1 Facebook, Inc.

Facebook took a first public position with regard to adopting a new EU legislative framework for data protection after the Commission published a Communication on *"A comprehensive approach on personal data protection in the European Union"* in November 2010, stating that the Union needed a more comprehensive and coherent policy on the fundamental right to personal data protection (European Commission, 2010a). Prepared by representatives of Facebook Ireland Ltd and Facebook Inc., under the lead of Richard Allan, Director of Policy for Europe and responsible for representing the company and lobbying EU governments, its official response to the EC's Communication already referred to six of the eight elements, which have identified above as thematic cornerstones for the following legislative draft (Facebook, 2010). In April 2012, three months after the Commission proposed the GDPR (COM(2012)0011), Facebook's Director of EU Affairs and former MEP Erika Mann, published a document, setting out the company's views on the proposal (Facebook, 2012).

The general thrust of the position paper and Facebook's attitude towards a reform of the existing legislative framework becomes already apparent on the first page:

> *"The revision of the Data Protection Directive has the potential to facilitate innovation and provide consumers with greater transparency and control. Facebook believes that it is possible to have sound privacy regulation and a thriving digital sector. The new legislative framework should focus on encouraging best practices by companies like Facebook rather than on setting out detailed technical rules that will not stand the test of time and may be frustrating and costly for both service providers and users (Facebook, 2012, p. 1)."*

Mann then addressed ten key aspects of the Regulation indicating which elements should be revised in the further course of the legislative process. The overview of the companies' preferences and strategic objectives, summarized and presented in Table 9., as well as its specific recommendations on the draft opinion of the EP Committee on the Internal Market and Consumer Affairs (IMCO) (Facebook, 2013), will in particular show that Facebook attempted to weaken and reduce a high number of prescriptive provisions and higher levels of bureaucracy; arguing for a stronger contextual and flexible embedding of new rules and regulations (Facebook, 2012).

In sum, the analysis of related documents revealed that Facebook's public involvement in the decision-making process on the Regulation has been relatively low. In contrast to Microsoft, for example, Facebook neither participated in the *Data Protection Conference* in May 2009, nor replied to the public consultation that was launched two months later (European Commission, 2010b). However, it seems that the company has been particular engaged in indirect lobbying activities, as well as attempted to approach the involved institutional decision-makers outside the limelight. On the one hand, Facebook is a member of the American Chamber of Commerce to the EU (AmCham EU) and the European Internet Foundation (EIF)[15]. Both associations have regularly participated in the debate on reforming the European data protection legislation. AmCham EU, for example, published a comprehensive position towards the proposed Regulation in July 2012 (AmCham EU, 2012), while the EIF have organised several stakeholders events on this topic, such as a so called *Dinner Debate* on 24 April 2012 that included a speech by Françoise Le Bail, the Director-General for the Commission's DG Justice (EIF, 2012). In addition, most of the interviewees stated that their offices have been in touch with Facebook during the course of the decision-making process on drafting the new Regulation (e.g. Parliamentary Assistant to MEP (No.2), 13 May 2014).[16]

[15] A full overview of the companies' association memberships and persons in charge of EU affairs can be found in Appendix D.

[16] Facebook's access to the three EU institutions will be particularly evaluated in Chapter 7.4.

7.2.2 Google Inc.

Similar to Facebook, Google's direct public involvement in the decision-making process has been rather restrained, which also includes that the company did not participate in the 2009 public consultation. However, Google firstly took a public stance when its Global Privacy Counsel Peter Fleischer gave a keynote speech at the *EU Data Protection Conference* on 20 May 2009 (European Commission, 2009). Under the heading *"Transparency and Notification in the Age of the Internet"*, Fleisher criticised the existing legislative framework on data protection in the European Union, namely the Directive from 1995, by addressing major aspects, such as the *"legalistic"* and "*un-readable"* character of current privacy policies, as well as *"fictitious consent models"* and the *"obsolete system"* of notification and checking mechanisms (Google, 2009). With regard to necessary reforms, he stressed that rather than implementing prescriptive and bureaucratic regulations, the new legislation should strengthen the *"empowerment and self-protection"* of the consumers (Ibid.). As in the preceding case of Facebook, also Google has attempted to encourage the EU decision-makers in drafting a regulation which gives more importance to self-regulation and the consumers' responsibility with regard to privacy and data protection. The reduction of administrative burdens served as grounds for these claims (Ibid.).

After the Commission tabled the proposal for the new Regulation, Google re-emphasized its objectives by publishing *"Preliminary Views on the Proposed Data Protection and Privacy Regulation in the European Union"* (Google, 2012). The paper is divided into two parts: the first part acknowledges the Regulation's *"significant improvements"* in areas that are particularly related to the harmonization and simplification of rules for international data transfers.[17] The second part then refers to propositions in the draft where, in the view of Google, significant modifications were required "*to avoid adverse impact on both citizens and organizations"* (Ibid.). More precisely, the company addresses three main areas *(„The Definition of Personal Data", "Rules on Consent and Profiling", "The Right to be Forgotten" and "Responsibilities and Liabilities of Controllers and Processors")***,** of which three sub-aspects are directly associated to the eight elements that form the basis for this analysis, namely the requirements for data subjects' consent, the right to be forgotten and the concept of data processors and data controllers.[18] Google's general aim of influencing the legislative outcome becomes apparent when looking at the section on data subjects' consent, which is clearly in line with its positioning strategy in 2009:

> *"We believe that the legislation should be flexible enough to allow for the creation of innovative ways in which users can maintain control about the data related to them. In*

[17] Explicitly Articles 41 (1), 42 and 44 (1h, 3, 6) of the EC proposal (European Commission, 2012a).
[18] Google's preferences and strategic objectives are illustrated in more detail in Appendix E.

> *particular, we think that when the use of data is in accordance with both industry standards and the expectations of the average consumer, the bar for gaining consent should be less onerous for both industry and the citizen (Google, 2012)."*

In particular the aspect of stressing the importance of adopting a flexible legislative framework, could be already identified as a major objective in the case of Facebook.

However, apart from these two position papers, the analysis of related documents and the interviews conducted in the course of this research, indicates that Google's further involvement in the decision-making process has, on the one hand, not been publicly documented and, on the other hand, mainly taken place through engagement in business associations. The overview of Google's association memberships (Appendix D) for instance, lists several associations that have been regularly involved in the decision-making process. Besides AmCham EU and EIF, whose involvement has been already mentioned, Google is also a member of the Interactive Advertising Bureau Europe (IAB Europe) and TechAmerica Europe; both of which replied to the Commission's public consultation in 2009 and furthermore published press releases (e.g. TechAmerica Europe, 2012) or official position papers (IAB Europe, 2012) in the further course of the legislative procedure. In addition, one of the interviewees explicitly mentioned that his office has had contact to representatives from TechAmerica Europe (Parliamentary Assistant to a MEP (No. 4), 13 May 2014).

7.2.3 Microsoft Corporation

In contrast to the two other case study companies, Microsoft started to engage in the process on reforming the current EU legislative data protection framework already at the consultation stage. Six months after Thomas Myrup Kristensen, EU Internet Policy Officer of Microsoft Europe held a keynote speech on *"Identity Management"* at the *EU Data Protection Conference* in May 2009 (European Commission, 2009), the company sent a official *"Response to the Commission Consultation on the Legal Framework for the Fundamental Right to Protection of Personal Data"* (Microsoft, 2009). The document assesses from a more general perspective the key strengths and weaknesses of the 1995 directive and outlines possible room for improvement. In this context, Microsoft acknowledges the Directive's contribution to helping *"embed the value of data protection - which is recognised as a fundamental right under the EU Charter of Fundamental Rights - into the everyday practices of companies and other organisations that process personal data"*, however, stressing at the same time that these rules have been undermined by inconsistent implementation among member states and current mechanisms, which has led to the provision of varying levels of data protection to the European consumers (Microsoft, 2009, p. 3). Furthermore, the company addresses the EU rules for international data transfers, criticising that the existing mechanisms would show considerable

shortcomings, especially with regard to the operations of multinational companies. By calling the effectiveness of these methods into question, since they would, in the company's view, rather focus on *"prescriptive rules and processes than effective protection of data"*, Microsoft applies the similar reasoning as the two other companies. This becomes all the more evident in the following quote, when the company raises concerns that a prescriptive approach could hamper technological innovation and increase overall costs:

> *"While Microsoft strongly supports the user rights established by the Directive, we are concerned that the Directive takes an overly prescriptive approach in laying down rules on personal data. In some cases, the Directive's requirements may only marginally increase user privacy, if at all, while at the same time limiting the ability of service providers to offer new services and imposing unnecessary costs (Microsoft, 2009, p. 5)."*

After the Commission published the Proposal, Microsoft started to make its stance clearer on specific data protection issues and the reform of the legislative framework. The first official position to the proposed Regulation was published in February 2012 (Microsoft, 2012a). The document includes preliminary comments on the Proposal's main elements, such as the *"main establishment"* proposition, meaning that companies processing data in the EU will be subject to a single supervisory authority based on their country of main establishment, the role of data processors, the *"right to be forgotten and to erasure"*, data breaches or rules on the data subjects' consent, and emphasized the company's view that the Regulation would, as proposed, introduce *"overly prescriptive approaches"* that do not reflect the internet's structure and the needs of consumers (Microsoft, 2012a, p. 2). This line of arguments could already be found in the case of the two other companies. A further position paper entitled *"Microsoft positions and suggestions for the draft General Data Protection Regulation"* then laid out specific amendments to the draft Regulation that has served as the main basis for the identification of Microsoft's main preferences and objectives (Microsoft, 2012b).

With regard to Microsoft's indirect involvement in the decision-making process through strategic association memberships, it can be said that the company is listed in the *EU Transparency Register* (see Appendix D) as a member of several associations, whose active engagement has been already described (AmCham EU, EIF, TechAmerica Europe, IAB). In addition, the company is a member of *Digital Europe* and *Business Europe*. These two associations have been ranked first and second in terms of regularity of contact by one of the respondents (Parliamentary Assistant to a MEP (No. 2), MEP, 13 May 2014). That was also confirmed during interview with a representative from Business Europe, who stated that the association have seen *"a high number"* of MEPs during the legislative process, in particular after the LIBE Committee published its draft report in January 2013

(Representative of Business Europe, 06 June 2014). Both associations furthermore published position papers at different stages of the legislative process. Digital Europe, for example, replied to the Commission's public consultation in 2009 (Digital Europe, 2009) and Business Europe stated its position in Marc 2014 (Digital Europe, 2014).

7.2.4 Overview of the companies' key preferences about the outcome of the GDPR

This section will present the concrete preferences[19] of the three case study companies with regard to the proposed Regulation. In order to ensure an adequate structure, eight major elements of the EC's Draft Proposal have been identified[20], of which each one has been taken up, respectively, referred to in position papers and recommendations, by at least two of the three companies:

1. **Main establishment/ "One-Stop-Shop"**
2. **Requirements for data subjects'[21] consent[22]**
3. **Right to be forgotten and to erasure**
4. **Concepts of data processors[23] and data controllers[24]**
5. **Security/data breach[25] notifications**
6. **International data transfers**
7. **Administrative fines and sanctions**
8. **Powers of the Commission to extend the GDPR/delegated acts**

[19] The companies' preferences derive from the analysis of the position papers and draft recommendations which have been introduced in the Chapters 7.2.1, 7.2.2, and 7.2.3.

[20] It should be noted that almost all positions to these elements refer to propositions of the 2012 EC Proposal, as the positions expressed during the consultation phase between 2009 and 2011 were too broadly formulated to be of use for the analysis. Furthermore, only Microsoft officially replied to the public consultation in 2009.

[21] "**data subject** means an identified natural person or a natural person who can be identified, directly or indirectly, by means reasonably likely to be used by the controller or by any other natural or legal person, in particular by reference to an identification number, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;" (European Commission, 2012a, p. 41).

[22] "the **data subject's consent** means any freely given specific, informed and explicit indication of his or her wishes by which the data subject, either by a statement or by a clear affirmative action, signifies agreement to personal data relating to them being processed;" (European Commission, 2012a, p. 42).

[23] "**processor"** means a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller;" (Ibid.).

[24] "**controller** means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes, conditions and means of the processing of personal data; where the purposes, conditions and means of processing are determined by Union law or Member State law, the controller or the specific criteria for his nomination may be designated by Union law or by Member State law;" (European Commission, 2012a, p. 41f.).

[25] "personal **data breach** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;" (European Commission, 2012a, p. 42).

This methodological step will be, in addition to the data collected through interviews, of crucial importance for evaluating the companies' access to the three EU institutions. It should be furthermore noted that the preferences will be presented in a cumulated way (Preference 1 to 15), since the objective of this work is not examine which of the three companies have had the highest degree of access to the EU institutions, but to trace the overall access of these companies to the legislative process.

1. Main establishment/"One-Stop-Shop"

Until today, companies that operate across Europe are subject to multiple and divergent national data protection regimes. To address this problem, the EC Proposal introduced a *"one-stop-shop"* based on the location of an organisation's *"main establishment".* In practice, this means that the *Data Protection Authority* (DPA) of the country hosting a company's European headquarters has jurisdiction on behalf of the rest of the EU (European Commission, 2012a). Facebook and Microsoft welcomed the overall direction of this proposition; however, they expressed concerns about the exact terms and conditions. Hence, both companies argued for slight amendments. In this context, two key preferences could be identified. First, a clear indication of how the *"main establishment"* rule would apply to group, respectively transnational companies. Consequently, only the EU-based data controller of a corporate group should be responsible for compliance with the relevant EU data protection (**Preference 1**).[26] Secondly, when determining data processors' and controllers' countries of main establishment, both should be subject to same tests, since many controllers also act as processors within one company (**Preference 2**) (Facebook, 2012; Microsoft, 2012b).

2. Requirements for data subjects' consent

The proposed Regulation provides extended requirements when data controllers rely on data subject consent to legitimize data processing. Overall, the companies pleaded in favour of considerable weakening of the associated articles (Article 4(8) and 7). Whereas Facebook argued for the replacement of the term *"explicit"* consent by *"unambiguous"* consent, should consent, according to Google, be valid without specific actions and statements of the user, accompanied by flexible rules in accordance with industry standards and user expectations (both statements are summarized under **Preference 3**). Facebook furthermore recommended that controllers should be able to make consent to the processing a condition of access to a service which may not be otherwise free (**Preference 4**) (Facebook, 2012; Google, 2012).

[26] A more detailed overview of the companies' preferences can be found in Appendix E.

3. Right to be forgotten and to erasure

This proposition describes a right for people to have their data deleted and, at the same time, requires data controllers to make all reasonable steps to obtain erasure of content forwarded (copied) to third parties. Although the three companies acknowledged the general idea behind the proposed law, it became evident that its possible implications, in particular the third party aspect, have been conceived as technically impossible to apply in practice. Therefore, the companies recommended, e.g. the deletion of the term "to be forgotten" (**Preference 5**), not to indicate that users have a specific right to obtain from the controller the erasure of data which was made available when he or she was a child (**Preference 6**), as well as the deletion, respectively amendment of Article 17(2), which specifically requires informing third parties of the request for deletion of personal data (summarized under **Preference 7**).

4. Concepts of data processors and controllers

Consistent with the existing 1995 EU legislative framework on data protection, the proposed Regulation continues to allocate responsibilities between *"data controllers"* and *"data processors"*, as it is of crucial importance for companies to understand when they are operating as a controller and when they are operating as processor (Microsoft, 2012b). However, it could be derived from the companies' position papers and draft recommendations that the line drawn by the EC Proposal has in their opinion not been clear enough. The companies therefore called for a strict separation between responsibilities and liabilities of controllers and processors to ensure efficient operations and *"legal certainty"* (summarized under **Preference 8**) (e.g. Facebook 2012; Google, 2012).

5. Security/data breach notifications

Although the companies stressed the importance of ensuring a high level of consumer protection, they recommended to contain the extend and prescriptive nature of the proposed security provisions and questions with regard to notifications of data breaches. These amendments included, for example, the recommendation for not obliging organizations to report occurring breaches to the responsible authority within 24 hours. It should be furthermore avoided to establish rules that require notifications of minor data breaches (**Preference 9**). The companies justified this by pointing to the danger of overburden data protection authorities, creating higher levels of bureaucracy and taking the overall workability of the proposed regime into question. (Facebook, 2012; Microsoft, 2012b).

6. International data transfers

The companies generally welcomed the introduction of new mechanisms to improve the secure flow of personal data to third countries (e.g. Facebook, 2012). In this context, Microsoft suggested the establishment of additional safeguard mechanisms for international data transfers which would create a possibility for organizations to offer supplemental, legally binding protection agreements. These safeguard mechanisms could be implemented in the form of an EU Data Protection Seal or trust marks (**Preference 11**). However, Microsoft also stressed that the data protection incentives should be *"voluntary, affordable, technology neutral and capable of global recognition"* (**Preference 12**) (Microsoft, 2012b).

7. Administrative fines and sanctions

In comparison to the existing Directive on data protection, the new Regulation proposes a regime that consists of comprehensive fines and sanctions for violations of data protection law (European Commission, 2012a). The overall character of the related Article 79 of the EC Proposal was strongly criticised by the companies. Hence, they argued for limiting the magnitude of the proposed fine system by determining maximum penalties per case, which are not included in the Proposal (summarized under **Preference 13**). In addition, Microsoft pleaded for an amendment of Article 79 towards a more scaled sanctioning mechanism, namely that higher fines should be only imposed on serious delinquencies and persistent offenders (**Preference 14**) (Facebook, 2012; Microsoft, 2012b).

8. Powers of the Commission to extend the GDPR/delegated acts

The EC proposal includes 26 provisions where the Commission has granted itself the power to extend the Regulation by adopting delegated acts in accordance with Article 86 (European Commission, 2012a). Against this background, the companies argued for a significant reduction of these provisions, as it could compromise "*the level of legal certainty afforded by the regulation"* (Facebook, 2012, p. 12). Microsoft furthermore explicitly referred to propositions *"that deal with "essential elements of law or that are better addressed through innovation"* (Microsoft, 2012b, p. 4). The related amendments are summarized under **Preference 15**.

To also get an overview of the demand side in the context of the decision-making process on the proposed Regulation, the next subchapter will present the EU institutions' most important access goods and critical resources.

7.3 Identification of the EU institutions' demand for access goods/critical resources

The identification of the EU institutions demand for access goods and the respective critical resource in the course of the legislative process is of crucial importance in order to test Bouwen's Theory of Access in its foundations, as well as for reviewing the predictions formulated in Chapter 4.3. The following sub-section is therefore dedicated to shed light on the *ranking of dependencies* for each of the three institutions.

As already mentioned in Chapter 5.3.2, it was only possible to schedule interviews with representatives of the European Parliament, since no representative of the two other EU institutions was available, neither for a telephone-based or personal interview, nor for filling in a short survey. Therefore, the interviews with representatives of associations which have been involved in the case of the General Data Protection Regulation, as well as with a representative of the Permanent Representation to the EU of a large EU member state, has served as compensatory sources for identifying the institutions' demand for access good, which turned out to be helpful for filling informational gaps. The author is, however, fully aware of the fact that the validity of these responses might be restricted, as they still had an external perspective on the decision-making procedures within the two institutions.

7.3.1 European Commission

Bouwen argues that *Expert Knowledge* is in general be the most demanded access good by the European Commission, since it is dependent on external resources to obtain the necessary expertise to be able to propose legislation. As the second most important good for the Commission, he identifies *Information about the European Encompassing Interest* in order to play the role as a *"legislative broker"*. By contrast, the EC's demand for Information about Domestic interests is to be expected rather low, since the domestic private interests and the interests of most member states in the issues at stake have, according to Bouwen, not yet been identified at this early stage of the legislative process. Against this background, the Commission's ranking of dependencies would be EK > IEEI > IDEI.

Similar to the case of the Parliament, also on the part of the EC, Bouwen's ranking of dependencies could not be confirmed. Although *Information about the Domestic Encompassing Interest* has been classified as the least important access good by all of those respondents, who explicitly referred to this question, *Information about the European Encompassing Interest* instead of *Expert Knowledge* has been identified as the critical ressource for the Commission during the decision-making process on the Regulation (by 3 out of 4 respondents). In this context, two main reasons have been given.

First, as two of the interviewees stated, Expert Knowledge appeared to be of less importance for the EC, in comparison to the Parliament for example, since the *"experts"* of the Commission could better meet the comprehensive requirements of technological expertise with regard to the dossier of the Regulation than most of the MEPs:

"Compared to the Commission with its large administrative machinery, we [the MEPs] are subject to informational disadvantages, since we have no means like a research division. Therefore, due to these limited resources, we have to work more intensively, which also requires a constant dialogue with external experts (Shadow Rapporteur for the GDPR, MEP, 02 June 2014)."

The second reason relates to the debate on the NSA spying affair, which in the opinion of one of the respondents moved a "*European awareness*" into the foreground of the legislative process since its peak in 2013, leading at the same time to an increased importance of *Information about the European Encompassing Interest* as a ressource for the EU decision-makers:

"If this would have happened at an earlier stage of the procedure, the European interest would have been more present at public events and discussions from the start (Parliamentary Assistant to a MEP (No. 3), 28 May 2014."

In sum, these findings lead to a modified ranking of dependencies on the part of the Commission: **IEEI > EK > IDEI instead of EK > IEEI > IDEI**. Whether the changing framework conditions have also had adverse affects on the access of the three case study companies to the Commission, bearing in mind that *Expert Knowledge* is expected to be provided best by individual firms, will be shown in Chapter 7.4.

Table 8. Ranking of dependencies for the EC with regard to EU decision-making on the GDPR

Respondent	First choice (critical resource)	Second choice	Third choice
MEP (Shadow Rapporteur for the GDPR)	IEEI	EK	IDEI
Parliamentary Assistant to MEP (No. 3)	IEEI	EK	IDEI
Representative TechAmerica	EK	IEEI	IDEI
Representative Business Europe	IEEI	EK	IDEI

Source: Author's own illustration, based on the data gathered through interviews.

7.3.2 European Parliament

As described in Chapter 4.1, Bouwen argues that *Information about the European Encompassing Interest* is the EP's critical resource, since it particularly needs information which allows assessing the legislative proposals made by the European Commission from a European perspective. *Information about the Domestic Encompassing Interest,* respectively the needs and interest of a specific sector in the domestic market, should be, according to Bouwen, the second most important access good for the Parliament. In addition, *Expert Knowledge* is described by Bouwen as the least important resource, since the European Commission has, at this stage of the legislative process, already drafted a detailed and often highly technical proposal with the help of detailed expertise. Hence, the European Parliament's ranking of dependencies is IEEI > IDEI > EK. Based on interviews with parliamentary representatives, it has been tested if this also applies to the case of the proposed Regulation.

The evaluation of the interviews and surveys shows that although there is a considerable variance within the sample, *Expert Knowledge* and *Information about the European Encompassing Interest* appear to be the Parliament's most important access goods, since 5 of the 6 respondents chose either of the two as the critical ressource with regard to the decision-making process. One of the respondents justified his choice for *Expert Knowledge* as follows:

"Technological expertise has been of primary importance for us, because it served as the basis for our decision-making. As you have to base your decision-making on certain grounds, we have been independent on external knowledge. [...] Especially in regard to highly complex dossiers is external expertise almost essential, since we are not experts in technological details (Parliamentary Assistant to a MEP (No. 3), 28 May 2014)

The particular importance of *Expert Knowledge* in comparison with more traditional policy areas, was also stressed by another respondent who classified it as the *critical resource*:

"I think that, with regard to technological processes, ordinary legislation before the globalized, technological revolution had been not that complex; and this has changed. Now, in the case of the GDPR, we have been facing a matter that plays a great role in almost every aspect of our lives (Shadow Rapporteur for the GDPR, MEP, 02 June 2014)."

However, also *Information about the European Encompassing Interest* has been of great value for most of the respondents, as only one of them ranked it at the low end of the table. One of the two respondents, who said that it has been his or her critical resource in the course of the decision-making process, made the following statement:

"That's not to say that we don't value them for their expertise [...] it's much more useful to get a European contact on a sector [...] and how we're going to impact that sector (Parliamentary Assistant to a MEP (No. 4), 13 May 2014)."

To get an overview of the perspective of the European economy, respectively the whole sector, was also the most important aspect for the other respondent who chose *Information about the European Encompassing Interest* as the critical ressource:

"Since the internet is borderless [...] it is, first of all, important to get a general view of the whole sector (Parliamentary Assistant to a MEP (No. 1), 13 May 2014)."

When looking at Table 9, it also striking that, in contrast to Bouwen's classification, *Information about the Domestic Encompassing Interest* was in 3 of the 6 cases described as the least important access good. In this context, two respondents emphasized the particular nature of the proposed Regulation, which is, due to its generality for all EU member states (*"the internet is borderless"*), to be distinguished from traditional policy areas.

"We make laws for Europe and as the GDPR touches many digital companies there is no difference for a Romanian or a French company in terms of effects (Parliamentary Assistant to a MEP (No. 2), 13 May 2014)."

"I have seen national interests much less in this contest, then, for example in the energy sector or industrial goods production, since the coal sector in Poland and nuclear energy in France have totally different interests, while small start-ups, with regard to data protection, in France and Germany do not have different problems (Parliamentary Assistant to a MEP (No. 1), 13 May 2014)."

Another respondent furthermore justified his choice for classing *Information about the Domestic Encompassing Interest* as the least important resource by stating that *"with regard to the great scope of the GDPR and its technological requirements, is has been much more a matter for the Council to identify national interests and agree on a common position among the member states, than for the Parliament "* (Shadow Rapporteur for the GDPR, MEP, 02 June 2014). Once again, in particular the technological specificity of the topic has led to a different weighting of the resources, than it could be expected on the basis of Bouwen's hypotheses.

The conclusions drawn from the collected qualitative data suggest that the ranking of dependencies on the part of the European Parliament has been different from Bouwen's hypotheses (**EK > IEEI > IDEI instead of IEEI > IDEI > EK**) in the case of the Regulation. On this basis, *Expert Knowledge* has been identified as the Parliament's critical resource. Furthermore, especially the aspects that the IT

sector is very difficult to compare with traditional sectors, as it is less tied to national borders, as well as the technological depth of the proposal, obviously weaken the importance of information about domestic markets and strengthen the need for comprehensive expertise as a critical resource for EU decision-making.

Table 9. Ranking of dependencies for the EP with regard to EU decision-making on the GDPR

Respondent	First choice (critical resource)	Second choice	Third choice
MEP (Shadow Rapporteur for the GDPR)	EK	IEEI	IDEI
MEP (Member of LIBE and IMCO Committee)	IDEI	IEEI	EK
Parliamentary Assistant to a MEP (No. 1)	IEEI	EK	IDEI
Parliamentary Assistant to a MEP (No. 2)	EK	IEEI	IDEI
Parliamentary Assistant to a MEP (No. 3)	EK	IDEI	IEEI
Parliamentary Assistant to a MEP (No. 4)	IEEI	IDEI	EK

Source: Author's own illustration, based on the data gathered through interviews.

7.3.3 Council of the European Union

Finally, with regard to the Council, Bouwen argues that it is crucial for the representatives of the member states to identify the needs and interest of their domestic market. He therefore classifies the *Information about the Domestic Encompassing Interest* as the Council's critical resource. The European interest is described by Bouwen as the second most important access good, whereas the Council's demand for *Expert Knowledge* from private interest groups would be substantially reduced, as the legislative proposal has been already technically elaborated at this stage of the procedure. Hence, Bouwen's ranking of dependencies for the Council is IDEI > IEEI > EK.

Although the respondents have confirmed the general tendency of Bouwen's classification relating to the decision-making in the case of the new Regulation, *Expert Knowledge* has been considered as more important than it could be expected on the basis of Bouwen's assumptions. As arguably the most decisive source in this context, a representative of the Permanent Representation of a large member state stressed the interdependence of *Expert Knowledge* and the domestic interest:

"Information about national interests are certainly important, but without expert knowledge about national rules and practices on the one side, and about considerable knowledge about date protection rights laid out in the Commission's proposal on the other side, would it be not possible to negotiate (Representative of the Permanent Representation to the EU of a large member state, 11 June 2014)."

The respondent furthermore estimated the importance of information about an overall European interest (IEEI) as very low, justifying his or her assessment as follows:

"I would consider the importance of a European interest in this context as non-existent, taking the substantial effects of the [data protection] reform into account. [...] Who determines the European Interest? Therefore, attaching a great importance to this is a very distorting hypothesis (Ibid.)."

Overall, *Expert Knowledge* has been identified as the critical resource for the Council in 2 out of 5 cases. The other three respondents have chosen the *Information about the Domestic Encompassing Interest* as the most important access good in this regard. *Information about the European interest* has been the least important good according to the findings. On this basis, the Council's ranking of dependencies would be **IDEI > EK > IEEI instead of IDEI > IEEI > EK**. The following chapter will show if the greater importance of external expertise has had an effect on the companies' access to the Council.

Table 10. Ranking of dependencies for the Council with regard to EU decision-making on the GDPR

Respondent	First choice (critical resource)	Second choice	Third choice
Representative Permanent Representation	EK/IDEI	-	IEEI
MEP, Shadow Rapporteur for the GDOR	IDEI	EK	IEEI
Parliamentary Assistant to MEP (No. 3)	IDEI	EK	IEEI
Representative TechAmerica	EK	IDEI	IDEI
Representative Business Europe	IDEI	EK/IEEI	-

Source: Author's own illustration, based on the data gathered through the interviews.

7.4 Evaluating the companies' degree of access to the three EU institutions

After the activities and key preferences of the three case study companies have been traced and illustrated in the previous chapters, the following section is dedicated to evaluate their actual access to the three EU institutions in the context of the decision-making process on the General Data Protection Regulation, and its preliminary legislative outcome. This step is required in order to validate the prescriptions formulated in Chapter 4.3 and to answer the central research question. In contrast to the EP, the evaluation of the companies' access to the Commission and the Council have been mainly based on empirical evidence gathered through interviews, since the corporate position papers and concrete recommendations in large parts refer to the 2012 EC Proposal, making a valid quantitative (*ex ante*) examination of attained preferences rather difficult. The Council, on the other hand, has not yet defined its 1st reading position. Furthermore, most of the documents of the Council's *Working Group on Information Exchange and Data Protection* (DAPIX), which is in charge of the GDPR dossier, are not publicly available. It has therefore been more useful to evaluate the access of the companies on the basis of expert opinions. The summaries of the Council debates on the data protection reform, as well as the available DAPIX documents have served as an additional source (e.g. Council of the European 2012; 2013a; 2013b).

The analysis of the companies' position papers and draft recommendations has led to the identification of 15 key preferences, subdivided into eight major elements of the proposed Regulation. Two of these elements - *the right to be forgotten and to erasure and concepts of data processors and data controllers* - have been taken up by all three companies, indicating that the two areas are of particular importance for the IT sector. However, Google's public communication on its preferences with regard to the reform has been in general rather low (reference only to three of the eight elements), which also suggests that the company has rather attempted to successfully enforce their objectives by approaching the EU institutions away from the public eye. This tendency has been already revealed in Chapter 7.2.2 on Google's activities and overall objectives. The other companies by contrast, have formulated and published concrete recommendations and amendments to the draft proposal and, in the case of Facebook, also to the draft opinion of the IMCO Committee (Facebook, 2013). Especially with regard to evaluating the access to the European Parliament, these recommendations have been of great value.

It should be once again emphasized that *access* has been operationalized as the companies' influence on the (temporary) legislative outcomes of the three EU institutions in the case of the General Data Protection. The junction of these two terms (influence and access) has been also addressed during

the interviews. Hence, the respondents' understanding of access has been in line with the definition applied to the underlying case.

7.4.1 European Commission

As mentioned above, the evaluation of the access to the Commission has been mainly based on qualitative data gathered through interviews. It should be noted at this point that applying the method of preference attainment, which has served as the *main source of evidence* for access in this work, usually requires group preferences and positions that have been defined before a legislative proposal is published. In the case of the Commission, this was not possible, since the examined position papers and draft recommendations of the three companies have been published after the 2012 EC Proposal. The companies have therefore directly referred to the draft, which only allowed an *ex post* evaluation. However, a general tendency with regard to the companies' degree of access could still be deduced, as the variety of views has been striking.

In this context, the identified key preferences and objectives (Chapter 7.2) indicate that the companies have particularly criticised the prescriptive and partly inappropriate character of the Commission's proposals, especially with regard to the constantly changing conditions and technological requirements of the IT sector. Facebook described these propositions as *"technical rules that will not stand the test of time and may be frustrating and costly for both service providers and users"* (Facebook, 2012, p. 1). As a consequence, the companies' positions and recommendations on the eight major areas of the proposed Regulation differ significantly in most respects from the EC's point of view. For example, the high requirements for validating a user's consent to process personal data (Article 4(8) of the EC Proposal), as well as the proposed magnitude of fines and sanctions for data breaches and the companies' obligation to report these breaches (e.g. Articles 31, 32 and 79), reflect the overall attempt of the Commission to ensure a high level of protection of personal data and privacy in the European Union, which would involve considerable additional costs and adverse effects on the companies' business models. Against this background, it is hardly surprising that the companies and the IT industry-related associations have been pleading for toning down a large number of these propositions since the Commission tabled its Proposal in January 2012.

This impression appears to be confirmed by the interviews conducted in the framework of this work. One of the respondents described the openness of the Commission towards a dialogue on its 2012 Proposal and possible amendments as rather low:

"In particular with regard to this dossier [the GDPR], it was noticeable that the Commission, as the author, has been rather immune to feedback. [...] Even until just before the adoption of the EP draft

report, the Commission has wandered around Brussels, promoting its draft version as the real deal and haven't let itself in for discussions at panel events (Parliamentary Assistant to a MEP (No. 3), 28 May 2014)."

The respondent furthermore stated that this has been amplified after the public debate on the NSA eavesdropping scandal was at its peak (Ibid.). The limited access of business interests in the underlying case was also stressed by the interviewed representative of Business Europe:

"There is an understanding of our actual positions, but the Commission is not willing to change their position that they tabled in the Proposal and they will keep on supporting this until the end; and we're not happy with this proposal. Let's say the general outcome of the exchanges with the Commission is not going anywhere (Representative of Business Europe, 06 June 2014)."

Taking into account both the qualitative data gathered through the interviews, as well as the findings of the document analysis, the access of the examined US It companies to the European Commission during the decision-making process on the proposed Data Protection Regulation has been comparatively low.

7.4.2 European Parliament

On 12 March 2014, the EP adopted its legislative resolution on the Commission's Proposal (European Parliament, 2014b), which has served as the main basis for the evaluation of the case study companies' access to the Parliament. As a general conclusion, the findings of Table 11 show that the companies have fully attained **10 out of 15 preferences**, and partly attained 2 preferences. In this context, particularly the area *"main establishment"/One-Stop-Shop"*, which describes the core principle of a single Data Protection Authority" (DPA) having jurisdiction over companies that operate over multiple European countries, as well as the Articles concerning *"administrative fines and sanctions"* and *"powers of the Commission to extend the GDPR"*, appear to be successfully influenced by the major US IT companies, since the amendments of the EP explicitly take the case of multinational, respectively group corporations (e.g. Facebook, Google and Microsoft) into account and set out clear fine limits for breaches of the Regulation. The reduction of provisions that confers powers to the Commission, however, should be treated with caution, as it is hardly surprising that the Parliament attempts to contain a further extension of the EC's powers and influence on the reform of the EU legislative framework on data protection. From the perspective of the Commission, this would undermine the main principles of the *Lisbon Treaty*, which authorizes the Parliament as a co-legislator at the Council's side and places it on equal footing with the two other institutions in a wide range of policy areas (see also Chapter 2.2). With regard to the preferences that have not been

attained, it can be assumed that especially the unmodified Article 4(8), which defines relatively high requirements for the validity of a user's consent, as well as the fact that the Parliament have maintained Article 17 (2) on the obligation for data controllers to inform and request third parties for the deletion of individual's personal data, has been unsatisfactory for the IT companies, as it is linked to higher costs and more effort. On the other hand, they partly attained the preference for containing the prescriptive nature of the proposed security provisions and questions, which would lead to a significant reduction of costs and efforts, even though not every aspect in this context could be reached (e.g. the distinction of minor and serious data breaches).

Table 11. Attainted preferences with regard to the EP legislative resolution

Preferences	EP legislative resolution
Main establishment/"One-Stop-Shop" (Articles 51(2) and 4(13))	
Clear reference to multinational or group companies	✓
Same tests for processors and controllers when determining the organisations' country of "main establishment"	✓
Requirements for the data subjects' consent (Articles 4(8) and 7)	
Considerable toning down of Article 4(8)	✗
User's consent as a condition for specific services	✓
Right to be forgotten and to erasure (Article 17)	
Deletion of the term "to be forgotten"	✓
No specific rights to obtain the deletion of data that has been made available when the user was a child	✓
Deletion of Article 17(2): Controllers' obligation to request third parties for the deletion of personal data	✗
Concepts of data controllers and data processors (e.g. Articles 4(5,6), 24, 26, 28, 29)	
Clear distinction between responsibilities and liabilities of controllers and processors	○
Security/data breach notifications (Articles 31 and 32)	
Containing the prescriptive nature of the proposed security provisions and questions	○
International data transfers (e.g. Articles 39, 41 and 42)	
EC should not be granted the power to give consideration to *judicial precedents*	✗
Establishment of an EU Data Protection seal or similar trust marks	✓

Amendment of Article 39 (on certifications): voluntary and technologically neutral character of seals and trust marks	✓
Administrative fines and sanctions (Article 79)	
Overall weakening of Article 79 (e.g. fine limits)	✓
A more scaled sanctioning mechanism (e.g. recognition of persistent offenders)	✓
Powers of the Commission to extend the GDPR/delegated acts (Article 86)	
Reduction of the 26 provisions conferring power to the EC to adopt delegated acts	✓

✓ = Preference attained ✗ = Preference not attained ○ = Preference partly attained

Source: Author's own illustration.

In sum, applying the method of *preference attainment* has led to the assumption that the access of the three case study companies to the European Parliament in the course of the decision-making process on the General Data Protection Regulation has been rather high. This result has been also confirmed during the interviews carried out for the purpose of this research. For example, in reply to the question if he or she would describe the access of US business interests to the Parliament as "high", gave the following answer:

"Yes, I would say that especially in the early phases, respectively after the draft report of the Parliament was tabled in January 2013, there has been great pressure by the American side, for example, at one time or another, via the US representation in Brussels or via the American Chamber of Commerce (Parliamentary Assistant to a MEP (No. 3), 28 May 2014)."

In view of the different legislative drafts, the respondent furthermore assessed the level of access of US business interests to the Parliament as higher than to the European Commission (Ibid.). In addition, a representative of Business Europe evaluated the access to the Parliament as *"quite easy, even with MEPs that, I would say, are naturally not so close to our interests"* (Representative of Business Europe, 06 June 2014). These findings appear to be consistent with Chapter 7.3.2, where the access good *Expert Knowledge*, which is typically provided best by individual firms, has been identified as the Parliament's critical resource with regard to its decision-making on the Regulation.

7.4.3 Council of the European Union

The analysis of the available documents and comments of the Council concerning, indicates that there has been a general consent with regard to some of the major elements of the 2012 EC proposal. In January 2014, for instance, the member states' Justice and Home Affairs Ministers

expressed their overall satisfaction with the provisions of the proposed Regulation on international data transfers (examined during the course of this research on the basis of Article 39, 41, 42 of the draft proposal) and the *"One-Stop-Shop"* principle, which determines that there should be one single supervisory authority (DPA) responsible for monitoring the activities of the controller or processor throughout the Union and taking the related decisions (Council of the European Union, 2013a; 2014a). One could therefore at first glance conclude that the Council's overall position has been in line with the Commission's point of view, leading to the assumption that the access, respectively influence of the US business interests on the decision-making of the Council has been rather limited; considering in particular the fact that the analysis already indicated that there has been a considerable gap between the position of the Commission on one side and the position of three companies on the other side. However, a closer look at the case of the Council reveals a different picture. First, the Council's recommendations and amendments with regard to the propositions on international data transfers unrolled by the EC Proposal, imply a rather moderate and less prescriptive position in terms of regulating data transfers to third countries, respectively as in the underlying case, to the United States. Although the Council stresses the importance of the general validity of the new Regulation (*"Any processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union should be carried out in accordance with this Regulation, regardless of whether the processing itself takes place within the Union or not"*), it is also noted that the *"legal form of such arrangements, whether through a branch or a subsidiary with a legal personality, is not the determining factor in this respect"* (Council of the European Union, 2014a, p. 6). Furthermore, the Council acknowledges the importance of those transfers for the European market, which reflects a viewpoint of liberal economic policy-making: *"Cross-border flows of personal data to and from countries outside the Union and international organisations are necessary for the expansion of international trade and international cooperation"* (Council of the European Union, 2014a, p. 8). This impression, namely that the Council and the delegations of the member states have been open to dialogue with companies representing third country or US business interests was also confirmed by both sides. On the one hand, a representative of TechAmerica Europe stated that in particular members of the *DAPIX Working Party* have been interested in exchange (Representative of TechAmerica Europe, 10 June 2014), while the Representative of the Permanent Representation of a large member state indicated that he or she has been in contact with several representatives of American IT companies and industry-related associations, outscoring the importance of exchanging views and information:

"It is of great value for me when companies describe their concrete business model and furthermore outlines possible problems for their activities, deriving from legislative drafts, such as the

Commission's Proposal for the General Data Protection Regulation, since I do not have the expertise or practical experiences as the relevant supervisory authorities. Therefore, I am grateful for the possibility to exchange information with industry representatives (Representative of the Permanent Representation to the EU of a large member state, 11 June 2014)."

This statement furthermore seems to confirm the findings made in Chapter 7.3.3 on the identification of the Council's ranking of dependencies. Whereas Bouwen's generally classifies *Expert Knowledge* as the least important access good for the Council, it has obviously been of crucial importance with regard to the examined dossier.

To conclude, although the official Council communication shows that there have been ongoing discussions on certain aspects, reflecting heterogeneous interests among the member states, its general position can be described as closer to the position of the industry, respectively the three case companies, than to the Commission's. As a consequence, the overall access of these business interests to the Council appeared, on the basis of the present findings, to be relatively high compared to the access to the EC. However, it should be noted that assumptions about the concrete influence on the decision-making and a final evaluation of the access to the Council is not possible at the current state of the procedure, since the negotiations on reaching a common position are still ongoing. This is also the main reason why the author is rather cautious with regard to finally compare the companies' access to the Council with the access to the Parliament, as the EP already tabled adopted its 1st reading position.

7.5 Review of the predictions

Finally, after all relevant determinants have been analysed, it is now possible to review the predictions formulated in Chapter 4.3. To obtain a clear overview, they have been divided into three categories: European Parliament, European Commission, and Council of the European Union.

European Commission: Predictions 1, 1a, 1b, 2, 2a

According to Bouwen, *Expert Knowledge* is the Commission's critical resource, in particular for gaining sufficient expertise to draft technically demanding legislative proposals. The preceding analysis has however shown that *Information about the Encompassing European Interest* has been the most important access good for the EC during the decision-making process. Prediction 1 and 1a, defining *Expert Knowledge* as the most important and Information about the European Encompassing Interest as the second most important access good during the decision-making process, could thus not be confirmed. Prediction 1b, by contrast, turned out to be valid as *Information about the Domestic Encompassing Interest* has been identified as the least important

access good. Secondly, the examination of the access to the Commission led the assumption that the companies have not had a significant influence on the EC's decision-making, neither through direct lobbying activities, nor via business associations. Consequently, predictions 2 and 2a, which expected the Commission as the companies' best access point in the course of the decision-making process, could not be confirmed.

European Parliament: Predictions 3, 3a, 3b, 4, 4a

The identification of the EP's ranking of dependencies in the underlying case (EK > IEEI > IDEI) has shown that *Expert Knowledge* has been of crucial importance for the interviewed parliamentary representatives. Hence, predictions 3 to b could not be confirmed as they are based on Bouwen's order, classifying *Information about the European Encompassing Interest* as the Parliament's critical resource and *Expert Knowledge* as the least important access good; nor could predictions 4 and 4a be confirmed, which expected the companies' access as relatively low and mainly reached through indirect means (association memberships). Contrary to this, it was found that the three case study companies have had a relative high degree of access to the Parliament, particularly through *direct* lobbying activities.

Council of the European Union: Predictions 5, 5a, 5b, 6, 6a

With regard to the Council's decision-making, *Information about the Domestic Encompassing* has been classified as the *critical resource* by the interviewed stakeholders. This is in line with Bouwen's hypothesis and therefore led to the confirmation of Prediction 5. However*, Expert Knowledge* has been considered as more important during the legislative process than *Information about the European Encompassing Interest*, leading to the falsification of predictions 5a and 5 b, as they were based on Bouwen's ranking of dependencies for the Commission (IDEI > IEEI > EK). The results of the analysis furthermore indicated that the companies' access to the Council has been relatively high in comparison to the limited access to the Commission. In addition, the companies appeared to constantly engage in direct lobbying activities by seeking dialogue with government officials. On this basis, prediction 6 and 6a, which expected the lowest access of all three institutions, are to be disconfirmed.

Summary

As a result of the review, only **2 out of 15 predictions** could be confirmed. In particular the fact that the ranking of dependencies differed in all three cases from Bouwen's assumptions can be regarded as the decisive element in this context. Whereas, the increased importance of *Expert Knowledge* as an access good to the EP and the Council, for example, has secured greater influence of the US IT

companies on the decision-making and draft positions of these institutions, its reduced importance in the case of the Commission has lead to a very limited access. However, as already mentioned earlier, these findings are to be seen against the background that the legislative process is not yet completed, which could of course lead to changing positions of the involved actors at a later stage.

VIII. Conclusions

The final chapter of this work is dedicated to answer the central research question and to give recommendations for both a possible extension of Bouwen's *Theory of Access* and future research. The author will, furthermore, reflect on the project's limitations.

8.1 Answering the central research question

As formulated at the outset, the central research question for this project is:

Does Bouwen's Theory of Access explain the access of the major US-based IT corporations to the EU decision-making process on the General Data Protection Regulation?

Based on the preceding analysis, which combined the method of process-tracing with the assessment of preference attainment, it can be concluded that Bouwen's Theory of Access does *not* explain the access of major US-based IT corporations to the EU decision-making process on the General Data Protection Regulation, as only **2 of the 15 predictions** formulated in Chapter 4.1.1 could be confirmed. In this context, none of the predictions on the companies' degree of access to the three EU institutions has been consistent with the findings of the analysis. Whereas according to Bouwen, the access to the European Commission is expected to be the best, followed by the access to the European Parliament and, predicted as the lowest, the access to the Council of the European Union, the above results have identified the EP as the best access point for influencing the legislative process. The access to the Commission by contrast, proofed to be comparatively low, as not only the document analysis indicated that there has been a considerable gap between the positions of the US IT corporations and the EC's point of view which is laid out in the 2012 Proposal, but also the interviewed stakeholders stated a limited willingness to engage in dialogue with business representatives, respectively lobbyists, on the part of the Commission. The overall access to the Council on the other hand, appeared to be relatively high compared to the access to the EC. This has been mainly attributed to a particular interest in exchanging views and information with outside experts and an economically liberal policy-making approach on the Council side.

However, the analysis has also shown that Bouwen’s initial idea of resource dependency and informational exchange, as it is laid down in his supply and demand scheme (Figure 1), appears to be

generally valid. Although the companies' access to the three institutions departed from Bouwen's assumptions in the case of the Data Protection Regulation, their lobbying success has obviously depended on their ability to provide the access goods, which have been demanded by the EU institutions. Following this, there seems to be a causal link between the EU institutions' *modified ranking of dependencies* and the actual access of the case study companies to the decision-making process. It thus became apparent that the increased importance of *Expert Knowledge* in the case of the EP and the Council, which is typically provided best by individual firms - a tendency that has been also confirmed by the interviewees -, has led to higher access to both institutions. From a citizen's perspective, in particular the fact that the influence of private business interests on the decision-making procedures and legislative outcomes of the European Parliament increases in cases where technical know-how and expertise is lacking on the part of the MEPs, should provide ample food for thought. As already mentioned, contributing to the debate on the Union's democratic legitimacy has been one of the objectives of this work. It should therefore be said that a desperate need of external knowledge due to limited internal resources, as in the case of the EP, in order to be able to fulfil its legislative duty, undermines any form of democratic legitimacy. Against this background, it appears necessary to adapt the prevalent organizational structures to the requirements of technical-demanding and comprehensive policy areas, to safeguard independent decision-making.

On the part of the Commission, by contrast, *Expert Knowledge* has been identified as less important than it could be expected on the basis of Bouwen's theoretical framework. Hence, the access to the decision-makers of the EC has been found as comparatively limited. In addition, the respondents have attached less importance to *Information about the European Encompassing Interest* during the legislative process, which arguably served as the second reason for the outcome of the examination and, consequently, for the falsification of the predictions. To what extend these findings could be used as a starting point for a possible extension of the Theory of Access, will be discussed in Chapter 8.3.

8.2 Limitations of the research project

From the very beginning, the author had been aware of the fact that examining the access of business interests to the decision-making process on the General Data Protection Regulation was not going to be an easy task, in particular since private firms usually attempt to keep their lobbying efforts out of the public domain. Thus, it was a conscious decision to combine the collection of qualitative data through interviews with "written" information based on a comprehensive analysis of associated documents. In the course of the research process, this turned out to be the right step, since both methods had limitations in terms of completeness (documentation) and accessibility (interviews).

With regard to the interviews, it can be said that particularly the timing appeared not be ideal, taking into consideration that the interviews hat had to be conducted in the run-up to the European elections in May. As a consequence, a number of EU representatives stated they would not have time for scheduling an interview at that point of time, or did not reply at all. This was notably the case for representatives of the Commission and the Council, as no interviews could be conducted with both institutions. The author therefore attempted to obtain the same information in a different way, by talking to external stakeholders. In this context, especially the two interviews with representatives of business associations that have been involved in the decision-making process, as well as talking to a representative of a large member states' Permanent Representation to the EU, have been of great value for this project. In addition, it became apparent that the decision to only select MEPs who were a member in the LIBE Committee, the lead committee for the GDPR dossier, or the three committees for opinion, has been helpful to extract specific information relating to the case.

The second limitation concerned the availability of official EU documents. Unfortunately, not all relevant documents have been publicly available at the current state of the legislative procedure, which has specifically complicated the evaluation of the companies' access to the Council. But, here again, the data gathered through the interviews could close substantial informational gaps.

Finally, it should be noted that the legislative procedure is not yet concluded. The results derived from this research project should therefore not be considered as definitive. Moreover, given the limited time-frame for this project and the associated small sample size, the test of Bouwen's theory does not claim a general validity. But, by testing a prevailing theory in a context where little work has been done yet, this work aimed at making a significant contribution to the existing body of knowledge and giving a thought-provoking impulse for future research.

8.3 Recommendations for future research

This work has shown that Bouwen's Theory of Access appears to reach its explanatory limits, when attempting to explain the access of US companies to the EU decision-making process on the General Data Protection Regulation. This naturally triggers the question about the causes. In this context, six aspects could be identified.

First, Bouwen's lines of thoughts seem to lose their validity once non-European business interests, who might supply different access goods, are engaging in lobbying activities. This explicitly relates to his assumption that the relationship between business interest groups and the three major EU institutions should be viewed as an exchange relationship between two groups of interdependent organizations that carry out implicit or explicit cost-benefit analyses to decide on the basis of their critical resources, respectively most needed goods (EK, IEEI, IDEI), with whom to interact. An

unsurprising observation, taking into account that US-based companies shall have only restricted capabilities of providing information about the European interest, and even less when it comes to formulating positions of a specific EU member state. It therefore becomes evident that the basic mechanisms of the underlying exchange and resource dependency theories, which can be seen as the core of Bouwen's approach, will no longer work, since maintaining the predefined categories of access goods are likely to undermine the influence of companies based outside of the EU. This study has, for example, shown that although non-European companies might not be able to supply comprehensive Information about specific domestic interests of individual member states, their expertise is also in the Council highly valued, since they represent a transnational business interest, which has particularly in times of merging markets become increasingly important. Against this background, it would be recommended, in cases where mainly non-European actors are involved, to add a category of access goods which could cover the changing market fundamentals. This type could be called *Information about the Encompassing Industry Interest* or *Transnational Business Interest*.

Secondly, it appears that Bouwen's definition of the supply side of the scheme for the exchange of access goods is incomplete. As described in Chapter 4.1, he rates the variables *number of layers that constitute the organizational form* and the *complexity of the internal decision-making process* as the key factors determining the quality and quantity of supplied access goods and, consequently, the degree of access. The present findings however indicate that once major multinational corporations, such as Google or Microsoft, start engaging in EU lobbying activities, other variables are of particular significance: namely, *market concentration* and *level of competition*, taking into account that these firms hold a quasi-monopolistic position in the market. Thus, future research should therefore specifically examine if these factors have a significant impact on the lobbying success of individual companies and, furthermore, if there are other aspects relating to the supply side, which have not yet been analysed. Should this be the case, it is highly recommended to integrate the respective determinants into the theory.

Thirdly, an extension of the organizational forms that are described by Bouwen (individual firms, national associations, European associations, external political consultants), for example, by adding *transnational organizations,* once third-country interests are involved in the decision-making process, could prevent a non-observance of decisive lobbying channels. This form should be defined as organizations (institutions) that in fact operate on a global level, such as the American Chamber of Commerce or TechAmerica, and are not restricted by definition to the European sphere.

Fourthly, it could be derived from the interviews that it is in many cases very difficult or not possible at all to consider the three access goods separately from each other, as they have a high degree of

interdependence. Consequently, a number of respondents have had difficulty in ranking the access goods in order of importance. Particularly comprehensive *Expert Knowledge* has been described repeatedly as a necessary means for entering into negotiations, meaning that the provision of information about a European sector or preferences within certain member states alone, hardly creates added value for the EU decision-makers. Against this background, it deems necessary to also take the relative supply of these access goods into account. Future studies could then attempt to identify *optimized ratios*, which could explain interest group influence also in exceptional cases, respectively in cases that involve third-country interests; the central shortcoming of Bouwen's framework. This is directly related to the following observation made during the course of the analysis.

It became apparent that the policy field of data protection has a special nature, compared to traditional areas. Not only the fact that is less tied to national borders and specific domestic interests, which are subject to longstanding path dependencies, but also the technological depth and comprehensive character of the proposed legislative framework, obviously cause changing general conditions. It was already mentioned that compared to the need for technological expertise on the part of the EU decision-makers, information about domestic markets and European sector interests seemed to have declined in significance. Hence, it would be interesting whether this trend is also observable in similar areas, such as biodiversity issues, climate change or renewable energies. By conducting large cross-sectional studies, the question could be clarified if the growing demand for expert knowledge in technologically advanced policy areas may pose a considerable hazard to ensure independent policy-making in the future.

As a concluding point, it would be of course interesting to examine the final outcome of the legislative process. This would not only allow a comprehensive evaluation of the definite access of business interests to the three EU institutions, it could furthermore be observed whether the overall level of access tends to decline or increase at later stages of the legislative procedure. Depending on available resources and the general scope of subsequent studies, enlarged interview samples might be capable of addressing points that remained unresolved during the course of this work. For example, talking to representatives of the EC and the Council could enable an even deeper insight into the decision-making process.

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Appendix A: List of interviews

Respondent	Date and Time
Undisclosed, Parliamentary Assistant to MEP Undisclosed (ALDE) • Member of the Committee on Industry, Research and Energy (ITRE)* • Substitute member of the Committee on Employment and Social Affairs* (EMPL) • Substitute member of the Committee on Internal Market and Consumer Protection (IMCO)*	13 May 2014, 10:00-10:20
Henri Colens, Parliamentary Assistant to Timothy Kirkhope, MEP (ECR) • Member of the Committee on Civil Liberties, Justice and Home Affairs (LIBE)** • Shadow Rapporteur of the ECR for the GDPR	13 May 2014, 11:00-11:20
Undisclosed, Parliamentary Assistant to MEP Undisclosed	28 May 2014, 11:00 - 11:30
Axel Voss, MEP (EPP) • Member of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) • Shadow Rapporteur of the EPP for the GDPR	02 June 2014, 10:30 - 10:50
Undisclosed, Representative of Business Europe	06 June 2014, 10:30 - 11:00
Undisclosed, Representative of TechAmerica Europe	10 June 2014, 16:00 -16:30
Undisclosed, Representative of the Permanent Representation to the EU of a large member state	11 June 2014, 09:30 - 10:00
Birgit Sippel, MEP (S&D) • Member of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) • Substitute Member of the Committee on Employment and Social Affairs (EMPL) • Rapporteur of the German Social Democrats for the GDPR	Short statement
S. Guttmann, Parliamentary Assistant to Jan Mulder, MEP (ALDE) • Substitute Member of the Committee on Civil Liberties, Justice and Home Affairs (LIBE)	Questionnaire
Birgit Collin-Langen, MEP (EPP) • Member of the Committee on the	Questionnaire

Internal Market and Consumer Protection (IMCO) • Substitute Member of the Committee on Civil Liberties, Justice and Home Affairs (LIBE)	

*Committee for opinion on the GDPR **Lead Committee for the GDPR

Source: Author's own illustration.

Appendix B: Interview guideline EU decision-makers

Interview Guideline EU Institutions: The Access of the major US-based Information Technology Companies to the EU Decision-making Process on the General Data Protection Regulation

Name: _____

Institution: _____

Job Title: _____

Date: _____

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1. Could you tell me what kind of work you do for MEP XY? [Could you tell me what kind of work you do within your institution?]

2. How long have you been working for MEP XY? [How you have you been working within your institution?]

The decision-making process

3. Have you had contact with **US-based information technology companies** during the legislative process on the General Data Protection Regulation?

4. If yes, how regular has it taken place?

5. Has the regularity depended on the stage of the legislative process?

6. Could you perhaps give examples of the US-based information technology companies you have been in contact with during the legislative process on the General Data Protection Regulation?

7. Have you been in contact with **Facebook**, **Google or Microsoft** during the legislative process on the General Data Protection Regulation?

8. In what form have you or the MEP been in contact with these companies? For example, personal meetings or just correspondence via E mail or telephone?

9. Have you had contact with **European industry or business associations** related to the information technology sector during the legislative process on the General Data Protection Regulation?

10. If yes, how regular has it taken place?

11. Have the regularity depended on the stage of the legislative process?

12. Could you perhaps give examples of the European industry or business associations related to the information technology sector you have been in contact with during the legislative process on the General Data Protection Regulation?

13. In what form have you or the MEP been in contact with these associations? For example, personal meetings, conferences or just correspondence via E mail or telephone?

14. Have you had contact with **external political consultants (lobbyists)** hired by US-based information technology companies during the legislative process on the General Data Protection Regulation?

15. If yes, how regular has it taken place?

16. Could you perhaps give examples of the external political consultants (lobbyists) - and/or the companies that hired them - you have been in contact with during the legislative process on the General Data Protection Regulation?

17. In what form have you or the MEP been in contact with these consultants? For example, personal meetings or just correspondence via E mail or telephone?

18. Could you perhaps now rank the three categories of organizational forms (**companies/European associations/external political consultants**) on the basis of the **regularity** of these contacts during the legislative process on the General Data Protection Regulation?

19. Could you furthermore rank the three categories of organizational forms (**companies/European associations/external political consultants**) on the basis of the **usefulness** of these contacts during the legislative process on the General Data Protection Regulation?

20. Can you give specific reasons for this ranking? What made the dialogue with Form A the most useful?
    a. Respectively, what made the dialogue with Form B less useful than the dialogue with Form A?
    b. Why would you rank Form C as the least useful dialogue?

Theoretical framework

It is common knowledge that interest groups attempt to influence legislation. But, why are you in turn interested in **exchange views and information** with interest groups during the legislative process? Please evaluate the following three possibilities (resources) in the next section:

1. Expert Knowledge (EK):
The expertise and technical know-how required from the private sector to understand the market.
2. Information about the European Encompassing Interest(IEEI):
The information required from the private sector on the European Encompassing Interest (EEI). The EEI relates to the aggregated needs and interests of a sector in the European market.
3. Information about Domestic Encompassing Interests (IDEI):
The information required from the private sector on the Domestic Encompassing Interest (DEI). The DEEI concerns the needs and interests of a sector in the domestic market of a Member State.

21. Could you rank the three resources explained above on the basis of their **importance for the decision-making of your institution** on the General Data Protection Regulation?

    a. Could you give specific why do you think that Resource A has been the most important good for your institution with regard to the decision-making on the GDPR?

    b. Why would classify Resource B as the second important access good for you institution?

    c. Why would classify resource as the least important good for your institution?

22. In your opinion, which of the three access goods have the US-based IT companies provided the best during the legislative process on the General Data Protection Regulation?

    a. Which of the three access goods have the companies provided the second best?

    b. Which of the three access goods have the companies provided the third best?

23. How would you in general **evaluate the access of the US-based IT companies** [if possible with regard to the three case study companies] to your institution? Perhaps also **in comparison with the access to the two other institutions** which have been involved in the decision-making process on the General Data Protection Regulation?

24. Is there anything you would like to add with regard to the legislative process on the General Data Protection Regulation?

Appendix C: Interview guideline associations

Interview Guideline Associations: The Access of Business Interests to the EU Decision-making Process on the General Data Protection Regulation

Name: _____

Institution: _____

Job Title: _____

Date: _____

---

1. Could you tell me what kind of work you do for the association?
2. How long have you been working for the association?

The decision-making process

3. Have you or your association had contact with Members, respectively representatives of the **European Parliament** during the legislative process on the General Data Protection Regulation?
4. If yes, how regular has it taken place?
5. Could you perhaps give examples of the kind of information you or your association have provided to the Parliament during the legislative process on the General Data Protection? (Position papers, reports, press releases or information through personal meetings, phone calls etc.)
6. Have you or your association had contact with representatives of the **European Commission** during the legislative process on the General Data Protection Regulation?
7. If yes, how regular has it taken place?
8. Could you perhaps give examples of the kind of information you or your association have provided to the Commission during the legislative process on the General Data Protection? (Position papers, reports, press releases or information through personal meetings, phone calls etc.)
9. Have you or your association had contact with representatives of the **Council** during the legislative process on the General Data Protection Regulation?
10. If yes, how regular has it taken place?
11. Could you perhaps give examples of the kind of information you or your association have provided to the Council during the legislative process on the General Data Protection Regulation?

12. Could you perhaps now rank the three institutions on the basis of the **regularity** of these contacts during the legislative process on the General Data Protection Regulation?

13. Could you furthermore evaluate **the access** of your association (or industry interests as such) to each of the three institutions with regard to the legislative outcome?

Theoretical Framework

It is common knowledge that interest groups attempt to influence legislation. But, why do you think are EU decision-makers in turn interested in **exchange views and information** with interest groups during the legislative process? Please evaluate the following three possibilities (resources) in the next section:

1. Expert Knowledge (EK):
The expertise and technical know-how required from the private sector to understand the market.
2. Information about the European Encompassing Interest(IEEI):
The information required from the private sector on the European Encompassing Interest (EEI). The EEI relates to the aggregated needs and interests of a sector in the European market.
3. Information about Domestic Encompassing Interests (IDEI):
The information required from the private sector on the Domestic Encompassing Interest (DEI). The DEEI concerns the needs and interests of a sector in the domestic market of a Member State.

14. Could you perhaps rank the three resources explained above on the basis of their **importance for the decision-making of the European Parliament** with regard to the General Data Protection Regulation? Could give specific reasons for this ranking?

15. Could you perhaps rank the three resources explained above on the basis of their **importance for the decision-making of the European Commission** with regard to the General Data Protection Regulation? Could give specific reasons for this ranking?

16. Could you perhaps rank the three resources explained above on the basis of their **importance for the decision-making of the Council** with regard to the General Data Protection Regulation? Could give specific reasons for this ranking?

17. With regard to these rankings and the different access goods, would you say the EU decision-makers have been asking for a different kind of information compared to more traditional policy fields? Having in mind that data protection is a complex and quite technical topic/policy field.

18. Is there anything you would like to add with regard to the legislative process on the General Data Protection Regulation?

Appendix D: Company profiles with regard to EU decision-making

Company	Person in charge of EU relations / with legal responsibility	EU activities[1]	Association memberships[2]
Facebook, Inc.	• Erika Mann (Managing Director Public Policy • Sonia Flinn (Director of User Operations)	• Data Protection • Ecommerce • Internet Policy • Online Safety	• American Chamber of Commerce to the EU (AmCham EU) • European Internet Foundation (EIF)
Google Inc.	• Antoine Aubert (Head of Brussels Policy Team) • Larry Page (Chief Operating Officer)	• Data Protection • Future of the Internet • Internet Governance • Intellectual property and licensing • Future of the Internet • Knowledge Transfer	• American chamber of Commerce to the European Union (AmCham EU) • The European Digital Media Association (EDIMA) • European Internet Services Providers Association (EuroISPA) • Interactive Advertising Bureau Europe (IAB Europe) • Computer & Communications Industry Associations (CCIA) • European Internet Foundation (EIF) • European Privacy Association (EPA) • TechAmerica Europe • Open Forum Europe (OFE) • Public Sector Information Alliance (PSI Alliance) • Voice On Network Europe (VON Europe) • Lisbon Council • Bruegel • European Centre for International Political Economy (ECIPE) • European Policy Centre (EPC)
Microsoft Corporation	• Stephen Collins (Vice President Corporate Affairs) • Satya Nadella (Chief Executive Officer)	• Cloud Computing • Data Protection • Digital Agenda for Europe • Internet Security • Internet and mobile payment • Web accessibility	• Business Software Alliance (BSA) • Digital Europe • EPA • EDIMA • EIF • EuroISPA • European Services Forum • TechAmerica Europe • Association of Competitive Technologies (ACT) • AmCham EU • Business Europe

			• German Association for Information Technology, Telecommunication and New Media (BITKOM) • Trans-Atlantic Business Council • The European Academy of Business in Society (EABIS) • European e-skills Association • ICOMP, Initiative for a Competitive Online Marketplace • Interactive Advertising Bureau • ICC – BASCAP Business Action to Stop Counterfeiting and Piracy • Interactive Software Federation of Europe (ISFE) • SME europe • Transatlantic Business Dialogue • Voices for Innovation • Voice on the NET Coalition Europe (VON) • World Federation of Advertisers (WFA) • COCIR • OCA (Open Computing Alliance) • CSR Europe • EIAA (European Interactive Advertising Association) • Euro cloud

[1]Main IT-related EU initiatives covered the year before by activities falling under the scope of the EU Transparency Register.

[2] A company's membership of any associations/federations/confederations or relationships to other bodies in formal or informal EU networks.

Source: Author's own illustration, based on data of the *EU Transparency Register*.

Appendix E: Key preferences and objectives of the three case study companies

Area	Facebook	Google	Microsoft
Main establishment/"One-Stop-Shop" (Articles 51(2) and 4(13))	Recommends a clear indication of how the law on a company's "main establishment" applies to group (multinational) companies: only the EU-based data controller of a corporate group should be responsible for compliance with the relevant EU data protection obligations and accountable to the competent supervisory authority (**Preference 1**)	No reference	When determining data processors' and controllers' countries of "main establishment", both should be subject to same tests, since many controllers also act as processors within one company; recommendation: clear indication in Article 4(13) (**Preference 2**)
Requirements for data subjects' consent (Articles 4(8) and 7)	Recommends considerable toning down of Article 4(8): "unambiguous" consent instead of "explicit" consent, no clear method shall be required for expressing consent with regard to processed data **(Preference 3)**; Article (7(4)): Controllers should be able to make consent to the processing a condition of access to a service which may not be otherwise free (**Preference 4**)	Pleads in favour of a weakening of both articles: consent should be valid without specific actions and statements of the user, flexible rules in accordance with industry standards and user expectations **(Preference 3)**	No reference
Right to be forgotten and to erasure (Article 17)	Recommends the deletion of the term "to be forgotten" (**Preference 5**); deletion of the indication that users have a specific right to obtain from the controller the erasure of data which was made	Recommends the deletion/amendment of Article 17(2), as it would confuse "*the role of the user and that of a hosting platform in assigning responsibility in cases where personal data has been made public*" (**Preference 7**)	Recommends the deletion/amendment of Article 17(2), the Regulation should limit Article 17 to *"data retained by and under the control of the controller and reasonably accessible in the ordinary course of business"* and should not

	available when he or she was a child (Article 17(1)) (**Preference 6**); deletion of Article 17(2), which requires, from the controller, informing third parties of the request for deletion of links to or copies of an individual's data (**Preference 7**); **justification:** technically impossible		include data which was processed by third parties (**Preference 7**)
Concepts of data processors and controllers (e.g. Articles 4(5,6), 24, 26, 28, 29)	Recommends a clear distinction between responsibilities and liabilities of controllers and processors **(Preference 8)**: maintaining the definition of controllers as set out in Directive 95/46/EC (refers to Articles 4(5) and 24 (namely deletion of the term "conditions"); definition of processors should include decision-making responsibilities, "*without losing their processor status, as long as such processing continues to take place on behalf of a controller*" (Article 4(6)); administrative obligations placed on controllers as regards documentation should not extend to processors (Article 28(1), (3) and (4)), as well as regards to cooperation with supervisory authorities (Article 29(1))	Recommends a clear distinction between responsibilities and liabilities of controllers and processors**(Preference 8)**; therefore suggests the deletion of the term "processor" in Articles 28(1), 33(1), 34, 75 and 77, as well as the deletion of the term "controller" in Article 30(1); as an alternative: derogation of these provisions on the basis of contractual agreements	Recommends a clear indication that the controller is the one who only determines the *purposes* of processing data and not the *means* and the *conditions* (deletion of both terms in Articles 4(5) and 24) **(Preference 8)**; **justification:** processors today play a greater role in determining the means and conditions of processing
Security/data breach notifications (Articles 31 and 32)	Recommends containing the prescriptive nature of the proposed security provisions and questions (**Preference 9**): amendments of both Articles: no 24 hours	No reference	Recommends containing the prescriptive nature of the proposed security provisions and questions (**Preference 9**): notification requirements *"only where a breach is likely to lead to serious risk of*

	notification deadlines in case of data breaches, no absolute notification requirements to avoid notifications of the *"the most minor breaches"*; **justification:** additional layers of bureaucracy, hampering the effectiveness of Data Protection Authorities (DPA)		*significant harm to a data subject"* (Article 31(1) and Article 32(1)); recommends adding Article 31 a: no notification required if the controller applied, *"to the satisfaction of the competent authority"*, appropriate technological measures to the data concerned by the breach; deletion of the 24 hours notification deadline (Article 31(1); **justification:** regime must be practical and workable, avoid to overly burden DPAs
International data transfers (e.g. Articles 39, 41 and 42)	Recommends that the EC should not be granted the power to give consideration to *judicial precedents* (Article 41(2a)) **(Preference 10)**, **justification:** only the ECJ should be in charge of interpreting law	No reference	Recommends additional safeguard mechanisms for international data transfers: possibility for organizations to offer supplemental, legally binding protection agreements, in addition: an EU Data Protection seal or trust marks as incentives **(Preference 11)**; recommends to change Article 39 (on certifications): any mechanisms for seals or trust marks should be "*voluntary, affordable, technology neutral and capable of global recognition"* **(Preference 12)**
Administrative fines and sanctions (Article 79)	Recommends an overall weakening of Article 79: the magnitude of potential fines should be limited (**Preference 13**); **justification:** the proposed fine system could create disincentives for innovation and job creation, as well as for open engagement by companies with regulators	No reference	Recommends an amendment of Article 79 towards a more scaled sanctioning mechanism (higher fines should be only imposed on serious delinquencies and persistent offenders) (**Preference 14**); further argues for the determination of maximum penalties per case (initial Proposal

			does not set out maximum amounts)(**Preference 13**); **justification:** a "one-size-fits-all" approach would neither be balanced, nor effective
Powers of the Commission to extend the GDPR/delegated acts (Article 86)	Recommends a reduction of the 26 provisions conferring power to the EC to adopt delegated acts (**Preference 15**)	No reference	Recommends a significant reduction of the 26 provisions conferring power to the EC to adopt delegated acts (for example, provisions that touch upon *"essential elements of law"* and the prescription of technical formats and standards (**Preference 15**); **justification:** essential elements of law should be addressed in the GDPR itself and/or through innovation and not by secondary law making

Source: Author's own illustration.