

–GOVERNING THROUGH THE DISCOURSE ON COOKIES–

HOW IS THE DISCOURSE ON COOKIES ILLUSTRATED IN POLICY PAPERS OF THE EUROPEAN UNION? AN ANALYSIS OF THE COOKIES-DISCOURSE THROUGH THE LENS OF GOVERNMENTALITY.

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List of abbreviations:

Article 29 Working Party – A29

Contextual Integrity – CI

Critical Discourse Analysis – CDA

European Commission – EC

European Union – EU

General Data Protection Regulation – GDPR

VP – Vice President

Abstract

This thesis interrogates the European discourse on cookies through a governmentality framework with a focus on surveillance techniques and privacy in the digital age. Employing a textual, critical discourse analysis of documents published by the European Commission, this thesis aims at answering the following research question: “How is the Discourse on Cookies illustrated in Policy Papers of the European Union since the implementation of the Directive 2009/136/EC?”.

During the analysis, three major topics guiding the discourse were examined and will therefore guide the analysis chapter: informed consent, communication, marketization. The theoretical approaches of the theory of governmentality, accompanied by the notion digital surveillance will also influence the findings/structure of the analysis. This research could potentially be a component that adds to answer the question in which ways the discourse on the surveillance objective has to be changed in order to achieve data protectionists’ goals. Also, it could provide incentives to change behavior online and generate a new approach to intervene in the digital world. Furthermore, the subjacent structures of the discourse could be unraveled and thereby this thesis might be helpful for actors that fight for privacy.

Keywords: digital governmentality – neoliberalism – privacy, cookies – personal data – discourse

1. Introduction

The world finds itself in a situation of change with digitization as the key element that affects our living environment in various areas. While this development has opened up new opportunities in relation to industry and labor, in conjunction with the facilitation of everyday tasks, including sharing and receiving information or knowledge, communication across distance and shopping, it also carries inherent threats regarding the handling of the accumulated data. This gained relevance as the number of revelations concerning the misuse of data by several corporations, intelligence agencies and governments increased (Data Guardian, 2018), which has caused a lack of confidence in these institutions and fueled a debate about data protection outside of expert or political spheres. Especially the very recent scandal concerning unlawful transmission of data by Facebook Inc. towards the data-analysis, campaign and advertisement company Cambridge Analytica (Valdez, 2018) showed yet again the importance of a critical mindset and the need for a decision-based approach regarding companies whose main focus lays in profiting from the accumulation and commercialization of personal data. Since the structures of the digital environment in general relies heavily on gathering and analyzing complex information, makes it difficult to share knowledge about these functionalities to non-specialized citizens, it is mandatory to tackle the issue in a problem-oriented manner, which only includes the analysis of one case. In order to grasp an issue which is understandable and comprehensible without the need of having too much technical knowledge, the case of cookies seems a plausible choice. Cookies are small text files, which are being saved on the users drive when surfing on the internet (Kierkegaard 2005). This shows the crucial relevance of the chosen topic, as it appears in everyday life situation when being digitally active.

Such controversial topics about the digital environment and privacy online produce interest in the field of social science, thus a critical view has been adopted by several scientists over the last decade. Nowadays, those deal with the question whether and in which ways Big Data and Algorithmic Governance pose a threat to citizenship (Best 2010), equality (Taylor 2017), culture (Beer 2015) and strengthen surveillance techniques (Aradau & Blanke 2015, Bellanova 2017, Lyon, 2014, Peacock 2014). While these are very important topics that emphasize the problems awaiting in the future, the special case of cookies as a threat to privacy shows the current situation and has only been made a subject of modern discourse very few times, at least in social science (Kierkegaard 2005, Luzak 2014, Sipiior, Ward & Mendoza 2011, Best 2010). Furthermore, the current discussion focuses mostly on cookies as a technical instrument and structure which can be used to monitor citizens. It has already been central in the discussion that this is problematic in relation to (online) privacy, especially in the discussion about the legal developments, but also connected to the discussion of policies that were implemented in relation to cookies. So far, it has never been realized through a critical sociological perspective viewing discourse as the associated instrument. This is problematized by Bellanova

(2017), who also outlines the aim of this study very briefly:

“A governmentality approach to the digital and its politics can also [...] be seen as a crucial form to problematize both the will to govern through data and the will to govern data. Eventually, this may contribute to bringing to critical scholars’ attention, the role of digital data in shaping digital governance.”

The attempt made here, is to work on such an issue, while not problematizing it as a technicality. It rather aims at elaborating on the discourse about the topic itself and thereof discovering this as a very small scale power relation. Especially recent developments depict privacy concerns associated with online activity and how the gathered data can easily be misused. The need to analyze the European discourse is high, as this is one of the only legal actors, that can and did act in favor of the affected citizens. The analysis aims at showing the narratives portrayed by the EU and therefore may offer ways for citizens and non-governmental data protection groups to (successfully) act within the discourse in the future in order to change the recently portrayed perception and inevitably the legal reality.

The necessity of explaining the functioning, how they could possibly be posing a threat to privacy and inevitably protecting citizens from unlawful use of their data in the form of a sophisticated and comprehensible scientific debate is therefore increasingly high in the current (2018) and forthcoming years. Heretofore, recent research mostly stresses the importance of problems arising with the complex concepts of Big Data and Algorithmic Governance (Bellanova 2017, Taylor 2017), but not the discursive elements of a simple issue such as cookies or other personally identifiable data as one concrete example for the underlying structure of these very issues. On that basis, in core, this paper aims to point out the discourse’s importance in this political environment and eventually answering the following research question: “How does the European Union maintain its governmental power with the use of shaping the discourse on cookies in the digital age?”

In the thesis at hand, it is then aimed at answering this question by means of the theoretical concepts of governmentality and digital governmentality. Hereafter, the interdependence of these concepts and (digital) privacy will be examined, as this states the theoretical foundation on which the analysis is based on. Subsequently to that, the research methods are introduced, which take into account the reasoning of the selected case, as well as the processes relevant for collecting data and lastly the method used for analyzing this data. In addition, the actual analysis of the European Union’s policy papers will be conducted in the order mentioned below: firstly, depicting empirical findings and linking data breach incidents to (potential) policies, moving on to the narrative transmitted by the EU in this discourse and lastly, pointing out the relevance of the theoretical basis directly to statements made and as a result unraveling subliminal discursive structure that can be an instrument of power relations. At last, the conclusions deriving from the analysis will be presented.

2. Theory

Discourse can be briefly pictured as the entanglement of language with societal power structures, which does not solely imply a discussion, but rather the shaping and changing of certain realities through language (Wodak and Meyer, 2008). Thus, in order to understand the basis and context on which this discourse is analyzed on, some theoretical groundwork needs to be presented first. Here, three main concepts, which are important for evaluating the analysis of the cookies-discourse are going to be presented: first, the notion of *governmentality* (Foucault, 1978), which is formerly associated with the globalized world, will be briefly introduced; secondly, an extension and application of this notion to the *digital age* (Han 2017, Dokhanchi 2016, Kaltheuner 2012) is necessarily included here as well. Furthermore, the used theoretical concept of *contextual integrity as privacy* (Nissenbaum, 2011 & Fuchs, 2011) applicable to the digital realm will also be presented. Simultaneously, it will be elaborated on how these notions build a coherent picture to fit the chosen case of cookies-discourse in order to state the insights for this particular research. Using the approach of digital governmentality is allowing to view the cookies-discourse in the light of a particular technique and mechanism used by the European Union to set certain norms, build frames and, in the end, criticize those in relation to their understanding of and inherent threats to privacy. As the aim of this research is to elaborate on the development of the discussion about privacy concerns and surveillance in relation to personal data, discourse is viewed as a potential instrument of governmental technique to control and steer citizens' behavior (Foucault 1978, Pfeiffer 2007, Lemke 2010).

2.1. Governmentality: explaining governmental power structures

The notion of governmentality differentiates massively from what is commonly known as the state; it rather describes a tool to analyze the conceptualization of the historical analogy of the state and its power techniques, structures of governmental techniques, institutions, power relations and how these techniques can lead to the governance of self by steering behavior of citizens (Pfeiffer, 2007). It is hence especially interesting in the case of this research, because it acknowledges language and discourse as a power relation and technique used by the state (or other actors involved in the particular subject matters). These procedures of governmentality as a whole are marked by the use of small-scale power relations (Pfeiffer, 2007), which are enforced through implementing particular mechanisms, that can change over time and due to different types of states¹ (Foucault, 2006). Therein, it is explained how in these different regimes power is portrayed and maintained over time and how this affects the citizens within them (Foucault, 2006). Generally, Foucault grasps power as such is not

¹ Defining every "form" of state and its specific power mechanism would be too extensive for this thesis.

an activity that is perpetrated (at all, but especially not) through repression, but rather an ubiquitous, interchangeable and fluid relation between subjects in everyday life situations (Foucault 1982, 336-339). The question is not about ““How does it manifest itself?” but "How is it exercised?" and "What happens when individuals exert (as we say) power over others?"” (Foucault, 1982, 337). He offers a way to look at the mechanisms of the state differently, or as Walter (2012) appropriately phrases it:

“this tool-box equips us to do something important and quite novel: to understand governance [...] as an eminently practical activity that can be studied, historicised and specified at the level of the rationalities, programmes, techniques and subjectivities which underpin it and give it form and effect.” (P. 2)

Here, the question arises what power is in the perception of theoretical assumption: power is “action upon an action, which changes the possibilities of actions” (Foucault, 1982); it is something, that can offer incentives and can be productive. Power is neither restrictive, nor is it one resource that can be possessed by a subject, rather it is one phenomenon of different categories which inherit the same logic: therefore there are multiple power relations in several situations. Furthermore, it is nothing centralized, but it is ubiquitous and is localized in the small and direct action between subjects and goes through the whole body of society. Power relations always have to be interchangeable and fluid, otherwise one is faced with a force relation; the possibility to resist on an action is necessary. Resistance means in this context, that one does not comply with the affected action of a power relation, this discrepancy between the intended and real action needs to be theoretical and practical possible in order to have a power relation. This moment of freedom has to be at the very least fragmented to the possibility of suicide and this last possibility to resist is existential for this particular theory of power. The described theoretical concepts of governmentality and power relation by Foucault (1979, 1982) connects well to the case of cookie-discourse, because it stresses the importance of local and direct actions between actors and depicts the small-scale character of ubiquitous and international issues. Cookies, and particularly the discourse them, can function as one specific mechanism, that is used by the European Union to achieve a certain aim. This could e.g. include the perception and connotation of cookies (harmful/not problematic), the usage of them or the importance about the topic as a whole.

2.2. Neoliberal and digital governmentality: contemporary governance techniques

While the presented array of conceptualizations refer to obsolete state formations and can hardly be connected to the case of the cookies-discourse the subsequent approach seems to be more

suitable for present-day digitized analyses: the neoliberal art of governmentality². Here, politics is reformed and massively marked by a rise in market control, accompanied by the decline of nation-state control through restructuring governmental power relations by privatized, non-governmental standards and supervision (Foucault, 1979). This process is not exclusive to politics, but rather expands to all spheres of social life – including the subject itself. While the homo-economicus formerly described by Foucault (1979) does not encompass the digitized world and social media, this kind of subjectivity can also be accepted in such surroundings: in the digital realm, the user produces and simultaneously consumes data by shopping, viewing content, but also by solely visiting websites (Dokhanchi, 2016). This does not merely entail the production of data about and traceability of the subject itself, but rather the “homo-economicus participates in the game of “flattening culture,” and hence furthers the pervasiveness of power” (Dokhanchi, 91, 2016) and therefore acts as a stabilizing factor of this very structure. The question arising in relation to the chosen case is whether the use of cookies forces the user to act as a neoliberal and stabilizing subject in the context of digital governmentality, as the only resistance possible in this situation would be the complete withdrawal from the whole concept (internet as a whole). It is to notice, that this type of resistance is actually included directly in the work of Foucault's governmentality, namely asceticism (Foucault, 2006). In connection to this study, further elaboration is needed in regard to whether the discourse about the small power relation functions as one part of the “mechanisms of discipline are at work to ensure that gathering the knowledge of the population, different technologies, and relays of power, are employed to ensure demands of the market and homo-economicus appears as the appropriate subject of power” (Dokhanchi, 2016, 92).

Another approach including the concept of neoliberalism in the notion of governmentality as a central concept is established by Han (2017) in his writings about psychopolitics. He uses the perspective of governmentality as the groundwork to understand surveillances techniques and builds new perspectives on technologies of power in the digital age: "Digitized governmentality provides a framework for theorists to trace the genealogy of the operation of power in the digital age." (Dokhanchi, 2016). He extends the notion of the neoliberal regime in which control of citizens is exercised by mechanisms that deliver only positive emotions (such as aesthetic values or Likes) and thereby normalizes the techniques of the regime quietly. This mechanism aims towards the psyche (psychopolitics), and not the body (Han, 2017, 26). The embedded measurement as a mechanism of control towards the population constitutes one technique of power and contributes to a more efficient art of governing. Thus, measuring population by the use of online behaviour is just another new and efficient way of making them traceable. Later, he argues the presence of a dispositive of transparency,

² As formerly also constructed by Foucault (BOB), but here I refer to an application of that notion directly to the digital age by Dokhanchi (2016).

in which subjects freely devote themselves to a resignation of privacy altogether in order to fully and fastly communicate with each other (Han, 2017, 28). This dispositive makes the mere existence of a surveillance state obsolete, because subjects do not need to be controlled anymore if they decide to present everything of one's own will: "the digital panopticon lacks Big Brother wresting information from us against our will. Instead, we lay ourselves bare voluntarily" (Han, 2017, 39). This is in contrast to Best's (2010) view on the panopticon in the digital age: "Governance of the self, central to Foucault's metaphor of the panopticon, is still crucial: populations, aware that they are always being watched, subject themselves to continuous self-discipline – and discipline each other as well".

2.3. Privacy: more than a virtue?

In connection to the theoretical concepts mentioned above, Han (2017) furthermore questions whether this voluntariness is pursued through free will of a subject or if this constitutes an even more subtle and efficient way of dominion – the digital subject is one of self-exploitation: "[...] it ensures that individuals act on themselves so that power relations are interiorized – and then interpreted as freedom. Self-optimization and submission, freedom and exploitation, fall into one." (Han, 2017, 28). This is perpetrated by the application of what he calls smart-politics: not be denying or disciplining, but be pleasing, offering and hence addictive. One suitable example regarding this "free" self-exploitation without the need of a Big Brother is the use of cookies **EXPLAIN HERE WHY**. Bellanova (2017) on the other hand rejects this idea of the transparency dispositive and asserts, that data protection is still at stake in today's society: "whenever data protection is mobilized by actors, what seems to be at stake is the question of 'how not to be algorithmically governed *like that*'" (2017, 330). She (2016, **PAGE**) furthermore summarizes explicitly why privacy issues arise with the use of cookies: "Digital data are translations of people, things, behaviours and relations, into information that can be stored, computed and visualized by computers.". In order to grasp this idea in the context of the analysis, one of the multiple understandings of privacy has to be decided on. Generally speaking, privacy is understood as a vital feature of human existence which leads to the "feeling of self-control, relaxing away from others and personal autonomy" (Stuart & Levin, 2017, 694). This common definition is not sufficient in the digital realm and concerning cookies, because the only possible decision is to "freely" give or withhold consent. Also, for research purposes, a more elaborate definition is needed and thus the privacy notion established by Nissenbaum (2011) is used. She introduces the idea of *contextual integrity*, which inherits autonomous management of portraying different parts of identity, in different situations and to different people (Nissenbaum, 2011). The concept basically includes:

"analys[ing] changes of information processes in specific contexts [...] flags departures from entrenched privacy practices as violations of contextual integrity, [...] analyzes

if these new practices have moral superiority and if the privacy violation is therefore morally legitimate” (Fuchs 2011, 232).

This theoretical attempt of privacy does not only include the mere definition “privacy as a right to control information about oneself” (Nissenbaum, 2011, 34) and therefore allows me as a researcher not to limit myself on privacy as a virtue, but also use it as an analytical tool that can be used to examine whether privacy is given in certain situations. She emphasizes that privacy online should include this discussion in specific contexts and clarify “what information websites are allowed to collect, with whom they share it and under which conditions it can be shared” (Nissenbaum, 2011, 32). Deriving from her definition of the concept of contextual integrity, she likewise argues that a strict differentiation between on- and offline privacy is obsolete, because:

“a central tenet of contextual integrity is that there are no arenas of life not governed by norms of information flow, no information or spheres of life for which “anything goes.” Almost everything—things that we do, events that occur, transactions that take place—happens in a context not only of place but of politics, convention, and cultural expectation.” (Nissenbaum 2011, **PAGE**).

With the current use of cookies, privacy (as the concept of contextual integrity) is noticeably threatened and violated. In the context of digital governmentality, it can be argued whether or not this violation is morally legitimate: Bellanova (2016, 2017) would argue, that there still exists resistance by data protectionists against these measures (see quote above), this view is also amplified by Fuchs (2011) who declares that in modern societies withstanding against this is important because it threatens people's everyday life as a citizen (p. 293). In contrast to this, Han (2017) clearly neglects the idea of privacy altogether as a social norm in the digital age. The reasoning of Stroo (2013) in respect to Foucault postulates that surveillance is an instrument of (digital) neoliberal governmentality and the neoliberal subject/homo-oeconomicus does neither oppose, nor freely accepts this state: “The neoliberal citizen soldier is aware he is being watched, or could be watched, but accepts the gaze as an incentive to be better—to prove his worthiness for inclusion in society, and he trusts it to weed out the unworthy.” (p. 14); Dokhanchi (2016) intensifies this and affirms a strengthening of the neoliberal structures by the homo-oeconomicus (see quote above). With reference to the above stated theoretical concepts, the successional analysis will particularize the importance of contextual integrity in the context of today's digitized living environment and investigate the EU's position on that. Furthermore it will be investigated whether the stated discussion can also be found in the EU policy discourse or if the mentioned key aspects are included as well.

3. Methods

A study which understands itself as critical and aims at unfolding normative structures and subliminal power relations needs more than merely including a heterodox theoretical background. It is vital for scientific work in general to explain and justify the choices made, also in relation to attempted method and this especially applies to textual analysis because of the high subjectivity bias accompanying this research method (Saldaña 2013). This evidently encompasses the case chosen for the analysis, along with explaining which method has been used for collecting the data and concludes with outlining the approach used to analyze this data. Adhering a structure in this method within every process mentioned is essential, but particularly applies for the conduction of the analysis itself. The focus therefore lies on presenting the procedural steps taken within the critical discourse analysis. For reasons of transparency and reproducibility, all steps mentioned above will be explained in the following chapter and will thus contribute to outline the used research methods, which fully aim at obtaining the answer to the research question and possibly result in finding other relevant observations as a side-benefit.

3.1. Case selection: the cookies-discourse

The case on which this study is based is the discourse on cookies as established through different actors of the European Commission, especially divisions specialized on data protection (for further explanation, see next chapter). Therefore, this study is based on the European policy discourse about cookies. The cookies-discourse was first established in 1995 when the ePrivacy directive was implemented. The time frame from 1995 to 2009 was excluded from the analysis because the discourse was severely marked by technical discussions and due to this prioritization, it would have mismatched the aim of examining reactions of the European Union towards data breaches and the use of this discourse as one particular governmental technique. Additionally, it would exceed the extent of a bachelor thesis per se. Thereby, the time frame used for the analysis starts with the implementation of Directive 2009/136/EC in November of 2009, this is perceived as a key event due to the fact, that this was the first directive which directly included cookies in the legal context. The end of the data is set to the beginning of May this year (2018) and will therefore only briefly touch upon the discussions about the General Data Protection Regulation.

The EC was chosen as the actor of the discourse because it functions as the executive instrument of the EU, acts therefore as the governing party and represents other dominant actors of the discourse in their papers. It decides on EU policies and has the exclusive right of legal proposals. The decisions made are legally binding for every Member State in the union. As in this research the focus lies on data protection, the selected documents are mainly published by the Article 29 Working Party of the EC, which is an independent advisory council that works on questions of data protection

(Directive 95/46/EC, 1995). It was established through the introduction of the Art. 29 Data Protection Directive in 1995 and was exchanged by the European Data Protection Board when the GDPR (General Data Protection Regulation, May 2018) was adopted on May 25th (Article 94 Repeal of Directive 95/46/EC, 2016). All actors are directly related to or part of the EC as well.

The term cookies refers to the implementation of a small piece of information on the users device, when a website is visited (Luzak, 2014). They are used to remember the users' preferences, record items placed in a shopping basket and carry out various other tasks based on how that person uses the site (European Commission, 2016). Cookies as such, but especially third party cookies, which can connect the users' behavior over several websites, can be used as tracking methods, because they are able to record every step taken online. A linguistic or discursive explanation for the use of the term *cookies* does not exist, there are only certain myths around the origin of the terminology, which are irrelevant for this study.

3.2. Method of data collection

In the context of this thesis, the focus lies on the discursive development of the phenomenon of cookies, a discourse analysis has to be conducted. Such abstract elements as language, views or policies and the used theoretical concepts can hardly be measured in a quantitative way, since there is no consensus on the definition of these notions and measuring unclear concepts would not lead to valid conclusions. Hence, a qualitative analysis of the used language and its subjacent structures is fitting and appropriate. The method of research design is used for the discourse analysis. As a result of the extensive work that is needed in order to fully understand the discursive elements and its underlying power relations, a sufficient study can only be conducted on the basis of one specific case. As this research is based on textual analysis and therefore not based in a pre-existing dataset, its conclusions will thus be drawn on the basis of observations and interpretations on European policy documents. The data was derived from the archived website of the EC that stores all publicly available documents on data protection³. Every document including the term cookies was selected and due to the lack of data, it was partially extended to the term of personal data. The specific documents were found by adhering to the following scheme: using the search term "cookie" or "personal data", as well as skimming every document dealing with the topic of data protection and in the process of analyzing, deciding on the relevance for this study of each and every document. At the beginning, the dataset consisted of approximately 87 documents, but due to the fact that some of them were only dealing with "direct" personal data (addresses, phone numbers and names) they did not correspond the criteria for the analysis at hand. Also, documents related to justice and crime and cooperations between the EU and other governments, mostly the US, were excluded because they only dealt the legal basis

³ <http://europa.eu/rapid/search.htm> and http://ec.europa.eu/justice/article-29/documentation/index_en.htm

concerning the cooperation and were not relevant for this analysis. In the end, a total of 22 documents showcased to be relevant for this study and those were subsequently included in the analysis below⁴.

Several types of documents are included in the analysis, such as Opinions on amendments of legal documents, Joint Statements of the European Data Protection Authorities, Speeches by Reading and Junker, Press releases as a reaction to data breaches or Working documents concerning legal analyses and recommendations towards the European Union. It only includes two documents with a legally binding character, namely the EU Charter of Fundamental Rights and the “Cookie-Directive” Directive 2009/136/EC of 2009. Using different types of data and including several types of actors will hopefully allow me to grasp the general opinion of the executive branch of the European Union and help me to analyse the development accordingly. The reason for choosing the policy discourse consists mainly out of three aspects: 1. by examining the opinion of an supranational governmental actor, one can easily apply the chosen theory and draw conclusions on and 2. the EC is the executing organ of the EU and therefore very important for establishing new data protection measures, 3. when tackling issues in the digital age, it is important to neglect the ides of national borders partly, because the web is influenced by internationally active organizations and companies. All of the points mentioned also influenced the choice of analyzing the EU's policy discourse as well. The collected data links to the theoretical assumption inasmuch as the EC functions as one of the governmental institutions and has a regulatory character. It sets the basis for legal boundaries within the EU and therefore directly establishes power/force relations for its citizens, corporations and other states. This is not exclusively done by restriction, but also through setting and emphasizing the importance of diverse topics and leading political discourses internationally. Furthermore, the EU can be seen as an international forum that spreads their ideas, views, beliefs and perceived problems within its union, as well as worldwide. Consequently, the policy discourse within the EC and the used data fulfils all requirements of a suitable case to answer the research question.

3.3. Method of data analysis

The chosen method attained to the analysis of the collected data is the critical discourse analysis inspired by the methodological procedures established by Jäger (2009). On the premise that the various topics within social science cannot be generalized, this method does not provide a fixed framework to work with (Wodak and Meyer, 2008), but rather aims at encouraging researchers to decide for themselves, which operationalization needs to be used for the specific cases. The main objective of this method is to examine the link between language and meaning, hence the relationship

⁴ Due to the fact, that there were several topics discussed in the documents, they were sometimes only partly useful for the analysis. Nevertheless, the content from all of them contributed to understand the discourse.

between discourse (in a broader sense) and power relations in all kinds. This entails the question of how discourse can simultaneously produce, hide and stabilize power relations, hegemony, cultural, social and unequal structures (Wodak and Meyer, 2008). The analysis is mainly guided by the chosen theoretical concepts and the operationalization in the form of the coding scheme deriving thereof. Each of the three theoretical concepts contain three items deduced from these notions. Every item encompasses two codes elucidating the items of this notion. The operationalization for this analysis is therefore influenced by the theoretical notions chosen for this study, thereunto by the prior knowledge and worldviews of the researcher herself. As the codes are only mentioned indirectly in the data and do not qualify as in-vivo codes (Saldaña 2013), thereby the application of the codes is highly subjective. One also has to take into consideration the fact, that applies for discourse analyses in general: the findings cannot be applied to other discourses. Taking this into consideration, the coding scheme suitable for the theoretical framework and case introduced will is shown below:

Concepts	Items	Keywords
Governmentality	Genealogy	Development, forms of states
	Mechanisms/Techniques	Laws, prohibition, social control, self control
	Affected area	Territory, Citizens
Governmentality in the digital age	Neoliberal Governmentality	Consumerism, Commodification
	Psychopolitics	Digital citizen, Tracing, Scanning,
	Smart politics	Positive emotions, Offering choices
Privacy as contextual integrity	Information flow	Identity, Personality
	Management	Autonomy, Decision
	Moral Legitimacy	Personal standards, Choice

The first steps, which are also part of the Jägerian (2009) analysis as such, were already conducted in the preceding parts (theory and methods). Those steps include the explanation of the context in which the discourse is held (partly done in the introduction and theory) and should also include the historical and current debate likewise (Jäger, 2009, 190f) – at this point, the method used on the study slightly deviates from the Jägerian analysis, because the analysis only refers to either data breaches or the theoretical assumptions, but not the development of the discourse as a whole. Within the second step, the material structures of the discourse has to be examined, which means categorization of each paper of place of publishment, author etc. (Jäger, 2009, 191). This step was already accomplished in the methods sections prior to this one and a detailed description of every document can be found in the Appendix 1; therefore this part of the analysis is successfully finished.

The brief approach in the actual analysis consists of the following steps: subsequently to the preceding parts, statements which are “typical” for the discourse have to be summarized and structured into the main focus and sub-sections of the discourse (Jäger, 2009, 193). This includes the depiction of statements made directly after data breaches (Part one of the analysis), as well as the utilized narrative by the EU. The last step of the Jaegerian analysis includes a detailed analysis of the institutional frame, linguistic-rhetorical means and contextual-ideological statements (Jäger, 2009, 175f). At this point the study at hand deviates again: while analysing it became evident that the EU maintains a neutral language in terms of rhetorical means, therefore this step of the analysis is excluded completely, because it would not lead to any useful outcomes. Nonetheless, this neutral language is then inspected closely in connection to the theory and the derived coding scheme, in order to unravel possible hidden meanings. Also, this research cannot be viewed as an ideological critique, as this is another research method on its own. Thus, it only partly touches on the topic of analyzing ideological statements.

Recreating the European policy discourse of tracking methods, namely cookies, with a special emphasis on privacy issues while likewise examining it in combination with the use of the analytical tool of CDA will enable this research to point out linguistic patterns and subliminal power relations used in that discourse. By completing the steps stated above, the answer to the posed question will most definitely be answered or at least contribute to partly answer it, as some shortcomings of the thesis and its approach still inhibits the possibility of covering everything on that topic. This is partly due to the point, that the analysis can only include the textual documents published by the chosen actor, but not what is intentionally neglected. Furthermore, due to the scope of this research, only one actor can be part of the analysis. One quote portrays this quite concise: “The discourse is equally in what is not said, or what is exposed in gestures, attitudes, *Seinsweisen*, patterns of behavior and the design of space. Discourse is the entirety of enforced (*erzwungener*) and forcing (*erzwingender*) meanings, that pervade through the societal circumstances.”⁵ (Foucault, 1994) – clearly, this research only depicts what is said and neglected by the EU, other components of the discourse cannot be taken into consideration.

4. Data analysis

This chapter is attributed to elaborate on the research findings arising with the analysis of the cookie-discourse, an overview of the used documents can be found in the Appendix I. Here, it is mainly aimed at answering the research question posed above, but will also include the depiction of the development of the discourse in general, in order to understand the changes from an European point of view regarding data protection and privacy. The analysis is basically divided in three parts:

⁵ Translated from German to English by me.

the first part will describe the development of the European discourse on cookies in general and in particular in connection with the Snowden revelations (2013, 2014), WikiLeaks affair (2017) and partly the Cambridge Analytica scandal (2018). This is done to give a better understanding of the guiding principles by the EU in general and to roughly grasp the legal scope of action. The second part consists of the depiction of the narrative the EU shaped over the years. Eventually, the presented findings will be closely connected to the theoretical framework described above and the narrative constructed by the EU will be stated and criticized. Hence, before addressing the analysis on the basis of the theoretical groundwork and the thereof derived coding scheme, first the empirical findings connected to revelations concerning data breaches in the form of reactions are presented, as well as the shaping of the central narrative concerning cookies as established by the EC. It is necessary to present this first, considering that these phenomena massively contributed to the construction of the “historic” (at least within the time frame set for this analysis) and the current debate.

4.1. Connecting incidents to policies: reaction of European data protection authorities

As in this sections, it will be evaluated, how the EC is reacting on data revelations in order to draw conclusions on the general context of the discourse and the position of the EU, all data mentioned here was published around, or after the incidents in the timeframes of June 2013 to March 2014, March 2017 and May 2018. Starting off with the first event connected to the misuse of personal data, the Snowden revelations from June to December 2013. Here, the first reaction of the EC is published at the end of November 2013, and directly connected to “Rebuilding Trust in EU-US data flows” . The most striking observation arising with the analysis of this document is the priority setting of the EC, the consideration of rebuilding of trust due to the economic value of personal data:

“If citizens are concerned about the large-scale processing of their personal data by private companies or by the surveillance of their data by intelligence agencies when using Internet services, this may affect their trust in the digital economy, with potential negative consequences on growth.” (DOC21)

This statement perfectly depicts the prioritization of the EU directly after the revelations on the data breaches: mistrust in international corporations can lead to negative developments in economy. This also describes the central narrative, the EC is delivering in all analyzed documents but it will be elaborated on this topic further in the next two sections of the ensuing analysis.

In contrast to the incidents in 2013, no direct statements attributed to the data leaks of 2014 and 2017 could be found, even though this was of high relevance in these years and did gain interest of the public. The EU nevertheless does not focus on these problems, but rather publishes documents that are, even though directed to privacy matters, keeping the topic quite general. This may show, that

the EU tries to shift the focus from what happened to what they are doing to prevent it from happening again. By showing, that they are perceived as one of the legally most restrictive actors, they strengthen their position in this discussion without accepting the mistakes that happened even though these measures were implemented before. A further analysis on this would not lead to scientifically important results, as at this point the only thing possible is interpretation, which is highly influenced by personal perception and not by features of scientific work.

In April and May of this year (2018) the scandal about Facebook and Cambridge Analytica earns high public interest and thus, the EU publishes several press releases on that topic but this analysis can only tackle one of those. Here, it is again emphasized that the protection of individual rights is important for European actors and that steps towards more data security need to be pursued:

“We are at the start of a new era of data protection. The protection of individuals against unlawful use of their personal data on social media platforms will be one of our key priorities.” (DOC 22)

The Working Party acknowledges the problem and in contrast to prior data breaches they do directly address how they aim at assessing the problem at hand:

“The WP29 is fully aware, however, that the issue is broader and concerns other actors, such as app developers and data brokers. The work of this Social Media Working Group will continue after the establishment of the European Data Protection Board. The EDPB will have a wide range of competences in order to ensure the consistency of the application of the GDPR.” (DOC22)

This part of the analysis depicted drafting a timeline of important events connected to the misuse of personal data (this includes various types of personal data, not exclusively cookies) and connected those with the content of the policy documents published around that time. It showed, that even though the revelations were described as trust breaking by the EU itself and surely had influence on the way users perceived their behavior online in general and surveillance in particular, the EU thoroughly emphasized the importance of trust in the digital world, as well as the consideration of economic relations and the possibilities offered by the digital environment.

4.2. Shaping the discourse by sketching a central narrative

In order to evaluate sufficiently on the developments of the cookies-discourse, not exclusively referring to the timeframes around data breaches, it is imperative to pinpoint the general narrative

transmitted through the policies and comments on those papers. Of course, there were several papers, speeches and working documents attributed to this and therefore, this analysis does not try to tackle every single document, but more the overall theme that connects the content of all of them. Thus the main statements of the EU will be presented in the following section, because those set the overall. While studying these documents it became evident, that the discourse is marked by three striking observations: I. legitimization of data collection through the consideration of the economic value, II. legitimization of data collection by informed consent and III. preferring the transmission of communication over data protection. Aside from those three observations, the self-depiction of the EU as an actor in the digital realm. In the following section, those observations will be discussed and in the next section of this chapter examined through the lens of the chosen theoretical groundwork.

At first, it is essential to mention, that one difficulty which had to be encountered throughout the analysis of the policy discourse is the fact that it is severely marked by legal discussions and amendments (see: DOC). Since it seemed to be a vital part of the discourse, it will also be represented partly. In the European Declaration of Fundamental Human Rights (which does not fall under the set time frame because it was ratified in 2002), it is stated that the protection of personal data is a fundamental right. The first legal basis concerning personal data is defined in the eighth article clause (1) states that “Everyone has the right to the protection of personal data concerning him or her” (EDFHR, 2002), the term *protection* is not further defined. What protection specifically means is unclear and can therefore be open to discretion of companies: does it only include the protection of leakage of the data or does it also include protection of the commercial use? The extension of clause (2) does not specify that either, rather it opens up new possibilities of interpretation: “Such data must be processed *fairly for specified purposes* and on the *basis of the consent of the person concerned* or some other *legitimate basis laid down by law*. Everyone has the *right of access to data* which has been collected concerning him or her, and the *right to have it rectified*.” (EDFHR, 2002) – again, it is not defined what these specified purposes are and how the consent of the person is achieved. It is unclear, whether the person only needs to declare consent without having information about the purpose of that data collection. It furthermore includes the protection of personal data from solely using it as an economic good, as well as treating it as a common good. This opposes the actual use of the EU, because in the case of cookies personal data is mainly used as an economic good (or for advertisement purposes, which indirectly fall under the category of economic goods) and actually legitimized with the argumentation of that very purpose (either the economic or common value, for further explanation, see next section).

Here, it is also emphasized, that personal empowerment and autonomy should be strengthened in order to support individuals in their education about these topics and eventually to restrict surveillance by themselves (EDFHR, 2002). Stating, that education must be one of the vital parts

concerning privacy issues and surveillance is especially interesting because it shifts the responsibility of it to the citizens, while they would never be able to fully grasp the complete scope of the problem as they cannot be a specialist in this everchanging field. In the case of this analysis, as it aims at questioning the Status quo “opening collective judicial actions to individuals to facilitate reporting of widespread data protection violations” (DOC8). The small example of the issues arising with a legal analysis is a good depiction of how finely faceted this discussion is. In order to avoid sticking to this part of the discourse only, merely some aspects mentioned above exemplified for the analysis.

Another central narrative is the perception of the actor by the actor itself. The EU understands itself as a global actor, who is active in international developments and engaging in the digital economy as it boosts over time. It is therefore not only depicted as an actor engaged in the legal sphere, but also in the political and economical one, which is highlighted and stressed oftentimes in the discourse:

“EU companies offering privacy-friendly services can be more appealing to consumers, and hence more competitive. The EU has the highest data protection standards in the world. This generates trust.” (DOC13)

Nevertheless, the EU still depicts itself thus rather as a regulating body for companies dealing with the allocation of digital data rather than an institution which is fighting for civil or privacy rights. The statement from Viviane Reding depicts that (DOC15):

“The protection of personal data is a fundamental right for all Europeans, but citizens do not always feel in full control of their personal data. My proposals will help build trust in online services because people will be better informed about their rights and in more control of their information. The reform will accomplish this while making life easier and less costly for businesses. A strong, clear and uniform legal framework at EU level will help to unleash the potential of the Digital Single Market and foster economic growth, innovation and job creation.”

The chosen quote also shows another core problematic that is connected to the wording the EU uses: the term privacy or data protection is not mentioned, but these are always connected to either 1. the economical value they can entail, or 2. the justification of the current privacy measures with the support of informed consent (will be examined further below). Referring to the economic aspect first, it becomes clear that after the analysis above (EU Charter of Fundamental Rights) this seems contradictory. While above, it is stated that personal data ought not to be used for common or solely economic reasons, this legal description opposes the situation at hand: due to the fact, that it is always connected to the economical purpose or use of personal data, the focus of the discourse shifts to this

aspect and forms the perception of cookies in favor of this relation to economy. This is especially problematic, because the EU is depicting itself as an agent that includes data protection and privacy as one of their core values. They emphasize this with an even stronger argumentation than before, referring to the basics and core of Europe and its Union itself. Even discussing it inasmuch, that it is phrased as follows (DOC16):

“Data protection is a fundamental right in the EU. The reason for this is rooted in our historical experience with dictatorships from the right and from the left of the political spectrum. They have led to a common understanding in Europe that privacy is an integral part of human dignity and personal freedom. Control of every movement, every word or, every mouse click is not compatible with Europe's fundamental values or our common understanding of a free society.”

The language used here is a strong example of how they aim at shaping the discourse positively, referring to only positive connotations and neglecting negative past events. Referring to the history of the Union, it creates the perception that privacy was one of the deeply rooted cultural aspects connecting the whole Union. This is misleading in relation to past and current aims of the EU in relation to privacy, but still functions in favor of their aims towards forming the narratives in the discourse. The paradox of the statement and language used above becomes clear, as the EU mentions the importance of balancing privacy rights with the economic value several times:

“If consumers wish to be freer with their data, they must be able to actively decide this for themselves by changing their preferences. Consumers must have the assurance that devices and applications are safe and that providers respect and protect their privacy. This includes communicating clearly and simply with users so that they can make informed choices.” (DOC20)

This statement shows, that the same argumentation is not only used on the macrolevel, dealing with the whole conception of privacy, but also tackling the microlevel. It is stressed, that the digital subject is mainly one of consumption, rather it is mostly depicted as a mere consumer than a citizen in the digital realm. The prioritization of consumerism over citizenship happens throughout the discourse and is independent from the year looked at. This can also be perceived as an instrumentalization of economic stability of the region and therefore as an excuse and positive explanation of the diminishing of privacy rules.

It is analyzed that the neoliberal citizen is here depicted as the consumer and producer simultaneously, but the EU only touches on the aspect of consumerism: while using the digital sphere, it is impossible to not produce while consuming, because the use of the internet inherently leads to the production of data about the person using it (the digital subject). This, again, leads to an accumulation of the online behavior and therefore provides data analysis companies the possibility to produce something new of the data, for example more appropriate advertisement. This leads to a loop of consumption and production by merely using the structures of the world wide web, primarily provided by the use of cookies. It also influences the content seen by the user (as companies create new content for them) and changes the perception or focusing of that content and different aspects of it (effects like these are described and tested within psychology and behavioral economics, one of them being framing). Therefore, companies and other actors in this field can contribute to changing the content and partly how it is perceived by users. This phenomenon also functions as a perfect example for the mechanisms described in the work of Han (2017). The EU and companies do not try to act restrictively, but rather open up new possibilities, scope of actions and is therefore not negatively perceived:

“But sometimes we do not want to show our data. Still, data are being collected without our consent and often without our knowledge. This is where European law comes in.” (DOC20)

European law as the guarantee for having autonomous management about what happens to your data and who can access it. Again, these positive formulations show the direction in which the actor tries to push it.

“The current ePD already sets a high level of protection, by requiring the prior consent of users, before the collection of content from communications, traffic or location data, except in a limited number of cases.” (DOC12)

Also, the EU directly legitimizes its actions by directly stating, that it is only collected for legitimate reasons (without mentioning them) and simultaneously ensuring to safeguard the data:

“To ensure that data are collected only for specified, explicit and legitimate purposes, that they are kept accurate and up to date and for no longer than is necessary.” (DOC17)

The loop of instrumentalization closes here, because now, economy is used to give an explanation for surveillance of citizens: not only the economic value as an excuse for diminishing privacy rules, but also economy as such.

Here again, one term is recurring and used several times by the EU: the concept of informed consent. This refers to a legal concept that legitimizes the use of personal data for e.g. advertising purposes justified by the informed consent given by the user. The discussion about the legal reasons why the current use of this concept is problematic, are several

“An important measure in this respect is the strengthening of consent, so that data can only be processed and distributed if users have explicitly given their consent. We share the conviction that consumers must regain control over their personal data. No business should be in possession of personal data or be able to set up user profiles without the user’s agreement.” (DOC18)

In this research, the legal technicalities are left aside and not problematized, as this has already been thematized in the expert realms of this particular discussion. It is more interesting to see, that with the use of informed consent, the European Union is creating a self-reliant citizen, which has the freedom to choose on their own behalf. It is creating the picture of a real and free choice that is only reliant on the opinion and decision of the person acting and therefore emphasizing the individuality offered. The focus of the EU has shifted from taking the responsibility themselves to offering possibilities to its citizens – or at least that is what they portray here.

This part of the analysis showed the central narratives that could be found on the policy discourse of the European Union after carefully examining the chosen data. It showed, that the main pictures drawn by the EU are described with positive terms and that the EU describes itself as a central actor that is active in the debate about data protection and privacy. Nevertheless, every comment associated to that is either accompanied with the connection to the economic value of personal data or with the concept of informed consent. Both of those connections are viewed critically in the behalf of the citizens. How these findings connect and can be related to the theoretical assumptions made above, will be described in the last part of the analysis, directly hereafter.

4.3. Connecting findings with theoretical concepts

Connecting to the prior section, the main statements made will be connected to the theoretical framework. In general, the terms *data protection* and *privacy* are massively influenced by the use of the EU, because they are a generally accepted institution which functions as a normalizing power:

what the EU says is building the guiding principle in these realms, not only through establishing policies, but merely by determining what can be said about a certain topic. The connection to the theoretical basis will show the Due to the fact, that in this research the notion of governmentality was only shortly introduced without hinting at the several features the analytical model entails (e.g. the different forms of states and how power can be analyzed there), hardly any features of governmentality were found.

The most striking feature of the cookies-discourse is the above described *consideration of the economic value*, as this used throughout all documents analyzed and thus functions as the central statement made by the EU. As discussed above, even directly after data breaches the value of economic growth is not decreasing. This supports the theoretical approaches chosen for this research, especially the notion of neoliberal governmentality (Dokhanchi 2016) and the digital dispositive (Han 2017): “We need to balance privacy concerns with the free flow of information, which helps create economic opportunities. These are the questions I want to address with our proposals to modernise the EU's data protection rules during 2011.” (DOC19)

Clearly, neoliberal values will be central in post-crises times and the century of global capitalism. What should be alarming here is not that governmental tasks are directly linked to efficiency of the market, because this is one instrument of control in neoliberalism (Dokhanchi, 2016). But rather that by doing this, they are offering these structures and are thereby maintaining the possibilities for corporations (and themselves) to use the accumulated data.

Also, by leading the discourse this way, they are forming a new subjectivity, the consumer. This is connected to the frequent use of the concept *informed consent*, as this is also guiding the subjectivity framed in the discourse. In connection with the narrative explained above, they are not only consolidating neoliberal structures, building a new type of subjectivity: the responsible and informed consumer (and not citizen). With the use of informed consent, they are producing a human of self-regulation: one, that does not have to rely on governmental regulation anymore, but one that morally responsible for itself. Autonomy, responsibility and freedom of choice are used as an instrument of governance, which is changing the relation to the self and others. By shifting the guidance from governmental responsibility towards the individual's, leadership efficiency is increased by decentralization (Eser, 2005). Here, the motive of smart politics (Han 2017) also applies: the technique of power is not restrictive, but offers individuals the possibility to act “freely”.

As observed before, several features of neoliberalism can be found while analyzing the EU policy documents. Therefore, the theoretical groundwork of the neoliberal dispositive is highly represented: the extension of the form of the market as a control instrument is part of the political strategy here (see quotes in prior section). Furthermore, by offering these neoliberal structures the EU makes it possible for the corporations to maintain their procedures, but even more than that. Even

through seemingly user-friendly mechanisms, they offer a new market of e.g. building or writing the consent forms online. This is not only restricted to the gathering of data as such, but directly relates to the behavior of the user: by using the informed consent as a measure of privacy, the EU is building the self-reliant and responsible subject, which seems to have full control over the data online because it seems that they can decide for themselves if and which privacy measures she or he wants to implement. Under the veil of choice, the subject becomes one of *Selbstlenkung* and due to the mechanisms implemented, it is acting as the restricting Big Brother themselves, without the need of being watched. The problem of data allocation is being handed over to the individual and thus, it is responsible for itself to act according to its own standards. While this as such is problematic, another issue comes to play: the information handed out by the EU is not sufficient, it becomes a duty or the user to consent informed. The aspect of being informed and thus entails a moral aspect as well. This could also imply the mechanism of social control, which is also mentioned as one of the techniques in the concept of governmentality.

The analysis of informed consent gains relevance when it is connected to the chosen notion of contextual integrity: two vital aspects, the knowledge about the information flow and the completely autonomous choice are being violated within informed consent. The user cannot decide on which information is shared and also, the aspect of autonomous management is violated through the need to consent. Furthermore, it is questionable that the violation of contextual integrity is morally legitimate. Even if this applied, it is still a personal decision to make, which cannot be generalized while the legal situation at hand is using it as something that is equal for everyone (as laws usually do) and leaves no room for discussion or personal decision, because the person cannot really withhold consent. Still, the European Union depicts these technological developments as something inherently good it broadens the possibilities for market and information access. This use of technology as something good is influencing their reasoning and does not lead to a better situation for concerned users, but rather worsens the possibility to criticize the situation at hand because it leads to the problem that critics are viewed as people who are not accepting a positive change.

Overall, it transpired that the use of cookies and other identifiable data is being used for advertisement purposes, in economy and politics. Therefore, the discourse about these functionalities is highly influenced by the imperatives the EU tries to hold up and can thus not keep to the standards of protecting personal data from this use in a globalized digitized world in the end. Furthermore, it showed that the statements made included several features of neoliberal governmentality as well as techniques which were included in the notion of psychopolitics described in the theory section. While an elaboration on the concept of contextual integrity was not completely possible, because it focuses on the individual choice in certain situations including interactions between people (which simply cannot be found in the papers analyzed). Even though a content-related analysis was impossible, the

structural dimensions of the concept were taken into account: it has transpired, that it could be used as a tool of instrumentalization and legitimization of the actions by the EU within this particular discourse.

5. Conclusion

As a final step, the main findings of the analysis of the policy discourse on cookies in the European Union will be briefly summarized. With the research question “How is the Discourse on Cookies illustrated in Policy Papers of the European Union since the implementation of the Directive 2009/136/EC?” this research tried to detach itself from merely describing the status quo. Nevertheless, asking these types of questions in the context of the digital environment is of high importance, because the situation is changing so rapidly and it is aimed at improving the situation, a critical mindset is needed. Furthermore, this study clearly shows the need of elaborate qualitative research on topics connected to discourses on data protection, privacy issues and surveillance techniques in the digital age, as this will have an even bigger influence on people’s life in forthcoming years.

It showed, that the EU has a certain self-perception that is portrayed throughout the whole discourse by all actors, even when parts of the legislation of argumentation is being criticized: the European Union depicts itself as the data-protection police. This point of view strengthens its position within the discourse and leads to a further legitimization of their actions. The analysis of the cookie-discourse on the other hand showcased, that the increase in data revelations during the past decade has not led to an extension of data protection regulations in the long run, but only tackled these questions shortly after they have occurred. These ad-hoc regulations have the possibility to push down the heat discourse at the particular moment and due to the direct, but insufficient action on these issues they thereby stabilize the Status quo. These measures do not aim at improving the situation for concerned citizens, but rather function as instruments used for soothing the affected actors. Not only the measures as such, but also the illustration and structure of how the discourse is held can be perceived as one power mechanisms described in the theory section: here, the EU is using mechanisms described by Foucault (1979, 1982), Han (2017) and Dokhanchi (2016), especially features of 1. neoliberal governmentality, because it is only restricting economy up to a certain point and handing over the responsibility to the user, 2. psycho-politics and smart-politics. This focus the European Union sets in the discourse undermines the possibilities for other political actors through marketization and rationalization in a typical neoliberal sense. Through this discourse, the EU is forming one particular digital subject: the one of self-regulation, which takes into account the cost-benefit-relation and interiorizes economical structures in its own behavioral patterns. It is thereby strengthening neoliberal structures outside the realms of economy and is hence outsourcing the responsibility of actions on privacy. This is also reinforced by the strong focus on the term and

concept of data protection, rather than privacy. Thus, the view that the EU is maintaining its governmental position through the use of shaping a discourse can be adopted. This discourse is severely marked by the theoretical concepts used as a groundwork in this thesis, which is mainly not caused by having a focus on those, but by the formulations and framing of the discourse by the EU.

The analysis conducted showed that the discourse about cookies is severely marked by the developments of economy and the discussion about legal possibilities. The EU furthermore guides the discourse in relation to its own positioning in the worldwide privacy discourse: it is stated several times, that they are the ones with the best data protection directive (see statements above). It also showcased, that governments nowadays seem to not serve the citizens they have devoted themselves to, but rather aim at satisfying companies' interests first. Furthermore, in the special case of cookies, it got clear that they do not balance those interests and needs, but clearly follow their interests which are marked by neoliberal structures, just as described by Han (2017). Therefore, it is questionable whether governments in this age do serve political aims and if they even try to enhance situations for citizens. While it is a common opinion among legal experts, that giving consent is a step that does not go far enough (Clifford 2014), it also showed that it is not sufficient to only look at the discourse in the legal realm. This is partly due to the opinion claimed by some of the legal and economic experts, that a further development towards restrictive measures by the EU would lead to an exclusion of them from other international actors, and it would not lead to measures that are useful for European citizens. These opinions also show the need for theoretical research which examines this discourse from another point of view and with another theoretical focus. This also includes the expansion of the here chosen theoretical view on other topics that are connected to the case of the cookie-discourse, such as an examination of other actors, the analysis of different sources or the extension of this to another case. Mainly, this thesis functions as an incentive to tackle the issue of digital privacy more elaborately by other critical researchers.

Furthermore, it pointed out the importance of the cookies-discourse as an example for the data protection and privacy discourse in the digital age. Something that cannot be neglected as well is the direct influence of daily digital life, videlicet the practical solutions possible to restore contextual integrity in the context of governmentality in the digital age. This implies the reconsideration of legal bases, the inclusion of specialists of digital technologies, as well as policy-makers and data-protectionists. It is important for policy and law makers to act when the possibility to intervene still exists in this fast changing environment. Also, a vital feature that needs to be included is citizenship and privacy as one of the core values in the discourse about and implemented policies of the EC again, because European citizens must be viewed as such first, and not as mere consumers. Policy-makers that act in behalf of citizens' rights have to consider this and start with the issue of tracking related to cookies, because if they neglect this topic now, how are they able to handle the

ever evolving threats to privacy, identity, citizenship and in the end democracy if they do not act on it now? The issue of data protection and privacy is not solved by implementing more legal restrictions for companies or more information material and decision-making options by citizens, rather the problems of data gathering should not arise in the first place. The internet should offer spaces free of surveillance just as they do exist in the real world. The possibility to freely discuss topics without the intervention of others should be a given, because otherwise the internet cannot be considered as a place of open and public discussion anymore and the core of the issue is rooted even deeper: the possibility to collect identifiable data as such is questionable because the mere existence of that is making those things possible. This research functions as a plea to policy makers, researchers and other people active in and responsible for these structures to offer the possibility to act according to their own preferences without being directed by someone outside.

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Appendices

Appendix I: List of documents used for the analysis

Number in citation	Name of document	Date of publication	Type of Document	Length
DOC1	DIRECTIVE 2002/58/EC	31.07.2002	Legal directive	11 pages
DOC2	DIRECTIVE 2009/136/EC	25.11.2009	Legal directive	22 pages
DOC3	Opinion 2/2010 on online behavioural advertising	22.06.2012	Opinion of Working Party	24 pages
DOC4	Opinion 16/2011 on EASA/IAB Best Practice Recommendation on Online Behavioural Advertising	08.12.2011	Opinion of Working Party	12 pages
DOC5	Opinion 04/2012 on Cookie Consent Exemption	07.06.2012	Opinion of Working Party	12 pages
DOC6	Opinion Article 29 Working Party analysis revised cookie-rule	12.06.2012	Press release of the Working Party	1,5 pages
DOC7	Working Document 02/2013 providing guidance on obtaining consent for cookies	02.10.2013	Working Document of Working Party	6 pages
DOC8	Joint Statement of the EDPA	26.11.2014	Joint statement of the Working Party	4 pages
DOC9	Surveillance of electronic communications	05.12.2014	Working Document	51 pages

	for intelligence and national security purposes			
DOC10	Cookie sweep combined analysis	03.02.2015	Analysis report	20 pages
DOC11	Cookie sweep	17.02.2015	Press release	3 pages
DOC12	Opinion 03/2016 on the evaluation and review of the ePrivacy Directive (2002/58/EC)	19.07.2016	Opinion	22 pages
DOC13	The EU Data Protection Reform and Big Data	March 2016	Factsheet	4 pages
DOC14	Opinion 01/2017 on the Proposed Regulation for the ePrivacy Regulation (2002/58/EC)	04.04.2017	Opinion	35 pages
DOC15	Commission proposes a comprehensive reform of data protection rules to increase users' control of their data and to cut costs for businesses	25.01.2012	Press Release	3 pages
DOC16	The EU's Data Protection rules and Cyber Security Strategy: two sides of the same coin	19.05.2013	Speech	7 pages
DOC17	Protection of personal data in the European Union	November 2012	Factsheet	2 pages

DOC18	EU Justice Commissioner Viviane Reding and German Consumer Protection Minister Ilse Aigner see European data protection reform as 'historic opportunity'	26.02.2013	MEMO	2 pages
DOC19	Data Protection Day: guaranteeing individuals' privacy rights	28.01.2011		3 pages
DOC20	Privacy: the challenges ahead for the European Union	28.01.2010	Speech	4 pages
DOC21	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Rebuilding Trust in EU-US Data Flows	27.11.2013		10 pages
DOC22	"Sorry is not enough": WP29 establishes a Social Media Working Group	11.04.2018	Press Release	3 pages

Appendix II: Atlas.it output