The Global Diffusion of the 'General Data Protection Regulation' (GDPR)

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EXECUTIVE SUMMARY

On May 25th, 2018, the European Union's '*General Data Protection Regulation*' (GDPR) went into effect. The EU regulation placed stricter rules regarding the controlling and processing of individuals' data. The GDPR made a lot of noise because suddenly all companies, organizations and public bodies holding and processing personal data of European citizens, regardless of geographical location, had to comply with the requirements of the EU law. The extraterritorial impact of the regulation was very much apparent as countries around the globe are increasingly adopting similar standards set by the GDPR into their domestic law. The EU is a powerful economic and political actor and can pressure or coerce non-EU countries to align with the GDPR. On the other hand, the GDPR is currently the most innovative and comprehensive data protection model in the world, and countries might want to associate themselves with having the same high standards.

The main aim of this research was to examine how the EU created a global data protection standard through the GDPR. The chosen research design is a co-variation analysis. The thesis analyzed the economic, political, cultural and legal factors of why countries beyond the EU would want to adopt GDPR-like standards. Moreover, whether the diffusion happened through processes of coercion or attraction. Japan and the United States have been selected as case studies to determine why both countries have aligned with principles set by the GDPR. The research findings revealed that the diffusion of the GDPR to Japan and the US occurred through processes of economic coercion rather than attraction. The results indicated that data protection is extremely important, not only for increasing bilateral relations, but also as an instrument to reinforce international trade. Furthermore, the diffusion of the GDPR is part of the global trend, caused by major data scandals, to take the protection of personal data more seriously, as well as pushing companies toward greater accountability when using consumers' data. The EU effectively used bilateral negotiations and economic incentives to promote the GDPR in Europe and beyond, and in this way created a global standard on data protection.

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The writing of the thesis has truly been a roller-coaster ride with some ups and downs. It has been an interesting period of my life in which I have learned a lot academically but also personally. While writing this thesis, I have gained knowledge about social science research methods, my main topic, perseverance and seeking guidance when needed.

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LIST OF ABBREVIATIONS

APPI	Act on Protection of Personal Information
BCR	Binding Corporate Rules
CCPA	California Consumer Privacy Act
DG	Directorate General
DPO	Data Protection Officer
EC	European Commission
ECJ	European Court of Justice
EDPB	European Data Protection Board
EEA	European Economic Area
EP	European Parliament
EPA	Economic Partnership Agreement
EU	European Union
FDI	Foreign Direct Investment
GDPR	General Data Protection Regulation
GDP	Gross Domestic Product
HDI	Human Development Index
IMF	International Monetary Fund
MEP	Member of the European Parliament
MNCs	Multinational Companies
PIPC	Personal Information Protection Commission
SCC	Standard Contractual Clauses
SPA	Strategic Partnership Agreement
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
US	United States
WB	World Bank
WTO	World Trade Organisation

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1. INTRODUCTION

1.1 Background

"Please note that the GDPR is not implemented in countries outside of the EEA."

-European Data Protection Board (EDPB), 2019

Edward Snowden's revelations about the spying practices of the National Security Agency (NSA) and the Facebook-Cambridge Analytica scandal, in which the data of up to 87 million Facebook users was improperly collected, were among the largest data scandals to have occurred in the past few years. These instances gave alarming signals on existing data security frameworks, urging governments, businesses and individuals to address the issues surrounding data and privacy protection. The EU's 'General Data Protection Regulation' (GDPR) is considered to be the most important change regarding data privacy and regulation in 20 years (Coleman, 2018). The GDPR, which replaced the 1995 Data Protection Directive, was adopted on the 14th of April 2016 by the EU member states and became officially enforceable on 25th of May 2018. The regulation standardizes data protection and privacy laws for all 28 European Union (EU) member states. Since it is a regulation and not a directive, the GDPR is directly binding and applicable to all the member states.

The key changes under the GDPR compared to the directive are provided in the table below.

Table 1: Main changes between the EU data protection directive and the GDPR	
Increased territorial scope	• GDPR is applicable to data processors* and not just data controllers**. • The jurisdiction of GDPR has extended, as the regulation now applies to all companies processing personal data of EU residents, regardless of the geographical location.
Penalties	• The fine for breaching the regulation can be up to 4% of the annual global turnover. • Fines for not having the records in order. • Fines for not notifying the supervising authority about a breach.
Higher consent standards	• The standards for consent have been strengthened. • The information on the request for consent must be given in an easy, clear and accessible form. • The use of clear and plain language. • Easy to withdraw consent as it is to give it.

Breach notification	• Breach notifications are mandatory in all member states. • Breach must be notified within 72 hours of first notice. • Data processors are obliged to notify their customers and the controllers as well.
Right to Access	• Data subjects have the right to obtain information from the controller about whether their personal data is being processed, where and why. • Data controller has to provide a copy of the personal data, in an electronically format and also free of charge.
Right to be forgotten	• Data subjects are able to have the controller delete their personal data and cease processing of the data by potential third parties.
Data portability	• Data subjects have the right to receive the personal data concerning them and are able to transmit the data to another controller.
Privacy by design	• Data controllers shall only hold and process the data absolutely necessary to fulfil its duties. • Data controllers shall limit the access to personal data to processors.
Data protection officers (DPO)	• There are internal record keeping requirements. • Appointments of DPO's are only mandatory for data controllers and processors whose core operations consists of processing and systematic monitoring of large amounts of personal data.
***Data processor: processes personal data on behalf of the controller** ****Data controller: determines the purpose and means of processing personal data**	

Source: European Union (2016); "GDPR Key" (n.d.).

The regulation placed stricter rules on controlling and processing of personal information of individuals. The aim of the GDPR is to give the EU citizens more control over their personal data. The European Commission sees the regulation as an "*essential step to strengthen individuals' fundamental rights in the digital age and facilitate business by clarifying rules for companies and public bodies in the digital single market*" ("Data protection", n.d.). Individuals are now able to demand companies to reveal or delete the personal data that they hold. In addition, regulators are able to work in concordance across the EU, instead of having to apply separate jurisdictions in each state. This regulation will especially affect those companies holding large amounts of data, such as technology firms, marketing enterprises and data intermediaries that connect them, and companies whose business models depend on collecting and exploiting consumer data at scale (Hern, 2018). When companies or organizations disregard the rules, they will be fined by the member states supervisory authorities and infringement cases can be brought to the European Court of Justice (ECJ). The fines for the most serious violations can be as high as 20 million euros, or 4% of the company's total revenue (European Union, 2016; "GDPR Key", n.d.).

1.2 Problem definition

The regulation is essentially directed to the protection of EU residents data, but it hugely affected organizations and companies worldwide. The GDPR is applicable to all organizations holding and processing personal data of EU citizens, regardless of geographical location. Thus, organizations that are based outside the EU, but offer goods or services, or track the behaviour of EU residents, have to comply with the requirements of GDPR as well. Multinational companies, such as Google, Facebook and Amazon collect and hold immense amounts of people's private information, which urged European policy-makers to set up the new bar for data protection on a global scale. Věra Jourová, European Commissioner for DG Justice, said that "privacy is a high priority for us" and the EU wants "to set the global standard" (Scott and Cerulus, 2018). According to the European Data Protection Board (EDPB) (2019), the GDPR is not implemented in countries outside of the European Economic Area (EEA). On paper and officially this is true, but in practice GDPR-like regulations have certainly been adopted by various non-EU countries. Argentina, for example, is currently reforming and aligning its data protection system with the EU's new rules. Other countries, such as South Korea, Colombia and Bermuda are adopting their domestic legislation by including European data protection standards as well. Japan has also adopted many rules that mirror the GDPR (Scott and Cerulus, 2018). The diffusion of the EU standard to the rest of the world really shows the extraterritorial impact the GDPR has.

The EU is one of the world's largest economic and political power and, therefore, have the ability to pressure countries and firms to adopt the principles of the GDPR. This influence has extended to free trade negotiations, as the EU now demands other countries to adopt the data protection standards through adequacy decisions. Adequacy decisions are based on article 45 of the GDPR and determine whether "a third country provides a comparable level of protection of personal data to that in the European Union, through its domestic law or its international commitments (European Commission, 2018a). This regulatory change is usually manageable for advanced economies, but it is much harder for emerging or developing economies due to the administrative burden and costs of compliance. Additionally, it is often out of necessity for governments to comply with the regulation because otherwise they would be left in the cold, i.e. excluded from trade agreements or denied partnerships etc. These kind of actions by the EU can be considered as coercive means to employ influence abroad. Furthermore, the European Union is considered to be a global rule setter, as it has externalized its rules outside its borders across a range of areas, e.g. food, chemicals, competition, and privacy protection. Bradford (2012) has called this phenomenon the "Brussels effect". On the other hand, countries are increasingly falling in line with the EU data protection model, due to its appeal and comprehensiveness. Pansy Tlakula, chairperson of South Africa's Information Regulator, said that "We regard Europe's

directives as best practice" (Scott and Cerulus, 2018). This form of international standard setting through the means of the GDPR can be viewed as part of Europe's exporting its soft power over other countries. Meaning that the European Union uses attraction, instead of coercion, to influence third countries to align its data protection system to that of the EU. This research will look into whether the adoption of the GDPR by third countries happened through processes of coercion (pressure) or attraction (soft power).

1.3 Research aim and research question

The first aim of this study is to find out how the GDPR is causing an extraterritorial impact by setting an international standard on data protection. Secondly, this research aims to explore how this form of global rulemaking would impact the governance of data worldwide. Thirdly, we try to understand why non-European countries would adopt similar data protection standards set by the GDPR. Finally, defining whether the diffusion of the GDPR is more related to matters of coercion or attraction. The overall aim of this study is to explain the global impact of the GDPR. For this purpose, the following research question was formulated:

How has the European Union's 'General Data Protection Regulation' (GDPR) created a global standard on data protection?

1.4 Social relevance

The findings of this research are of great relevance in the 21st century, in which data has become one of the most important sources of power. Governments are eager to implement privacy standards and regulations to better protect the personal information of its citizens. How would this act of setting an international standard on data protection by the EU affect Europe's position in global governance? More importantly, what are the implications of the GDPR on multilateralism, international politics and international relations? The data regulation has made room to address the global challenge of regulating technology, e.g. artificial intelligence, genetic cloning, and other policy areas in which Europe or another superpower could extend its influence in the future. The EU imposing its law on other sovereign states may cause conflicts as there are competing cyberspace regulatory frameworks in the world. Moreover, the act may have produced unintended effects: other major powers will try to do the same and be less cautious about passing laws with extraterritorial effect.

1.5 Theoretical relevance

It is relevant to study the global diffusion of European ideas and laws, and in this case, the General Data Protection Regulation, to better understand the internal and external forces that determine domestic policy-making processes of countries outside the EU borders. Besides, the growing power of the EU enables them to pressure third countries to adopt similar standards. From a different perspective, non-EU states could also align due to the appeal of a comprehensive data protection model such as the GDPR. The main focus of this thesis is, thus, to find out how the GDPR has diffused beyond the EU's territory. To do so, the research will examine possible factors that make third countries adopt foreign legislation. Moreover, whether the diffusion of the GDPR occurred through the means of coercion or soft power (attraction). The outcome of this research is an addition to the existing academic literature about diffusion, global norm-setting, and EU power politics in international relations.

1.6 Thesis outline

The thesis first explores the current literature on EU policy-making beyond its borders and more in-depth about the GDPR in general in chapter 2. Chapter 3 gives an elaboration of the theoretical concepts that will be used as a frame to analyze the research. The research design and methods that are selected for this research are provided in Chapter 4. Subsequently, the empirical analysis will be presented in chapter 5. Chapter 6 reveals the conclusion in which answers will be given on the research question, followed by a reflection section, including the limitations and recommendations for future research.

2. LITERATURE REVIEW

Chapter 2 will discuss the existing scholarly literature on EU policy-making beyond its borders and more extensively about the GDPR. The purpose of a literature review is to discover a gap in the academic discussion about the EU influence over third countries, in which my research can be a relevant addition to the existing literature. The GDPR will be used as a case study to explain this phenomenon more intrinsically. The articles and chapters will be arranged in relation to the similarities in topics. Section 2.1 will start exploring the diffusion of EU laws, policies, or institutions to third countries. Section 2.2 will examine the current academic articles on the GDPR.

2.1 EU policy making beyond its borders

The academic debate on how the EU projects its best practices outside its borders is rather complicated and consists of a multi-level aspects. I have categorized the literature on EU policy-making beyond its borders into two sections. Section 2.1.1 explores the literature on EU external relations from an external governance perspective. Section 2.1.2 analyzes the actual and potential power of the EU to make third countries adopt or harmonize with EU rules.

2.1.1 EU external governance

Europeanization originated from the European continent and the concept implies the adoption of everything truly European (e.g. culture, history, politics, and rules). According to Petrov and Kalinichenko (2012), "*Europeanization became a standard label attached to the EU's various external policies directed towards its immediate neighbours, for example the Stabilization and Association Process in the Balkans, the Union for the Mediterranean, the European Neighbourhood Policy (ENP) and Eastern Partnership*" (p. 326). The concept of external governance attempts to grasp the increasing influence of the EU rules outside its borders (Schimmelfennig and Wolfgang, 2004; Lavenex, 2014). According to Lavenex and Schimmelfennig (2009), "*traditional fields of domestic politics such as environmental, competition or immigration policy are also rapidly developing an external dimension, which consists in the attempt to transfer the EU's rules and policies to third countries and international organizations*" (p. 791). The acquis communautair or EU acquis (i.e. the EU law) is usually considered as the basis of EU external action. Magen (2007) stated that "*the acquis represents an institutionally convenient and instrumental mechanism for promoting EU interests in political, economic and regulatory transformation in third countries*" (p. 392). It is, therefore, relevant to explore how the external governance of the EU is shaped.

EU external governance is largely shaped by existing EU institutions. These institutions serve as a template to externalize EU policies, laws, and modes of governance (Lavenex & Schimmelfennig, 2009). According to Abbott et al (2000), the more precise, binding, and enforceable EU standards are, the more likely third countries will select, adopt and implement such ideas into their domestic systems. Additionally, Schimmelfennig and Sedelmeier (2005) argued that EU rules will more likely be adopted when the rule is accepted and complied within the EU itself and is more or less in line with international rules. Lavenex and Schimmelfennig (2009) agreed with this and added that the quality of existing institutions is an important element to externalize EU standards. Studies by De Bievre (2006), Laatikainen and Smith (2006) and Telò (2007) looked at the role of the EU in policy-making processes, such as agenda-setting, decision-making and development strategies of other international organizations, for instance the World Trade Organization (WTO), the World Bank, United Nations (UN), and regional organizations in Asia, Africa and Americas, and how these instances have shaped the EU external governance. Furthermore, whether the EU is able to effectively externalize its rules, depends on the domestic structures of third countries as well. According to Lavenex and Schimmelfennig (2009), two conditions are at play to influence the adoption of EU laws by third countries. The first condition implies that third countries are more likely to select, adopt and apply EU rules when they resonate with domestic practices, laws, and traditions. The second condition is about the compatibility of EU laws to domestic institutions. This means that EU rules are more likely to fit when the type(s) of state, society, and administration of the third country are more or less similar to that of the EU member states and the European multi-level system. Accordingly, "*economic and administrative autonomy and openness should facilitate the selection and adoption of EU rules and, together with high state capacity, they should promote rule application as well*" (Lavenex & Schimmelfennig, 2009, p. 805). Thus, non-EU countries are more likely to be influenced by the European Union when they share similar political, economic, institutional and societal aspects, as well as having capabilities to induce reforms.

2.1.2 EU's power and impact on third countries

Several studies have examined the EU's role in its external sphere. Petrov and Kalinichenko (2011) argued that the Europeanization of third countries is caused by the growing role of the EU as a global power. EU external governance from a power-based perspective suggests that "*the EU's power and its interdependence with regard to third countries as well as competing 'governance providers' in its neighbourhood and at the global level*" determines the externalization of EU laws and policies (Lavenex & Schimmelfennig, 2009, p. 803). The findings of Dimitrova and Dragneva (2010) are in line with Lavenex and Schimmelfennig (2009) power based model. The authors identified differences in the extent of interdependence and the effectiveness of external governance, and differences regarding interdependence across various policy areas. The bargaining power of the EU is central in the power-

based explanations. The enlargement project, in which ten Central and Eastern European countries were accepted into the EU, is a good example of the EU offering strong incentives for candidate countries to adopt the EU acquis. These candidate countries are commonly more reliant on the EU than vice versa and eager to obtain membership into the Community. Therefore, during the accession negotiations, EU rules were massively adopted and in an extremely fast manner. The bargaining power of the EU is, however, usually weaker and more diverse across countries and policies outside the enlargement conditions (Lavenex & Schimmelfennig, 2009). Similarly, Petrov and Kalinichenko (2011) stated that it is difficult to promote Europeanization to third countries that cannot or do not want to join the EU. Nevertheless, in a context of high mutual interdependence, spontaneous external governance can occur when the EU template meets the interests of third countries (Lavenex & Schimmelfennig, 2009). Therefore, countries are more likely to adopt EU rules when there are high levels of interdependence and interests at play.

Scholars have also analyzed characteristics intrinsic to the EU to explain the way the EU approaches its external activity. According to Manners (2002), the international role of the EU is predominantly shaped by "*not what it is or does or what it says, but what it is*" (p. 252). The author conceptualized the EU as a normative power, who is active in setting global norms and encouraging other states and actors to adopt similar standards (Manners, 2002). Other debates emphasized the economic or market power of the EU. Proponents of the "Market Power Europe" conceptualization such as Damro (2012) argued that the single market can provide the EU power to externalize its economic and social market-related policies and regulatory mechanisms to third countries. This is considered to be a persuasive and coercive policy instrument. In a similar way, Bradford's (2012) conceptualized the "*Brussels effect*" as a process in which the EU is extending its influence by "*unilateral regulatory globalization*" (p. 46). The concept of unilateral regulatory globalization describes that a single state or entity can externalize its laws and standards beyond its borders through market mechanisms. She stated that the EU is currently the only jurisdiction that can wield unilateral influence across a number of areas of law, ranging from antitrust and privacy to health and environmental regulations. However, Bach and Newman (2007) argued that the size of the market is necessary but not a sufficient factor for global influence. Barbé et al. (2009) stated that the EU is able to promote its rules, not only through the unilateral transfer of rules but on the basis of international and bilaterally developed rules as well.

The power debate regarding the EU's external action is more focused in terms of normative and market power, but not so much on the EU's soft power side. This is rather strange since soft power is a relevant policy instrument to explain how certain nations can influence and attract other nations (See studies

on the relevance of soft power: Nye, 1990 and 2004; Wang and Lu, 2008; Gallarotti, 2011; Kearn, 2011; Leonova 2014). Therefore, soft power will be used to analyze why third countries align with the GDPR.

2.2 The GDPR

The following sections will focus on the externalization of the GDPR by the European Union. I have identified two main streams in the discussions about the GDPR. The first one is about the actual purpose or aims of the legislative text, and the second is about the extraterritorial effect of the GDPR. These two streams will be elaborated on in section 2.2.1 and 2.2.2.

2.2.1 Purpose of the GDPR

According to the European Commission, the goals of the GDPR is to strengthen individuals' fundamental right to data privacy and to harmonize the system by removing "*the current fragmentation in different national systems and unnecessary administrative burdens*" ("Data protection", n.d.). Several studies researched the aims of the GDPR by analyzing the legislative text. The change from a directive to a regulation is a fundamental change that has strengthened the GDPR as an EU law. The change of the legal form was an appropriate way to diminish the legal fragmentation and provide legal certainty through a true harmonized system of rules (Chen, 2017). The data regulation solved two dilemmas in regards to sustaining the single digital market (Plume 2012). First, it dealt with the risks of member states reluctance to share data transfers with other member states that do not have a similar level of data protection. In practice, data sharing between the member countries are usually not unrestricted or completely free. The second problem was about the protection of data subjects within the EU. The protection of EU citizens' data was at risk due to the different levels of protection among member states. The GDPR has addressed both dilemmas, which the directive was unable to do (Plume, 2012). Phillips (2018) stated that, the GDPR is able to bring the world closer to achieve the policy goal of eliminating weak international data sharing regulations and the possibility to guarantee on wherever the data may end up, it will be adequately protected. Vestoso (2018) argued that the new regulation "*explicitly challenges policy-makers to exploit evidence from social data-mining in order to build better policies*" (p. 1). The author examined the implications of 'knowledge-based' policy endorsed by the GDPR and looked at two main issues: the effect of Big Data on social research, and the potential junction between social data mining, rulemaking and policy modelling. Through the GDPR, governments and social scientists are now able to gain information which was inaccessible before and enhance their competence to comprehend the world and fix its problems (Vestoso, 2018).

However, several authors have criticized the GDPR for its content and stated that the regulation is unable to develop into an effective harmonized system. According to Blume (2012) and Chen (2017), national law in the member states will still have a significant role under the regulation. The author explained that the impact of GDPR on the national legal culture differs among member states. This means "*that it is very uncertain whether regulation in this field will actually be applied in the same way in all of the member states*" (Blume, 2012, p. 132). Furthermore, the GDPR is unclear about allowing member states to have sector-specific data protection laws (Kotschy, 2014). Authors, such as Goodman and Flaxman (2017), Wachter et al (2017), and Selbst and Powles (2017) have criticized, although differently, the legal aspects of the GDPR, including the contents regarding automated decision-making processes and whether it affects a data subject's "right to explanation". Wolters (2017) argued that the security of personal data also relies on subjects who are not directly bound by the GDPR or any other EU rule. Furthermore, divergent measures in the application and implementation of the regulation can still lead to uncertainty in legal aspects and different levels of protection. Therefore, the GDPR will not achieve the aim to effectively harmonize the rules regarding the protection of personal data (Wolters, 2017). The views of various academics have demonstrated that the GDPR, in its current form, does not give enough clarity in their legal text, which made it rather difficult to achieve the goal of establishing an effective harmonized data protection framework in the EU and beyond.

2.2.1 Extraterritorial effect of the GDPR

An intriguing causal effect of the GDPR is the fact that it solved one of the biggest problems the EU law has faced, which is the lack of jurisdiction over the processing of EU citizens data by third countries (De Hert and Czerniawski, 2016). Various studies have examined the extraterritorial impact and enforcement of the GDPR. Poullet (2007) argued that although the EU rules regarding data transfers, since the implementation of the directive, did not have an extraterritorial scope, they do have an extraterritorial impact. Particularly representatives of the USA have insisted that the EU data protection directive has been extraterritorial in nature (US Government, 2001). Bradford (2012) provided examples of the Brussels effect on antitrust, privacy, health and environmental regulation. The author stated that Europe's approach regarding privacy rights has been spreading outside its boundaries through unilateral standard setting ever since the passing of the EU's Data Protection Directive. Many multinational companies (MNCs) tend to apply the strictest international standard to reduce the compliance cost of dealing with multiple regulatory frameworks. Therefore, firms usually have one company-wide data protection policy, that of the EU (Bradford, 2012). Bendiek and Römer (2019) similarly argued that the EU uses unilateral standard setting to pressure extraterritorial markets to adopt the GDPR standards. Thus, the extraterritorial impact of the GDPR is related to the ability of the EU to coerce and impose rules on countries beyond its borders.

According to Kuner (2015), the term "*extraterritorial*" has, aside from disagreements about its meaning as a legal concept, carried political baggage. One side views the extraterritorial adoption of the EU data protection law positively "*as a mechanism for protecting the rights of individuals from threats outside the jurisdiction*", while the other side argues that it is an "*improper intrusion of foreign states on domestic interests*" (Kuner, 2015, p.235-236). The different views derive from the fact that the terms "*territoriality*" and "*extraterritoriality*" are constructed on a legal basis, as claims of authority, or of resistance to the ones in powers. These instances are executed by specific actors who are eager to promote their peculiar substantive interests (Buxbaum, 2009). Furthermore, Greengard (2018) has emphasized the global reach and ramification of the GDPR. The regulation has the potential to "change everything from the way data collection takes place to the way corporate databases are designed and used" and "*the way research and development takes place, and will impact cybersecurity practices, as well introducing a practical array of challenges revolving around sites and repositories where groups share comments, information and data*" (Greengard, 2018, p. 16). The GDPR is expected to break down borders and influence third countries. Nevertheless, Greze (2019) argued that the extraterritorial impact of the GDPR is restricted by the difficulty in enforcement. The author claimed that some foreign businesses will voluntarily comply with the EU regulation to develop a valuable commercial image and secure solid data protection practices. Others will comply because of the notices of the data protection authorities, or judgements and rulings from the European Court of Justice (ECJ). But the cases in which the controllers and processors have no link at all with the EU will bound to impede enforcement (Greze, 2019). Kuner (2015) stated that the extraterritorial effect of the EU regulation is not intrinsically good or bad, but its usefulness is reliant on how it is adopted and applied abroad. In addition, there is nothing new or necessarily wrong about employing extraterritorial means in an interdependent world, as the United States has done this many times, most controversially with its banking regulations (See studies by: Kern, 2002; Greenberger, 2012; Laby, 2017).

Discussions on the GDPR have mainly dealt with the purpose of the legislative text and the extraterritorial effect it has or could have internationally. The debates are mainly focused on the broader global impact and not so much in-depth on the perspectives from the third countries that are actually affected by the new EU regulation.

2.3 Gaps in the existing literature

The literature on EU policy-making beyond its borders examined the European Union external governance and how the EU has developed as a global power. The main discussions are about the external governance of the EU and the notion that European integration has shifted into processes of Europeanization of third countries. Besides, the development of the EU as a powerful actor, in terms of its normative, regulatory and market power, which influenced third countries to adopt or harmonize with EU rules has also been extensively researched. The literature on GDPR was categorized into two streams of discussion. One part, analyzed specific elements of the legal text, emphasized which parts of the GDPR were unclear, gave critical explanations, and recommendations. The other part of the literature explored the extraterritorial impact and the coercive nature of the data law. The GDPR has certainly influenced third countries to strictly think about their data regulation frameworks. However, not much research has been done on the politics behind the GDPR and the global political effect it has by setting an international standard on data protection. Especially, which factor(s) is/are most dominant in regards to influencing non-European countries to adopt similar standards set by the GDPR? This has much to do with how the EU law is diffused globally. Moreover, the notion of the EU influencing third countries through the means of attraction or soft power, in the field of data protection, has not been touched upon yet in current academic literature. My research will, therefore, aim to explain how the EU has created a global data protection standard by externalizing the GDPR through the means of coercion and soft power. By doing so, this thesis will add to the broader discussion on diffusion, global norm-setting, and EU power politics in international relations.

3. THEORETICAL FRAMEWORK

The following chapter thoroughly discusses the theories of policy diffusion and soft power. Some states or organizations would be considered as "*leaders*" and others as "*laggards*" in the world (Walker, 1969). The EU has been a global standard setter for issues regarding human rights, intellectual property, consumer safety, health, family, education, and employment laws across various (and mostly democratic) states (Linos, 2013; Björkdahl et al., 2015). It is usually common for geographically neighbouring countries with similar public or interest group pressures and political ideologies to adopt similar policies. But geographically distant countries with "*similar demographics, political ideologies, and other characteristics would adopt similar policies over time*" as well (Volden et al. 2008). What about countries that have different political, cultural and legal frameworks? How do we explain their process of foreign policy adoption? Countries adopting foreign policies can be explained by the theory of policy diffusion. This theory is relevant to analyze why EU norms and standards are imported by countries outside the EU and will, therefore, first be discussed. There are related concepts such as policy convergence, policy transfer and isomorphism, but due to the focus of the thesis on the spread of EU standards to non-European countries, policy diffusion seems to be most appropriate. In addition, the concept of soft power will be integrated to determine how the EU is able to use the means of attraction in influencing non-EU states to adapt their domestic laws. The "exporter" of standards is, thus, the European Union and the "importer" of such standards are the non-European countries. The combination of both theories are essential to explain how the EU has created a global standard on data protection.

3.1 Policy diffusion

Oliveira (2017) developed a concept of diffusion, based on prior studies by Dolowitz and Marsh (2008), Rogers (2003), and Simmons et al. (2008): "*as a process, mediated, or not, from which an element or range of political elements (e.g. ideas, paradigms, institutions, solutions for public action, normative devices, programmes, models, technologies, etc.) situated somewhere – in time or space – is adopted elsewhere*" (p. 42). Policy diffusion takes place when innovative policies/standards/laws in a given jurisdiction have an influence on similar policy decisions in other jurisdictions (Newmark, 2002). According to Shipan and Volden (2006), policy diffusion processes can spread horizontally (e.g. state to state, government to government, city to city) or vertically (upper-level government to the lower-level government). The involvement of governments in different levels makes policy diffusion inherently a political process (Karch, 2010). Furthermore, policy diffusion might occur under coercion

or voluntarily (Newmark, 2002; Dolowitz & Marsh, 1996). In the case of coercion, one government (or organization) is able to directly or indirectly force the other government to adopt certain policies. For instance, members of the IMF and WB are required to adopt certain policies. Voluntarily diffusion takes place when policy-makers learn or borrow policies from others to improve their existing policy (Newmark, 2002; Dolowitz & Marsh, 1996). Policy diffusion describes the transfers of innovative ideas, norms, policies, or laws from one territory to another. Policy diffusion processes produce similar policy outcomes in similar and dissimilar social and cultural contexts (Oliveira, 2017). This raises the question of why different countries across the globe are more or less willing to import norms and standards exported by the EU, more specifically which factors facilitate or hinder the diffusion process. It is important to delve into the analysis of diffusion in order to gain a deeper understanding of this contemporary social and political phenomena

Certain factors or determinants are able to influence the occurrence of policy diffusion. Various scholars have identified two main factors of policy diffusion: internal and external determinants (Graham, Shipan & Volden, 2013; Boehmke & Skinner 2013; Wolman, 2009; Shipan & Volden, 2008; Weyland, 2005). The internal factors that influence policy diffusion will first be discussed. According to Weyland (2005), domestic initiatives in terms of the "*quest for legitimacy*" and the "*pursuit of interests*" drive policy diffusion (p. 269-270). Both initiatives are related to attempts from policy-makers to achieve a certain goal. The first one being an attempt to obtain international legitimacy by complying with international norms. The objective is to create a positive image by adopting innovative policies from other jurisdictions. In this case, the policy-makers do not necessarily consider the functional applicability of the policy in their home country. The objective of the "*pursuit of interests*" is to adopt international norms to pursue their self-interests. Policy-makers do consider the functionality of the policy in this case. They evaluate and analyze the functional needs of the foreign rule and whether it will reach their domestic goals (Weyland, 2005). Boehmke and Skinner (2012) argued that internal factors consist of "*slack resources*" and social, economic, or political contexts. Slack resources are "*the resources available from which legislation can draw upon*", such as financial resources and organizational capacities (Boehmke & Skinner, 2012, p. 4-5). It is, for instance, generally easier for countries with greater financial resources to adopt new policies. Ideologies, governmental structure, culture, as well as norms and values fall under the social, economic and political contexts. States that have similar political ideologies, cultural heritage and a unified government are more likely to be influenced to adopt similar policies (Boehmke & Skinner, 2012). Similarly, Wolman (2009) used "*ideology*", "*political culture*", "*resident wealth and government slack resources*" as determinants of policy diffusion. But the author included "*problem severity*" and "*institutional capacity*" (p. 4-5) as well. Problem severity indicates that states are more prone to adopt new foreign policies when the

problems are severe in their own country, and their current policy is not able to address the problems sufficiently. Institutional capacity is the number of professional personnel and experts in the country. The larger the number the more ready the state will be to adopt new policies (Wolman, 2009).

The external factors that influence policy diffusion processes will now be examined. Weyland (2005) argued that external pressure comes from international or supranational organizations imposing their regulative policy to their member states. International organizations (IOs) such as the IMF, WTO and the WB have the power to "*control important means of influence, ranging from the dissemination of information to strong economic incentives and painful sanctions*" (Weyland, 2005, p. 269). These actors are, therefore, central in the diffusions of innovations. Wolman (2009) included "geographic proximity" and "*connections to and membership in knowledge communities*" as external determinants of policy diffusion (p. 4-5). Geographic proximity refers to the process that states adopt policies from neighbouring countries to increase their competitiveness. Moreover, policy-makers in a state having close connections with members of professional associations are more prone to adopt policy options from that jurisdiction (Wolman, 2009). Boehmke and Skinner (2012) extended the external factors with "economic competition" and "social learning". Economic competition refers to the generation of "spill-over effects" of one state to another state. When this is the case policy diffusion is stimulated. Social learning is when a state sees the benefits of a certain policy somewhere else, learns from it, and adopt the same policy domestically (Boehmke & Skinner, 2012).

Shipan and Volden (2008) emphasize the role of actors regarding the policy diffusion process. They indicated that policy diffusion is a process in which pressure for policy innovations come from internal actors, e.g. interest groups pushing for a new policy or preferences from electoral and institutional actors, and external actors, caused by the "*spread of innovations from one government to another*" (p. 841). According to Graham, Shipan and Volden (2013), there are three categories of actors: internal, external, and go-betweens. Internal actors are for instance policy-makers or legislators within the government who want to adopt policies from other jurisdictions. Internal actors have certain preferences, goals, capabilities and they live and work in a certain environment. All these aspects are crucial to better understand their decisions to adopt new policies. The governments from which policies and innovations diffuse are considered to be the external actors. External actors are relevant because they usually do not behave passively in the diffusion process. They have the ability to act strategically and proactively to spread their policy. Go-betweens (e.g. policy entrepreneurs, think tanks, academics, intergovernmental organizations, or media) are able to stimulate or impede the diffusion process because they act as a bridge between the leaders and laggards (Graham, Shipan &

Volden, 2013). Studying the various actors is essential to better understand the whole picture of the policy diffusion process.

All the internal and external factors that influence the occurrence of policy diffusion from the above-mentioned authors are provided in the table below.

Table 2: Internal and external factors of policy diffusion	
Internal	**External**
• Quest for legitimacy • Pursuit of interests • Ideology • Political culture • Governmental structure • Resident wealth • Slack resources/financial resources • Problem severity • Institutional capacity	• Pressure from international or supranational organizations • Geographic proximity • Connections to and memberships in knowledge communities • Economic competition • Social learning

Source: Compiled by author.

Scholars have identified four main mechanisms of policy diffusion: competition, conditionality (coercion), emulation (imitation), and learning (Lipos, 2013; Kleibrink, 2011; Simmons & Elkins, 2004; Simmons et al., 2008). The four mechanisms of policy diffusion add to our understanding of why countries adopt foreign policies or standards. There will be overlap between the four mechanisms in real world practices, which makes separation rather difficult. Nevertheless, it is important to make the distinction between the theoretical mechanisms to provide guidance for scholars to analyze and disentangle policy diffusion processes (Shipan & Volden, 2008). Inspired by the insights of the four mechanisms, I will adjust the framework to fit the topic at hand. Based on what I already know of the subject, I will use the four policy diffusion mechanism to explain the economic, political, cultural, and legal factors of the international adoption of the GDPR standards.

3.1.1 Economic factors (competition)

Governments choosing specific foreign policies or laws to increase their competitiveness, attract and preserve capital, markets, or other resources, are considered to be economic factors that influence policy adoption. The literature on globalization and policy diffusion emphasize the idea of a "*race to the bottom*" driven by international competition. Instead of a race to the bottom, governments are also increasingly adopting similar investor-friendly policies (e.g. privatization, deregulation, low inflation, strong property rights, and balanced budgets) to ensure their competitive stance in the global market by keeping up with domestic policies from their rivals and countries or organizations that are

seen as “leaders”, “modern”, “advanced”, or “developed” (Marsh & Sharman, 2009; Linos, 2003). Competition can resemble coercion, this happens when there are high economic power asymmetries (Linos, 2013). The asymmetry in economic power is able to grant a stronger state or organization to influence policy reforms in weaker and dependent states (Kleibrink, 2011). In the case of the GDPR, the EU can influence weaker governments to adopt stricter data protection principles similar to that of the GDPR, to increase the third country’s competitiveness, and to attract more foreign investments from EU-based companies. These can be categorized as economic factors for aligning with the GDPR.

Economic hypothesis 1: Non-EU countries adopt the GDPR standards to ensure their competitiveness.
Economic hypothesis 2: Non-EU countries adopt the GDPR standards to attract more foreign investments.
Economic hypothesis 3: The likelihood of non-European countries adopting the GDPR standards increases when they are highly integrated into the EU economy.

3.1.2 Political factors (conditionality)

The central idea in the political perspective is that policy processes involve a continuous struggle over power and between competing values. The development, decision-making and implementation of policy processes are, thus, determined by power conflicts and political strategies of respective stakeholders (Lindblom, 1965). According to the second mechanism of *conditionality*, powerful states or international organizations like the IMF and World Bank are able to coerce other countries via *conditions* attached to their lending or other forms of international agreements (Marsh & Sharman, 2009). Therefore, “*the adoption of a practice is a condition for the receipt of some material benefit, such as aid, loans, or membership in an international organization, governments are more likely to adopt the practice*” (Linos, 2013, p. 15; Simmons, 1998). When strong incentives are provided to adopt a certain standard, governments will eagerly comply with the more powerful state or organization (Kleibrink, 2011). In that sense, a speculation can be made on the EU and its ability to influence non-EU countries to adopt GDPR through the means of political incentives. For instance, when recipient countries want to increase trade or form a strategic or economic partnership with the EU, they might be more likely to adopt GDPR-like laws. These matters are considered to be political factors that lead to the adoption of the EU data protection standards by third countries.

Political hypothesis: The likelihood of non-EU countries adopting the GDPR standards increases when there are strong political incentives.

3.1.3 Cultural factors (emulation)

The cultural approach fundamentally assumes that the perceived world is socially constructed through interactions, language, symbols, and other means of communication. The policy diffusion mechanism of emulation, inspired by sociological research and constructivism, focusses on the identity of prior adopters and the social construction of appropriate policies (Gilardi & Wasserfallen, 2017). The policy choices from countries with a high status or reputation are imitated regardless of the consequences. Governments adopt or mimic foreign standards because they seek political options based on a higher social legitimacy rather than superior functionality or effectiveness of the policy (Kleibrink, 2011; DiMaggio & Powell, 1983). Furthermore, "*norms and conventions are socially constructed and policymakers conform to these norms with the adoption of appropriate policies*" (Gilardi & Wasserfallen, 2017, p. 7). The mechanism of emulation is important to better understand the widespread global diffusion by a heterogeneous group of countries who have shared values on certain fundamental rights or norms (Gilardi & Wasserfallen, 2017). Accordingly, non-EU governments adopt GDPR to increase their own legitimacy, for symbolic reasons, and essentially due to socially constructed shared norms and values in their society. These aspects can be viewed as cultural factors for GDPR adoption by non-EU countries.

Cultural hypothesis: The likelihood of non-EU countries adopting the GDPR standards increases when there are high levels of shared values regarding privacy and data protection between the EU and the respective country.

3.1.4 Legal factors (learning)

Harmonization of the laws of the member states is an important feature of the EU. Many international treaty obligations include duties to adopt and comply with certain legislation. The legal factors emphasize the advantages of a harmonized legal framework surrounding data protection. The fourth mechanism, learning, states that governments gain information from other governments' policy decisions and "*imitate their policies when they correlate with positive outcomes*" (Linos, 2013, p. 14). The central idea is that policymakers rationally analyze consequences based on the information and enacted policies elsewhere (Gilardi & Wasserfallen, 2017). But governments are bounded in their information and could adopt a foreign policy which does not really fit the functional need of their country (Weyland, 2006; March & Simon, 1993). According to Volden (2006), evidence of a successful policy is not always required, and it is more about the appeal of a promising policy which is offered by a geographically close country or organization. In this respect, regardless of the bounded nature of the learning process, "*governments can change their behaviour when new information is available*" (Kleibrink, 2011, p. 74). Consequently, this could make regulators from outside Europe, especially

those which are geographically close, view the GDPR as a success story of a harmonized data protection system, and implement similar data protection rules in their own country. Moreover, countries adopt stricter data protection rules, as a harmonized global legal system is easier to sustain than complying with multiple systems. These could be referred to as legal factors influencing the global adoption of the GDPR principles.

Legal hypothesis: the likelihood of non-EU countries adopting the GDPR standards increases due to the positive outcomes of a globally harmonized data protection and regulation system.

The table below provides an overview of the factors for the GDPR adoption by countries outside the EU. The information is derived from the previously mentioned theory on policy diffusion and the corresponding mechanisms.

Table 3: Factors for adopting the GDPR standards by non-EU countries

	Internal	External
Economic factors (Competition)	• Attract foreign investments • Sufficient financial resources • High level of resident wealth • High number of institutional capacity	• Ensure competitiveness • Economic power asymmetry • Interdependency
Political factors (Coercion)	• Similar political culture • Quest for legitimacy • Unified government • Pursuit of interests by certain actors • Problem severity	• Power asymmetry • Conditions • Pressure from international or supranational organizations • Political incentives • Geographic proximity
Cultural factors (Emulation)	• Shared ideology • Shared values regarding data protection and regulation	• Connections to and memberships in knowledge communities
Legal factors (Learning)	• Analyze consequences of the GDPR	• Social learning • Appeal of the GDPR (promising effects) • Positive outcomes of a harmonized system

Source: Compiled by author.

3.2 Soft power

The theory of soft power will be used to explain how the EU is able to influence non-EU states to voluntarily change their current data protection framework through the means of attraction. Soft power is a concept introduced and popularized by Joseph Nye in the late 1980s. According to Nye (1990), power is the ability to control and get people to do what you want. This can be achieved by coercion or threats, also known as hard power. Another way to achieve the desired outcomes is through soft power, which entails the ability to influence others to want what you want. This form of co-optive power is achieved through cultural or ideological attraction that goes beyond coercion or inducement (Kearn, 2011). The key elements of attractiveness stem from intangible resources, such as a state's culture, ideology and institutions (Wang and Lu, 2008). Soft power will encounter less resistance, as it is viewed as legitimate by others (Nye, 1990). Gallarotti (2011) defined the foundations of soft power being derived from international and domestic sources. International sources consist of foreign policies and actions, e.g. respect for international laws, fundamental reliance on multilateralism, and respect for international treaties. Domestic sources contain domestic policies and actions, acquired from culture and political institutions (Gallarotti, 2011). The table below provides the foundations of soft power constructed by Gallarotti (2011, p. 30).

Table 4: Foundations of soft power

International sources	Domestic sources
• Respect for international laws, norms, and institutions • Fundamental reliance on multilateralism and disposition against excessive unilateralism • Respect international treaties and alliance commitments • Willingness to sacrifice short-run national interests in order to contribute toward the collective good • Liberal foreign economic policies	• Culture • Pronounced social cohesion • Elevated quality of life • Freedom • Tolerance • Alluring lifestyle • Political institutions • Democracy • Constitutionalism • Liberalism/pluralism • A well-functioning of government bureaucracy

Source: Gallarotti (2011, p. 30).

Soft power arises from "*the attractiveness of a country's culture, political ideals, and policies*" (Nye, 2004, p. 10). Therefore, soft power is a relevant political instrument to influence domestic policy processes of other countries through the means of attraction. According to Leonova (2014), the essence of soft power is embodied through: (1) the use of intangible sources to achieve interests and enforce foreign policy strategies; (2) the use of methods to realize the desired outcomes in foreign

policy by peaceful means; and (3) the use of non-violent measures to fulfil national interests in the world. The strategic goal of soft power is, thus, to influence other sovereign states through sympathy, attraction, appeal and voluntary participation. Nevertheless, soft power has its limits because "*attraction does not always determine others' preferences*" and whether it will lead to desired policy outcomes (Nye, 2004, p. 6). The limits are especially apparent in the cultural and historic realms of the influence objects. The effects of Western soft power in the Eastern world countries is rather small on certain aspects. This is due to a difference in political culture between the East and the West. Some political values of liberal democracies as treated in the West regarding e.g. human rights or freedom are not favoured in non-liberal countries, e.g. China and Russia (Leonova, 2014). These domestic factors are able to restrict such countries to be prone to certain aspects of Western soft power. According to Nye (2004), "*Soft power is a staple of daily democratic politics*" (p. 6). In that sense, liberal democratic countries are more likely to be attracted by the EU's cultural, political ideas and policies.

For this thesis, an analysis will be made on how the GDPR is used to attract and influence third countries. In regards to the domestic adoption of GDPR by non-EU countries, which domestic factors make countries more or less prone to be influenced or attracted by the EU's soft power? Due to globalization and the consequences of a connected world, not only external factors influence the interdependence between states, but domestic factors play an important role as well (Braun & Maggetti, 2015). In other words, there are certain characteristics of a state that make them more susceptible to foreign influence, even if the country is fully sovereign, has its own policies and complete formal independence from any other states. The degree of freedom, political regime, economic openness and capabilities, and territorial size are variables that have an influence regarding the exposure of states. For instance, countries that have an open economy are more likely to be exposed to foreign influence because they are more interdependent than countries with a closed economy (Braun & Maggetti, 2015). In addition, the size of the country, which was previously mentioned in the policy diffusion section, influences a country's exposure to the powers of the EU. The more people are living in a country, the more capability it has and the easier it is to conform and adopt foreign rules. But having only the capabilities will not necessarily make such nations adopt foreign standards. Countries that have similar or are appealed by certain political ideologies and cultural values are more susceptible to be influenced (Lavenex & Schimmelfennig, 2009). Accordingly, hypotheses can be formulated regarding the attraction of a comprehensive and ready-to-use data protection model such as the GDPR.

Soft power hypothesis 1: The GDPR is attractive because it is a good system that other non-EU states want to associate themselves with having the same high standards.

The table below provides an overview of all formulated hypotheses derived from the theories.

Table 5: Hypotheses	
Economic Factors (competition)	1. Non-EU countries adopt the GDPR standards to ensure their competiveness. 2. Non-EU countries adopt the GDPR standards to attract more foreign investments. 3. The likelihood of non-European countries adopting the GDPR standards increases when they are highly integrated into the EU economy.
Political factors (conditionality)	The likelihood of non-EU states adopting the GDPR standards increases when there are strong political incentives.
Cultural factors (emulation)	The likelihood of non-EU countries adopting the GDPR standards increases when there are high levels of shared values regarding privacy and data protection between the EU and the respective country.
Legal factors (learning)	The likelihood of non-EU countries adopting the GDPR standards increases due to the positive outcomes of a globally harmonized data protection and regulation system.
Soft power	The GDPR is attractive because it is a good system that other non-EU states want to associate themselves with having the same high standards.

In the case of the GDPR, the European Union can pressure third countries to adopt stricter data protection rules through economic coercion or political conditionality. But non-EU states might also be attracted by the comprehensive model and want to be associated with having a GDPR-like system. The two mentioned theories are relevant because they can explain how the EU can externalize its influence beyond its borders through the means of coercion and attraction. Soft power is directed at using attraction to influence others, while the policy diffusion mechanisms are more in line with the coercion style of generating foreign influence. The theory of policy diffusion and soft power will be developed into an operationalization in the research design.

4. RESEARCH DESIGN AND METHODS

This chapter will explain and justify the chosen research design and methods to conduct this research. This includes an elaboration on the type of research design, the case study selection, and theory selection. Consequently, important components of producing valid research, such as internal validity, external validity, and reliability will be outlined. Furthermore, an explanation on the types of data and the measures regarding data collection will be given. The last section of this chapter is about the operationalization of the research, in which it will be demonstrated how the data will be analyzed into results and conclusions.

4.1 Qualitative research design: case study research

The qualitative research design rather than the quantitative research design has been selected to research this topic. The period after the implementation of the GDPR has been short, which make extensive data collection for quantitative research quite difficult. The qualitative approach is chosen because of the higher level of feasibility, which is due to the time and the current available sources. Qualitative research is the most appropriate method as it deals with small-N cases and using non-numerical data (Yin, 2009). The case study research of the qualitative methods will be used in this thesis. Simons (2009, p. 21) defined case study research as "*an in-depth exploration from multiple perspectives of the complexity and uniqueness of a particular project, policy, institution, program or system in a 'real life'*". One or more cases can be studied in a case study research. The main focus of this thesis is to explain how the EU has created a global standard on data and privacy protection, and the GDPR is hereby used as a case study to explain this phenomenon. Two different countries will be selected, to identify which factor was most influential per country regarding the adoption process of the GDPR standards. There are three approaches to case study research, which are the causal-process tracing, the congruence analysis and the co-variation approach (Blatter & Haverland, 2014). The qualitative case study research of this study will be examined through a co-variation analysis.

4.2 Co-variation analysis

A co-variation analysis approach is a small-N research design in which researchers use case studies to provide empirical evidence, to determine whether there is a causal relation between the independent variable 'X' and the dependent variable 'Y' (Blatter & Haverland, 2012). The co-variation analysis is useful to discover whether certain factor(s) has/have an effect or make(s) a difference. To explain how the EU created a global standard on data protection, the factor(s) why non-EU states align with the

GDPR should first be examined. The adoption of the GDPR standard is the dependent variable 'Y' and the factor(s) for adoption is/are considered to be the independent variable 'X'. All the factors, a combination of factors, or one dominating factor has influenced the adoption of GDPR by non-EU countries. This research will try to find out the most prominent factor of why a third country has decided to align with the GDPR. Therefore, the aim is to determine whether the economic, political, cultural, or legal factor has led to the adoption of standards set by the GDPR in the selected cases.

The cross-sectional design, which involves comparisons across cases at the same time period, of the co-variation approach will be used to conduct my research. The timeframe is the period after the official announcement of the EC to replace the existing data protection Directive with the "*Proposed Regulation*", which is January 2012 (European Commission, 2012). By conducting a cross-sectional co-variation analysis, I am reliant on theory to argue why the causality goes in a certain direction. It should be noted that theories play a significant role in the social sciences. Theories are used to provide meanings to empirical observations and in this way "structure the scientific discourse and influence the social and political praxis" (Blatter and Haverland, 2014, p. 148). Furthermore, the case selection should be done thoroughly, as the cases have to vary as much as possible in relation to the independent variable and be similar as possible in relation to the control variables.

4.2.1 Case study selection

The following countries, Japan and the US, are chosen as cases to explain the global diffusion of the GDPR. The countries are completely different in terms of economic, cultural, legal and political frameworks. However, the two countries do have several similarities. Both Japan and the US are, for instance, developed countries, have one of the highest levels of living standards, and are great economic and political powers. It will be interesting to explore whether these two countries had similar or dissimilar motives regarding the adoption of standards set by the European data protection model.

Japan

The EU and Japan have agreed to recognize each other's data protection regimes as providing adequate protection of personal data on July 17, 2018. The EU already has adopted adequacy decisions for countries and territories, such as New Zealand, Switzerland, Uruguay, the US, Canada, Argentina, Israel, Faeroe Islands, Isle of Man, Jersey, and Guernsey (European Commission, 2018a). The Japan case is intriguing because it is the first time that a reciprocal recognition between a third country and the EU has been formed on the adequate level of data protection after the GDPR became applicable. The adequacy findings will not only enhance the trade benefits of the Japan-EU Economic Partnership Agreement, which will become effective as of 1 February 2019, but also enhance the Japan-EU strategic partnership because it enables the free and safe flow of data between the two entities (Nishi, 2018).

Companies from both economies will benefit from safe, free and unrestricted data transfers, which was not possible without mutual recognition. The reason why and how Japan obtained an adequate data protection system comparable with the EU model will be examined.

The US

The US is a special case as the country has always been reluctant to adopt foreign standards in the past. But ever since the data protection directive, the US has been aware of the global impact of the European regulation. The US is different from other nations as every state makes its own laws, which means that there are various interpretations of what constitutes a data breach. Therefore, the case study analysis will focus on one specific state, that of California. One month after the GDPR went into effect, the California Consumer Privacy Act (CCPA) was passed on June 28, 2018. The CCPA gives greater privacy rights to citizens who reside in California and is considered to be the counterpart of the GDPR. It is expected that other states will follow California and create stricter data protection laws. Furthermore, the EU already recognized the US for having an adequate level of data protection through the EU-US Privacy Shield. But the Privacy Shield framework is based on "partial" adequacy decisions. This means that the benefits of free data transfers between the EU and the US are only provided to those companies that are committed to the principles of the Privacy Shield (European Commission, 2018a). The case study analysis chapter will explore which factor was the main cause for the adoption of GDPR-like standards by the state of California. In addition, the establishment of the EU-US Privacy Shield will be analyzed.

4.2.2 Theory selection

The policy diffusion literature mainly focusses on pattern-finding (Marsh & Sharman, 2008). Lee and Strang (2006) argue that "*pattern finding research tests a priori hypotheses about diffusion channels (…) this strategy asks whether structures of covariance and temporal ordering are generally consistent with a theoretically specified model of influence*" (p. 886). Policy diffusion studies usually take a quantitative research approach and create generalizations from it. However, this statistical approach of diffusion cannot cope with independent national policy choices and do not take into account domestic factors that come to play (Marsh & Sharman, 2009). This research will, therefore, take the qualitative lens and use detailed case studies to study the relative impact of economic competition, conditionality, learning and emulation and the role of domestic factors on the diffusion process of the GDPR. The theory of soft power is significant in explaining the ability of the European Union to influence the voluntary adoption of EU rules by non-European countries through the means of attraction. The policy diffusion mechanisms, on the other hand, can provide insights on the usage of coercive instruments to generate foreign influence. Soft power and policy diffusion enable to explore

that even though a country is fully sovereign, has an existing legal system and policies, it is still exposed to foreign influence. Therefore, these two theories are selected to explain the global diffusion of the GDPR.

4.3 Internal validity, external validity and reliability

In qualitative research, researchers use validity to refer to a study that is "*plausible, credible, trustworthy, and, therefore, defensible*" (Johnson, 1997, p. 282). Some qualitative research studies are better than others and this is due to the difference in levels of validity. A distinction is made between internal and external validity. Internal validity is when researchers have not made internal errors in the research design that could lead to false conclusions (Neuman, 2014). The internal validity is strong when the selected theories have measured according to what they were supposed to measure and that the cause of the phenomenon is actually caused by the independent variable (Kellstedt & Whitten, 2013). This concept discusses issues of causality by raising the question of whether "*this apparent causal relationship is genuine and not produced by something else?*" (Bryman, 2016, p. 47). In other words, internal validity is concerned with whether the independent variable X really causes or is responsible for the variation in the dependent variable Y.

External validity refers to "*whether we can generalize results that we found in a specific setting with a particular small group beyond that situation or externally to a wider range of settings and many different people*" (Neuman, 2014, p, 221). With regards to co-variation research, generalizations can only be done when cases "*display the same scores on all the control and independent variables as the cases that have been studied*" (Blatter & Haverland, 2012, p. 69). The external validity is, thus, concerned with whether the results of the research can be generalized to other cases. It is rather difficult to make generalizations when applying a qualitative case study research due to the full-focus on one or more specific cases. Therefore, generalizations can only be made to other cases that have or share similar conditions.

In social science, the concept of reliability is concerned with whether the results of the research are repeatable and consistent. Both the criteria of validity and reliability determines the quality of research. Case study research generally allows a high level of internal validity and reliability, while the external validity is relatively low. The reliability is high when another study obtains the same results while using the same measures and concepts (Bryman, 2016). To make sure that the results are consistent, it is important to take into account the accuracy and stability of the operationalization (Buttolph Johnson & Reynolds, 2008; Kellstedt & Whitten, 2013).

4.4 Data collection

A mosaic of facts, observations and ideas from press releases, statements, existing research and actual legal texts (e.g. Treaties, Formal Agreements, Directives, and Regulations) will be incorporated to research this topic. The data will be retrieved from secondary sources, such as official documents of the respective countries, EU documents on GDPR, press releases, newspaper articles, and databases such as the World Bank and Eurostat. The exact sources are presented in the operationalization section.

4.5 Operationalization

This section will explain how the established theoretical framework and formulated hypotheses will be empirically tested in the next chapter. Table 6 illustrates the operationalization of the policy diffusion mechanisms. The factors that determine the diffusion of the GDPR are derived from the theoretical framework and information from the literature review. The table below demonstrates how each factor will be applied and what indicators will be utilised for the research.

Table 6: Policy diffusion operationalization

Factor	Policy diffusion mechanism	Expectation	Indicator (& source)
Economic	Competition	Countries align with the GDPR to ensure their competitiveness. Countries align with the GDPR to attract more foreign investments. Countries align with the GDPR when they are highly integrated into the European economy.	• Size of the economy in GDP (World Bank). • Global Competitiveness Index 4.0 (World Economic Forum, 2018). • Number of active multi-national companies in the EU (Eurostat). • Net inflow of FDI in current US$ (World Bank). • Calculate a state's economic integration (import and export share) with the EU: ○ Total sum of a state's exports and imports to and from the EU, divided by its total exports and imports in a year (World Bank).
Political	Conditionality	Countries align with the GDPR to obtain political interests	• Negotiations on bilateral agreements between the EU and the country including talks on data

			regulation laws (EU press releases, government press releases). • Negotiations regarding EU's adequacy decisions (EU press releases, official reports, media).
Cultural	Imitation	Countries align with the GDPR due to shared values regarding data protection	• Statements from relevant actors, institutions, or organizations in favour of stricter data protection rules (Press releases, media). • Public opinion in favour of the GDPR (Surveys, polls, reports).
Legal	Learning	Countries align with the GDPR due to benefits of a globally harmonized data protection system	• Governments are appealed by the promising effects of the GDPR and a global harmonized data protection framework (Press releases, media).

Table 7 demonstrates the operationalization of the theory on soft power. This theory is used to explain the attraction of the GDPR as an already designed, developed and ready-to-use model other states might want to copy.

Table 7: Soft power operationalization

Theory	Expectation	Indicator (& source)
Soft power	Countries adopt standards set by the GDPR due to the attractiveness of the regulation as a comprehensive and ready-to-use data protection model. Governments consider the GDPR as a good model and want to associate themselves with having the same high data protection standards. The people within the countries are in favour of GDPR-like standards.	• Governments indicating the appeal of a global harmonized data protection framework such as the GDPR (Press releases, reports, media). • Governments indicating that they share similar GDPR-like values (Press releases, media). • Statements from political actors in favour of stricter data protection laws similar to that of the GDPR (Press releases, reports, media). • Statements from relevant actors, institutions, or organizations in favour of stricter data protection

		rules (Press releases, reports media). • Public opinion in favour of the GDPR or stricter data protection laws similar to that of the GDPR (Surveys, polls, reports).

5. EMPIRICAL ANALYSIS

Chapter 5 will analyze the empirical data on this topic to ultimately answer the research question. Each case study is divided into three parts. The first part will provide detailed background information on the selected countries. The case study on Japan will examine *Japan adequate national law* regarding data protection and the *Japan-EU Economic Partnership Agreement (EPA)*. The US case study will analyze the *EU-US Privacy Shield* and *the California Consumer Privacy Act (CCPA)*. Both sections will discuss per case the *factor(s)* and *actors* that were influential for the diffusion and adoption of standards set by the EU GDPR. Section 5.3 presents the discussion on both case studies.

5.1 Japan

5.1.1 Background

Japan is an island country, having a land area of 145.936 km^2 and is located in East-Asia. In terms of population, Japan is considered to be the world's eleventh largest nation ("About Japan", n.d.). The Japanese population has 126.7 million inhabitants, from which 98.5% are ethnic Japanese. The other 1.5% consists of foreign workers living in Japan, predominantly from China, Korea, Peru and Brazil ("Japan Population 2019", n.d.). The Japanese consider Japan to be a monocultural society, the former Prime Minister of Japan and current Deputy Minister and Minister of Finance Taro Aso defined Japan as a country with "*one race, one civilization, one language, and one culture*" ("Aso says", 2005). This is very different from the US, who has a very multicultural population. Japan has a highly skilled and educated workforce, a large number of the Japanese people hold a tertiary education degree (OECD, 2019). The nation is highly developed with a very high standard of living and Human Development Index (HDI). Similarly, with other highly developed countries, Japan is facing pressing issues such as an ageing population and low birth rates (UNDP, 2018).

In addition, Japan is a member of the UN, the OECD, G7, G8, G20 and ASEAN Plus, and is regarded as a great power (Yasutomo, 1989; Rozman, 2002; Black & Hwang, 2012). Especially from an economic point of view, the country is very powerful. Japan is the world third-largest economy having a GDPR of 4.872 trillion US$ in 2017 (World Bank, 2019a). The country is also the fourth-largest exporter and importer in the world, in which the industrial sector makes up approximately 27.5% of its GDP. Major industries are automobiles, consumer electronics, computers, and other electronics ("About Japan", n.d.). According to the Global Competitiveness Index 4.0, Japan is placed 5th in the world for having a competitive economy, just behind the US, Singapore, Germany and Switzerland (World Economic

Forum, 2018). The Eurogroups Register (EGR) reported that 47621 multinational groups were active in the EU in 2018. Japan placed 5th for having 350 active multinational companies in the EU. The first place went to the European member states (40081), followed by Switzerland (2843), The US (2200), and Norway (441) (Eurostat, 2018). To determine the openness of the Japanese economy, the level of FDI was examined. Prime Minister Abe has pledged to make Japan "*the world's easiest country for companies to do business in*" (Fensom, 2018). Major investments came from Asia and Europe. The net inflow of FDI was the highest in 2016, as it hit a record of $34.3 billion, but declined to $25.9 billion in 2017 (World Bank, 2019b). Japan is placed rather low In terms of world FDI inflows. However, the country was placed second regarding FDI outflows in 2017 (UNCTAD, 2018). The economic integration of Japan with the EU, in terms of import and export share in the world, is calculated in the table below.

Table 8: Japan trade integration with the EU

	2015	2016	2017
Japan total export to the EU in US$ (goods & services) (Eurostat, 2019a)	76.1	84.5	87.2
Japan total export in current US$ (World Bank, 2019c)	773	798	860
Japan trade integration with the EU in %	9.8	10.5	10.1
Place of the EU as Japan's top exporting partner in the world	3rd (World Bank, 2015a)	3rd (World Bank, 2016a)	3rd (World Bank, 2017a)
Japan total import from the EU in US$ (goods & services) (Eurostat, 2019a)	85.7	89.6	95.2
Japan total import in current US$ (World Bank, 2019d)	808	771	838
Japan trade integration with the EU in %	10.6	11.6	11.3
Place of the EU as Japan's top importing partner in the world	3rd (World Bank, 2015a)	2nd (World Bank, 2016a)	2nd (World Bank, 2017a)

**All numbers are in billion US$*

The EU is Japan's third top exporting partner and second or third top importing partner. Thus, Japan has a very competitive and open economy, and its market is very much integrated with the EU. This means that the economic factor is a valid reason for the adoption of standards set by the GDPR in the case of Japan.

Japan is a constitutional monarchy, in which the power of the Emperor is very limited. The Japanese constitution regard the role of the Emperor as primarily symbolic. The executive power is wielded by the head of government, which is the Prime Minister of Japan, and his cabinet. The legislative body of Japan is named the National Diet. According to the Japanese constitution, which was established in 1947, the Diet is the sole organ having the ability to make and adopt law (Constitution of Japan, ch. IV, art. 41). The country is divided into 47 districts, also known as prefectures, in eight regions. Each of the prefectures is ruled by an elected governor, have a legislature and administrative bureaucracy. The judicial system of Japan has historically been influenced by the Chinese. However, since the late 19th century the legal system has been largely dominated by European influences, especially from Germany and France, and some influences from the US model as well. In 1896, for instance, Japanese law was altered by adopting Germany's civil code (Reimann et al., 2006). The Act on Protection of Personal Information (APPI) (No. 57 of 2003) is a general law that oversees online privacy and data protection matters in Japan (Personal Information Protection Commission, 2016). The following section (5.1.2) will delve into the Japanese national data protection law and the Japan-EU adequacy decision.

5.1.2 Japan Adequate National Law (APPI)

Internal actors (Japan)	*Japanese government, Personal Information Protection Commission (PIPC), Commissioner Harihi Kumazawa of the PIPC, Prime Minister Shinzo Abe*
External actors (The EU)	*The European Union, European Commission, European Parliament, Commissioner Vera Jourová of the EC, President Jean Claude Juncker*

On 10 January 2017, the European Commission announced discussions on possible adequacy decisions with key trading partners, starting with Japan in their 'Communication on Exchanging and Protecting Personal Data in a Globalised World' document (European Commission, 2017a). In that same year in Brussels, a joint statement was given by Věra Jourová (EU Commissioner for Justice, Consumers and Gender Equality of the European Commission) and Haruhi Kumazawa (Commissioner of the Personal Information Protection Commission of Japan). They emphasized the importance of high standards regarding data protection as a fundamental right and a key factor of consumers' trust in the digital economy. Both Jourová and Kumazawa highlighted the work their commissions have done to

strengthen the mutual understanding of the EU and Japanese legislation on data protection. Both actors further acknowledged the planned reforms to increase the convergence between the EU and Japanese data protection systems. Accordingly, the EC stated that this convergence "*offers new opportunities to further facilitate smooth and mutual data flows, in particular through simultaneous finding of an adequate level of protection by both sides*" (European Commission, 2017b). Both the EU and the Japanese government have decided to address the significant differences to ultimately build and enhance the alignment between the two jurisdictions. Additionally, at the G7 summit in July 2017, Jean Claude Juncker (President of the Commission) and Shinzo Abe (Prime Minister of Japan) stated in a joint statement that the adoption of the adequacy decisions, as a shared commitment between the EU and Japan to promote the highest level of data protection standards on a global stage. They have welcomed the progress of convergence between both systems and their shared approach resting "*on an overarching privacy law, a core set of individual rights and enforcement by independent supervisory authorities*" (European Commission, 2017c). Japan seeks the benefits to promote the highest standards regarding data protection by converging to the European model. It illustrates the appeal of a global harmonized system based on shared values regarding data protection. This means that cultural and legal factors were relevant regarding the diffusion of the GDPR to Japan.

The EU and Japan concluded negotiations on reciprocal adequacy a year later on July 17, 2018. The adequacy requirement of the EU contains a threshold test for transfers of EU citizens' data to countries outside its borders. The requirement also allows on a legal basis to block data exports to states that fail to meet this standard (European Commission, 2018b). The processing of individuals' data in the European Union is based on the GDPR, in which different instruments when handling personal data transfers to third countries are laid out, including the adequacy decision. Article 45(2) of the GDPR presents the basic template for negotiations between the two entities and the EU to evaluate Japan's national law on data protection. The power to determine whether a country has an adequate level of data protection is executed by the European Commission. The Commission has to assess the third country on: a) "*the rule of law, respect for human rights and fundamental freedoms, relevant legislation … and judicial redress for the data subjects whose personal data are being transferred*"; b) existence of an independent supervisory authority; c) existence of international commitments in relation to the protection of personal data (European Union, 2016). The European Parliament and the Council can question and appeal the Commission to maintain, amend or withdraw these decisions. The European Commission released a draft Adequacy Decision report and started its internal process of formally approving the adequacy finding. The draft had to be judged by the European Data Protection Board (EDPB) and be approved by the committee of representatives of the EU member states (European Commission, 2018b). The European Commission and Japan have officially recognized each

other's data protection laws as adequate on January 23, 2019. The adequacy finding means that the EU and Japan have agreed to recognise each other's data protection systems as adequate, which permits safe transfers of personal data between the two jurisdictions.

Graham Greenleaf, professor and researcher on the global development of data privacy laws and agreements, wrote a book titled 'Asian Privacy Laws' (2014). The author criticized Japanese law for its limited scope over the private sector. He regarded Japan's data protection system as an "*illusion of protection*", for the following reasons: the absence of rules on the processing of sensitive data, weak restrictions on data exports, and the lack of enforcement mechanisms (Greenleaf, 2014). The question is now, how did Japan change its data and privacy system, which was considered to be illusory in 2014, to its current form of being accepted and added to the adequacy list by the European Commission? The key changes began in 2015, when the Japanese national data protection law was extensively amended. The amended version of the APPI became effective in 2017. The amended APPI required companies and businesses holding and processing personal data to specify the purpose for data collection and utilization. Furthermore, data subjects are obliged to give consent regarding data transfer to third parties. The government of Japan established the independent 'Personal Information Protection Commission' (PIPC) on January 1, 2016. The government commission is responsible for the protection of individuals' data and the enforcement of privacy regulations. The PIPC can request reports and materials from businesses handling personal data. The employees from the PIPC can also visit, interview and inspect businesses on how they handle personal information ("Online Privacy", 2018). These changes made the APPI significantly similar to the EU data protection system. After the 2015 amendments, the EC negotiated further adjustments to be incorporated into the APPI. The Commission has set up the so-called additional safety checks in forms of supplementary rules and extra commitments by the Japanese government. Some of the protections are, however, only limited to European originated personal data, and not personal data from and processed in Japan (European Commission, 2019a).

The additional safety checks include:

- **Supplementary rules**: these rules "*will bridge several differences between the two data protection systems*" (European Commission, 2019a). The additional safeguards have the full effect similar to legally enacted laws. These rules will extend, for instance, the protection of sensitive data, strengthen individual rights and the conditions concerning the transfer of EU data by Japan to other third countries. Japanese companies importing EU data are obliged to follow these supplementary rules. The Japanese independent data protection authority (PIPC) and the courts have the responsibility to enforce the rules.

- **Complaint-handling mechanism**: this mechanism is set up to examine and resolve complaints from European citizens regarding the access to personal data by authorities in Japan. The complaint-handling mechanisms will be supervised by the PIPC.
- **Assurance** from the Japanese government regarding "*the access of Japanese public authorities to personal data originating from the EU would be limited to what is necessary and proportionate for criminal law enforcement and national security purposes and subject to an independent oversight and effective redress mechanism*" (European Commission, 2019a).

These additional protections are collected in an Annex to the Implementing Decision on Japan. Another element of the Implementing Decision is periodic reviews regarding the adequacy finding. The European Commission is in charge of reviewing the procedures, the first review has to be within two years of the agreement's entry, after that a review should be done every four years. Additionally, the EC has to pay strict attention regarding the application of the Supplementary Rules and the transfer of data to other third countries by Japan (European Union, 2019).

The decision of the EU to recognize Japan for having an adequate level of data protection laws was finalized due to the above mentioned additional safeguards offered in the amended version of the APPI. Japan has put stricter guidelines and limitations regarding privacy and data protection by aligning to the GDPR. Japan, for instance, denied the transfers of personal data outside its borders to countries that do not have a sufficient level of data protection. Furthermore, the Japanese government provided its national privacy commission with the power to enact data embargos (Personal Information Protection Commission, 2016). This is the first time for the EU to decide on an adequacy finding to mutually recognize each other's data protection models. In the past, the EU's adequacy decisions for countries such as Argentina, Canada, New Zealand, and other third countries were unilateral, and therefore, only concerned with the transfer of EU personal data to non-EU states (European Commission, 2018a). The mutual reciprocity between the EU and Japan, thus, represents a high point in the global diffusion of the GDPR.

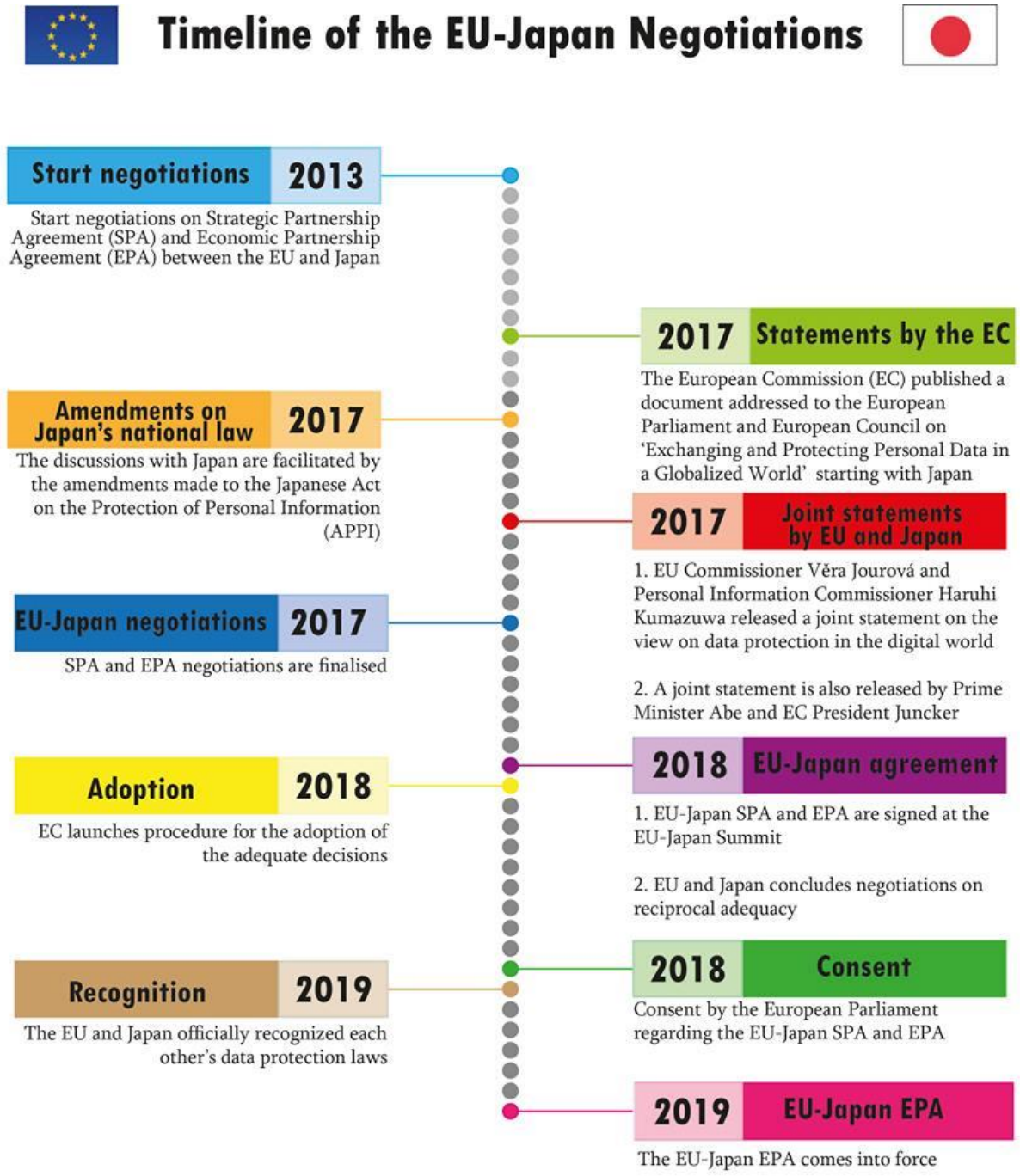
5.1.3 EU-Japan Economic Partnership Agreement (EPA)

Actors	*Japanese government, Prime Minister Shinzo Abe, the European Union, European Commission, European Parliament, President Jean Claude Juncker, Commissioner Vera Jorouvá*

On the same day of July 17th, 2018, the EU and Japan concluded talks on both the adequacy decisions and the equally ambitious economic partnership agreement. The agreement is the largest negotiated trade deal in EU history, as it will create an open trade zone covering over 600 million people (European Commission, 2018c). The EPA increases trade in goods and services and endorses many opportunities for investments. It also removes numerous trade barriers between the two entities (European Commission, 2017d). According to the European Commission (2019b), the trade agreement enables to (1) remove these barriers, (2) shape global trade rules by conforming with European high standards, (3) send a powerful message to the US and China (two of the world's biggest economies), rejecting their ongoing protectionist actions.

At the EU-Japan summit in Tokyo, Donald Tusk, President of the EU Council, stated that: "*We are putting in place the largest bilateral trade deal ever. This is an act of enormous strategic importance for the rules-based international order, at a time when some are questioning this order. We are sending a clear message that we stand together against protectionism*." (European Council, 2018). This statement can be observed and understood as an economic and political action by two jurisdictions to increase and promote free trade.

It is interesting to note that the timing between the trade agreement and the adequacy finding may not be a coincidence but rather a strategic move at the right time to strengthen the EU-Japan bilateral relationship. The following figure illustrates the timeline of the EU-Japan negotiations on the Strategic Partnership, Economic Partnership, and the adequacy decision.



Source: Compiled by author.

Negotiations on the Economic and Strategic Partnership already started in 2013, as instructed by the EU governments to the Commission. The negotiations were finalized on December 2017. A year later in December 2018, the European Parliament approved the EPA and the agreement was headed to its conclusion (European Commission, 2019b). On 1 February 2019, The EU-Japan EPA officially entered into force. In addition, a large part of the Strategic Partnership Agreement (SPA) between the EU and Japan will also apply on a provisional basis as of February 2019. The SPA is the first bilateral agreement

between the European Union and Japan and it aims to support the overall partnership by "*promoting political and sectoral cooperation and joint actions on issues of common interest, including regional and global challenges*" (European Union External Action, 2019).

The question at hand is, how the impact of the trade agreement has affected the adequacy decisions or vice versa. According to the EC, dialogues and negotiations on data protection and trade agreements with third countries are required to follow separate tracks (European Commission, 2018a). However, during the trade negotiations between the EC and Japan, the Japanese negotiators brought up the topic of wanting to include data flows in the deal. A spokesperson from the side of Japan said: "*Japan would like to work together [with the EU] to establish a state of the art digital economy which can be a model for the rest of the world*." (Mucci et al, 2018). Marietje Schaake, Dutch Liberal and Member of the European Parliament (MEP), made it clear that the EP will not approve an agreement in which data protection in the EU can be weakened. Due to these matters, the Commission had to affirm once again that data protection will not be negotiated in trade deals and only through the adequacy decisions (Mucci et al, 2018). As stated by the Commission, "*The Economic Partnership Agreement applies without prejudice to the each party's legislation in the field of data protection. By allowing the safe transfer of personal data between the EU and Japan, the mutual adequacy findings will further facilitate commercial exchanges, thereby complementing and amplifying the benefits of the Economic Partnership Agreement*." (European Commission, 2018a). In practice data protection and trade negotiations are strongly linked to one and another, the two may follow separate tracks but the endpoint, i.e. to establish closer bilateral relations, is the same. This can be demonstrated through several statements and joint statements made by various relevant actors during and after the negotiation procedures.

Jean Claude Juncker (EC President)

"*Almost five centuries after Europeans established the first trade ties with Japan, the entry into force of the EU-Japan Economic Partnership Agreement will bring our trade, political and strategic relationship to a whole new level. I praise the European Parliament for today's vote that reinforces Europe's unequivocal message: together with close partners and friends like Japan we will continue to defend open, win-win and rules-based trade. And more than words or intentions, this agreement will deliver significant and tangible benefits for companies and citizens in Europe and Japan.*" (European Commission, 2018d).

The EC President underlined the benefits the economic partnership will bring for international trade, EU-Japan relations, and global governance. He emphasized to enhance trade, political and strategic relationship between the two entities. These instances indicate the importance of economic and

political factors that led to the partnership agreements, as well as the adoption of GDPR-like standards by Japan.

Shinzo Abe (Prime Minister of Japan)

"*The Japan-EU SPA forms the foundation upon which Japan and the EU, sharing fundamental values, will maintain and expand the free and open international order and lead the peace and prosperity of the international community. Based on the SPA, Japan and the EU will further strengthen their cooperation in a broad range of fields.*" ("Opening Statement", 2018).

"*The Japan-EU EPA and SPA signed today are historic agreements that will elevate Japan-EU relationship to a new dimension. Taking these agreements as the guideposts, I will vigorously develop Japan-EU relations across various spectrum of fields and contribute to world peace and prosperity, together with Donald and Jean-Claude, keeping the flag of free trade waving high as partners sharing universal values such as freedom, democracy, human rights, and the rule of law.*" ("Opening Statement", 2018).

These statements by Prime Minister Abe displayed the support for the development of Japan-EU partnerships focused on free trade and universal values. In addition, by setting up Japan-EU bilateral agreements is a signal demonstrating the willingness of the two entities to lead the international community and strengthen cooperation across various fields. These kinds of instances demonstrate the economic and political motives behind such agreements.

Cecilia Malmström (EU Commissioner Trade)

"I am extremely pleased with the Parliament's vote today. Our economic partnership with Japan – the biggest trade zone ever negotiated – is now very close to becoming a reality. This will bring clear benefits to our companies, farmers, service providers and others. Those benefits also go hand in hand with a commitment on both sides to uphold the highest standards for our workers, consumers and the environment. That's good news for the EU and all supporters of an open and fair international trading system." (European Commission, 2018d).

Malmström highlighted the bilateral trade agreement as an incentive to create a more stable and fairer global economy. The commitments made by the two entities will not only protect the citizens by introducing the highest standards but support a better environment for international trade. Commissioner Malmström similarly brought about the importance of economic factors.

The European Commission

"This mutual adequacy arrangement will create the world's largest area of safe transfers of data based on a high level of protection for personal data. Europeans will benefit from strong protection of their personal data in line with EU privacy standards when their data is transferred to Japan. This arrangement will also complement the EU-Japan Economic Partnership Agreement, European companies will benefit from uninhibited flow of data with this key commercial partner, as well as from privileged access to the 127 million Japanese consumers. With this agreement, the EU and Japan affirm that, in the digital era, promoting high privacy standards and facilitating international trade go hand in hand. Under the GDPR, an adequacy decision is the most straightforward way to ensure secure and stable data flows." (European Commission, 2018b).

Accordingly, the EC emphasized the economic aspects of the EU-Japan EPA and pointed out that the adequacy decisions will complement the trade agreement with their key economic partner.

Vera Jourová (EU Commissioner Justice)

"Japan and EU are already strategic partners. Data is the fuel of global economy and this agreement will allow for data to travel safely between us to the benefit of both our citizens and our economies. At the same time we reaffirm our commitment to shared values concerning the protection of personal data. This is why I am fully confident that by working together, we can shape the global standards for data protection and show common leadership in this important area" (European Commission, 2018b)

Commissioner Jourová, in a similar way, indicated the economic benefits of the mutual adequacy recognition between the EU and Japan. She also commented on shared values between Japan and the EU in addressing privacy protection related issues. Shared values are part of cultural factors that influence the diffusion of the GDPR to Japan.

In the current era of digitalization, it is highly unlikely to not discuss the issue of data protection when dealing with trade agreements. These statements by the various actors have demonstrated the importance of data protection and the benefits it will bring not only for bilateral relations between the EU and Japan but also for international trade. This means that the economic factors were most prominent regarding the diffusion of the GDPR to Japan.

5.2 The United States

5.2.1 Background

The United States of America, commonly referred to as the U.S. or U.S.A or America, is a country located in North America. The US is a democratic federal republic comprising 50 states. The country is the fourth largest country in the world in terms of land area (9.8 million km2), after Russia, Canada and China ("The United", 2019). With a population of over 328 million people, the US is considered to be the third most populous country. The US is also the world's most ethnically diverse and multicultural nation ("The United", 2019). Furthermore, the country has the largest economy, 19.485 trillion in 2017, when measured in GDP in the world (World Bank, 2019e). The nation's wealth is mainly derived from its highly developed industry and partly due to its natural resources and enormous agricultural output. The US is very much present in global trade, as its exports and imports represent large proportions of the world total trade. According to a competitiveness report by the World Economic Forum (2018b), The US is placed the highest when it comes to competitiveness. Besides, the country has 2200 active multinational companies in the EU, which makes the United States to be ranked third for having the most MNCs in the European Union (Eurostat, 2018). The US has the highest net inflows of foreign direct investments in the world, $354.8 billion in 2017 (World Bank, 2019f). The country is also placed first in terms of FDI outflows in the world (UNCTAD, 2018).

The economic integration of the US with the EU is calculated in the table below.

Table 9: The US trade integration with the EU

	2015	2016	2017
The US total export to the EU in US$ (goods & services) (Eurostat, 2019b)	464.4	477.9	481
The US total export in current US$ (World Bank, 2019g)	2265	2218	2350
The US trade integration with the EU in %	20.5	21.5	20.4
Place of the EU as the US top exporting partner in the world	1st (World Bank, 2015b)	1st (World Bank 2016b)	1st (World Bank, 2017b)
The US total import from the EU in US$ (goods & services) (Eurostat, 2019b)	599	590	612.4

The US total import in current US$ (World Bank, 2019h)	2786	2738	2929
The US trade integration with the EU in %	21.5	21.5	20.1
Place of the EU as the US top importing partner in the world	2nd (World Bank, 2015b)	1st (World Bank, 2016b)	2nd (World Bank, 2017b)

**All numbers are in billion US$*

When the European member state countries are grouped together, the EU is considered to be America's number one exporting partner and number one or two importing partner in the world. Thus, the United States has a very open and competitive economy, and its market is also greatly integrated with the EU. This means that the economic factor might have caused the diffusion of the GDPR to the US.

According to the US Constitution, the federal republic is a system in which certain powers are delegated to the national government and others are given to the states. The authority of the national government and the states might overlap in some areas. Both entities can, for example, impose a tax, establish courts, and make and adopt laws. But the states are limited or denied powers in areas, such as public health, safety, regulation of commerce within a state, establish local governments, tax imports or exports, the establishment of treaties, as well as implementing laws that contradict the Constitution. The structure of the government of the 50 states closely resembles that of the national government, each having a governor, a legislative department, and a judicial department ("The United", 2019). Moreover, the US does not have a comprehensive privacy law. The protection of citizens' data is regulated by both the national and state-level law in the US. The federal legislation is generally directed at particular sectors, while the state-level regulations are more aimed at protecting the privacy rights of individual consumers. The US federal law has predominantly regulated privacy and data protection in the healthcare and financial services sector. In general, laws on a federal level always pre-empts state laws when covering a similar topic, unless the federal law state that it is not pre-emptive of state laws (Thoren-Peden & Meyer, 2018).

On the state level, the right to privacy is incorporated into many state constitutions. The federal laws aim to protect citizens of all 50 states, while the state laws only apply to the protection of the citizens in a specific state. Laws across states are not consistent with each other because each of the states has the power to make and enforce law. Regulations in New York, for instance, are more directed to financial institutions in addressing cybersecurity risks. The state California, on the other hand, has

mainly adopted laws to protect its consumers (e.g. regulations that prevent disclosure of individuals' data for marketing related purposes) (Thoren-Peden & Meyer, 2018). Most interestingly, California has passed a new law just one year ago, called the California Consumer Privacy Act (CCPA). Various reports imply the similarities between the GDPR and the CCPA, while others regard it as the watered-down version of the GDPR (Bateman, 2018; Hospelhorn, 2018; Lerman, 2018; Umhoefer, 2019). Nevertheless, it cannot be denied that the CCPA is the very first and most comprehensive data protection law in the US. Moreover, America has a partial adequacy decision with the EU through the Privacy Shield agreement, which became operational on 1 August 2016. The Privacy Shield allows certified American companies to benefit from free transfers of EU citizens' data to their domestic market for commercial purposes (European Commission, 2018a).

The following sections will start with an analysis on the adoption of the EU-US Privacy Shield agreement, followed by an examination on the internal processes and external influences regarding the adoption of the CCPA by the state of California.

5.2.2 The EU-US Privacy Shield

Actors	*The US national government, the US department of Commerce, The European Commission, The European Court of Justice (ECJ), the European Parliament*

The EU-US Privacy Shield framework (2016-present), formerly known as the Safe Harbour (2000-2015), is based on "partial" adequacy decisions, and only American companies that are committed to the principles of this framework can benefit from free data transfers between the two jurisdictions. This framework is based on the voluntary compliance of the private sector in the US. To better understand the development of the Privacy Shield, the former Safe Harbour framework (2000-2015) will first be examined. The Safe Harbour principles were established in a time in which it was impossible for the US to receive an adequacy decision from the EU. The Americans were aware of this and never formally applied for an adequacy determination (Wolf, 2014). That is why the US and EU decided on a different approach and created a framework which could work without having to establish full adequacy. The EU already had established several ways to permit limited adequacy. The Standard Contractual Clauses (SCC) and Binding Corporate Rules (BCR), for instance, approved the transmitting of data from EU entities to third countries that are not on the adequacy white lists ("Standard Contractual", n.d.; "Binding Corporate", n.d.). Furthermore, the GDPR has a similar statute, Article 45(1), in which it is stated that an adequacy finding is not only directed to third countries but can also be applied to "*a*

territory or one or more specified sectors within that third country" (European Union, 2016). This means that the EU regards the actual practices of data protecting entities to be more important than whether the domestic law is similar to that of the EU.

The Safe Harbour and Privacy Shield are bilateral agreements created outside formal treaty-making processes. The negotiations started in 1998, and the Safe Harbour was agreed in the year 2000. The new framework allowed companies to comply with the principles on a voluntary basis through an opt-in system. The authorities on the side of the US wanted to establish an agreement in which international data flows could continue from the EU to America. According to Farrell (2003), this was a strategic move from the US government to introduce the concept of self-regulation, which was a dominant cyberspace ideology in the 1990s. Furthermore, the benefits of transatlantic digital products and services were very appealing for not only the US but also the EU. On the side of the EU, the US privacy model was not perceived as providing an adequate level of protection and an omnibus privacy law was far from realization, due to strong opposition from leading American tech companies (Reidenberg, 2001). According to the Data Protection Directive recital 56, the EU sought to promote European data protection standards, as well as the significance of cross-border data flows to further increase international trade (European Union, 1995). This suggests that by implementing the Safe Harbour approach, the EU is able to continue to facilitate trade with the US, one of the EU's most important trading partner in the world. In addition, the EU was able to introduce a global discussion regarding data protection and regulation. The agreement also brought benefits to the US, as American companies could voluntarily comply with the EU rules and in this way continue to access the European digital market. This means that the economic benefits for both entities were at large for adopting the Safe Harbour agreement.

Reidenberg (2001) considered the Safe Harbour decision as vulnerable and stated that it watered down European privacy standards. The EP also had doubts and passed a non-binding resolution to dismiss the Safe Harbour Decision in the year 2000. However, not much happened until Maximilian Schrems, an Austrian citizen, filed a complaint against data processing practices of Facebook to servers in the US in 2013. Schrems complained that the US law did not offer sufficient protection against the usage of personal data by public authorities. In the light of revelations made by Edward Snowden concerning the spying practices of the US national intelligence services, this issue became more urgent and the Commission had much explaining to do about its adequacy decision regarding the Safe Harbour agreement (European Parliament, 2015). The European Court of Justice officially ruled in October 2015 that the Safe Harbour Decision was invalid because the agreement did not offer a level of data protection equivalent to the standards laid down by the EU Data Protection Directive. The ECJ stated that "*legislation permitting the public authorities to have access on a generalised basis to the content*

of electronic communications must be regarded as compromising the essence of the fundamental right to respect for private life." (European Commission, 2015). The Commission and the US authorities had to further negotiate a new framework for transatlantic data flows. The new framework was established in February 2016 and is known as the EU-US Privacy Shield. According to the EC, "*The new arrangement includes commitments by the U.S. that possibilities under U.S. law for public authorities to access personal data transferred under the new arrangement will be subject to clear conditions, limitations and oversight, preventing generalised access. Europeans will have the possibility to raise any enquiry or complaint in this context with a dedicated new Ombudsperson*" (European Commission, 2016). Moreover, Vice-President of the Commission Ansip and Commissioner Jourová gave statements regarding the EU-US Privacy Shield agreement.

Andrus Ansip (EC Vice-President)

"We have agreed on a new strong framework on data flows with the US. Our people can be sure that their personal data is fully protected. Our businesses, especially the smallest ones, have the legal certainty they need to develop their activities across the Atlantic. We have a duty to check and we will closely monitor the new arrangement to make sure it keeps delivering. Today's decision helps us build a Digital Single Market in the EU, a trusted and dynamic online environment; it further strengthens our close partnership with the US. We will work now to put it in place as soon as possible." (European Commission, 2016).

Vice-President Ansip indicates the benefits the Privacy Shield will bring to support the European digital market and how it will create a safe and trusted online environment for EU citizens. In addition, the agreement is significant in sustaining the EU-US partnership.

Vera Jourová (EU Commissioner Justice)

"The new EU-US Privacy Shield will protect the fundamental rights of Europeans when their personal data is transferred to U.S. companies. For the first time ever, the United States has given the EU binding assurances that the access of public authorities for national security purposes will be subject to clear limitations, safeguards and oversight mechanisms. Also for the first time, EU citizens will benefit from redress mechanisms in this area. In the context of the negotiations for this agreement, the US has assured that it does not conduct mass or indiscriminate surveillance of Europeans. We have established an annual joint review in order to closely monitor the implementation of these commitments." (European Commission, 2016).

The main points here were made regarding the protection of European citizens' data by American companies. Both statements suggest that the EU can sustain the partnership with the US by creating a

way for US companies to work in the digital market of the EU, as well as protecting the personal data of Europeans transferred to a third country. This means that the partial adequacy decision in the form of the Privacy Shield did not make the US conform to the EU data protection model. However, it did introduce the EU system into the US and created a "*safer*" online environment for EU citizens' personal data. These kinds of statements suggest that political factors (sustaining EU-US relation), but more specifically economic factors (support the EU digital Single Market, continue EU-US cross-border data flows, increase international trade) were most evident regarding the adoption of the EU-US Privacy Shield. Whether the Privacy Shield can be considered as an effective agreement is another question and falls out the scope of this thesis.

As a result of the many data leaks and improper collection of personal information by companies, changes were bound to occur as the American society increasingly voiced their concerns about national privacy laws. The next section is going to explore the adoption of the first comprehensive data protection law in the US by the state of California.

5.2.3 The California Consumer Privacy Act (CCPA)

Actors	*The state California, Californians for Consumer Privacy, Committee to Protect California Jobs, unions, non-profit organizations, big tech companies, the US national government, The US National Telecommunications and Information Administration (NTIA), US Senator Roger Wicker*

The California Consumer Privacy Act was signed by Governor Jerry Brown on 28 June 2018. The decision to pass the law was made after a week since the bill was introduced. The legislation, also known as the Assembly Bill 375 (AB 375), resulted from a compromise between the state California and the 'Californians for Consumer Privacy' (a political action committee). The committee agreed to refrain from its ballot initiative in exchange for the bill. The ballot initiative was led by the Californians for Consumer Privacy and supported by its coalition members (Wakabayashi, 2018).

The coalition members of the initiative are the following organisations and businesses (table 10):

Table 10: Supporters of the 'Californians for Consumer Privacy'

Organizations	Businesses
• Academy of Integrative Health & Medicine • Campaign for a Commercial-Free Childhood • Catalina's List	• Abine Blur • DeleteMe • Disconnect

• Center for Digital Democracy • Center for Public Interest Law • Consumer Action • Consumer Federation of California • Consumers Union • Parent Coalition for Student Privacy • Privacy Rights Clearinghous	• DuckDuckGo, Inc.

Source: "Coalition" (n.d.); "California Consumer" (2018).

The opposition side campaign was led by the 'Committee to Protect California Jobs'. These members consist of organizations and businesses as well.

Table 11: Supporters of the 'Committee to Protect California Jobs'

Organizations	Businesses
• Alliance of Automobile Manufacturers, Inc. • California Chamber of Commerce (CalChamber)	• Amazon.com, Inc. • AT&T, Inc. • Comcast Corporation • Cox Communications, Inc. • Google, LLC • Microsoft Corporation • Uber Technologies, Inc. • Verizon Communications, Inc.

Source: "Campaign Finance" (n.d.); "California Consumer" (2018).

It is interesting to note that on the opposition side, the businesses, especially big American tech companies, are largely prevailing, while the proponent side is mostly dominated by unions and non-profit organizations. The big tech companies, such as Facebook, Amazon and Google, each donated approximately $200.000 US dollars to support the opposition campaign. The Committee to Protect California Jobs argued that the ballot initiative is unworkable and will limit the citizens' choices, hurt the businesses, and disconnect California from the global economy ("Statements By", 2018). Following the Cambridge Analytica scandal, Facebook made a statement to not provide additional funding to the opposition side. The social media platform commented that they wanted to support reasonable privacy measures in California. Facebook has used its lobbying power to fight legislation that enables the expansion of user privacy at the costs of its business interests in the past as well. So dropping its financial funding to the opposition campaign does hardly mean Facebook would support the proposition side (Lecher, 2018).

Various interested parties, e.g. tech companies and businesses beyond Silicon Valley, will start or already has started lobbying to amend the bill before it comes into effect in January 2020. According to Mary Stone Ross, one of the former members who organized the ballot initiative, a fight will bound to occur to weaken the CCPA. Local policy-makers and privacy advocates are fearful that the legislation

will not remain intact. Organizations such as the Internet Association, in which Amazon, Twitter and Uber are members, and the California Chamber of Commerce (or CalChamber) have attempted to revise the legislation by spending large amounts of money on lobbying. However, tech leaders strongly dismissed the notion they are attempting to weaken the law (Romm, 2019).

The Vice-President of State Government Affairs for the Internet Association, Robert Callahan is concerned about the fast decision of passing the law and said: *"Data regulation policy is complex and impacts every sector of the economy, including the internet industry. That makes the lack of public discussion and process surrounding this far-reaching bill even more concerning. It is critical going forward that policymakers work to correct the inevitable, negative policy and compliance ramifications this last-minute deal will create for California's consumers and businesses alike."* (Davis, 2018).

Katherine Williams, a spokesperson for Google, stated that the law *"came together under extreme time pressure, and imposes sweeping novel obligations on thousands of large and small businesses around the world, across every industry. We appreciate that California legislators recognize these issues and we look forward to improvements to address the many unintended consequences of the law."* (Davis, 2018).

Callahan and Williams mainly voiced their concerns about the fast decision of passing the law and emphasized that the law should be improved to create a better agreement for both the businesses and consumers. This means that the US tech industry is not necessarily against stricter data protection laws, however, they do want the laws to complement their business interests.

Furthermore, American society has also voiced their opinions regarding data protection laws. According to a public opinion poll set up by the Washington Post, Americans are becoming more concerned about the collection of digital data by governments and private companies (Fisher & Timberg, 2013). The National Telecommunications and Information Administration (NTIA) assigned the US Census Bureau to conduct a survey on security concerns by the American citizens. The survey revealed that three-quarters of internet-using households were worried about online privacy and security risks in 2017, and the concerns caused a third of the users to refrain from certain online activities (Goldberg, 2018). Another data survey by The Harris Poll reported that 78% of respondents regard the ability of companies to maintain their data and privacy as "very important", but only 20% thinks this holds true for the companies they interact with online (The Harris Poll, 2018). Moreover, a survey among 800 Californian voters, revealed that across race, gender, party preference, and regional lines, over 90% were in support of stronger consumer privacy protections (David Binder Research, 2019). It can be observed that the public concern regarding privacy protection is also very much apparent and the need for stricter rules are becoming more urgent in the United States of America.

Federal law concerning data privacy in the US was an unthinkable idea, a year ago. This is because in American law "*privacy interest are balanced to competing interests, such as the right to free speech and respect for free-market solutions*" (Wolf, 2014, p. 244). Since the introduction of the GDPR and the CCPA, federal legislation concerning privacy and data protection has suddenly become possible. Other states in America have decided to enact or review their present laws on consumer privacy as well. States such as Vermont and South Carolina are following California's tracks and are considering to include stricter measures to protect personal data (Shields and Sutton, 2019). Furthermore, US Senator Roger Wicker (Chairman of the Committee on Commerce, Science and Transportation) assembled a hearing titled: "*Consumers Perspectives: Policy Principles for a Federal Data Privacy Framework*" on May 1, 2019. The hearing provided information on consumers' expectations for data privacy and protection in the digital age. The panel also discussed data privacy rights, controls, and protections and the construction of federal law regarding data privacy in the US. Wicker said that such legislation "*is critical to reducing consumer confusion about their privacy rights and ensuring that consumers can maintain the same privacy expectations across the country*" (2019).

The witnesses during the hearing were Helen Dixon (Data Protection Commissioner from the Republic of Ireland), Neema Singh (Senior Legislative Counsel at American Civil Liberties Union), Jules Polonetsky (Chief Executive Officer at Future of Privacy Forum) and Jim Steyer (Chief Executive Officer at Future of Privacy Forum). These witnesses have recommended for algorithmic transparency, special laws for children and teens, and arranged regulations on data according to their sensitivity. Commissioner Dixon mainly shared her perspectives on the GDPR and how the US might pursue or deviate from that strategy (Dixon, 2019). Guliani stated that "*The current privacy landscape is untenable for consumers*" and therefore "supports strong baseline federal legislation to protect consumer privacy" (2019). The federal-level regulation should be a "floor" and not a "ceiling" for consumer protections (Guliani, 2019). Steyer, similarly said that the US needs a strong federal baseline privacy law, especially one that can protect vulnerable groups such as children and teens (2019). Polonetsky also gave a statement, in which he stresses the disadvantages American companies might face because of the negative perceptions of the current privacy protection model, being perceived as outdated and inadequate. According to Polonetsky (2019), the US Congress should ensure that the US will not fall behind the world when it comes to having a strong privacy framework. This means that the American citizens are serious about having a stronger data protection model on a federal level. Incidents concerning the lack of privacy protections have happened in the past as well in America. As a result of public responses to such incidents, major data reforms were established, for instance, the 'Privacy Act' of 1974 and the 'Health Insurance Portability and Accountability Act' of 1996 (HIPAA) (Wolf, 2014). The diffusion of standards set by the GDPR is due to the reactions of the society in favour of stricter data protection

rules. Thus, the cultural factor is relevant in explaining the diffusion of the European standard to the US.

Moreover, the US National Telecommunications and Information Administration (NTIA) issued a request for comments on September 25, 2018. The consultation by the NTIA covers the first steps that might lead to a federal law regarding the protection of personal data in the US. The NTIA received over 200 comments from various actors, including companies, civil society, academics, and individuals. The NTIA specifically requested comments on ways to develop a new approach "*to advance consumer privacy while protecting prosperity and innovation*" (National Telecommunications and Information Administration, 2018). Due to the massive amounts of comments, I have selected the ones that are most interesting from various groups or individuals within the society. These are: the US Chamber of Commerce, Microsoft Corporation, Privacy Law Scholars, and the Advanced Communications Law & Policy Institute (ACLP) at New York Law School.

The US Chamber of Commerce ("Chamber")

"Although the Chamber previously advocated that self-regulation was the preferred mechanism to address consumer privacy, the Chamber now believes a new approach is necessary. In light of high-profile incidents surrounding data, the implementation of the General Data Protection Regulation ("GDPR") in Europe and passage of the California Consumer Privacy Act ("CCPA"), the Chamber recognizes the need for Congress and the Administration to pursue federal privacy legislation that offers consistent protections to Americans to promote "harmonization and interoperability nationally and globally."" (Day, 2018, p. 2).

The Chamber suggests the need for a federal privacy model, one which is consistent with global standards. The GDPR and the CCPA have been viewed as significant international and national events in the field of data and privacy protection in the US. Major data scandals have also triggered the Chamber to rethink and push for a new approach to address consumer privacy. It can be observed that the Chamber is attracted by the benefits of a globally harmonized data protection system, which is a legal factor for the adoption of GDPR-like standards.

Microsoft Corporation (technology company)

"Microsoft supports NTIA's goal of reducing fragmentation nationally and increasing harmonization and interoperability nationally and globally. Regulatory fragmentation would create a barrier to entry and limit the growth potential of small and mid-size companies, including many of our customers. U.S. privacy law should be interoperable with GDPR. We need a uniform national framework which protects privacy by giving people stronger control of their personal data.

Additionally, as our customers need to be protected now, we will work with states as they develop strong privacy legislation that avoids fragmentation with existing legal obligations and promotes consistency." (2018, p. 9-10).

"Nothing the U.S. government does on privacy will be meaningful globally until the U.S. has a comprehensive privacy law that provides protections that are at least on par with global standards. It is time for the U.S. to take meaningful action to maximize both privacy protection and innovation and to maintain its competitive advantage." (2018, p. 11).

Accordingly, Microsoft favours the harmonization of the US privacy law with that of the GDPR. The tech company supports the development of strong and consistent privacy legislation that is on par with global standards. A uniform national framework is needed for the US to stay innovative and maintain its competitive advantage in the world. This suggests that the economic and legal factors are prominent.

Privacy Law Scholars

"At this historic moment for data privacy, NTIA can guide the United States into a future of data practices that addresses increasing concerns about privacy and autonomy, and respects individuals' rights. A strong federal approach to data privacy would not only encourage individuals to trust and participate in the digital economy and on digital platforms, but could enable U.S. companies to gain a more competitive position abroad." (2018, p. 1).

"Creating a larger gap between U.S. and European data privacy law will threaten already at-risk legal regimes for transferring data between those parts of the world. This will raise, not lower costs, for companies doing business around the globe." (2018, p. 47).

"Any discussion of harmonization must take into account not just state-federal dynamics, but federal-global dynamics as well." (2018, p. 48).

Privacy Law Scholars similarly emphasized the importance of a strong federal-level data protection system in the US. According to the scholars, a new model stimulates the citizens to trust and engage in the digital economy, and in particular American companies can gain a more competitive advantage in the global economy.

Advanced Communications Law & Policy Institute (ACLP)

"Without comprehensive action, firms will deploy ever more invasive data extraction techniques, greatly increasing the odds of more regular privacy intrusions. Consumer welfare and innovation are significantly worse off in such an environment. For these reasons, NTIA must urge the Executive to push for a legislative solution that formalizes a national regulatory framework, one that can deliver the certainty and predictability needed to protect consumer privacy while also assuring continued investment and business model experimentation." (2018, p. 22)

The ACLP made similar statements, prioritizing a comprehensive and national regulatory framework in the field of data protection laws. The new model should be able to protect consumer privacy but at the same time support businesses and investments.

Data protection on an international level is extremely relevant, as every statement has pointed out the global aspect of privacy regulations. The requested comments by the NTIA revealed that the people in America, whether businesses, unions, think tanks or just regular citizens are rethinking their domestic laws regarding privacy and data protection. There is large support for a model on the national level, one that is on par with the GDPR and global standards. The main motives are not only to regain consumers trust in the digital economy and online platforms but to maintain the competitive advantage of American companies in the global economy. This suggests that the economic factor of competition is most dominant.

5.3 Discussion

The results of the two cases are presented in the tables below (table 12 and 13).

Table 12: Results of Japan case study		
Factor	**Findings**	**Diffusion mechanism**
Economic	• The 3rd largest economy in the world • Global Competitiveness Index: 5th place • Number of active multi-national companies in the EU: 350 (5th place) • FDI inflow: low and FDI outflow: 2nd place in the world • Level of economic integration with the EU: 2nd or 3rd place in the world share • Economic Partnership Agreement • Statements from various political actors emphasising the importance of data protection for international trade and how the adequacy decision and the EPA complement one another. (Actors: Kumazawa, Abe, Jourová, Juncker, Tusk, Malmström, and the European Commission). • **The most dominant factor for Japan to implement standards set by the GDPR.**	Competition
Political	• Strategic Partnership Agreement • Economic Partnership Agreement • Adequacy decision • Timing of the negotiations and finalizing the agreements were very close • Statements by political actors to increase bilateral relations and strengthen cooperation across various fields between Japan and the EU. (Abe, Tusk, Juncker). • Relative large impact in influencing the convergence of Japan's system to that of the EU	Conditionality
Cultural	• Statements made on the commitments between Japan and the EU to shared values regarding the protection of personal data. (Abe, Juncker, and Jourová). • No available information on opinions regarding privacy and data protection in Japan. • Minimal impact on the diffusion of the GDPR to Japan.	Emulation
Legal	• Statements were made regarding the benefits of a harmonized system in which the EU and Japan could lead the global community but were more directed in support of facilitating international trade. (Abe, Juncker, and Jourová). • Minimal impact on the adoption of GDPR-like standards by Japan.	Learning
Theory	**Findings**	**Attraction?**
Soft power	• Japan has implemented European laws in the past as well. (E.g. Germany's civil code). Attracted to a certain degree to the high standards of the European data protection model. • Attraction only, not enough to align with the GDPR.	Yes, but not the decisive factor.

Table 13: Results of United States case study		
Factor	**Findings**	**Diffusion mechanism**
Economic	• The largest economy in the world • Global Competitiveness Index: 1st place • Number of active multi-national companies in the EU: 2200 (3rd place) • FDI inflow & FDI outflow: 1st place in the world • Level of economic integration with the EU: 1st or 2nd of the world share • Safe Harbour Agreement • Privacy Shield Agreement • The implementation of both the Safe Harbour and Privacy Shield were more directed at improving the trans-border transfers of digital products. (EU documents). • Statements that the US should align with global data protection standards and maintain a competitive advantage in the global (digital) economy. (Polonetsky, Microsoft, Privacy Law Scholars, and ACLP). • **The most dominant factor for the diffusion of the GDPR to the United States.**	Competition
Political	• Safe Harbour Agreement • Privacy Shield Agreement • Statements regarding the implementation of both agreements were said to improve and maintain EU-US relations. (European Commission, Ansip, and Jourová,) • Relatively large impact regarding the diffusion of GDPR-like standards to the US.	Conditionality
Cultural	• The CCPA was brought about by Californian organizations in favour of stricter data protection laws. • American society in favour of stricter privacy laws. (NTIA survey, Harris Poll, and David Binder Research). • Large impact regarding the adoption of the CCPA in the state of California. • Minimal impact on the adoption of GDPR-like standards in the US.	Emulation
Legal	• Statements regarding the benefits when harmonizing with global standards. (Chamber and Microsoft). • Minimal impact regarding the diffusion of the GDPR to the US.	Learning
Soft power	**Findings**	**Attraction?**
	• Attracted to a certain degree, as the GDPR partly caused the US to rethink their current domestic model. (Also influenced by public concern and latest data scandals). • Attraction only, not enough to align with the GDPR.	Yes, but not the decisive factor.

The findings of the Japan case study demonstrated that the economic factor was most apparent for the diffusion of the GDPR. Japan and the European Union are developing stronger economic and political ties through the agreed partnerships. The mutual adequacy decision complements the economic trade agreement as well. The trade deal is a sign for the global community that Japan and the EU are against protectionist practices and in support of free trade. The Japan case study revealed the importance of data protection not only for improved relations between the two entities but for trade and international business.

Accordingly, the diffusion of the GDPR-like standards to the US happened through economic factors. The Safe Harbour and Privacy Shield agreements were both established to increase economic and bilateral relations between the EU and America. The California Act, however, was brought about by public support for stricter privacy laws in the state of California. The CCPA and the GDPR introduced discussion for a federal data protection law in the US. As a result of various data scandals, Americans became more concerned about their national laws and are supporting a data protection model on a federal level as well. Additionally, the new model should be comparable with global standards for the US to maintain a competitive advantage. Due to these reasons, the diffusion mechanism of competition (economic factor) is most evident in the case of the US as well.

Japan and the United States did not adopt GDPR-like standards because of the attraction of the EU regulation. It certainly played a role because it was an easy and already developed model to use as a reference, but was not the ultimate factor for adoption. Attraction only is not enough to convince countries to adopt foreign legislation domestically. The two countries aligned with the GDPR due to economic benefits and interests.

6. CONCLUSION

The aim of this thesis is to discover how the EU has created a global standard on data protection through the General Data Protection Regulation. Two case studies, Japan and the United States, were used to conduct the analysis. This chapter will answer the research question: ***How has the European Union's 'General Data Protection Regulation' (GDPR) created a global standard on data protection?*** In addition, a reflection will be provided in which the limitations and recommendations for future studies are given.

6.1 Global Diffusion of the GDPR

In the case of Japan, the mutual adequacy decision between the Japanese government and the European Union were part of the EU strategy in the field of international data protection, as reported in the Commission's Communication report in January 2017. The negotiations to foster the EU-Japan adequacy decision displayed the strong engagement of both entities to reach an agreement. The diffusion of the GDPR can be observed through the mutual reciprocity between Japan and the European Union and the combined considerations regarding economic interests and data protection. As demonstrated by the timing and content of the adequacy decisions and the Economic Partnership Agreement (EPA), data protection and economic benefits are closely linked and complement one and another.

The economic aspects of both the adequacy finding and the EPA were numerously emphasized through individual or joint statements by relevant political actors, such as Commissioner Jourová, EC President Juncker and Prime Minister Abe. The agreements on the adequacy decision, economic partnership, and strategic partnership occurred through intensive bilateral negotiations between the EU and Japan, which is a very political process. But since the events are highly linked to increasing trade between both entities, the reason for aligning with the GDPR is more likely due to economic factors. The economic, political, cultural and legal factors or benefits were all mentioned at least once and are certainly relevant, however, economic benefits stood out as it has been referenced the most. The diffusion of the GDPR has, therefore, predominantly occurred through the mechanism of competition. Thus, the shift of a weak Japanese system to a strong EU level data protection system is a strategic move to further enhance the growing EU-Japan economic partnership. This strategic move demonstrates that data protection is a valuable tool to bolster international business.

The US case study revealed that the EU-US Privacy Shield agreement was made through bilateral negotiations starting from 1998 with the Safe Harbour. The Safe Harbour decision can be considered as the starting point of the EU's approach to introducing the global discussion surrounding data

regulation. The EU-US privacy shield illustrated the bilateral negotiations of the two jurisdictions based on economic interests to ease the transatlantic data flows. Even though the Safe Harbour and Privacy Shield agreements were more directed to protect the personal data of EU citizens, both frameworks were essential to initiate dialogues regarding the adoption of European data protection laws in the US. The California Consumers Protection Act, on the other hand, was initiated by the American privacy advocates in the state of California. The EU did not lobby the state legislature or Governor of California to adopt GDPR-like law. The diffusion of the EU standard made its way to California through the increasing pressure from society in favour of stricter data protection laws. The CCPA and the GDPR did, however, trigger the discussions regarding a federal law for data protection in the US. American scholars, companies, institutes, and organizations were requested to give comments on the development of a new approach concerning privacy protection and regulation. Recommendations were made on the establishment of a federal data protection law, which is on par with global standards. The main reasons were to enhance consumer's privacy rights but more specifically to sustain the competitive advantage of the US in the world. Therefore, the diffusion of the GDPR occurred through the economic factor of competition as well.

The US took into consideration the opinions of actors across various areas and industries. Unlike Japan in which the Japanese government mainly acts on its own to decide upon national and external relations. What the US government will exactly incorporate in the end, we will only know in the future. But it cannot be denied that in the field of data protection laws the US will have to adapt its current system by implementing a comprehensive federal law, and as the GDPR is currently the most innovative model, it will be highly likely for the US to implement standards that are in line with the EU system instead of inventing an entirely new model.

The diffusion of GDPR is also part of the global trend, caused by major data scandals and cybersecurity-related issues, to take the protection of personal data more seriously, as well as pushing companies toward greater accountability concerning the usage of consumers' data. The EU effectively used bilateral negotiations to promote its best practices regarding data standards in Europe and beyond. Through both case studies, it can be observed that the US and Japan were mainly influenced by economic coercion rather than attraction. It is an instance of the EU employing extraterritorial means to impose rules on countries beyond its borders. The hypothesis on soft power is, thus, rejected. This does not mean that the attractiveness of the GDPR did not play a role at all, but attraction was not the decisive factor. In the current digital age, data protection is an important source of influence and evidently for international business. The cases on Japan and the United States have demonstrated that the GDPR was diffused through bilateral negotiations and economic incentives, and in this way developed into a global data protection standard.

6.2 Reflection

6.2.1 Limitations

This research has several limitations. First, due to the scope and lack of data, the perspectives from the non-EU countries were not sufficiently analyzed. This research mainly used secondary sources, such as press releases, official statements, and media articles, to determine the motives for third countries to align with the GDPR. Furthermore, many of the meetings take place behind closed doors, which makes it rather difficult to find documents on the actual negotiation processes before finalizing the agreement. Therefore, it was hard to identify and make strong arguments for third countries to adopt GDPR-like standards.

Another limitation is that the quantitative analysis could have made better generalizations, while the qualitative analysis can only explain the selected case studies. The nature of qualitative research makes it difficult to generalize the results and formulate generalizable statements. The discussed case studies are very specific and cannot be generalized to other cases.

6.2.2 Recommendations

Further research should be conducted on the diffusion of European ideas and standards to better understand how the EU shapes its external relations. The (economic) coercion versus attraction (soft power) debate of why third countries adopt EU rules could be analyzed more deeply by applying it to more case studies. Besides, it is interesting to research the politics behind EU decisions by relevant actors, such as the Commission, the Council or the Parliament, and how the interplay between them can have an impact on EU external governance. In this current world of interdependency, although countries are sovereign, they will still be susceptible to foreign influences. To what degree will this form of exposure reflect the foreign policy of a country? The EU has extended its influence by creating a global standard regarding data protection and regulation. How will the EU or another great power address global challenges in the future?

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