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Mapping Enforcement: The role of national and European regulatory agencies and their institutional environment in the process of enforcing the European Law.

The GDPR case.

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Main Contribution

The introduction of new digital regulations in the European Union (EU) comes at a crucial moment, coinciding with the emergence of a new regulatory model. The EU's response to the increasing prominence of national-level regulatory agencies is the development of its own decentralized system of regulatory networks. The General Data Protection Regulation (GDPR) serves as an example of this evolution, formalizing the institutional framework that already existed on both national and European levels, with Data Protection Authorities (DPAs) assuming the role of local regulators, collectively organized at the EU level within the European Data Protection Board (EDPB).

This study demonstrates the dynamics of this new regulatory model. Through the analysis of an extensive, dedicated dataset and in-depth interviews with regulators, this study addresses a notable gap in the existing literature, which previously lacked an analysis of regulators behavior extending beyond mere fining assessments, constructing a comprehensive map of GDPR enforcement across various countries.

Key findings shed light on the functioning of the regulatory network under the GDPR. Firstly, different DPAs hold different positions within the group due to their institutional environments and characteristics, which also lead to voluntary or involuntary prioritization of issues among them. Secondly, these differences must be understood within the highly autonomous framework of the GDPR. The most influential regulators owe their position mostly to the simple fact that they regulate the most important markets and smaller organizations seem to accept some level of inequality as long as they have full control over their local jurisdictions. Thirdly, these local aspects are balanced by the highly collective character of the EDPB and the relatively easy way of bringing the most important issues to the EU level. Nevertheless, in the daily activities of the Board, national differences are reflected, with the most influential regulators having more impact on the preparation of guidelines and opinions. Fourthly, at least some of the most influential regulators seem to be aware of their roles and tend to act accordingly, to some degree going beyond their national interests. This sense of independence and agency leads to the general legitimization of the network among its participants, despite the visible differences in their positions.

The recommendations provided aim to enhance the efficiency and effectiveness of DPAs within the GDPR framework. Policy Recommendation 1 focuses on leveling the field and boosting efficiency, suggesting actions at both national and EU levels to address resource discrepancies and improve the EDPB's capabilities. Policy Recommendation 2 suggests proactive solutions to address the negative impact of lack of sufficient resources reinforced by the social factors, proposing measures like automatic generation of privacy policies and databases on private data use. Policy Recommendation 3 emphasizes acknowledging prioritization among regulators, calling for thorough analyses at national and regional levels to develop tailored regulatory strategies. Lastly, Policy Recommendation 4 proposes modifying the GDPR system to handle EU-scale cases more effectively, suggesting a modification of the one-stop shop mechanism for large cross-border companies, ensuring these cases are automatically handled at the EU level by the EDPB.

Introduction

The goal of this work is to uncover the role and character of transnational regulatory networks in executing European law. Regarding the former, the starting point for reflection is the growing position of regulatory agencies, alongside courts and similar standard-setting bodies, gradually assuming importance equal to that of standard elements in democratic systems, with visible marginalization of the role of parliaments in many systems. This shift arises not only from the acceleration of social or technological processes but also from changes in the role played by the state in recent decades, naturally reflected in the EU, where rulings of particular regulatory bodies and, especially, courts must be treated as seriously as EU legislation. With the increasing role of regulation over traditional positive law and visible changes in the model of European regulation, crucial questions arise regarding the character of and logic behind the new model.

This research aims to contribute to a better understanding of this framework by examining the mechanisms behind the complex structure of European regulatory networks stretching across national and European levels. By acknowledging the multitude of factors constituting these networks, this work seeks to answer the crucial question: What is the role and character of national regulatory agencies and the regulatory networks they create in executing European law, and what is the significance of their institutional environments for this process? Hence, this analysis not only delivers crucial data related to the role played by regulators in the EU legal system but also examines potential sources of differences stemming from the institutional environment in which regulators operate. Moreover, the regulatory network is deconstructed to a level allowing the observation of particular patterns of behavior and differences in influence among regulators within the network itself.

This is possible due to the structure of the paper, with the quantitative analysis having a more descriptive role, mapping GDPR enforcement across different countries and illustrating different profiles and roles among regulators. The qualitative part involves interviews with officials from particular DPAs to provide a deeper understanding of the enforcement map presented.

Two reasons stand behind choosing the GDPR as an example for this study. Firstly, it serves as a perfect illustration of the regulation creating the new type of regulatory network, with different regulators responsible for their respective jurisdictions, grouped in a structured body allowing coordination and the creation of a common EU privacy and data protection landscape. Secondly, this regulatory structure served as a prototype for the digital regulatory framework in the EU, with a nearly identical system adapted for the Digital Services Act (DSA) and, to some extent, the AI Act, making it crucial to properly understand its key components.

The analysis was conducted using the latest data on enforcement in all countries within the EDPB, although the lack of some important information necessitated the reduction of the final sample size, as explained in Chapter 2.

The main findings include the confirmation of significant differences in countries' behavior and positions within the network, as well as the demonstration of potential explanation. Due to the complex nature of the network described in this thesis, it is impossible to clearly assess the level

of importance of each factor or to provide a complete list of all legal, social, or economic factors shaping the environment of DPAs. Nevertheless, some factors, especially the allocation of resources within organizations, national legal systems, level of social awareness or knowledge, and social discourse, were proven to have a significant impact on regulators' actions.

Moreover, on the transnational level, differences in the level of influence within the network were demonstrated, correlated with both the higher number of large domestic and foreign tech companies under the jurisdiction of the regulator and the resources allocated to work on the EDPB level. Nevertheless, the network has developed a number of formal and informal mechanisms legitimizing it in the eyes of its members. Due to the principle of national autonomy, various ways allowing for the formal internalization of cases of greatest importance, formal equality balancing informal discrepancies and the behavior of the most prominent members of the network, the GDPR regulatory network seems to present the best answer for the reality of the incoherent European market.

Nevertheless, some recommendations were formulated based on the results. Firstly, the crucial role of resources should be acknowledged, both to ensure the efficiency of the network and to reduce inequalities among regulators by increasing resources and allocating them differently both at the national and EU levels. Secondly, more proactive solutions should be developed based on specific problems regulators are facing to reduce the overload they encounter. Thirdly, prioritization should be acknowledged as a crucial part of regulators' behavior, stemming from lack of resources and the particularities of their environment. Instead of the chaotic process currently in place, regulators, with the support of the EDPB, should formulate proper strategies allowing for clearer interpretation of the law and better harmonization of efforts at the EU level. Finally, some modifications of the one-stop shop mechanism are proposed to ensure that regulators' jurisdictions are not based on the existence of fictional decision centers and to ensure that truly European-level cases are automatically handled at the EDPB level, with all its members fully involved in all stages of the process.

1. State of Knowledge

To fully grasp the inspiration behind this work and the ensuing results, it is imperative to recognize three pivotal trends evident in the literature and research.

Firstly, the ideological and material foundation of the modern state has contributed to the increasing prominence of regulatory agencies, a trend that has been apparent since the neoliberal revolution of the 1980s. This phenomenon is further compounded by the swift changes occurring in the social sphere, rendering traditional decision-making processes inadequate in keeping pace with developments, particularly those in the technological realm – a domain crucial to this study.

Secondly, the resultant framework of regulatory agencies creates a complex network comprising other regulators, private actors, and other entities, profoundly influenced by the institutional milieu within which regulators operate. Within the European Union context, this network inherently assumes a multilevel character, with national regulators engaging in mutual interactions in both their day-to-day endeavors and within forums such as the EDPB.

Lastly, the burgeoning body of research examining the implementation of the GDPR in various member states indicates notable disparities in the conduct and potential positioning of national regulators within this network. Concurrently, the GDPR has established arguably the most important framework for digital regulation within the EU, exerting substantial influence on subsequent legislative endeavors such as the DSA or AI Act. Consequently, dissecting its operational dynamics offers profound insights into the broader landscape of digital regulation at the EU level, potentially enabling foreseeing the consequences of implementation of analogous legislative acts in the future. These three domains will be analyzed in the subsequent section of this thesis.

1.1 Regulatory Union

In the last three to four decades, an important shift from the positive to regulatory state bas been observed, changing the character of the EU as well. The discourse surrounding the evolving nature of the state in Europe, and the consequent alterations to the essence of the EU, was initiated by G. Majone. During the era of absolute domination of the neoliberal perception of the state, Majone argued that the state in both the US and Europe was not genuinely constraining the scale of its operations; rather, it was adapting its character (Majone, 1994). As the state transformed into a true night-watchman, it found itself forced to enforce stricter rules and surveillance mechanisms befitting its new role. Consequently, traditional positive methods of state intervention, such as redistribution, exercising control over state-owned enterprises, or macroeconomic stabilization, were supplanted by policymaking and standards, now employed on an unprecedented scale (Majone, 1994, 1997).

Of particular significance in the European context is that the transition from a positive to regulatory model occurred not only at the national level but also at the European one. Moreover, European integration was a primary catalyst accelerating this process within the Member States (Majone, 1997; Hofmann, 2016). The political model established at the onset of the integration process, which assumed laws being passed at the European level and subsequently implemented

at the national level, naturally incentivized Member States to establish their own regulatory bodies tasked with this endeavor (Majone, 1997). Additionally, for the EU, the traditional means of state intervention mentioned earlier are rendered impractical, as the organization lacks a significant independent budget crucial for redistribution[1] (Eberlein and Grande, 2005). Private actors also tend to advocate for the development of more regulatory federal or quasi-federal structures, as it allows them to engage with a single decision-making center and replace cumbersome *hard legislation* adapted in the parliaments with softer regulatory measures (Majone, 1994). These factors, coupled with the intricate and time-consuming decision-making processes, almost force the EU to evolve into a "Regulatory Union." Simultaneously, more universal factors were at play, as a positive model of a state grappled with issues such as lack of flexibility or inadequate management of state-owned enterprises (Majone, 1994). Furthermore, not only was the world becoming more complex, but technical and social changes were occurring at a pace that precluded traditional time-consuming processes characteristic of liberal democracies (Rosa, 2009).

Consequently, the EU increasingly relies on regulatory agencies at both national and European levels. However, the latter pose a delicate legal problem, as the renowned Meroni doctrine generally prohibits European institutions from delegating their powers to other bodies, thus constraining the creation of actual European regulatory agencies with substantial powers (Chamon, 2010)[2]. Nonetheless, in practice, such structures are still evolving, sometimes due to the Commission's innovative actions[3] but also, of significance for this study, by altering their character and integrating more closely with national regulators. An important trend observed, exemplified by the EDPB, is a departure from the traditional model where the EU enacts laws and Member States implement them, in favor of a more integrated approach. Here, national regulators collaborate closely with EU agencies not only in implementing regulations but also in setting standards and issuing decisions that at times are scarcely distinguishable from actual legislation (Eberlein and Grande, 2005). Consequently, EU legislation can afford to be more general, streamlining the decision-making process, while integration occurs on procedural and institutional levels rather than through the granting of additional competencies to the Union (ibidem). As a result, the standard two-level system is supplanted by one where the Union enacts a general law that is subsequently implemented and specified at the national level, both by parliaments and the corresponding regulatory body, with the latter overseeing enforcement and supplementing it with its own quasi-legislative decisions. The latter aspect is conducted in collaboration with other regulators and the EU agency, ensuring consistent implementation across all member states and fostering coordination both between the regulators and – to some degree – with the Commission.

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[1] Certainly, it does not apply to significant redistribution policies taking place among countries through measures such as the Cohesion Fund. Here, redistribution is understood in the traditional sense as policies related to taxes or welfare, which are not the main competency of the EU.

[2] In practice, the discussion over the application of the Meroni doctrine to particular cases involving regulatory agencies is broad and surely exceeds the scope of this work.

[3] For example, some regulatory bodies make the actual decisions that are then confirmed by the Commission without actual verification. Therefore, the binding decisions are made by the agency, but legally they are issued by the Commission; hence, no delegation of power occurs. See: Chamon, 2010; Hofmann, 2016.

This illustrates that due to the constraints on making direct decisions and impossibility of replacing their national counterparts, EU agencies are instead co-opting them, thereby creating complex networks of regulators as opposed to a single dominant entity making authoritative decisions from the EU level (Bach and Ruffing, 2013; Busuioc, 2016). Consequently, "they are essentially hubs of networks of national regulators, which come together in EU agencies to coordinate their regulatory practices" (Heims, 2016, p. 881). Moreover, as the reality of the regulatory union inevitably elevates the position of experts, they also contribute to the formation of a common identity among regulators, who maintain constant contact with each other. In this sense, bodies such as the EDPB are just formalized versions of the informal networks of regulators that have always been an important part of the EU ecosystem[4]. This pivotal aspect of European agencies' characteristics will be analyzed further in the subsequent section.

1.2 Everything is connected

At the current stage of social sciences evolution, it's a truism to state that no organization functions in a void. In the preceding section, a tendency of EU agencies to evolve into coordinators situated at the center of a network of national regulators was demonstrated. As the objective of this work is to analyze this network and the positions of specific countries within it, this section will delve deeper into the characteristics of organizations such as DPAs and the transnational networks they create.

The theoretical foundation for this analysis reflects the perspectives of authors aligned with new institutionalism. A pivotal element of their analysis involves discarding the rational-actor theory within the organizational context. From this standpoint, institutions do not arise from intricate planning processes; rather, they develop in response to changes in their broader environments (Powell and DiMaggio, 1991a). It has already been emphasized that bodies such as the EDPB essentially formalized existing informal discussion forums and structures, which were operational even before the introduction of the GDPR[5]. This holds true for national DPAs as well, which were largely established prior to the enactment of the act[6]. Consequently, the entire GDPR system can be viewed as a combination of various institutions[7], as suggested by new institutionalists (Meyer and Rowan, 1991), rather than a creation *ex nihilo*. Importantly, its formalization into an organizational framework was preceded by the development of specific institutions (e.g., expert meetings, the model of a European agency) including cultural patterns (e.g., growing awareness of privacy's importance and the role of cross-border processing), laying the groundwork for the emergence of the entire regulatory network. Naturally, as different organizations are shaped by their environments (Berger and Luckmann, 1990), which vary across countries, national regulators, despite the common culture that has emerged among

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[4] The perception of the EDPB as a formalization of the processes that were in place before the passing of the GDPR is something mentioned in the comment of the official from the Estonian DPA that will be recalled later in this work.

[5] Notably the Article 29 Working Party operating under the Data Protection Directive.

[6] Sometimes – as will be mentioned in Chapter 4, for more than 30 or even 50 years.

[7] The problems with a clear definition of institutions are well known (Hodgson, 2006). For the purpose of this work, an institution should be understood in a broad sense, with one of the most useful definitions created by R.L. Jepperson, defining an institution as "a routine [or a social pattern] that does not need action to reproduce "(Jepperson, 1991, p. 143).

them to some extent, bring a variety of scripts and institutions already present in their domestic organizations to the table. This is crucial for this research, as it contends that this logic of the emergence of the GDPR regulatory network is the primary explanation for its functioning. Furthermore, the relationship between an organization and its environment should not be viewed as static and one-sided. Particularly in the case of regulatory agencies, the organization's environment both shapes and is shaped by it (Keohane, 1988; Powell and DiMaggio, 1991a), with the agency and structure being practically indistinguishable from each other, in line with A. Giddens' structuration theory (Giddens, 1984). Therefore, this analysis endeavors to examine broader legal, economic, or social factors constituting the environment of DPAs and the network they create.

Following the emergence of the formal organization, it remains in a state of constant evolution as the structuring forces also change. However, despite differences arising from the blending of diverse institutions within the network, new institutionalists opted for the existence of isomorphism – a process wherein organizations functioning within the same sector become increasingly similar to each other (Powell and DiMaggio, 1991b). Isomorphism can stem from pressure exerted by other organizations, voluntary imitation of more legitimate or effective institutions, or professionalization, as different institutions embrace common institutionalized values (ibidem). In the context of the GDPR and the network it formalized, the two latter factors are particularly significant due to the nature of interaction between regulators. The entire network primarily relies not on *hard coordination mechanisms* (Heims, 2016) based on agent-principal relationships, but rather more sophisticated means. Although the EDPB can "enforce" decisions on regulators, it does so in practice through a truly collective process (Stone and Ladi, 2015), where every decision requires a majority of votes from regulators[8]. Therefore, the mechanisms crucial for the network are predominantly *soft* (ibidem), such as sharing best practices, day-to-day cooperation, and other group processes. Moreover, the relationship between national regulators and the EDPB resembles the process of orchestration described by Abbot et al. (2015), based on the limited possibility of direct command, voluntary cooperation stemming from shared goals, and mutual dependence.

Hence, despite employing terms like "country's/regulator's position in the network" in the analysis presented in the following chapters, this work is far from implying any traditional hierarchy among regulators, at least not within the framework assuming an agent-principal relationship. Nonetheless, it is argued that there is room for influence, in the sense that differences in countries' resources and environments can lead some to have a greater share in shaping the general European data protection landscape.

Therefore, the resulting network can be defined as "a set of relatively stable relationships of a non-hierarchical and interdependent nature which link a variety of actors" (Levi-Faur, 2011, p. 813), with an additional acknowledgment that even within a non-hierarchical system, different levels of influence exist among countries. Another crucial aspect to underscore is that the primary goal of the network is to cultivate a common "international policy culture" (Stone,

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[8] Hence, in practice, regulators are "enforcing" decisions on themselves, in the sense that they always have an equal part in the decision, even if, in the end, it is not fully in line with their goals and interests.

2004, p. 548), thereby shaping the identity of regulators (Laffan, 2004), within "European-wide epistemic communities" (Hofmann, 2016), whose main task is "linking actors" (Thatcher, 2011, p. 67). Moreover, the network provides its members with various other benefits, such as technical studies, materials, public pronouncements, and the aforementioned best practices or data (Berg and Horrall, 2008).

1.3 GDPR as a European Regulatory Network

One crucial element often overlooked is that a European framework for privacy and data protection existed before the adoption of the GDPR in 2016. The study by Barnard-Wills et al. (2016) highlights that DPAs indeed harbored high hopes and expectations regarding the formalization of their relationships with one another coming with the regulation. However, they also expressed concerns about the potential impact of the GDPR on their autonomy and legitimacy, as well as certain aspects of the GDPR framework that could potentially foster inequality among regulators, such as the size of agencies, the effectiveness of the consistency mechanism[9], or the one-stop shop rule[10].

From the outset, it was understood that the consistent implementation of the regulation would be challenging, particularly given the crucial role of implementation and interpretation, which is highly dependent on local legal systems and culture (Custers et al., 2018). DPAs were tasked with numerous responsibilities, necessitating prioritization, especially as different Member States were empowered to provide additional provisions of their own[11] (Custers et al., 2018). Despite the independence of the agencies mandated by Section 1 of Chapter VI of the GDPR, differences in organizational autonomy vis-a-vis a government still vary across countries, not to mention significant disparities in available resources (Custers et al., 2018). Other important factors relate to the characteristics of the population in a given Member State, such as varying levels of trust toward institutions, awareness, or activity of civil rights organizations[12] (Custers et al., 2018; Svenonius and Tarasova, 2021).

The issue of DPA independence naturally limited the inclusion of detailed instructions directly in the regulation, with even broad strategic goals binding regulators absent, which would enhance implementation consistency (Hijmans, 2018). Furthermore, while the regulation allowed for seeking the opinions of the EDPB in EU-scale issues, it did not mandate it (ibidem). Additionally, new actors with whom DPAs must collaborate have emerged, such as a common regulatory framework for DPAs and competition authorities resulting from rulings of the Court

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[9] The consistency mechanism, described in Section 2 of Chapter VII of the GDPR, includes a number of provisions allowing the EDPB to ensure both the consistent implementation of the act by issuing opinions in particular cases (Article 64) and handling disputes between regulators by issuing binding decisions (Article 65).

[10] The one-stop shop rule, one of the most controversial provisions of the GDPR, primarily outlined in Articles 56 and 60, states that the competence to act as a Lead Supervisory Authority (LSA) - the DPA responsible for overseeing and issuing decisions in cross-border cases - belongs to the DPA of the state where the main establishment or the single establishment of the controlled entity is located. This decision can be challenged by other DPAs concerned and may be overturned by the binding decision of the EDPB in accordance with Article 65.

[11] For example, focused on data related to healthcare and children, as in France (Custers et al., 2018).

[12] This is crucial, as the key element of the GDPR system is the complaints received from citizens and concerned actors. As will be shown in the analysis of the interview with the DPAs' official in Chapter 4, lack of knowledge about the regulation and its function among the population can lead to many unfounded complaints that put a strain on the capabilities of the DPA, which is especially problematic for those without sufficient resources.

of Justice of the European Union (Graef, 2023), while the relationship between DPAs and courts has been crucial from the outset (Daigle and Khan, 2020).

Hence, it was unsurprising to discover significant inconsistencies in the regulation's execution in the initial years of its implementation (Barrett, 2020), especially evident in the varying approaches of different countries to fining particular sectors and among DPAs from different regions[13] (Daigle and Khan, 2020). The pandemic served as an intriguing experiment, showcasing different regulators making divergent decisions in similar cases, such as regarding the allowance of mandatory questionnaires, while also highlighting the importance of EDPB guidelines adapted for social tracing apps (Etteldorf, 2020).

Unfortunately, the majority of research on the GDPR is limited to these initial years of its implementation, where we have already observed various elements described in this chapter balancing each other. The absence of a strategy or mandatory opinions on EU cases in the regulation does not mean that such strategies and opinions are not formulated[14]. As will be demonstrated in Chapter 4, officials interviewed consistently underscored the role of the EDPB and the collective processes occurring there, suggesting that institutional differences at the national level are somehow overcome by the longstanding "epistemic community" at the European level. However, the significant differences in Member States' environments must be acknowledged, and some forms of variation in countries' positions and influence within the network seem to be a natural consequence of that, despite the generally non-hierarchical character of the system. Furthermore, existing research rarely focuses on the task of actually mapping the regulators or analyzing other aspects of DPAs' behavior beyond fines. Therefore, this work, utilizing the most recent data from the EDPB, GDPR Fine Tracker, and interviews conducted with DPA officials, aims to fill these gaps by providing a comprehensive map of enforcement, taking into account the various roles played by regulators within the network and the impact of selected elements of their environments[15].

2. Data and Methodology

This study employs both quantitative and qualitative methods, adhering to the philosophy of Mixed Methods Research (MMR). Given the varied definitions of MMR used by different authors (Timans, Wouters, & Heilbron, 2019), it is worthwhile to describe the main logic behind it, which aims to benefit from triangulation – "the combination of methodologies in the study of the same phenomenon" (Denzin, 2017, p. 291). This involves gathering diverse data and using a variety of techniques in an unorthodox manner, which allows for the development of

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[13] For example, after the first year of implementation, the French CNIL focused on targeted advertising, public, and health sectors. Important differences were visible among Western and Central-Eastern Europe, with the former being more vigilant and quick in their actions, and the latter targeting mainly domestic companies, small organizations, public actors, and banks (Daigle and Khan, 2020).

[14] Indeed, looking at the EDPB documentations available on its website, we can see that the Board is very active in this field.

[15] Naturally, analyzing the role of all elements of the environments, given their broad character, would exceed the capabilities of any single paper.

new ways of analysis and thinking (Rossman & Wilson, 1985; Johnson, Onwuegbuzie, & Turner, 2007).

In this research, quantitative methods were employed for two primary purposes: mapping the position and roles of particular DPAs within the network and analyzing a specific aspect of their behavior, namely fining practices. For the former, the Profile Index was developed, measuring DPAs' characteristics across five categories:

1. Resources: This category takes into account human, financial, and to some extent, technical means of the organization.
2. Activity: This assesses regulators' actions in relation to their resources and scale of operation. It evaluates whether they operate beyond what would be expected given the size of their staff or other resources, both domestically (e.g., how often they initiate their own investigations) and internationally (e.g., frequency of contact with other authorities for sharing information, percentage of officials delegated to the EDPB or coordination-related work).
3. Position: This measures the level of influence of the DPA on the whole network, including instances when DPA acted as the Lead Supervisory Authority (LSA), the actual number of officials participating in the EDPB or coordination activities, and the number of requests for sharing information or taking measures[16].
4. Preference for measures other than fines: This evaluates how often DPAs resort to settlements or corrective measures instead of fines, expressed as measures other than fines as a proportion of all measures taken.
5. Preference for informality: This measures whether the DPA prefers to use informal communication and coordination channels compared to formal ones[17].

For the index, various variables were categorized into specific categories[18]. Subsequently, deciles for each variable were calculated[19] and converted to points. These points were then summed to calculate the final score for each Data Protection Authority (DPA) in each category[20].

The index was developed based on a dataset primarily composed of data from a survey conducted by the EDPB among regulators, as part of the EDPB's contribution to the report on the application of the GDPR, as required by Article 97 of the regulation (EDPB, 2023). This dataset was supplemented by data from the 2022 edition of the Government Finance Statistics of Eurostat (Eurostat, 2022)[21]. Unfortunately, many DPAs provided incomplete information to the EDPB, resulting in missing data. Consequently, only countries that provided complete

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[16] Article 61 of the GDPR - Formal Mutual Assistance (FMA). The same data are used for the Activity category, but not regarding the FMA requests received.
[17] The difference between these channels is explained in detail in the analysis of this category in the following chapter.
[18] The details are presented in the Appendix 1.
[19] With some exceptions for the Resources category explained in the Appendix 1.
[20] For example, if DPA's budget was in the 4th decile, it received 4 points for BUDGET variable, that was then added to other points received for other variables present in the Resources category.
[21] Using data from 2022 for the economic performance as well as the DESI Index (mentioned below) was motivated by concern for completeness of data.

information that allowed the construction of the assumed variables were included in the analysis. This limitation reduced the sample size from the 30 countries present in the Board to 21. However, efforts were made to maintain diversity among the regulators by including countries from different regions or with different sizes of economies. Nonetheless, it's important to note that this resulted in some significant regulators, such as Italy or Spain, not being analyzed, which should be considered when interpreting the results.

For a more specific analysis of the data from the index, the Digital Economy and Society Index (DESI) (European Commission, 2022) and the number of unicorns per country from the Dealroom dataset (Dealroom, 2024) were employed. DESI evaluates a country's performance across four equally weighted categories: Human Capital, Connectivity, Integration of Digital Technology, and Digital Public Services. These categories can be considered as indicative of the digital environment within the respective country[22]. Dealroom, a private data management company, provides more up-to-date data on unicorns compared to Eurostat, and it was utilized by the Joint Research Centre in their analysis on European unicorns (Testa et al., 2022). Linear regression as well as Spearman's and Pearson's correlation coefficients were utilized for the analysis of these datasets[23].

For a more detailed fines analysis, data from the GDPR Enforcement Tracker (CMS, 2024) were employed. As there is no centralized European database, this tracker offers a viable alternative, classifying fines according to the sector fined or the reason for sanction. However, since this dataset is privately managed, it relies on information made public by individual DPAs[24]. Consequently, it was used to analyze the distribution of fines into different categories among countries, employing Jensen-Shannon divergence to determine whether regulators fine the same sectors or use the same reasons for imposing fines.

Finally, the interviews were conducted with officials from the DPAs[25] naturally implying the purposive sampling (Knott et al., 2022). All DPAs grouped in the EDPB, as well as the office of the European Data Protection Supervisor, were contacted using both official (public email addresses of the institutions) and unofficial channels (contacting individuals working for the agencies)[26]. Seven organizations participated in the study, with in-depth interviews conducted with officials from six of them. One DPA, the Slovenian DPA, responded to the questions in writing[27].

The interviews were transcribed and analyzed using content analysis, employing an abductive approach (Graneheim, Lindgren, and Lundman, 2017) and thematic analysis as described by V. Braun and V. Clarke (2022). Initially, some categories used for coding were developed based

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[22] The advantage of DESI is also that its segments can be treated as separate variables.

[23] Linear regression is utilized for the figures presenting results. Spearman's correlation coefficient is employed for the analysis of ordinal variables, while Pearson's correlation coefficient is used for discrete variables.

[24] In the data, a clear disproportion among the entries for the smaller and bigger countries is visible, which seems to be larger than expected.

[25] Therefore, the fragments of interviews presented in this work represent only the personal opinions of the officials and should not be treated as the official statements of their respective DPAs.

[26] For this purpose, the LinkedIn platform was used. In both cases, given the character of the study, officials with some experience in collaboration with other DPAs were targeted.

[27] The interviewed officials come from Sweden, Norway, Estonia, Croatia, Slovenia, Portugal and Netherlands.

on literature analysis and quantitative analysis. Subsequently, additional categories were developed through a process of repeated analysis of the material. This involved applying codes to systemize the data, grouping them into broader categories, and refining the themes in subsequent cycles of reading (ibidem).

The study acknowledges several important limitations. Firstly, the complex environments within which DPAs operate, consisting of economic, legal, and socio-cultural factors, pose challenges in comprehensively including all relevant aspects in the study. While attempts are made to address these factors, their relative importance remains difficult to establish definitively.

Secondly, the quantitative analysis relies not only on data related to fines, unlike existing research, focusing on more broadly understood patterns of behavior and actions. However, relying solely on regulatory actions may not fully capture the significance of what regulators are not doing, as sometimes the absence of a particular decision is as important as its enactment.[28].

To mitigate these limitations, the qualitative part of the study assumes a crucial role in providing context and filling gaps left by the quantitative analysis. Although the number of interviews conducted is limited, they offer valuable insights into the differences between regulators and contribute to a deeper understanding of the network dynamics. However, the qualitative aspect does not enable the formulation of independent characteristics of the entire network or the modification of classification within the index based solely on interview data.

Lastly, the quantitative part of the study is constrained by incomplete data, resulting in a reduction in the number of countries included in the sample or missing data. This limitation underscores the need for cautious interpretation of the findings and highlights the importance of considering the broader context in which the study is situated.

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[28] For example, if the DPA is not making many decisions in cross-border cases, it will be classified as a regulator with a lower position within the network. However, there is a chance that the lack of action is a result of the regulator's choice, not its status. Thus, it can have a lot of influence on the network, but through inaction rather than action. Nevertheless, at least for the cross-border cases, this notion is limited by the possibilities of action guaranteed by the Act to other concerned countries.

3. Mapping Enforcement

3.1 The Regulatory Map of Europe

The foundation of this study is a Profile Index that measures the key characteristics of a country within the GDPR framework, understood very narrowly, hence using only data related to the activity of the DPAs and its attributes. Therefore, it does not consider other aspects of privacy, digital, or a broader understood ecosystem[29]. Some elements of the latter will be, however, analyzed in relation to the information coming from the index. Crucially, while some terms used in the index are self-explanatory, some – especially Position and Activity – are used in a very specific way defined in the previous chapter and below, that must be kept in mind while reading the results. The index is presented below as a visualization using the map of Europe (Figure 1) and the table (Table 1). For the table, the points are translated into the high (black), medium (grey), and low categories (white), that are later used for the analysis[30]. For the map, countries marked as light blue are the ones not included in the sample:

PROFILE INDEX

RESOURCES

POSITION

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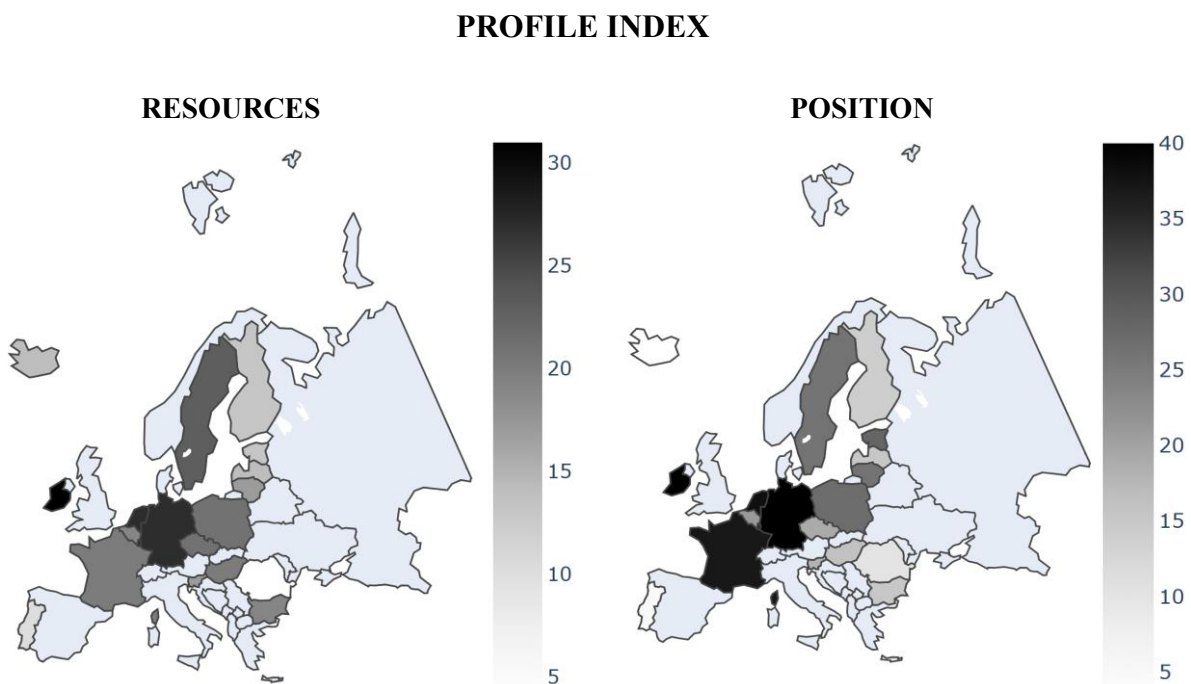
[29] With the only exception being the variable GEN_BUD_22_P, which represents the budget of an organization as a proportion of all state expenses, used for the Resources category. For more details, see Appendix 1.
[30] For more details, see Appendix 2.

ACTIVITY

PREFERENCE FOR MEASURES OTHER THAN FINES

PREFERENCE FOR INFORMAL PROCEDURES

Figure 1

The visualization of the results for each category

Country	Resources	Position	Activity	Preference For Measures Other Than Fines	Preference For Informal Procedures
BE	19	21	13	7	5
BG	19	15	21	4	2
CY	12	22	36	3	7
CZ	21	19	7	2	5
DE	27	40	14	5	7
EE	13	28	26	NA	1
FI	13	14	26	6	10
FR	20	37	17	7	8
HU	20	16	27	9	4
IE	31	40	30	10	6
IS	14	3	33	6	10
LT	17	26	20	8	2
LU	27	35	32	9	0
LV	14	15	26	8	3
MT	12	18	17	NA	6
NL	27	38	18	3	9
PL	21	27	16	1	4
PT	10	5	16	2	1
RO	4	10	16	4	8
SE	23	26	19	5	9
SI	17	18	31	10	3

Table 1

Key characteristics of the DPAs

3.1.1 Position and Resources

The analysis of the Position category brings no novel insights, with Germany, France, Ireland, Luxembourg, and the Netherlands constituting the High Position group. It means that these countries most frequently act as the LSAs for cross-border cases, which naturally implies

making more draft[31] and final decisions in such instances. They also have the biggest absolute number of officials delegated to working at the EDPB or cooperation-related issues and are most frequently asked for additional information or taking measures by other countries. They are also all *Old Europe[32]* countries, being among the most important economic players on the continent. This is worth noting, especially in line with the new institutionalist theories stating that more modernized countries tend to develop more spaces for regulation and more complex regulatory structures (Meyer and Rowan, 1991).

Nevertheless, the actual impact of economic factors on the country's Position is not as clear. Firstly, we can see that a higher GDP is strongly correlated with a higher number of complaints received by the DPA, with the Pearson correlation coefficient at the level of 0.90/0.81[33] (Figure 2)
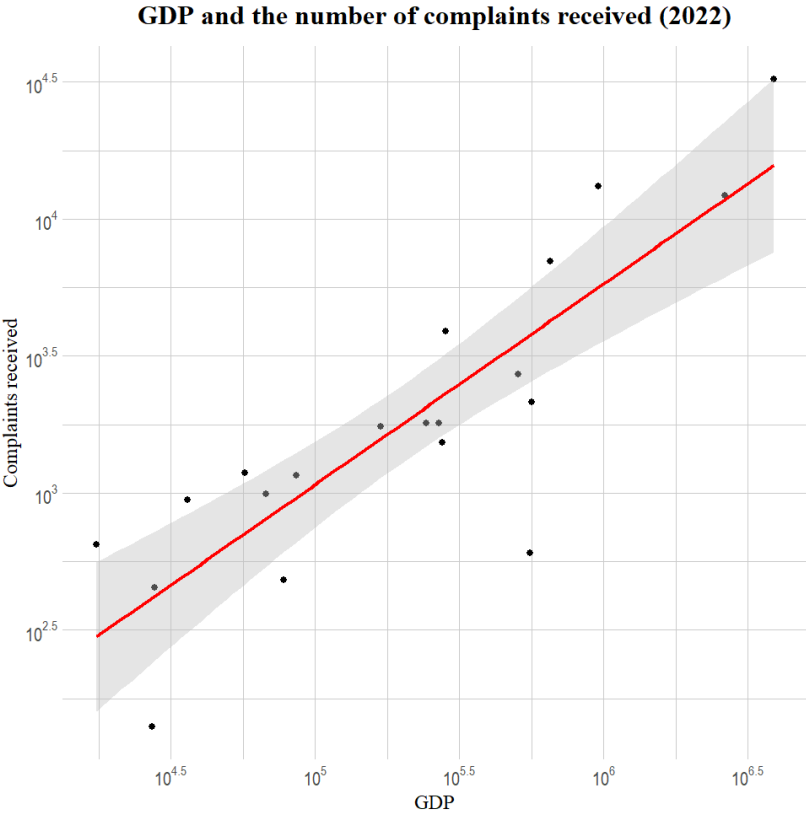

Figure 2

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[31] Regulated by the article 60 of the GDPR, these decisions can be then questioned by other concerned DPAs.
[32] Understood as the countries already involved in the European integration process before the 2004 enlargement.
[33] Due to the significant difference in the GDP between Germany and France and the rest of the countries in the sample, they naturally skew the distribution. Therefore, for each calculation involving the GDP, the result are provided first for the whole sample and then without these two countries. For graphs, I use the results for the whole sample with a logarithmic scale. All correlations, together with the level of significance are attached as Appendix 4.

Big economies naturally receive more complaints, which also explains the moderately strong correlation (Spearman) between GDP and the score in the Resources category (Figure 3), at the level of 0.59/0.53.

However, there is no direct correlation between the size of the economy and the Position score. Although such correlation exists for the whole sample (at the level of 0.48), after removing France and Germany, it is no longer statistically significant. Hence, it is clear that the economic factor is crucial, but it cannot be simplified just to the size of the economy.

What is more important is not the size of the economy, but its characteristics. Two crucial elements of the organization's environment must be mentioned here. Firstly, for Ireland, Luxembourg, or the Netherlands, their role as the main base for operations for the most important foreign (mainly American and Chinese) tech companies (Joint-ESA, 2024) is an obvious factor enhancing their position within the network, due to the one-stop shop rule forming a backbone of the GDPR system[34].
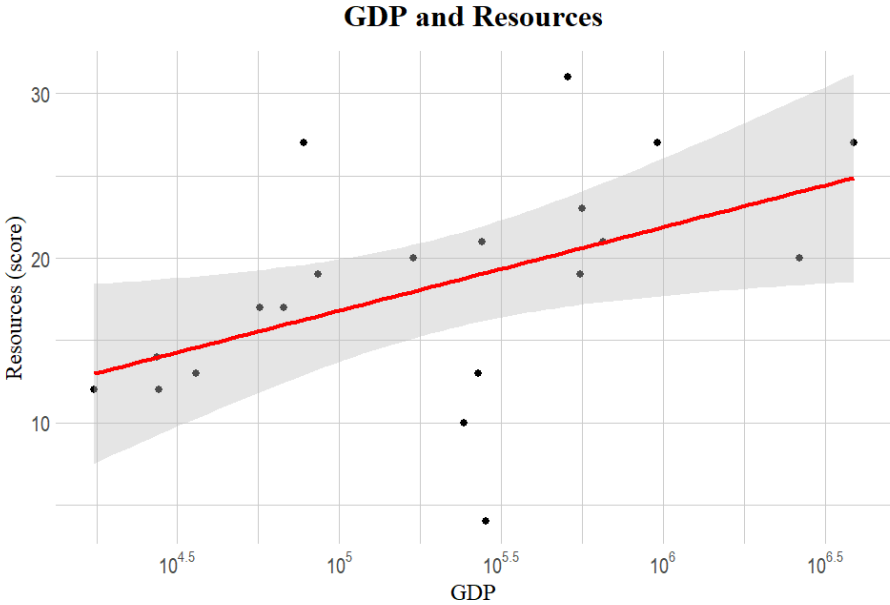

GDP and Resources

Figure 3

Furthermore, an equally important factor is the presence of large domestic companies. Focusing only on the unicorns, we can see that they significantly impact the position of the country within the network (Figure 4), with the correlation at the level of 0.71 and the number of unicorns being especially high for the countries within the High Position Group (Figure 5)[35]. Nevertheless, a significant number of outliers are visible in Figure 4, hence it is better to treat it as an important factor for a specific category of countries described. Moreover, even in Figure

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[34] As the presence of companies such as Alphabet, Meta, or Ireland in Ireland is well-known, it is worth mentioning companies with their base of operation in the Netherlands (Uber, Tencent) and Luxembourg (Amazon, Alibaba) (Joint-ESA, 2024).
[35] Countries in the High Position Group are marked as black.

5, we can see some countries with a substantial number of unicorns (especially Sweden, to some extent Poland, with a score similar to Ireland), that are nevertheless still categorized as Medium Position Countries[36]. Hence, once again, there is no single economic factor responsible for the high score in the Position category. However, the number of large domestic and international companies in the market naturally holds significant prominence, with the former probably more important for France and Germany, the latter for Luxembourg and Ireland, and both important for the Netherlands. Nevertheless, especially considering the lack of a direct correlation between the Position score and GDP, we must also consider other factors, both economic and non-economic in nature.
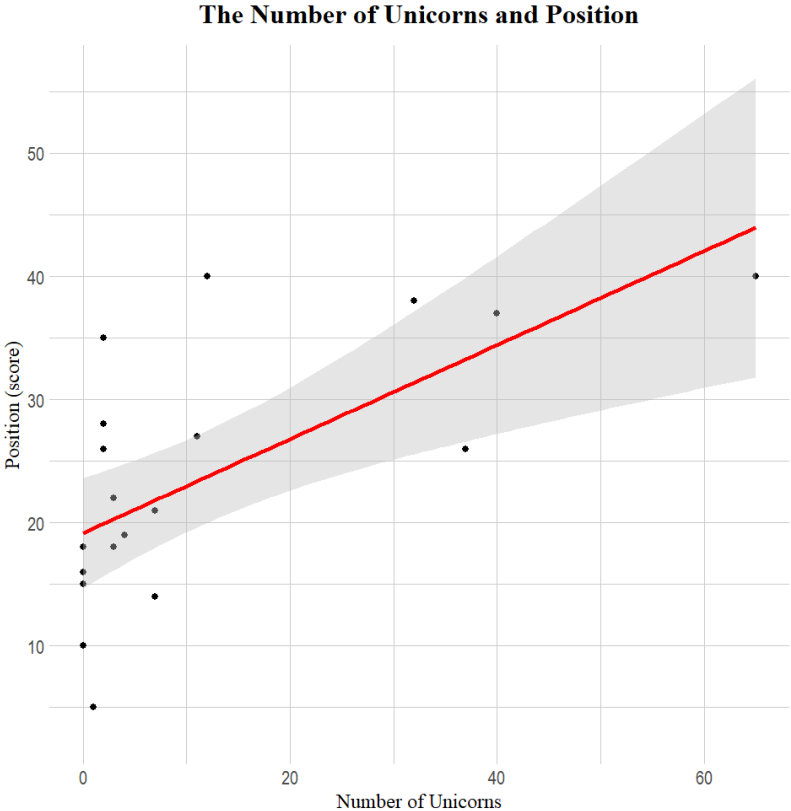

Figure 4

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[36] With scores at a level of 16 (Poland) and 19 (Sweden), significantly below the level of 30, which is the bottom threshold for the High Position category.
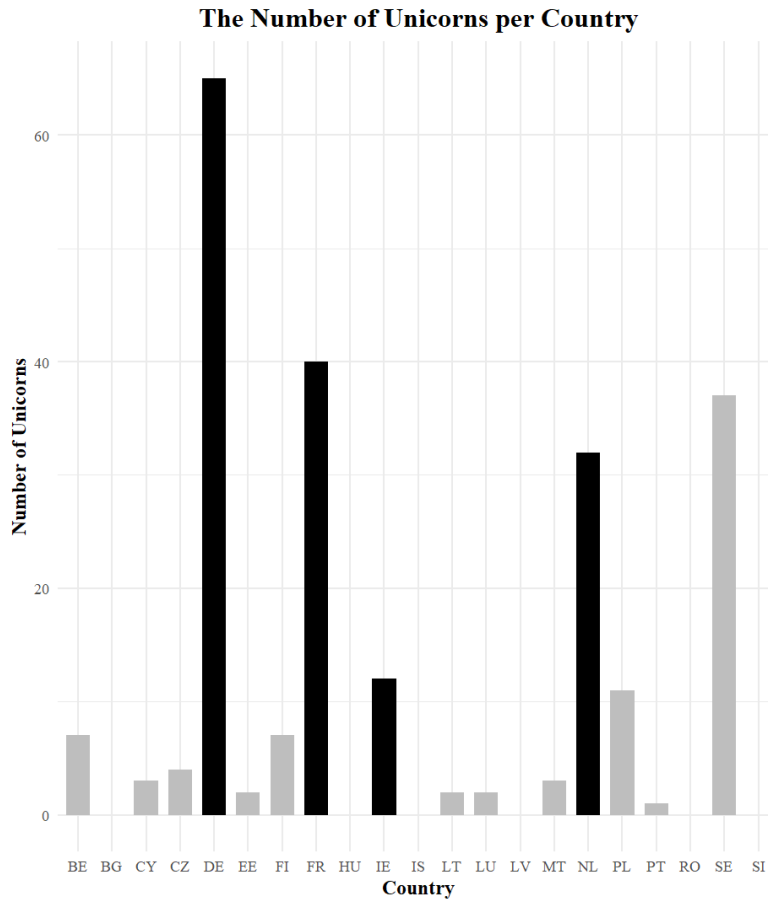
The Number of Unicorns per Country

Figure 5
Note: High Position Regulators marked as black

Some answers to this question may be found in the results for the Resources category. We can observe a strong positive correlation of 0.72 between the score in this category and the Position one (Figure 6). The simplest explanation would be to view resources as the main source of position within the network. Nevertheless, as previously mentioned, the economic factors at play are much more complex and include the broader characteristics of a given market. As will be demonstrated in the analysis of the interviews with the DPAs' officials, having more resources is crucial for a country's position, as they enable more activity in the EDPB's subgroups tasked with developing general guidelines and allow the regulator to be more proactive and focused on European-scale issues and cross-border investigations. However, it seems that while certain countries may be able to enhance their influence in the network this way, it is also likely that a high score in the Resources category for countries in the High Position Group[37] is both a source and a result of their position, as they require much more staff and funding to effectively deal with all cross-border investigations. As will be demonstrated in the next part, some officials even express their gratitude to their colleagues from the High Position Group, highlighting the significant responsibility that comes with the power they hold in the network. Nevertheless, the crucial impact of the resources on position cannot be underestimated, especially in line with the results of the analysis presented in Chapter 4.

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[37] Within this category only French DPA has a score classifying it in a Medium Resources Group.
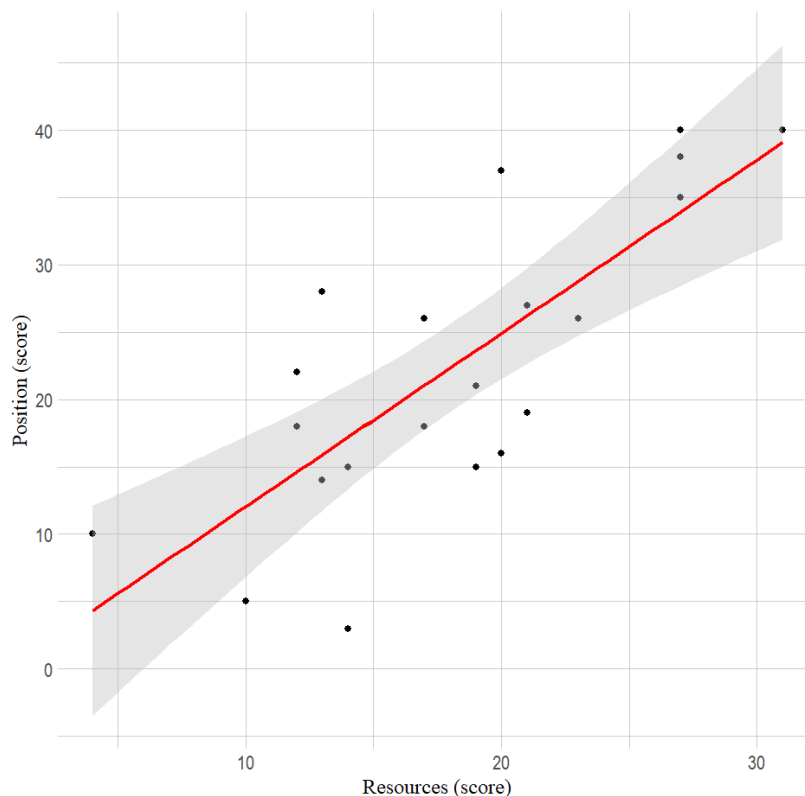
Resources and Position

Figure 6

3.1.2 Activity

More insightful results can be found in the Activity category. Countries with high scores in this category are those that allocate the largest proportion of their staff to work on issues related to the EDPB's and cooperation activities, frequently use formal and informal procedures for sharing information or demanding action from other regulators relative to the number of complaints they receive, and—on a domestic level—have a larger ratio of own-initiated investigations compared to the number of complaints.

Most importantly, there is no statistically significant correlation between the score received by the DPA in the Activity and Position categories. The High Activity Group is composed of a very heterogeneous group of countries: Cyprus, Iceland, Luxembourg, Slovenia, Ireland, Hungary, Estonia, Finland, and Latvia. Within this group, only Ireland and Luxembourg are countries from the High Position Group. Meanwhile, Germany, France, and the Netherlands receive an Activity score below the average. This is somewhat natural, as they are more often the recipients of requests for mutual assistance or information sharing rather than the ones initiating them, although the same can be said for Ireland or Luxembourg.

Some answers can be found in the already mentioned DESI, which can be used as a proxy for the digital and social environment in which the regulator operates. We can see that Luxembourg, Slovenia, Ireland, Estonia, and Finland—five out of nine countries from this

group[38]—have a DESI score above the EU average (European Commission, 2022). Nevertheless, the same can be said about the aforementioned Germany, Netherlands, and France (ibidem). Furthermore, there is no statistically significant correlation between the DESI or any of its four components and the Activity or Position or any other category of the index, which does not exclude the possibility of the impact of the digital and social environment on the behavior of the DPAs but surely suggests that it is more complex than a simple correlation[39].

Looking at the economic factor again, we can observe a medium negative correlation between GDP and Activity, at the level of -0.6/-0.55 (Figure 7). In light of the already known strong positive correlation between the number of complaints and GDP, it can be explained as countries with bigger economies being overwhelmed with the number of complaints, despite having more resources. Hence, their capabilities for more proactive behavior, both on the international and domestic levels, are naturally limited. At the same time, we can observe many smaller actors playing "above their league".

Figure 7

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[38] Iceland is not included in the DESI.
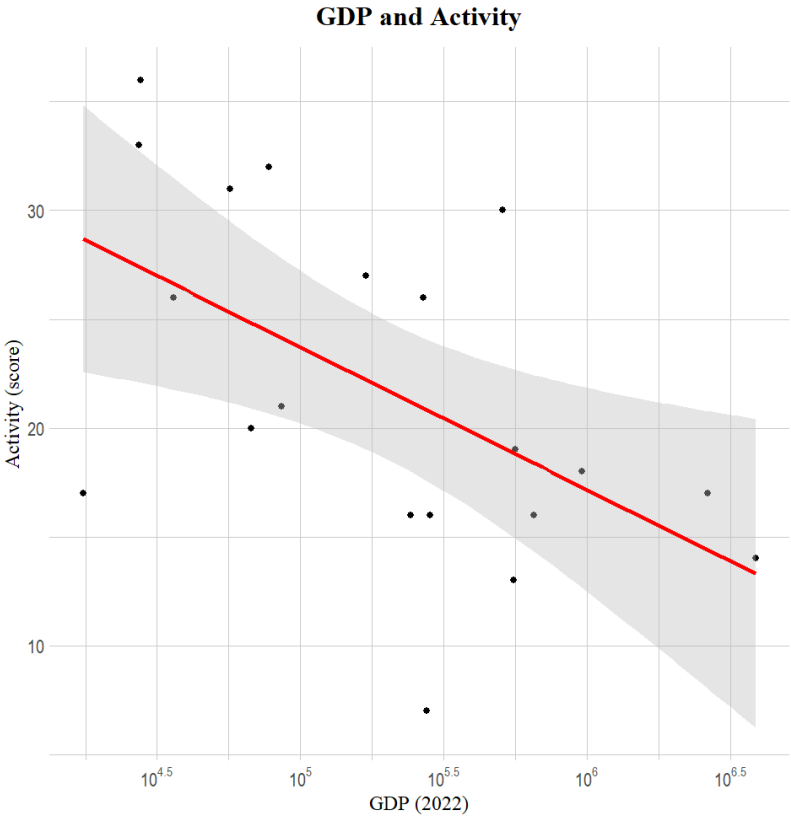
[39] Surely, the DESI may also not be the best tool to analyze this relationship. Unfortunately, as was already mentioned, the multitude of elements constituting organizations' environment forces us to rely on indexes such as DESI. Analysis of every single factor will be challenging or – as in the case of the legal system – nearly impossible using simple quantitative methods.

Especially at the international level, the dynamics are interesting. As will be demonstrated in the qualitative analysis, smaller DPAs are aware of their position and see the EDPB as a natural ally in leveling the field. In this context, it is unsurprising that, relative to their capabilities, they allocate more of their staff to participate in cross-border activities under the auspices of the Board[40]. However, once again, it must be mentioned that there is no direct significant correlation between GDP and the country's Position score.

Another important result is the moderate positive correlation between the Activity score and the Preference for Measures other than Fines score, at the level of 0.45 (Figure 8).
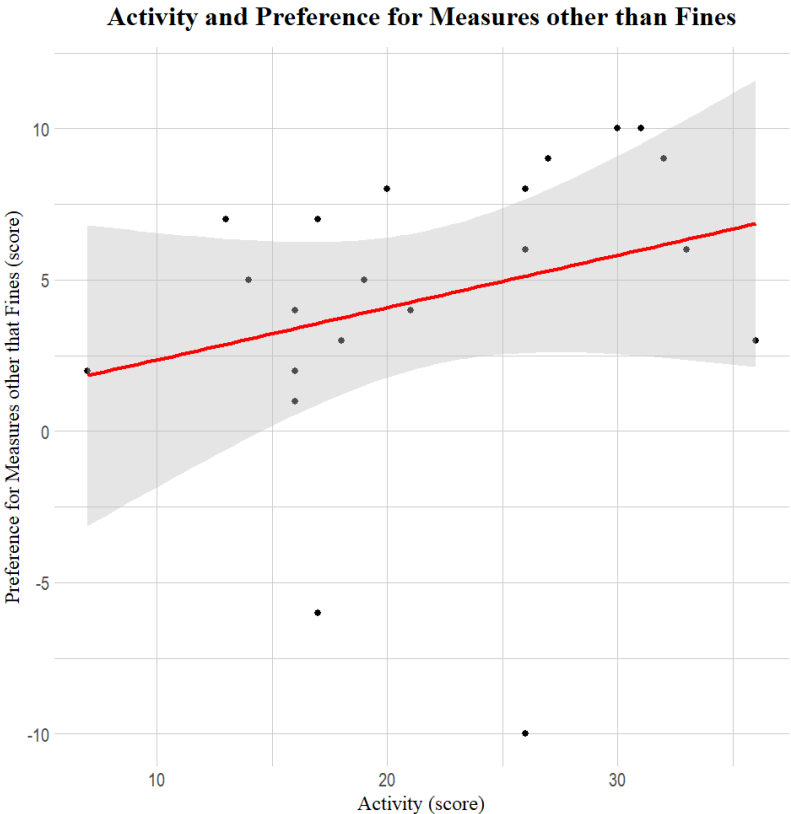
Figure 8

It is most probably related to two main factors. Firstly, DPAs with a higher Activity score have a higher number of own-initiated investigations, and they also seek more information about different cases, suggesting that they are more proactive than other regulators. Hence, due to the philosophy behind the GDPR, which was frequently mentioned in the interviews presented in Chapter 4, after discovering the infringement or receiving complaints, the DPAs in most cases give data controllers a chance to mitigate their wrongdoing. Though, it is natural that when finding a problem, more proactive DPAs will first resort to corrective measures before using fines to influence the controller, as fines are perceived as a sort of ultimate measure. This is

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[40] Estonia is a good example of this, with a separate department dedicated exclusively to handling EDPB-related issues, comprised of four people. This staffing level is relatively high for such a small DPA.

especially important for countries with smaller DPAs – which, as we know, are often more active – and need to balance their activities, as they are more frequently dealing with small companies that may be unaware of their obligations and naturally may be much more affected by fines.

Secondly, implementing fines is often costly for the regulators, especially in environments where their decisions may be frequently challenged in courts. More active regulators, despite often having limited resources[41], may prefer to utilize less contentious measures and focus on shaping the privacy environment through more widely accepted means.

3.1.3 Preference for Measures other than Fines and Informality

The last two categories of the Profile Index also do not present any surprising findings given the general character of the GDPR and the specifics of the European regulatory networks described in Chapter 1.

The Preference for Measures other than Fines was measured by calculating the number of corrective measures and settlements as a proportion of all actions (meaning the aforementioned and fines). Hence, given the discussed role of fines in the GDPR system, it is natural that fines are not the main tool used by all DPAs in their activity[42]. There is no simple correlation, however, that would explain the differences in the scores in this category, aside from the already mentioned impact of the Activity score.

Most importantly, the preferences are not the same within the group of the High Position Regulators. Ireland and Luxembourg classify in a High Preference Group, the Netherlands as a Low Preference Regulator, and Germany and France as Medium Preference Regulators. as the preference for using fines and corrective measures may be treated as a sign of less vigilant approach of the DPA.

Similarly, despite the overall dominance of the Preference for Informal Measures among the DPAs, defined as the number of uses of the Voluntary Mutual Assistance Procedure (VMA)[43] as a proportion of both VMA and Formal Mutual Assistance Procedure (FMA) initiated, significant differences between countries still occur, which cannot be justified by the direct impact of any factor used in this analysis. Once again, especially the High Position Regulators are crucial.

To understand this, one must properly understand the role of the VMA. As defined by the EDPB, "SAs [Supervisory Authorities] usually rely on the 'Voluntary' Mutual Assistance to inform another SA about a received complaint concerning a private body or a non-public body, to submit legal inquiries, or to provide updates on the state of play of a case, exchange documents, or request other kinds of information and assistance. […] it allows SAs to discuss

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[41] Though there is no direct correlation here, but indirectly we know that the size of GDP influences both Activity and Resources

[42] With the aforementioned lack of data for Estonia and Malta.

[43] VMA is an additional measure added to the FMA. The latter is described in Article 61 of the GDPR as a formal way of sharing information and enhancing collaboration between regulators. VMA was added by the EDPB as a more flexible procedure, not involving strict deadlines like the FMA.

and solve general legal questions, which are raised in the context of concrete cases" (EDPB, 2023, p. 19).

Hence, the VMA functions as an information sharing platform for the DPAs, and its frequent use by High Position Regulators can be understood as a sign of their willingness to share the benefits of their position with the other members of the network[44]. In this context, it is crucial that nearly all High Position Countries have either a high (the Netherlands, France) or medium (Ireland, Germany) score in this category, with only Luxembourg classified as a Low Preference Regulator.

It is not a decisive factor in analyzing the meaning and real character of the higher position within the network, but it already shows that the role of the network's leader is not only characterized by the notion of dominance. As will be demonstrated in Chapter 4, in practice, the activities of the High Position Regulators seems to be appreciated by other DPAs, and their willingness to share resources and collaborate with smaller partners is crucial to understanding this phenomenon.

3.2 The Distribution of Fines

According to the theory of institutional isomorphism described in Chapter 1, we can expect that particular regulators will gradually start to become more similar to each other, especially while acting in similar environments. This part will analyze how similar DPAs are regarding their actions toward data controllers. With all already mentioned reservations, fines still seem to be the best proxy for analyzing DPA's behavior in a quantitative manner, both due to data available and their crucial role in the actual execution of the GDPR on the national level.

Hence, in the next part, calculations of Jensen-Shannon Divergence (JSD) for particular regions as well as selected categories from the Profile Index are presented. That allows to compare how similar the distribution is regarding the sector fined and the type of violation in particular categories[45]. The underlying assumption is that within the same regions or categories of regulators, we deal with similar institutions, regulatory culture, and environment in general, which should translate into more similar actions.

What must be underlined is that analyzing just the frequency of fines is not enough. The most important, high fines are not issued frequently, but they actually shape the EU privacy and data protection landscape to the highest extent. Hence, this chapter's goal is more to recreate the actual way DPAs operate in terms of their daily activities – what are the main actors with which they engage in their particular jurisdictions when it comes to fining.

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[44] Of course, it is not a perfect measure, as different regulators may use other, more direct informal channels for communication. Nevertheless, this is the best proxy that can be used based on the available data.

[45] JSD allows for measuring the difference in distribution among pairs of subjects (a JSD value of 0 means that the distribution is identical; there is no ceiling value). Hence, firstly, JSD for every possible pair of countries was calculated. Secondly, the same was done for the pairs of countries within particular categories. By calculating the average JSD within the categories and for the whole sample, it is possible to determine whether the distribution for the former is more similar than the average.

3.2.1 Regions

Before conducting any analysis involving particular regions of Europe, one must necessarily make some tough decisions regarding the categories used and the classification of countries. To address this, inspiration was drawn from several official classifications to develop a division that appropriately considers broader cultural similarities between countries, as well as the time of their accession into the EU, rather than solely relying on their geographical characteristics (the resulting categorization is attached as Appendix 4 at the end of this work)[46].

As observed in Figure 9, the average distribution is more similar within the particular regions compared to the overall distribution among all countries in the sample. This similarity is evident for both the sector fined and the type of violation leading to fining, although the effect is notably stronger for the former. However, there is an exception with the Baltic Countries (BC). It is important to note once again that the dataset tends to favor larger countries with more entries. As a result, the Baltic Countries (BC) category, consisting of a small number of smaller countries, may not accurately represent the actual situation[47].
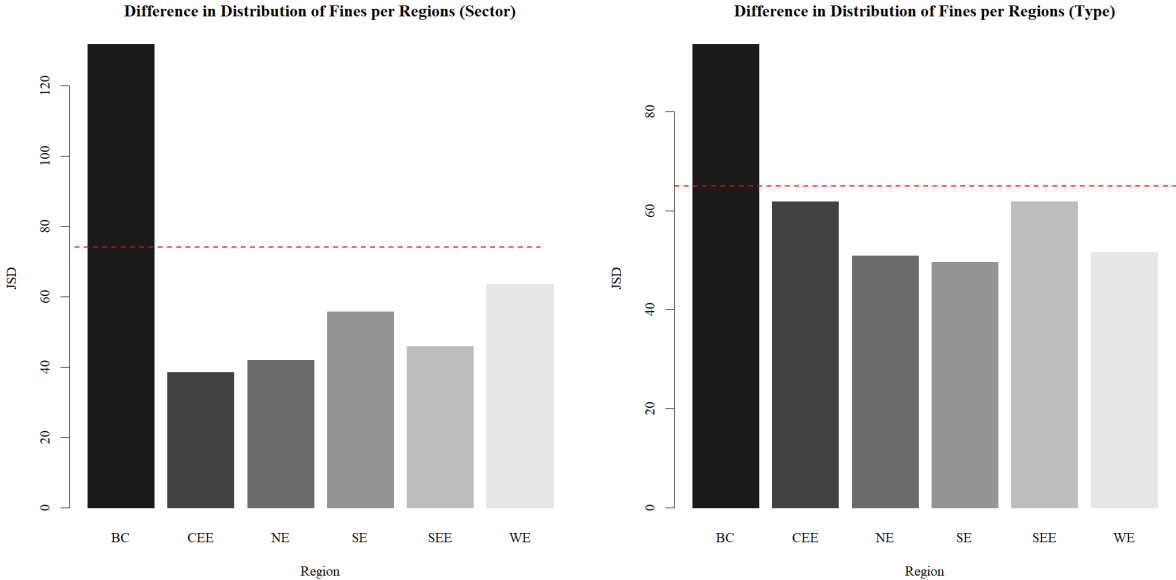

Figure 9
Difference in Distribution of Fines Per Regions
Note: The average JSD is marked with a red line.

Regional categories naturally represent not only similar cultural factors but also social and economic ones. Interestingly, one interpretation of the results could be that different regulators from the regions may deal with similar sectoral actors due to the similar structure of their economies and other institutional factors. However, these actors may behave differently,

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[46] The sample of countries used for the analysis of regions is larger than the one involving the Profile Index categories, as two different datasets were used for these analyses. Naturally, in the next subchapter, I use only the countries included in the index, with averages calculated separately for both samples.

[47] Furthermore, as will be shown in the next chapter, Estonia is not issuing many fines in the traditional understanding, despite having other similar measures, which result from the specifics of its legal system. The EDPB dataset used for index takes that into account, but the more specific data used in this section do not.

representing different kinds of entities and committing different kinds of infringements, which is responsible for the higher JSD for the type of violation. The only exception is Western Europe, with similar scores in both categories, which may be connected to the presence of all High Position Regulators in this group, which tend to act in a very individualistic way both in regard to sector fines and types of violation detected.

Looking at the most frequently fined sectors makes the most sense in the case of Central and Easten Europe (CEE), Northern Europe (NE), and Southeastern Europe (SEE), as these regions have significantly lower JSD than the average. Hence, we can talk about real trends in their behavior at the regional level. Southern Europe (SE) and Western Europe (WE), with higher JSD scores, should be treated as a more heterogeneous group, where establishing any regional trends may be difficult. Nevertheless, as their regional JSD score is below the average, it is worth looking at their fine distribution as well. With the aforementioned characteristics of the Baltic Countries, assuming any true regional trend among them is not justified, at least not based on the available data.

The Figures from 10 to 14 present the distribution of fines for particular regions:
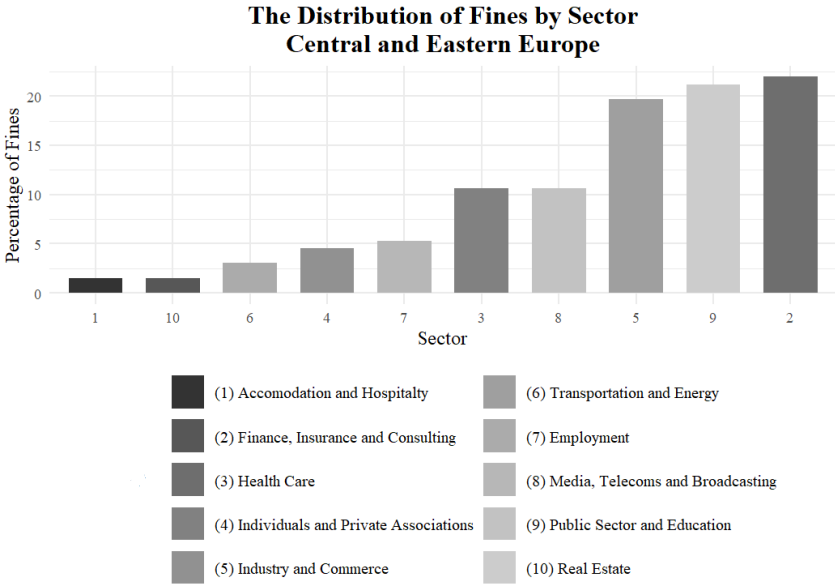
Figure 10

The Distribution of Fines by Sector
Southeastern Europe

Sector
- (1) Accomodation and Hospitalty
- (2) Finance, Insurance and Consulting
- (3) Health Care
- (4) Individuals and Private Associations
- (5) Industry and Commerce
- (6) Transportation and Energy
- (7) Employment
- (8) Media, Telecoms and Broadcasting
- (9) Public Sector and Education
- (10) Real Estate

Figure 11

The Distribution of Fines by Sector
Northern Europe

Sector
- (1) Accomodation and Hospitalty
- (2) Finance, Insurance and Consulting
- (3) Health Care
- (4) Individuals and Private Associations
- (5) Industry and Commerce
- (6) Transportation and Energy
- (7) Employment
- (8) Media, Telecoms and Broadcasting
- (9) Public Sector and Education
- (10) Real Estate

Figure 12

31

The Distribution of Fines by Sector
Western Europe

Figure 13
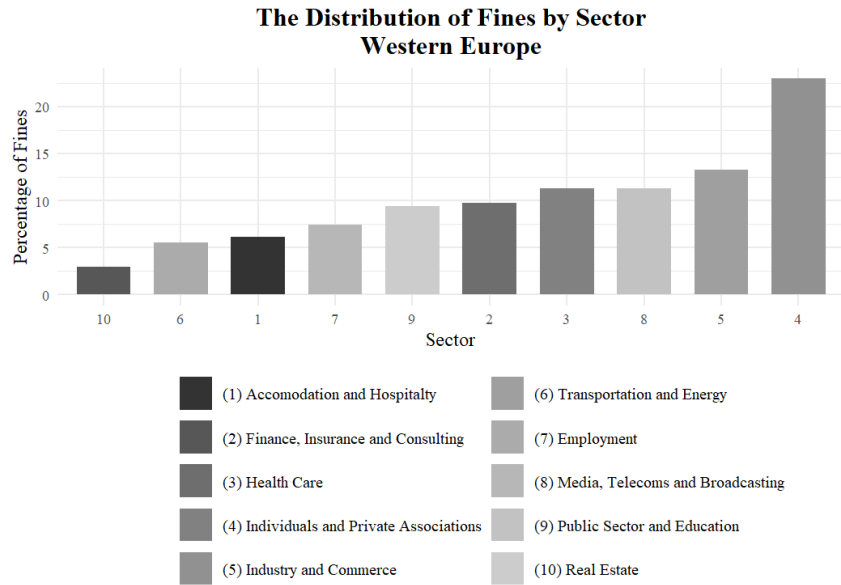
The Distribution of Fines by Sector
Southern Europe

Figure 14

We can observe that – aside from the SE – the relatively most important sector (Media, Telecoms, and Broadcasting), including Big Tech companies, does not represent the main fining target in any region. Nevertheless, the sectors are defined too broadly to make any valid conclusion on this point, and the frequency itself is not as important as the specific category of high fines that is nearly completely monopolized by the High Position Regulators (EDPB, 2023).

What can be said is that the data clearly shows how inconsistent the EU market is, as economic factors are treated as the most natural determinants of sectors targeted by fines in particular countries. The possibilities of countries to "choose" the sector they want to fine are naturally

highly limited by the one-stop shop mechanism, which created a regulatory regime with very autonomous regulators, focused on their specific fields, corresponding to the characteristics of their regulatory domain. Hence, regulators are fining entities who are the most important actors in their respective markets, which vary in different regions and countries.

Nevertheless, the impact of other non-economic factors cannot be neglected. One element serves as a great example of that, namely the frequency of fining the public sector. This is a sector naturally involved in the most important actions related to data processing in all countries; nevertheless, it is treated differently by particular regulators, prioritized only by the CEE and NE regulators. The reasons for that can be found in socio-cultural aspects[48], as well as legal issues[49]. Both of these factors will be analyzed more specifically in Chapter 4.

The most crucial question is surely whether these data say anything about possible institutional isomorphism among the organizations at the regional level. These questions should be answered both by looking at the regions separately and by comparing how similar they are to each other.

Firstly, it can be argued that higher similarity in fine distribution among the CEE, SEE, and NE countries is related to a more similar institutional environment within these regions, sharing more common historical, economic, and social foundations related to post-communist legacy or the building of the Nordic economic and social model. Despite unquestionable similarities between the other two groups, related both to akin economic models or – probably most importantly – the longer experience of European integration, WE and SE are still composed of a much more heterogeneous group of countries that did not experience such a level of voluntary (as for the NE) or involuntary (as for the CEE and SEE) harmonization at the institutional level.

Secondly, another argument in favor of isomorphism is the similarity in fined sectors in different regions. CEE and SEE have two common most fined sectors (Industry and Commerce and Finance, and Insurance and Consulting). Some similarities also exist between CEE and NE regulators, both fining the Public Sector quite frequently. WE and SE also share one sector they both fine most frequently (Individuals and Private Associations). SE shares also one most frequently fined sector with the CEE and SEE (Industry and Commerce). Hence, the most similar regions are CEE and SEE, which can be related again to their shared, post-communist experience and institutional – including economic – legacy.

Finally, we cannot forget that aside from the Baltic Countries, all regions have a more similar distribution of fines among themselves compared to the average. All of that seems to confirm that regulators in more similar environments act more similarly also regarding their fining behavior. This has very important implications for the GDPR model and the potential alternative way of implementing EU law through European agencies. Indeed, it is challenging to think of any other model than a decentralized regulatory network that would allow properly

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[48] For example, one of the countries with a dominant focus on fining the public sector is the Netherlands. This focus seems to be related to significant scandals involving public data controllers and an experienced general social debate on the issue of handling data by public authorities. This debate involved very active organizations from the third sector (Algorithm Watch, 2020).
[49] Some countries do not have any legal tools allowing them to practically fine public authorities due to limitations in their national legal systems.

harmonizing such a level of heterogeneity among not only particular countries but even regions, given the aforementioned inconsistency of the EU data market.

3.2.2 Position and Activity

The results for the Position and Activity categories from the Profile Index are interesting both in terms of the existing trends within particular categories and the lack of them.

For the Position category, we can observe no significantly higher similarity in fines distribution for any group of regulators. Crucially, there is no real isomorphism among the High Position Regulators.
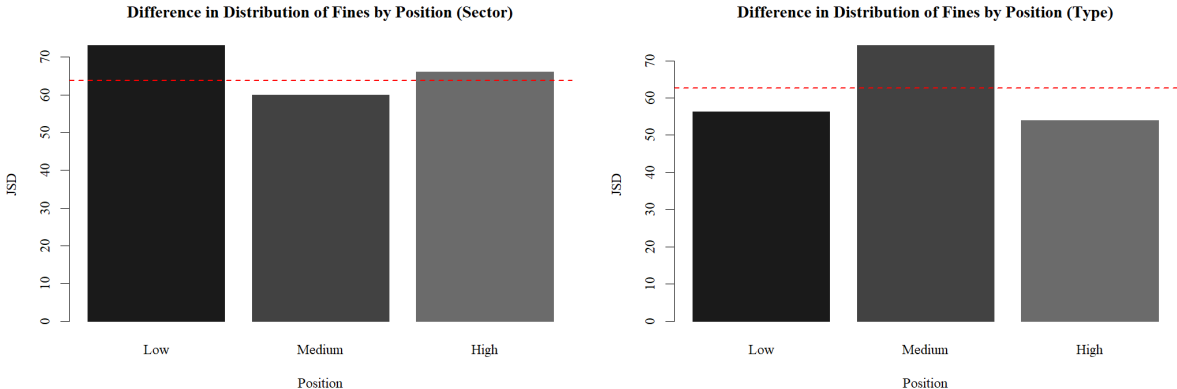
Figure 15
Difference in Distribution of Fines by Position
The average JSD is marked with a red line.

Interestingly, we can observe a significantly more similar distribution of fines – both for sectors fined and types of violations – for Low Activity Regulators. The most obvious explanation is that high-activity countries are naturally more diverse, as they tend to experiment more with proactive regulation. Accordingly, countries in the low Activity category rely more on retroactive, repetitive actions. The latter can be further enhanced by the existing positive correlation between GDP and the number of complaints and the negative correlation between GDP and Activity, which may force Low Activity Countries to standardize their actions to a greater extent

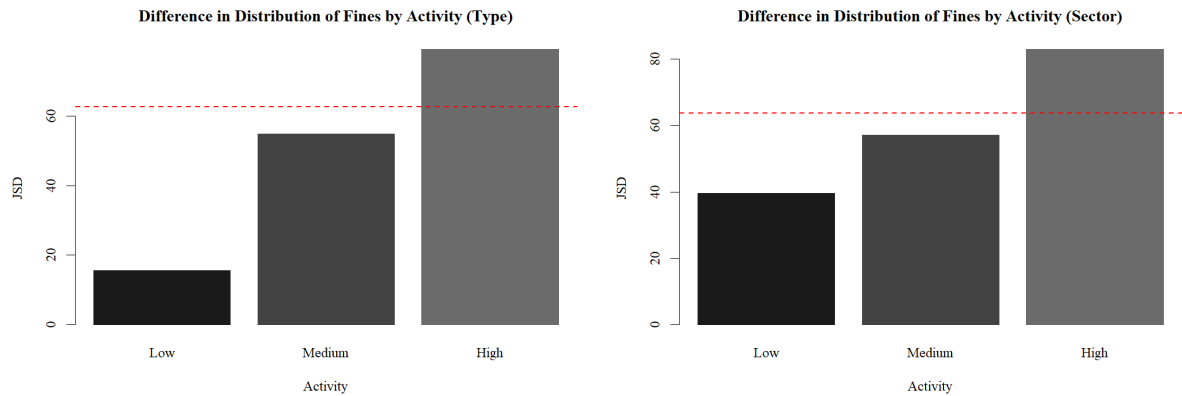**Difference in Distribution of Fines by Activity (Type)** — **Difference in Distribution of Fines by Activity (Sector)**

Figure 16
Difference in Distribution of Fines by Activity
The average JSD is marked with a red line.

Nevertheless, given the importance for the analysis of the whole network, the results for the Position seem to be especially crucial. Quantitative data suggests that we cannot really state that the process of mimicking High Position Regulators' actions – in line with the new institutionalism – by other regulators can actually take place, at least in the case of fining. Firstly, as was already discussed, sectors and types of violations are only in a very limited sense "chosen" by the regulators; they are more an effect of the particular institutional environment existing on the regional – to some extent – and national level. Hence, even if other countries would like to mimic High Position Regulator's behavior, it is not possible, simply due to the fact that they regulate absolutely different kinds of markets. Secondly, as we can observe in the data, there is no one High Position Regulator's mode of action that can be copied, as despite the small size of this group, the differences among particular DPAs it consists of are too significant. It does not mean that countries with lower Position scores are not influenced by the High Position counterparts; it means, however, that this process is far more complex than just High Position Countries more or less directly enforcing the way of implementing the GDPR to other countries.

4. How to Read the Map?

The chapters presented above provide insight into the general structure of the GDPR regulatory network, particularly regarding the varying levels of influence among different regulators, differences in their activities, potential isomorphism among organizations with similar environments, and the overall significance of these dynamics. However, the true implications of higher positions or the practical dynamics of day-to-day relationships among regulators cannot be fully grasped solely through quantitative tools. Therefore, the following section offers a more comprehensive analysis of these concepts, drawing from interviews conducted with officials from the DPAs. Importantly, only one of them (the Netherlands) comes from the DPA categorized in this study as a High Position Regulator. This provides valuable insights into how smaller regulators with less influence within the network perceive their more powerful counterparts.

4.1 The General Perception of the Network

4.1.1 "There Was Some History Before"

What must be emphasized once again is that the institutional framework that constitutes the GDPR was not developed alongside the Act. This point has been highlighted by the interviewed officials both at the national and transnational levels: *"The Portuguese data protection authority has existed for 30 years. It has not been created because of GDPR. It already existed. It had some attributions that became stronger when GDPR came into force in 2018. There were some things that we stopped doing, like licensing some aspects of that protection because there was a big umbrella over it all, called GDPR. So there was no further justification to keep licensing activities that were already regulated by a European directive. So we should have decreased our workload, but no, it increased a lot because we had to oversee a lot of things that were not inside our scope of work"* (Portuguese Official, 2024). Two important aspects must be noted here. Firstly, in the case of many regulators, GDPR co-opted organizations with a very long history into its structure. The Portuguese case is not an exception. For example, the Swedish, French, and German regulators were formed in the 1970s, the Norwegian in 1980s, and the Spanish and Irish in the 1990s. For most post-communist countries, their agencies were formed before accession to the EU, sometimes with organizational changes over the years (as in the case of Poland). Hence, we are discussing organizations with already established institutional frameworks, regulatory cultures, and priorities, which naturally impacted their behavior within the network created by the GDPR. Secondly, as was mentioned by the Portuguese Official, the GDPR created a new layer of tasks and responsibilities. As discussed below, it was not always followed by a corresponding increase in funding for the organizations, leading to their constant overload.

Furthermore, to a large extent, the same can be said about the EDPB: *"We are fully aware that data protection did not start from the GDPR. And when we are speaking about the EDPB, there was an Article 29 Working Party before the Board was created and the main essence is basically the same. Same people, same members, same map, same system – where every country has one vote. The idea of Article 29 was to give opinions and clearances. The idea of the Board is a little bit wider because there is now a one-stop-shop mechanism and consistency*

procedures. But I think for the DPAs, definitely there were changes, but it was not the start from the zero point level. There was some history before" (Estonian Official, 2024). That clearly demonstrates what was already discussed on the theoretical level, namely that the GDPR should not be perceived as something creating new institutions, but rather as something assembling the already existing institutional elements into a new order. This applies also to communication and resource sharing practices: *"Before the Board was established, we also communicated, asked each other's best practices, opinions, and so on. And we are still doing it" (Estonian Official, 2024).*

The evolutionary and organic character of the process of developing the current network brings about two main consequences. Firstly, the acceptance of the network by its participants is naturally much higher. With "same people, same members, and same system", the network gave regulators enough time to process the changes coming with the GDPR, which otherwise would have been perceived as revolutionary and highly disruptive[50]. Secondly, the organic character of the network, based on the long-established regulators, naturally leads to more heterogeneity within it, as continuous international collaboration can only partially mitigate the effects of strong institutional identity.

4.1.2 "More than Law Enforcement"

The perception of the GDPR and the role of the DPAs is evident in nearly every comment quoted in this chapter. Nevertheless, it is worth examining more closely the instances where interviewed officials openly expressed their views on this topic.

Crucially, the officials were clear in their assessment that DPAs are much more than just law enforcement agencies, on three main levels. Firstly, the importance of the actual protection of citizens' rights was frequently underlined*: "Well, the main purpose of the DPA, from my point of view, is to guarantee that the people have their personal rights, their data subject rights[51], foreseen in all activities. Before GDPR came into force, businesses, companies could do a lot of things that now they cannot, or at least they have to ask for permission to do so" (Portuguese Official, 2024).* This is emphasized by the Norwegian Official: *"I think we have a duty to uphold the law. So we have all these regulations. The general feeling is that if we do not actually do something to enforce them and inform the public about these laws and ensure that they are followed, then for sure they will not be followed simply because there are too many incentives that work against a high level of data protection. So it is really about ensuring that data protection is a part of society and that companies and organizations do respect it" (Norwegian Official, 2024).* Similar perception of the DPA as the organization with the specifically important calling is present in the comments of other regulators from Croatia*: "For me, GDPR means protecting the fundamental rights of individuals. This is the main thing" (Croatian Official, 2024)* and Estonia *"You cannot break the trust of the people. Otherwise, your systems will never there is no success story. And this is the main point, that you have to be responsible.*

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[50] Of course, this does not mean that it was absolutely not the case, as can be inferred from the Portuguese Official's comment quoted above, but it certainly mitigated these effects.
[51] Data subject is the individual the personal data relates to (EDPB, 2024).

Companies have to be responsible. It is a very simple message, but I hope, it seems to me, we were successful in sending this messages" (Estonian Official, 2024).

Hence, the general opinion among regulators is that DPAs play a special role by being the actual shield protecting citizens from the realities of a world where data are commodified and there are not many incentives for companies to act differently without the intervention of public actors. This idea of having a "higher goal" is perfectly reflected in the comment of the Portuguese Official: *"The role of the Data Protection Authority is not only as a law enforcement agency, it is also to protect the citizens' rights and well-being. And for me, that is the main purpose of the DPA's activity. Not just by the book company that goes and performs audits and behaves like a cybersecurity audit company that certifies according to standards like ISO 27000. No, the main focus is to protect the people's interests" (Portuguese Official, 2024).* This kind of attitude is crucial as it builds a specific sense of unity among regulators, who share not only common tasks and formal ties but are also connected on a deeper, normative level.

Secondly, the notion of being "more than a law enforcement agency" is expressed by the officials when they describe the goals of the DPAs: *"Our efforts contribute significantly to fostering a culture of data protection that is vital for building trust in the digital economy and ensuring the fundamental right to data protection" (Slovenian Official, 2024).* Accordingly, DPAs are aware that they need to utilize not only reactive measures: *"For us, raising awareness is equally important as enforcement" (Croatian Official, 2024)*[52].

This notion of more proactive activities must be considered in a broader context constituted by the third level – the relationship between the national regulators and the transnational superstructure of the network. Regulators are aware that their actions are always embedded in the broader system, naturally limiting their capabilities: *"There is room for improvement, but there is not much room to be different, because when the European directive came out, it has to be translated into a national law. And you cannot take things from it, but you can add some things that you find convenient. So there are some details that you can add, and there are some aspects you can adapt to your national reality, but if you start to have too much customization to the data protection principles, it might be hard and you might jeopardize your country or your country's economy" (Portuguese Official, 2024).* The concept of the DPA being close to the national environment, thereby ensuring an understanding of local circumstances and requisite flexibility, is worthy of emphasis. It stands as one of the pivotal elements underpinning the network's success, serving to legitimize it in the eyes of participants and ensuring effective enforcement at the national level. That positive aspect is of course also noted by other regulators: *"I think the general idea is that we act as civil authority for a specific country. We are the best people to monitor what is going on among controllers and processors on our national level*[53]. *So it is important to have that proximity between the supervisor authority and the controllers, those who are processing data. It is important to have someone who is aware*

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[52] This notion will be highly important when discussing the problems of the DPAs related to lack of awareness and sufficient knowledge among both citizens and data controllers.

[53] Data controller is a person or organization who decides the purposes for which, and the means by which, personal data is processed. Data processor is an entity processing the data on behalf of the data controller (EDPB, 2024).

and who knows the national legal system. We are impacting the guidance around the GDPR because some or many of the provisions in the GDPR are quite open, so they need to be specified and more precise. So in that way we are constructing our own case law and our own interpretation. But then, we are not entirely free to do so ourselves. We are in an EU environment so we have to also agree among us, among the EU DPAs. We have to agree on a harmonized and common interpretation (Swedish Official, 2024). It is very well summarized by the Dutch Official while defining the DPA: *"The DPAs make the EDPB. So it is really artificial to separate the Board from its members. It is really an effort of the DPAs that come together in the format of that Board to work together" (Dutch Official, 2024).* Hence, the interdependencies between the national and European levels are so complex that to some extent, it is challenging to clearly separate the two. Furthermore, while the regulators are in power of "constructing their own case law", the European super-level is naturally limiting their space for such activities. This surely balances the impact of both international and local factors on the network and its participants. However, as will be demonstrated in the following subchapters, it seems that prioritization and adaptation of the provisions of the EU law are still allowed by the network to a surprisingly large extent.

4.2 National Level

4.2.1 Legal Factors

The most obvious differences between regulators are the economic and legal factors, with the former being analyzed in the previous chapters. Nevertheless, the complex analysis of each country's legal system's influence on its implementation of the GDPR is much more intricate, as demonstrated by the example of the seven states included in the qualitative study sample.

Some elements of the legal framework are common to all DPAs, for example, their relationship with the national courts. *"If there is a good relationship and if the courts almost always agree with the DPA, then they will feel encouraged, feel that they can have some more really enforcive decisions, more drastic decisions" (Portuguese Official, 2024).* Others are related to a bigger extent to specific national circumstances. Staying in the context of the relationship with the judiciary, Norway has a dedicated appeal body, leading to fewer people taking their cases to the courts, though the relationship with the former is very similar to the "standard" relationship with the courts: *"I think the appeal body has been a bit critical to how we have closed cases in the past, but equally often the appeal body has said, yeah, no, we agree with the DPA analytically. It seems that the appeal body is agreeing more and more with kind of how we have been enforcing things. So I think the trend for us is we do not close as many cases, we need to investigate a bit more, but it is quite new and not necessary negative" (Norwegian Official, 2024).* Thus, the relation with the courts seems to put the regulator within a certain boundaries, clearly communicated by the judicial decisions.

Such nation-specific cases can drastically influence the relationship between the regulator and data controllers, coming from both the private and public sectors. For the former, Estonia is an interesting case, as its legal system does not recognize administrative fines, a situation

somewhat mitigated by issuing penalty payments (Estonian Official, 2024). Nevertheless, despite these efforts, the crucial fining mechanism still faces significant obstacles, which do not go unnoticed by some data controllers: *"This is a problem we are finding in Estonia and I am pretty sure that there are some companies who are using this position, the fact that you cannot fine. And of course, there are also other companies who are taking it very seriously because even if you cannot fine, it is a question of your image or your responsibility, is that how you look like for your customers"* (Estonian Official, 2024). Similarly, Croatia is one of the countries where it is not possible to effectively fine the most important categories of public data controllers[54] (Croatian Official, 2024). On the one hand, again, it is leading to a lack of engagement from some partners: *"Because of that, I must say, our public authorities are not so keen to comply with data protection regulation. They cannot fine us, we do not care"* (Croatian Official, 2024). At the same time, it is once again forcing the regulator to change its strategy: *"Some of them [the public data controllers] are really trying a lot. We also have a lot of meetings. Not in the sense of prior consultations from article 36, but a lot of meetings with data controllers from the public sector, very often on a daily basis"* (ibidem).

These examples not only show how different elements of the network influence each other (the impact of the courts/appeal bodies), but also how the shape of the legal environment directly results in different patterns of regulator's behavior, such as using penalty payments instead of fines or introducing more proactive awareness-raising measures for public actors.

4.2.2 Cultural Factors

It is challenging to clearly separate the cultural factors from the rest of the organization's environment, especially since the term can be nearly synonymous with the institution itself. Nevertheless, it is worth analyzing separately aspects related to the broader regulatory culture and some related social factors, which is also visible in the next subchapters.

Starting with Norway, the following comment constitutes a perfect description of the regulatory culture and the differences it can cause among the countries within the network: *"The thing about Norway is that we are an extremely non-formalistic country, or extremely pragmatic. So that means that we always try to read the complaint in light of the GDPR, understanding that citizens do not know the law, and that is fine, we need to help them to contextualize this within the framework of data protection law. So we aid them a bit"* (Norwegian Official, 2024). The same applies to the relationship with the data controllers: *"In some countries in Europe you have this culture where whenever the authorities try to do something in person, make the decision, they get sued and it goes to court immediately. Norway is not so much on that end of this spectrum. So generally, we want to reach out to controllers and say, hey, there is an issue here and this is not OK. Most of the time, they will accept our decision. Quite often, even when*

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[54] This is not an isolated problem, mostly stemming from legal and budgetary constructions that prevent the state from "fining itself."

we notify them, we are looking into this, and this is the issue, they would already then start to mitigate the issue" (ibidem).

As demonstrated in the subchapter on the relationship with data controllers, such attitude is not common among all countries in the sample. Naturally, these kinds of cultural factors drastically influence not only the level of trust between the regulatory body and data controllers but also, which is maybe even more crucial, between the agency and the citizens, promoting more proactive behavior of the regulator. Similar regulatory culture or scripts can even make collaboration between the DPAs easier: *"Everyone offers us different background, different culture. And sometimes you have to consider your national situation also. Not everything is cross-border. And of course, I feel that the way Estonian think, is very close for the Scandinavian or Nordic countries" (Estonian Official, 2024).*

Naturally, the same cultural factors are present among the population, most importantly when it comes to awareness and knowledge, which — as will be demonstrated below — are crucial for the way regulators act. The perfect illustration is the comment of the Estonian Official: *"It is very hard to describe the vibe of the Estonians because we are so used to this digital stuff (ibidem)".*

4.2.3 Social Factors

4.2.3.1 Data Subjects. "We see the news"

For the purpose of this subchapter, social factors are mostly reduced to the key partners of the DPAs. In the case of citizens or data subjects, two of the most important aspects should be underlined here: the role of public discourse and the already mentioned awareness and level of knowledge among the population.

The Netherlands is a particularly important example of the former, as the country where the debate on the role of the use of data was especially vocal, due to the scandal with the use of biased algorithms detecting potential tax fraud based on citizens' data, which eventually led to the resignation of the whole government (Erdbrink, 2021). It was commented on by the Dutch Official as: *"A change in a positive way, because it has been a driver behind making us known and showing that we can do good things, instead of just pressuring people into setting up privacy policies. So it really helped us to secure our added value in society and show why privacy is important" (Dutch Official, 2024).* Hence, broad discussions regarding data security and privacy can allow the regulator to promote itself as an actual protector of citizens' rights, in line with the declaration mentioned in chapter 5.1.2, and not as a disruptive element in companies' operations or citizens' lives.

Furthermore, the public discourse naturally influences how a DPA prioritizes issues[55]. This phenomenon is well described by the Norwegian Official, explaining why the ad tech sector is

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[55] It is worth reminding that for the Netherlands, the public sector is the most frequently fined sector, which can be used as another argument in favor of this hypothesis.

prioritized in their country: *"Maybe ad tech was more prominent issue within the Norwegian public discourse. In Italy, children's well-being on social media, for example, TikTok, has been more in the media, especially because an Italian child actually died after carrying out a TikTok challenge, so then it is natural for them to deal more with those issues. So it is always an altitude of different aspects. It is not as straightforward, but I think that often a lot of it can be found in a national context and what is really the focus of the national discourse, what are the more prominent processing activities taking place in that particular country"* (Norwegian Official, 2024).

An interesting comment was made by the Portuguese Official, suggesting that the public discourse can not only shape the general priorities of the DPA but also motivate it to start an investigation in a particular case: *"Sometimes we do an audit by our initiative, because of image in social media. We see the news. We issue a communication with the controller that is targeted by the news. And if they confirm that the situation actually happened, then we might do something without getting complaints"* (Portuguese Official, 2024).

Then, the crucial issue signaled by the Dutch, Estonian, Croatian, Norwegian, and Portuguese Officials is the case of citizens' awareness and its importance for the system based to a high degree of complaints received from the citizens. The case is twofold. Firstly, there is an issue of citizens being aware of their rights, which was described as a big problem in Croatia: *"And if you have citizens who are not aware of their rights, and who are not asking questions to organizations, to data controllers, then you cannot expect the right to privacy, the data protection to actually work"* (Croatian Official, 2024). Naturally, this level of awareness varies across the countries: *"We have a digital society. For example, we have a solution called data track, and every person can log in into this system and check out who has seen or used his data, which are located in different state databases. So there is actually Article 15 in GDPR, which forces that person has the right to ask. But in our case, you do not have to ask. You can just log in and check it out"* (Estonian Official, 2024).

Hence, we can see that some societies can be more active in seeking to protect their data; nevertheless, both the lack of knowledge and a more proactive attitude of the citizens can lead to the overload of the organization if the structural elements do not correspond to their institutional environment. This is a problem that we can find both in Croatia and Estonia. Starting from the former: *"We receive a lot of complaints, but most of them, they do not have any basis. Still, we need to investigate, even if we see, that this is something stupid, but still, we need to go in the field. I must go to ask questions to controllers, need to write decisions and this is very, very time-consuming. And if we had educated citizens, they would know, okay, if I have questions about my data and why it is being processed, I will ask the bank clerk and not the DPA"* (Croatian Official, 2024). A nearly identical answer can be found in the Estonian Official's comment: *"We also, continually, advise not to turn to the data protection authority if you have this question, please turn to this person and ask him or her and if you are not satisfied, then you can come to us"* (Estonian Official, 2024). Similar opinions were expressed by the Norwegian and Portuguese Officials, and to some extent, the Dutch one, who also described probably one of the best solutions for the problem: *"And especially in the beginning,*

we got complaints that were just one or two lines in an email and they called it a day. But we already have a complaint form now. So anything, that does not meet all the criteria in that complaint form, we can say might not be eligible" (Dutch Official, 2024). Nevertheless, we can see that the problem exists to some degree even for one of the biggest DPAs, which shows how crucial it is and how drastically it can bind the resources of the smaller regulators.

Surely, it also demonstrates the importance of awareness and knowledge-building, as understandably underlined by the officials in their previous comments. This issue is crucial not only in the case of data subjects but also for data controllers.

4.2.3.2 Data Controllers. "Data is Money"

The issue of public data controllers[56] was already analyzed in the parts describing the impact of legal factors, as well as the public debate. For private controllers, again, the notion of knowledge is crucial, as all regulators mentioned it as an important factor leading to violations of the GDPR. This notion is well summarized by the Dutch Official: *"Most controllers want to do the right thing but do not know how" (Dutch Official, 2024).* Naturally, the level of knowledge is higher for the larger companies: *"We have this big difference between large companies and small and medium-sized companies. If you have, for example, a bank or some other big company, they have privacy teams, they have IT experts. There are, for example, for banks, there are so many regulations applying to them. So definitely they have experts and definitely the level of compliance would be higher in these kinds of large companies where they have privacy teams" (Croatian Official, 2024).*

This kind of mechanism massively influences the behavior of regulators. For example, in Croatia, where Small and Medium Size Enterprises (SMEs) constitute an important part of the market, the Croatian DPA developed a dedicated tool allowing them to generate their privacy policies. It is also taken into account in fining practices: *"When it is about micro or small size enterprises, we must always act in a way that we will not ruin them, so we use fine that it is huge enough that will deter you from doing this again. We never want to do that. But of course, in the case when you have a large company with huge profit and then you see that they are not taking care of personal data at all, then they deserve it" (Croatian Official, 2024).* Hence, with the acceptance of different capabilities and resource levels among the countries, regulators must adapt their behavior accordingly. Furthermore, again, as in the case of citizens, the lower level of knowledge can lead to additional tasks for the DPA: *"They want to comply, but maybe sometimes they do not fully understand all the obligations and all the requirements that the GDPR puts. So, and that is why I feel that they are quite constantly seeking perhaps more information and more guidance from us" (Swedish Official, 2024).* The same was signaled by other DPAs, including the Slovenian one: *"Experience has shown that most entities are keen to comply with data protection laws but often face challenges in interpreting and implementing*

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[56] Data controller is a person or organization who decides the purposes for which, and the means by which, personal data is processed (EDPB, 2024).

the requirements. In such cases, our role extends beyond enforcement to include education and providing resources to facilitate compliance" (Slovenian Official, 2024).

Nevertheless, sometimes it is not as much a question of knowledge, but rather the priorities of the organizations: *"Obviously companies want to use data but do not want to spend money on compliance. And most companies, the core task is not complying with data protection law. It is about creating business. In terms of the individuals working within the organizations, I would say that generally there are many excellent data protection advisors, DPO's[57], etc., or just people interested in data protection working within organizations. Generally, in many cases, management is not necessarily too keen on listening to their views" (Norwegian Official, 2024).* The same was said by the Dutch Official: *"There are some larger controllers that show a lot of willingness and want to do things correctly but they are also controllers that are less willing to do so or they just do not make it a priority. There is a willingness there. It is just not always a priority" (Dutch Official, 2024).* This notion was clearly stated by the Portuguese Official, in line with the already mentioned definition of the DPA's role: "*You cannot look at that protection without looking at the economy because data is money. And that is why the DPAs exists; to stop making money at all costs" (Portuguese Official, 2024).* Similar comment was made by the Croatian Official: *"They [data controllers] always lie. They lie 99% of cases. They always say everything is okay. But we have a lot of ways. They say: we have proved our legitimate interests. And then you ask them, for balance tests and then you see some kind of horror, so they always lie. I am not sure whether they lie because of the ignorance. Probably in some cases because of the ignorance and in some cases because they want to cover that they are not GDPR compliant to avoid fines of course" (Croatian Official, 2024).*

Hence, the complexity of the relationship between private data controllers and DPAs becomes apparent, as the latter clearly distinguish between various categories of actors based on factors such as their size (and consequently, their level of resources and expertise), the nature of the infringement, and their past compliance history. Even officials, whose remarks may appear more stringent, underscored the importance of a case-by-case approach to their enforcement practices. They emphasized the necessity of affording controllers an opportunity to rectify violations, except in cases of egregious and intentional breaches. This approach largely stems from the utilization of common fining guidelines issued by the EDPB. However, as demonstrated in the quantitative analysis and as will be further elucidated in Index 2, the disparities in fining frameworks are substantial and cannot be solely attributed to economic or other external factors, as there are significant variations even within the most homogeneous regions. While some differences can be attributed to legal factors, as evidenced by examples from Estonia and Norway, others may be attributed to divergent interpretations of key concepts by different regulatory bodies[58].

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[57] Data Protection Officer is a person responsible for a proper data processing within their organization.
[58] Again, different decisions in the same instances made during Covid are probably the best illustration (Etteldorf, 2020)

4.2.4 "It Has Been a Struggle"

The issue of resources must be emphasized once more. The quantitative analysis has already revealed significant disparities in the resources available to the DPAs. Insights from officials enable to grasp their impact at both national and international levels, with the latter being examined in the subsequent subchapter. The issue of being understaffed emerged as a primary concern according to officials from Estonia, Croatia, Portugal, and Slovenia. Additionally, the Norwegian Official highlighted this issue in the context of handling complaints, as previously mentioned.

In all instances, a specific type of resources was cited – human resources. An intriguing observation was provided by the Croatian Official: *"We are hugely understaffed, hugely. The government supports us in our efforts to enforce and to be more efficient, but we cannot find employees. We have these job competitions, there are situations where nobody applies. Or someone who is not qualified or has some other problems. We have quite low salaries, and these salaries are in fact not so low anymore, but salaries in the private sector are much, much, better; and we cannot compete with that" (Croatian Official, 2024)*. As some officials have previously noted, data has now become a commodity, with a thriving market and significant players keen on leveraging it for business purposes. Therefore, it's unsurprising that public regulatory bodies struggle to attract top experts, even when attempting to expand their staff.

This directly impact regulators actions, which was openly stated by them: *"Well, it has always been a little bit difficult for us, because there is a question of human resources. But I have to say that and it has been a struggle. But also it means that we prioritize" (Estonian Official, 2024)*. The same was noted by the Portuguese Official: *There are external factors that influence a DPA's decision. One of them, and it is a really key point, is the staff" (Portuguese Official, 2024)*; as well as its Slovenian counterpart: *"In some instances, resource constraints may limit our ability to take proactive measures, leading to differences in the level of enforcement activity and the scope of our operations" (Slovenian Official, 2024)*. Thus, the available resources naturally compel organizations to prioritize, acknowledging that they cannot feasibly engage in all activities, regardless of their desires.

Naturally, there exists a synergy between resource allocation and other factors, such as legal considerations. As noted by the Croatian Official, the regulator may find itself overwhelmed by less crucial tasks due to national regulations: *"We need urgent amendments of our national law on implementation of the GDPR, which would move these responsibilities from us, so we can have more time to dedicate to serious data protection issues like automated decision-making from article 22 and other serious breaches of GDPR, like serious breaches" (Croatian Official, 2024)*. A similar issue was highlighted in the previously cited comment by the Portuguese Official in Chapter 5.1.1. It is evident that while increased national regulation may be viewed positively for enabling the customization of privacy regulations to local circumstances, it inevitably comes with a cost. Especially in the absence of adequate resources allocated to the regulator, it can effectively hamper its ability to take action.

4.2.5 "We Prioritize"

The challenge of analyzing such a complex network lies in the practical impossibility of assessing the level of importance of each factor mentioned above, both in the qualitative and quantitative analyses. This limitation necessitates settling for demonstrating their diversity. However, the complexity of the factors influencing the network is not the sole outcome of the conducted analysis. A concrete finding is the confirmation of different priorities and behavioral profiles among regulators, shaped by their legal systems, regulatory culture, public discourse, specific characteristics of data subjects and controllers, or organizational resources.

All DPAs referenced similar general elements of their national environments that impact their day-to-day operations, albeit with varying characteristics depending on the specific nature of these elements in individual countries. The subsequent section delves beyond the national level to analyze the transnational layer of the network, providing insight into the magnitude of differences among countries.

4.3 The Transnational Network

4.3.1 "We Choose Our Issues"

Despite the points raised earlier, not all regulators observe clear differences among the countries participating in the network: *"I cannot really see any great disparities or I think most of the cases are the same for all of us. We have the new technology and the new way of processing data that is cracking and monitoring people. I think a lot of that is the same. The focus on data subjects' rights, for example, is also something that is prioritized by all of us" (Swedish Official, 2024)*. Others do not perceive prioritization or specialization as positive factors: *"I think [the specialization in particular sectors or issues], it is not the case, because as a DPA you do not know what happens tomorrow, what kind of complaint you will see or what kind of data leakage might occur. So it is not a very good idea to take a very narrow position" (Estonian Official, 2024)*. However, this perspective is not unanimous among the DPAs, as the Dutch Official expressed a contrasting view: *"It is difficult though, because not every authority has this [strategic goals]. And some authorities focus more on, for instance, handling all the complaints, and they do not prioritize or strategize in that. So that makes the conversation a bit difficult sometimes" (Dutch Official, 2024)*.

This reservation towards prioritization is understood, with potential threats of such an approach well-articulated by the Portuguese Official: *"The DPAs should not be biased and we are not biased, but we have some external influence and also internal handicaps that we have to face. So that can justify for some of the different views or different opinions or different decisions that you might have witnessed all over Europe" (Portuguese Official, 2024)*. This is confirmed by the Norwegian Official: *"the DPAs are generally quite small, so it simply is not possible for all the DPAs to go after all the big issues. And what I think we are seeing in practice is that we choose our issues" (Norwegian Official, 2024)*. Hence, what is crucial to understand is that prioritization is only to a limited extent an inherent element of a DPA's agenda; rather, it is more a result of its environment and internal factors' influence. Naturally, this isn't always the case, particularly for larger countries, as explained by the Portuguese Official using the example

of the AI Act negotiation process: *"Italy and France suddenly said: we do not agree with this way of doing things after all. Interesting, right? What is my opinion on what happened? They want to be able to compete with the US companies. The DPA's activity is also almost a consequence of what international companies are based on the country and also the national companies, what are their areas of interest and where do most export profits come from"* (Portuguese Official, 2024).

Therefore, it appears reasonable to assume that the differences in DPAs' behavior are largely determined by their priorities, which stem from a combination of internal and external factors. These priorities are primarily influenced by the structure of DPAs in the case of smaller countries, or by the agenda aimed at preserving national interests in the case of larger actors[59]. Given the nature of the sample in this analysis, the focus will naturally be on the role of structural limitations and how various DPAs attempt to circumvent them.

4.3.2 The Big Leveler

The discussion on the network would be incomplete without mentioning the EDPB, which serves as its formal structure to some extent. Regarding this body, two significant findings should be emphasized. Firstly, the EDPB itself contributes to differences in countries' positions within the network. Secondly, it can also be leveraged to enhance the network by balancing the lack of national-scale importance with involvement in European-level endeavors.

Naturally, the key issue in both of the aforementioned points is, once again, resources: *"Well, you are often in the situation where if you have more resources, you can prepare more. So when you go to meetings, there are often people from the same countries taking the floor and speaking up. But in the end, every authority gets one vote. And that is why we always try to make sure that whenever there are new initiatives everyone can participate. So that everyone gets the floor, everyone gets their say, and you do not forget about the smaller countries just because they have few reviews and they maybe could not have speak up at that particular time"* (Dutch Official, 2024). The Swedish Official provided a nearly identical comment regarding the last sentence: *"When we are working, for example, with a guideline, there may be a smaller team who is doing the first drafting, but then they are very eager to collect the views from all the DPAs"* (Swedish Official, 2024). Nevertheless, despite these efforts, the differences arising from the level of resources remain clearly visible: *"We are the lucky ones, because we received extra funding last year and we were able to create a new division inside our board team. It includes only four lawyers, but they are dealing only with the EDPB matters. But on the other hand, for example, we have Germany. And of course, they have not only one data protection authority, they have separate data protection authorities in every state. It means they have 16 data protection authorities. And I have spoken some of my German colleagues and, mainly the federal authorities are participating in the EDPB, but they have also seen that in some very*

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[59] Again, I am using the terms "structure" and "agenda" not as opposites, but in the spirit of A. Giddens' structuration theory. Naturally, the agenda of the more influential countries is also shaped by their structure, the differences apply only to a degree of setting the priorities as a mere reaction to the circumstances or a rational decision aimed at enhancing some elements of it.

specific cases, when they know there is a good knowledge, for example, on the state level, in the other authority then they include this person. So they definitely have more resources and there is no point to even argue about it" (Estonian Official, 2024). In practice, again, it means prioritization: *"When we see the working plan of the EDPB, we take out two, three, four of main priorities. We signal the EDPB that we want to be included to write this in that guidance. And there is also a question of time because we don't have time to write all those things. So it means that we just check out some of the propositions that somebody else has been written down. So it is the question of how you do your work" (ibidem).*

All officials underscored the role of voting as a factor in leveling the field for everyone. However, as evident from the quoted comments, the process preceding the voting is equally, if not more, significant. DPAs not only need to decide on their participation in various subcommittees' work but also determine the extent of their involvement. This point is further emphasized by other officials: *"A lot of things tend to be resolved before we take a vote. You get to see a final text at the end of it, but the whole process comes through before that, where you share best practices, where you try to create support for what you are trying to do, and really work together to come to that final compromise" (Dutch Official, 2024).* Norway presents an interesting case, as its non-EU status deprives it of voting rights in the Boards. This offers us a unique perspective on its work: "*Numerous discussions are made in various working groups where everyone fully participate, including Norway. So, within the discussions, we have a lot of work to do, of course contribute as does everyone else and then we all work in order to try to find compromises, to find a solution that is okay for everyone, or at least the big majority. So, the voting itself is not really the decisive factor. Of course, in some cases you need to vote between different options, but I think that so much is being shaped through the discussions itself. So I would not say that whether you have a voting right or not, it is the biggest issue here" (Norwegian Official, 2024).*

To summarize, despite the collective nature of the body, regulators ultimately fall into two groups: those actively involved in drafting the guidelines and opinions of the Boards, and those who provide opinions on them. However, this process appears to be viewed as natural by smaller regulators. While it necessitates prioritization, it does not lead them to contest the rules governing the Board. On the contrary, they perceive it as a factor that levels the playing field, to some extent even in cases of resource disparities: *"So, the EDPB gathered this pool of experts and if you have some kind of issue, you can ask them to provide you with experts who will help you to deal with it. This is very helpful for small authorities that do not have enough resources" (Croatian Official, 2024).*

The only significant issue highlighted by both the Dutch and Swedish Officials is the inadequacy of the Board in swiftly preparing new guidelines. This concern cannot be overlooked, as it may also affect the level of acceptance of the current state of affairs within the EDPB, as without the resources of the largest countries, the body would likely become entirely paralyzed.

4.3.3 At the End of a Day We Are Still in Estonia

The issue of the influence of position within the network is perhaps the most crucial but also the most complex notion analyzed in this work. It appears that, as evidenced in the previous subchapter, different DPAs acknowledge the existence of varying roles and positions within the network[60]. However, they do not necessarily agree that these roles translate into any discernible domination or influence. The perception of the EDPB, as previously mentioned, is crucial in shaping this perspective: *"I do not really see that [differences in the DPAs' position]. Of course there are some DPAs that are a lot bigger than others. Some DPAs have perhaps more experience, longer experience from data protection rules, data protection legislation. So, of course, the bigger DPAs have more resources to put also for work for the EDPB. But I think in the end, in the discussions, each DPA also chooses on what they want to focus on. I do not think that there is any discrimination or so because of that. And the voting is very equal"* (Swedish Official, 2024). Nearly identical opinion was made by the Estonian Official: *"There is equality. If I can say that there are some kind of discussions or preparing some kind of a new guidance, I can always participate. Not only in writing it, but also in discussing it at the panel level. It means that the heads of the DPS are coming together every month. And there is a voting. Every country has only one vote. So we are equal"* (Estonian Official, 2024). Interestingly, the same countries are aware of the significant limitations on their participation in the Board's works, as described above. Nonetheless, formal procedures, especially voting, are still regarded as a key factor in leveling the field.

Even the most controversial element of the GDPR infrastructure, namely the one-stop-shop mechanism, was not openly criticized. On the contrary, the Norwegian Official described it as paradoxically enhancing the position of smaller regulators: *"Indeed, maybe we are very concerned with one particular aspect or issue, but we do not have any controllers in Norway engaging in that kind of processing of personal data. Seems frustrating, right? But if you go back to the basics, the Norwegian DPA is called for the Norwegian territory, then it is not necessarily the one-stop shop creating the situation. We already had these issues. So I would say that the advantage of the one-stop shop is that we can actually ask the other leading DPA: can you please provide more information on this, can you please look into it etc. So you can say that the one-stop shop does not necessarily remove anyone's competence, but it does allow us to pool our competence and deal with the cases together. So in this sense, while it may appear controversial, there are actually a number of benefits to this mechanism"* (Norwegian Official, 2024). That is naturally connected with the issue of the binding decisions by the EDPB, involving the voting mechanism, which appears to be crucial for most countries: *"You sometimes see the media saying, oh, the Irish regulator is the most powerful regulator etc. And all of that suggests some kind of hierarchy. But what we have seen in practice is that all of those big cases pertaining to the big American tech companies have actually been dealt with by the EDPB in practice. So even though the case starts in Ireland, it will nevertheless be resolved on the European level where everyone participates and can voice all of their concerns until there*

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[60] It must be underlined that all officials acknowledge some level of differences among the regulators stemming from resources or the regulated market.

are no concerns left" (ibidem). Hence, the EDPB plays a crucial role in the Europeanization of national cases with international consequences.

Nevertheless, the attitude of the High Position Regulators themselves is pivotal as well. Firstly, they are naturally aware of their role within the network: *"We are very conscious of that role [of a High Position Regulator]. So we also try to convey the message internally that we are not just the Dutch supervisor, we also play a part in the European sphere. So we try to be really active, for instance, in setting the European base strategy. And we are really conscious that we have the opportunity to shape it" (Dutch Official, 2024).* At the same time, the High Position Regulators seem not to abuse their role: *"If you look at the large cases, the ones in which we are the leading authority, what we do is we submit that to the other authorities not through the formal channel, but we first do it informally. So they can see it, they can comment on it, and we can take their comments. And if we are confident that we have gained support for what we want to do, then we put it through the channels formally. And this is something that we have developed over time and there are some DPAs that do this differently, but we try to do the same also when we are not the Lead Supervisory Authority (ibidem).* This attitude is confirmed by the smaller regulators: *"On daily basis, Irish colleagues are uploading some new information about different apps, different IT services and so on. So they are very dedicated to prior consultations. I was very, very impressed with their work and how they deal with these big texts and how they deal with this prior consultation. And they are always informing us about everything" (Croatian Official, 2024).* The opinion of other High Position Regulators is lacking (or opinions about them); nevertheless, as highlighted in the quantitative part, most of them utilize these informal channels on a large scale. This, combined with the overall acceptance of the system, suggests that they are indeed behaving in such a manner.

Moreover, the entire GDPR system is founded on the idea of autonomy of the supervisors, which is key to understanding both the importance of the High Position Regulators, who simply have autonomy over more significant markets, as well as the acceptance of this situation – alongside the aforementioned EU-level factors – by smaller regulators. Hence, while the unequal influence on the EU privacy framework by High Position Regulators can be discussed, their impact on the respective jurisdictions of other DPAs is minimal, as explained by the Portuguese official: *"It is important to act on evidence and not just on social alarm. So the Spanish or any other DPA should not do something just because the other one did" (Portuguese Official, 2024).* This is confirmed by the Croatian Official: *"For us, the role models are Netherlands, Germany, Italy, especially for me, especially Italy. I like their way of enforcement and the way of how they understand the importance of privacy. And also Ireland of course, but in some cases, we may have different views. Different views, of course, for me personally there are role models, but it is not that every time I will see a decision from CNIL[61], I will agree with it completely" (Croatian Official, 2024).* In this comment, a crucial mechanism within the network can be observed. Various regulators indeed exhibit different "ways of enforcement," which may align more or less with individual values and understandings of privacy, both on individual and collective levels within different organizations. Here, one of the key components

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[61] The French DPA.

of the network is illustrated: connecting professionals who exchange and share opinions on regulated matters.

Finally, as has been emphasized, the priorities and behavior of DPAs are primarily determined by their national environment. The best description of this was delivered by the Estonian Official, who at the same time made a similar remark on the possible way of informal influence as their Croatian counterpart: *"On LinkedIn there are lots of accounts of the data protection authorities. It's a very good professional level. And of course, I'm looking at what others are talking about. And of course, the communication teams of other authorities or the EDPB, for example, are very good. They have lots of resources and it is interesting to see, but does it influence? Maybe, of course we share their materials if there is something new, that nobody has ever heard or when there are some significant European court decisions for example. But I am not sure, is it the case. Because you know, at the end of a day we are still in Estonia, we have Estonian problems and this is our main purpose"* (Estonian Official, 2024).

Conclusions

This analysis, by using both quantitative and qualitative methods, established a number of findings.

Firstly, various DPAs indeed exhibit distinct patterns of behavior and maintain different positions within the network due to their institutional environments and characteristics. These factors also lead to either voluntary or involuntary prioritization of issues among them. Consequently, different regulators possess varying degrees of influence in the networks, contributing to the shaping of the general EU-wide privacy and data protection landscape. The most significant elements determining the actual choice of priorities and influence include:

1. Internal factors, primarily the level of resources:

   At the national level, the lack of officials results in overwhelming the regulator with low-scale cases, hindering the development of more strategic approaches to paramount issues such as AI. This is a crucial limitation due to proactive and flexible nature demanded from the regulator by the sector that constantly evolves given rapid technological changes. Insufficient resources render such efforts impossible. Consequently, better-funded regulators not only handle more large-scale cases more frequently but can also afford establishing additional units responsible for preparing strategies and conducting proper research and analyses. These factors naturally cultivate a level of expertise beyond the scope of smaller DPAs.

   On the transnational level, limited resources translate into fewer officials participating in the works of the EDPB's subcommittees. Moreover, it places additional burden on those present in Brussels, who may need to engage in multiple committees simultaneously. Consequently, smaller regulators often cannot participate in all working groups and when they do, they are frequently confined to providing opinions on propositions made by larger DPAs. These factors naturally affect the influence of particular organizations. This is confirmed by quantitative analysis and a strong direct correlation between the Position and Resources score. The lack of correlation with Activity and Position indicates that, ultimately, relative numbers are unimportant. If a country wishes to have a higher impact on the EU privacy landscape, it must commit serious resources to this goal.

2. External factors, mostly the structure of their economy, but also legal and social elements:

   The freedom to choose particular targets of regulation is simultaneously constrained and facilitated by the one-stop shop mechanism. Countries with similar institutional and economic environments tend to have a more similar distribution of fines across sectors, as demonstrated by the quantitative analysis. Moreover, economic factors significantly influence social ones; for example, the presence of numerous SMEs on the market may

lead to many data controllers lacking sufficient knowledge and awareness, exacerbating the effects of overloading the regulator with unfounded complaints or requests. The one-stop shop mechanism, together with the consistency mechanism, enables collaboration with other DPAs on cases that would normally fall outside the regulator's scope. However, these possibilities are again limited by resource constraints, as overloaded and understaffed organizations cannot fully utilize this mechanism. Thus, the one-stop shop mechanism broadens the DPAs' scope of interest only when they are adequately funded.

Legal factors are crucial, directly determining regulators' behavior patterns. National legislation can exacerbate the regulator's workload, influencing resource allocation, or compel the regulator to adopt unorthodox approaches not necessarily intended by the GDPR, particularly regarding the necessity of being proactive and employing measures other than fines.

The most important social factors revolve around awareness and knowledge among both data controllers and data subjects, enhancing the impact of internal and external factors as described. While the notion of regulatory culture seems to influence specific behavior patterns, the analysis only uncovered traces of it. Therefore, no specific conclusions can be drawn in this regard. Elements of regulatory culture discovered in research were mostly associated with the apparent existence of regulator profiles, shaping their approach or mindset ("thinking in a specific way"), and the influence of the judiciary on regulatory conditions (mainly freedom to take more decisive measures and the demanded level of detail for the investigations).

Secondly, these differences must be understood within the highly autonomous framework of the GDPR. High Position Regulators primarily owe their status to the fact that they regulate the most important markets, as demonstrated earlier. However, while their influence is clearly visible on the European level, it may not be as pronounced on the national level. Informal influence may occur through professional contacts, expertise, and information sharing, but it is not necessarily significant for regulators acting within their respective jurisdictions.

Thirdly, the entire system is legitimized by the existence of the EDPB, which serves as a central point of the network, especially given the relatively easy Europeanization of issues. While national differences are reflected in the Board's daily activities, with High Position Regulators exerting more influence on the preparation of guidelines and opinions, the formal equality of all members is crucial for legitimizing the system in the eyes of smaller regulators. Moreover, formal measures such as voting should not be seen solely as a legitimating tool but also as a counterbalance to the inequality that naturally arises in informal interactions.

Fourthly, at least some High Position Regulators seem to be aware of their role and tend to act accordingly, to some extent transcending their national interests. While the differences in position among particular countries are well-known to all network participants, it appears that greater position naturally entails more responsibilities of both formal and informal nature.

Particularly crucial is the informal aspect, as High Position Regulators, as suggested by both quantitative and qualitative analyses, genuinely seek to share their resources with other regulators and garner support for their approach to handling cross-border cases.

As a result, the network is stable and accepted by its members. These three notions – the independence of regulators, the ease of Europeanization of cases with very equal formal measures adopted at the EU level, and the behavior of at least some High Position Regulators – somehow mitigate the differences in influence among particular DPAs stemming from the factors mentioned above.

Recommendations

At the most general level, this analysis underscores the significant differences between regulators, highlighting a crucial aspect of the EU privacy landscape and, to some extent, the EU digital market. In both cases, we confront a highly decentralized and non-uniform phenomenon. Despite efforts to harmonize regulatory actions, their enforcement remains heavily influenced by local institutional environments, resulting in inherent inconsistencies. Moreover, these differences translate into varying levels of influence and position within the network.

However, taking the second step in formulating recommendations necessitates considering the actual situation and the range of possible options. Firstly, it is not feasible to truly change the aforementioned model of inconsistency, as doing so would require fundamentally altering the character of the entire Union. Secondly, the current decentralized model appears to be accepted by its members and is further legitimized by significant successes, particularly notable cases against Big Tech companies in the past. Therefore, the following recommendations acknowledge the reality as it stands and focus on introducing changes to the existing model rather than proposing a new one.

Furthermore, although formulated in the context of the GDPR, these recommendations are applicable to any similar network, with a particular emphasis on the DSA and AI Act system, implementing an identical structure of the Board grouping the regulators.

Policy Recommendation 1: Leveling the Field and Boosting Efficiency

Recognizing the crucial role of resources in enabling the network to effectively fulfill its functions, it is imperative to address existing inequalities and enhance overall efficiency.

At the national level: Governments should acknowledge that resource allocation significantly impacts DPA's capabilities. To address this, two types of action are proposed. Firstly, governments should engage in dialogue with regulators to reassess additional tasks imposed on DPAs by national laws. Tasks outside the scope of the GDPR, such as small-scale cases or repetitive procedures, should be removed from the regulator's mandate. Secondly, governments should recognize that their influence in shaping the EU privacy landscape is directly correlated

with the number of officials representing them in the EDPB. Therefore, a target of maintaining a dedicated team of at least five officials per country should be set, which should allow for participation in at least half of the EDPB subgroups.

At the EU level: The EDPB should be endowed with more independent resources, particularly in terms of specialists not directly tied to Member States, with a logical option being to enhance the role of the European Data Protection Supervisor. This approach aims to achieve three main goals. Firstly, it seeks to increase the efficiency of the EDPB's work, crucial for effective harmonization and prompt responses to emerging challenges. Secondly, it aims to reduce disparities among countries by placing greater responsibility for preparing propositions on EU officials, based on input gathered from member states. This shift should decrease differentiation between groups preparing propositions and those merely commenting on them. Finally, specialists pooled at the EU level should closely collaborate with smaller DPAs, providing expertise and additional resources as needed. This collaboration should help diminish differences among regulators and enable smaller DPAs to focus on broader issues despite limited funding.

Policy Recommendation 2: More Proactive Solutions

Addressing the combined negative effects of social factors and lack of resources, particularly the awareness and knowledge among the population and data controllers, requires proactive measures beyond merely building awareness. Solutions such as automatic generation of privacy policies (as seen in Croatia), databases on the use of private data by the public (as implemented in Estonia), or properly designed complaint forms (as utilized in the Netherlands) should be promoted.

At the national level: Regulators should clearly identify their challenges and develop anticipatory solutions. A significant challenge faced by many regulators is the overload of complaints and requests. Therefore, implementing forms and databases, as mentioned, appears to be the most effective approach. Complaint forms should require clear statements indicating that complainants have exhausted all other available avenues, and for requests, redirect citizens to relevant databases or materials before official involvement. Further development of databases to provide citizens with the information on the use of their data, rather than generic information on the topic, is also recommended. Adequate resource allocation by the government is essential for the successful implementation of these recommendations.

At the EU level: The EDPB should coordinate the collection of best practices and formulate guidelines in this regard. Centralized coordination at the EU level can ensure consistency and effectiveness in promoting proactive solutions across member states.

Policy Recommendation 3: Acknowledging Prioritization

This analysis underscores the natural and common occurrence of prioritization among regulators. However, the current process is too chaotic, lacking proper analysis and reflection,

and often resulting in an ad hoc adaptation to particular circumstances. To replace this retroactive behavior with proactive strategies, the following recommendations are proposed:

At the national level: Regulators should conduct thorough analyses of all factors mentioned in this analysis and their impact on their activities. Specifically, they should establish profiles of the most prominent data controllers they deal with, analyzing any specific needs or challenges related to them. For example, if a particular sector is heavily regulated by other controllers, regulators may consider planning joint operations. Additionally, they should assess whether violations are due to lack of knowledge, lack of prioritization, or other factors. Regulators should clearly articulate the actions they expect from data controllers, considering these details. Furthermore, they should establish general national goals related to privacy and data protection. These analyses should be formulated into proper regulatory strategies, partly for communication with the public and other regulators, and partly for internal use. This approach will enhance the readability of the EU regulatory framework, making it easier for data controllers to comply with the law and for DPAs to cooperate and effectively prioritize their actions, maximizing their regulatory potential by actively acknowledging the characteristics of their environment.

At the regional level: It is recommended to foster closer cooperation among countries within the same regions. The analysis has revealed that there are similarities in the regulatory environments of different countries within the same regions. Therefore, regional cooperation in setting regulatory strategies would be beneficial, allowing both sharing of similar experiences and good practices among neighboring countries, as well as coordinating strategic goals regarding similar categories of data controllers.

At the EU level: To ensure that national strategies enhance collaboration within the network, the EDPB should develop guidelines for a common structure and character of these strategies. National strategies would also help set common goals more efficiently at the EU level by the EDPB.

Policy Recommendation 4: Acknowledging the Scale

The only recommendation that would significantly modify the GDPR system, albeit presenting tremendous potential challenges in implementation, is the clearer handling of EU-scale cases. A modification of the one-stop shop rule should be made for cases of European importance, involving specific categories of companies with particularly strong influence on citizens' lives. A mechanism similar to that used in the Digital Markets Act could be adapted for this purpose, to identify a special category of large companies whose activities are mainly cross-border and whose establishment in Europe is mostly formal, with the actual decision center situated outside of the EU.

Such cases should be automatically handled by the EDPB, with investigations conducted by either the Commission, EDPB staff (requiring implementation of Policy Recommendation 1), or officials delegated by national regulators, selected through a voting procedure. This solution

would ensure that EU-level cases are treated as such, with all aspects of the process, not just the final decision, handled at the transnational level.

Final Remarks

The goal of this thesis was to present the emergence and characteristics of the new model of regulation, along with the multitude of factors determining it. However, the main limitation of this work is its broad overview of the framework, showing the general mechanisms governing it without a detailed evaluation of all factors influencing regulators' actions. A more thorough analysis of each specific national case would be needed, which exceeds the capabilities of one researcher and one paper.

Furthermore, the regulatory network around the GDPR is the result of an organic process of gathering different institutional elements, making it applicable as an example of EU regulatory agencies where similar institutional backgrounds are present. Therefore, the most natural sphere for applying its conclusions are other similar digital regulations, such as the DSA or AI Act, which deal with similar markets and are influenced by a similar set of institutional factors.

This research aims to contribute to a better understanding of the emerging digital regulatory framework in Europe. The study demonstrates that controversial mechanisms like the one-stop shop rule and resulting inequalities among regulators are more complex and paradoxical than often believed.

Additionally, the differences between regulators reflect differences between Member States. Amidst the growing competition between technological centers and the GDPR's success in harmonizing privacy rules, it is essential to remember that the existence of such an effective decentralized system also signals significant internal inconsistencies. These challenges, not only regarding the notions of privacy and data, but the general digital regulations, Europeans must face, and the constant evolution of the regulatory network governing the sector is indispensable for that.

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Appendix 1. Variables used for building the Profile Index

RESOURCES	Explanation
BUDGET_22 Budget of the organization (2022)	Data for 2022 are used as the most reliable.
GEN_BUD_22_P Budget of the organization as a proportion of the state's expenses (data for 2022) The only variable constructed with data not coming exclusively from the EDPB (data on state's expenses come from Eurostat)	Data for 2022 are used as the most reliable. Including one proportional variable is s compromise between the opposite narratives of including only the relative or only absolute values in such cases.
STUFF_X Number of Stuff (FTE)	
SUFF_FR Sufficiency of the Resources (Financial Resources). Self-declared by the DPA in the survey conducted by the EDPB	Described as satisfactory or non-satisfactory by the regulators. Satisfactory was coded as 1, non-satisfactory as 0. Then, values were added to the deciles calculated for other variables.
SUFF_TM Sufficiency of the Resources (Technical Means)	Described as satisfactory or non-satisfactory by the regulators. Satisfactory was coded as 1, non-satisfactory as 0. Then, values were added to the deciles calculated for other variables.
SUFF_HR Sufficiency of the Resources (Human Resources)	Described as satisfactory or non-satisfactory by the regulators. Satisfactory was coded as 1, non-satisfactory as 0. Then, values were added to the deciles calculated for other variables.

POSITION	Explanation
DD_LSA Total Number of Article 60(3) Draft Decisions per LSA	Frequent decisions issued as an LSA are understood as a sign of an influence of the agency - who is more often acting as a regulator in transnational cases. Data for 2024

EDPB_RES_24 The Resources allocated to participating in EDPB activities	Higher number of employees is believed to be correlated with a higher influence in the EDPB Data for 2024
CB_AS_LSA Total number of complaints related to cross-border cases resolved through an Article 60 decision of the DPA 2018)	As for DD_LSA
FMA_R Total number of Article 61 - Formal Mutual Assistance procedures requests received	More requests are understood as a sign of importance of the regulator within the network - it has something valuable to share (information, position vis a vis the compliant or controlled entity, etc.). SEE FMA_S

ACTIVITY	Explanation
STAFF_COOP_P People (FTE) working on the issues devoted to the cooperation and consistency mechanism as a percentage of all employers	It shows who is prioritizing cooperation activities (in general) Data for 2024
STAFF_EDPB_P People (FTE) working on the issues related to the EDPB as a percentage of all employers	It shows who is prioritizing cooperation activities (within the EDPB) Data for 2024
OWN_INV_R Total number of own-initiative investigations as a ratio of all complaints received	Relying not solely on complaints and similar mechanism but also conducting investigations out of DPA's own initiative shows that the agency is not only retroactive.
VMA Total number of Initiated Voluntary Mutual Assistance procedures	Initiating VMA is treated as an activity on the international level, as it applies mostly to information sharing in situations different than standard cross-border processing, where such procedures are mandatory. For the same reason, it is not classified as Position variable (it may be used just to receive more information for the local case) NOT USED AS A SEPARATE VARIABLE (SEE COAC_COMPL_R)
FMA_S Total number of Article 61 - Formal Mutual Assistance procedures requests sent	Same as for VMA. The difference is that for formal procedures more strict deadlines apply. In both cases (FMA and VMA) only initiated procedures are taken into account. This way, it actually shows activity (who is asking for additional information, consultation, etc.). Accordingly, the FMA received are treated as a sign of position (who is more frequently asked for help).

	NOT USED AS A SEPARATE VARIABLE (SEE COAC_COMPL_R)
COAC_COMPL_R VMA + FMA_S/COMPL_R	To actually measure activity, VMA and FMA_S are summed and treated as a ratio of all complaints received. It is not a perfect solutions (complaints are primary, but not the only base for DPAs' activity), nevertheless it is allowing us to look at these procedures in the context of the actual scale of activity of the organization.

PREF. FOR NOT FINES
ACTION_FINES_P Fines as a percentage of all action taken (Total number) NOT USED AS A SEPARATE VARIABLE (SEE PREF_FOR_NOT_FINES)
ACTIONS_NOT_FINES_P Settlements and corrective measures as a percentage of all actions taken (Total number) NOT USED AS A SEPARATE VARIABLE (SEE PREF_FOR_NOT_FINES)
PREF_FOR_NOT_FINES the difference between ACTION_NOT_FINES_P and ACTIONS_FINES_P

PREF. FOR INFORMALITY	Explanation
COAC_FMA_PFMA_S FMA (sent), as a percentage of all mutual assistance procedures initiated (VMA + FMA_S)	Only FMA_S are used, as I have data only on VMA initiated, so if I want to compare FMA and VMA I cannot used data on received FMA, as I don't have data for VMA received. NOT USED AS A SEPARATE VARIABLE (SEE PREF_FOR_VMA)
COAC_VMA_PVMA VMA initiated, as a percentage of all mutual assistance procedures initiated (VMA + FMA_S)	NOT USED AS A SEPARATE VARIABLE (SEE PREF_FOR_VMA)
PREF_FOR_VMA the difference between COAC_VMA_P and COAC_FMA_P	

Appendix 2. Categorization of countries for particular elements of the Profile Index

GROUP	Resources	Position	Activity	Preference For Measures Other Than Fines	Preference For Informal Procedures
Low	0-15	0-15	0-15	0-3	0-3
Medium	15-25	15-30	15-25	3-7	3-7
High	25-31	30-40	25-36	7-10	7-10

Appendix 3. Significant Correlations

Type	Variables	Correlation	P-value
Pearson	GDP and the Number of Complaints Received	0.90/0.81*	0/0
Spearman	GDP and Resources	0.59/0.53	0.0063/0.0224
Spearman	Position and the Number of Unicorns	0.71	5e-04
Spearman	Resources and Position	0.72	2e-04
Spearman	GDP and Activity	-0.6/-0.55	0.0051/0.0169
Spearman	Activity and Preference for Measures other than Fines	0.45	0.0395

*The second value is calculated for the sample without Germany and France

Appendix 4. Categorization of Countries into Regions

Region	Composition	Explanation
Central-Eastern Europe (CEE)	Czech Republic, Hungary, Poland, Slovakia	CEE according to the Eurovoc (Eurovoc, 2024) minus the Balkan countries. The 2004 enlargement
Southeast Europe (SEE)	Bulgaria, Croatia, Romania	Balkan countries according to the CIA World Factbook (CIA, 2024) The 2007 and 2013 enlargement
Northern Europe (NE)	Denmark, Finland, Iceland, Norway, Sweden	NE according to the EuroVoc (ibidem) minus the Baltic States
Baltic Countries	Estonia, Latvia, Lithuania	Separated from both the CEE and NE due to specific common historical experience (former Soviet Republics) and close bonds with each other. The 2004 enlargement
Western Europe (WE)	Austria, Belgium, Germany, France, Ireland, Luxemburg, Netherlands	Western Europe according to the EuroVoc (Eurovoc, 2024)
Southern Europe (SE)	Cyprus, Spain, Greece, Italy, Malta, Portugal	Southern Europe according to the EuroVoc(ibidem)

Public Policy Master's Thesis Series

Mapping Enforcement: The role of national and European regulatory agencies and their institutional environment in the process of enforcing the European Law. The GDPR case.

Wiktor Samek

Abstract

The new model of digital regulation has emerged in Europe. It is resulting from a decades-long evolution of the character of regulatory agencies at the national and European levels. This culminates in the new system of a transnational regulatory network. This paper sheds new light on the characteristics of such networks by examining the GDPR. It identifies different roles and profiles of the regulators within the network and explores specific institutional factors that determine it. In a process, it fills important gaps in research by utilizing quantitative methods to analyze a variety of regulators' behaviors, not limited to their fining practices and by focusing on the institutional environment of the organizations, to seek true reasons for their actions, thanks to the interviews conducted with the regulators themselves. Key findings confirm significant differences in influence among regulators at the European level, as well as different models of behavior on the national one. Despite these differences, the autonomy-based framework for regulation, coupled with effective mechanisms for Europeanization of critical issues, open behavior from the most influential regulators, and formal mechanisms promoting equality, contribute to the stability and legitimization of the network in the eyes of its members. Based on these findings, recommendations are made to enhance efficiency and equality, promote proactive measures, strategic coordination, and suggest some modifications to the one-stop shop mechanism.

Key words

GDPR, Regulatory Network, Institutional Environment, Regulatory Agencies, Data Protection, Privacy