

# Political Contestation in the Digital Single Market

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Exploring Party Politics in the EU's Digital Policy

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## **Abstract**

Digital policy is high on the agenda of the European Union. Aiming at the creation of a Digital Single Market, a diverse set of policies are being discussed and legislated on. As co-legislator, the European Parliament is highly involved in the shaping of this Digital Single Market. How do the political groups in the Parliament position themselves in this matter? This study maps the patterns of contestation in three case studies: The General Data Protection Regulation, the Telecom Single Market Regulation and the European Parliament's Copyright Evaluation Report, three policies representing the variety of issues which are part of the overall Digital Single Market. Reflecting on the draw-backs of established research approaches, the study develops a new methodology for assessing contestation in the European Parliament. It is based not on the voting but on the amendment behaviour of MEPs. The results show that there is no unified pattern of contestation for digital policy so far. Left/right contestation does take place in some cases (data protection, net neutrality) while in others grand coalitions form (copyright). It also happens that the European Parliament takes a consensual, institutional position in opposition to the Council or the European Commission (roaming).

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## **List of Abbreviations:**

<b>CJEU:</b>	Court of Justice of the European Union
<b>DSM:</b>	Digital Single Market
<b>EP:</b>	European Parliament
<b>EU:</b>	European Union
<b>ITRE:</b>	Committee on Industry, Research and Energy (European Parliament)
<b>JURI:</b>	Committee on Legal Affairs (European Parliament)
<b>LIBE:</b>	Committee on Civil Liberty, Justice and Home Affairs (European Parliament)
<b>MEP:</b>	Member of the European Parliament

Political groups in the European Parliament:

<b>ALDE:</b>	Alliance of Liberals and Democrats for Europe
<b>ECR:</b>	European Conservatives and Reformists
<b>EFDD:</b>	Europe of Freedom and Direct Democracy
<b>ENF:</b>	Europe of Nations and Freedom
<b>EPP:</b>	European People's Party
<b>Greens/EFA:</b>	Greens/European Free Alliance
<b>GUE-NGL:</b>	European United Left-Nordic Green Left
<b>S&amp;D:</b>	Progressive Alliance of Socialists and Democrats

## 1. Introduction

Information and communication technology (ICT) has been transforming our daily lives at a rapid pace. The internet affects the way we communicate, work and entertain ourselves. A digital economy promises increased efficiency and high growth rates. At the same time, it disrupts traditional economic sectors putting jobs at risk. Social media creates new opportunities for civil engagement and participation but also endangers fundamental rights through the collection of personal data and behavioural nudging.

Policy-makers are struggling to keep up with these technological developments and to come up with regulatory frameworks that promote the use of ICT for the benefit of the whole society. As recently as 2013, German chancellor Angela Merkel referred to the internet as “Neuland” – uncharted territory – exemplifying the helplessness of the German government in the wake of the Snowden revelations (Kämper 2013). Even so, in the last years, “*digital policy*” has moved up on political agendas.

The European Commission has made the creation of a *Digital Single Market* in the European Union (EU) one of its ten priorities (Juncker 2014). It promotes EU-wide rules for the digital economy as a significant step towards the completion of the Single Market, which is seen as a crucial prerequisite for fostering economic cohesion and welfare across the EU. The European Parliament’s research service estimates that a properly implemented *Digital Single Market* could generate welfare gains of 415 billion euros or 3% of EU GDP (European Parliamentary Research Service 2015: 12).

In 2015, the European Commission published its “Digital Single Market Strategy”, mapping fields of action and announcing upcoming legislative initiatives. The Strategy unites a diverse set of policies under one objective: the creation of a single market for digital goods and services. This economic frame, however, does not hide that “digital policy” is much more than “market-making”. It is also concerned with the modernisation of public administrations and the participation of citizens, cyber security, media and press freedom and the rights of citizens in an online environment. Consequently, the issues outlined in the Digital Single Market Strategy range from infrastructure policy to copyright reform, from e-commerce to e-Government to cyber security, from data protection to competition policy (European Commission 2015a).

What all these different policy areas have in common is that they, in one way or another, affect or

are affected by the internet and ICT in general. Few of them are entirely new but until now, these issues were seldom discussed together. In today's technological environment, they have become interrelated and often interdependent. Some have therefore argued that we are witnessing the formation of a new policy field (cf. Haunss & Hofmann 2015). The *Digital Single Market* frame might promote this development.

As co-legislator in the EU's ordinary legislative procedure, the European Parliament (EP) has great influence on shaping the *Digital Single Market*. Is it going to be a tightly regulated or rather unregulated market? What role will consumer protection play? Therefore, the question arises: How do the political parties in Europe position themselves in this emerging policy field? How do the political groups in the Parliament address and amend the legislative proposals of the European Commission? In other words, the main research question of this study is: ***What are the patterns of political contestation over the Digital Single Market in the European Parliament?***

Following the theoretical and empirical work of Hix et al. (2007), political groups in the European Parliament chiefly compete along a socio-economic left/right dimension. Conflicting policy preferences inside groups, can be traced back to diverging preferences of the Euro parliamentarians' national parties, best assessed using the two-dimensional model of Hooghe et al. (2002), which measures party positions on an economic as well as on a socio-cultural dimension. Can these patterns be conferred to the policies of the *Digital Single Market*?

This thesis explores the patterns of party group contestation in three case studies: the General Data Protection Regulation, the Telecom Single Market Regulation and the European Parliament's Copyright Evaluation Report. The cases reflect the diversity of policy issues in the *Digital Single Market*. This allows the comparison of the respective patterns of political contention: Do they correspond with each other or are different patterns observed?

The empirical research on politics in the European Parliament has so far been predominantly based on the analysis of roll-call votes. This approach, however, has been criticised for being subject to a selection bias: only a small part of all votes are taken by roll-call (Carrubba et al. 2006). This study, therefore develops a novel research design. The policy preferences of the Members of the European Parliament (MEPs) are derived not from their voting records but from their amendment input through which they seek to make changes in proposed legislation. Using *multidimensional scaling*, the similarities of MEP's preferences are visualised. The result is a policy space which reveals the



pattern of contestation for a given policy issue.

The case studies reveal mixed patterns of political contestation. For the General Data Protection Regulation and the parts of the Telecom Single Market Regulation that are concerned with *net neutrality*, a left/right pattern of party group contestation could be identified. In these cases, preferences diverge on the question of how strong regulatory standards have to be for the respective law to fulfil its purpose. Interestingly, this pattern of contestation also exists within the liberal ALDE group, making it difficult to locate the group on the left/right spectrum. But other patterns exist as well. There has not been any contestation over the abolition of *roaming* charges, a second policy issue within the Telecom Single Market Regulation. Instead, the EP spoke with one voice and prevailed in the inter-institutional negotiations over a reluctant Council and a European Commission who had preferred a different solution. The Copyright Evaluation Report, in turn, was shaped by a grand coalition who opposed the Greens' ambition for more harmonisation in copyright law and extended exceptions from copyright protection.

These findings indicate then, that the *Digital Single Market* has not yet produced consistent patterns of political contestation. They also show that *digital policy*, despite the economic framing of the Single Market – might not be easily subsumed under the left/right dimension of political conflict.

This thesis is structured as follows: Chapter 2 introduces the EU's Digital Single Market Strategy giving an overview of the various policies subsumed under this frame. Chapter 3 surveys existing research on politics in the European Parliament. Theoretical conceptions, empirical findings and methodological debates are discussed. Hypotheses with regard to political contestation over the Digital Single Market are derived from this literature review. A new research design is developed in Chapter 4, seeking to overcome the draw-backs of existing approaches. This methodology is applied in three case studies (Chapter 5): Representing the diversity of Digital Single Market policies, the General Data Protection Regulation, the Telecom Single Market Regulation and the Parliament's Copyright Evaluation Report are analysed in depth. In Chapter 6.1, the findings of the case studies are discussed. Chapter 6.2 revisits the proposed methodology in light of the experiences made during the case studies. Chapter 7 concludes.

## 2. The EU's Digital Single Market Strategy

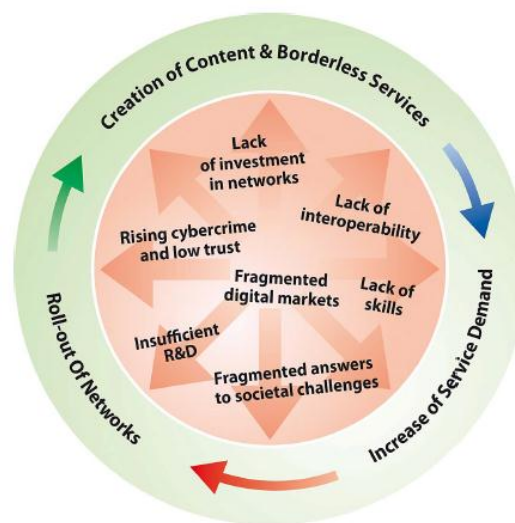
ICT has become a general purpose technology whose impacts are no longer limited to a specific sector but which affect the whole productive system (Lorenzani & Varga 2014: 57). The European Commission's Annual Growth Survey for 2015 calls ICT "the foundation of a modern innovative economy" (European Commission 2014). This "transformational change" creates similar policy challenges in all EU member states, frequently exposing the limited regulatory effectiveness of national governments towards a World Wide Web and its actors (European Commission 2015a: 3). From an economic perspective, a fragmented regulatory environment prevents ICT firms from exploiting economics of scale and reduces their global competitiveness (Zuleeg & Fontana-Reval 2010). Therefore, co-ordinated action on the European level can help to seize the opportunities of ICT and to cope with its risks.

Unsurprisingly, the EU has positioned itself as an actor in the field. It has coined the term *Digital Single Market* (DSM), a frame under which the EU institutions now pursue policies regarding the internet and other digital technologies. A DSM is defined as "one in which the free movement of goods, persons, services and capital is ensured and where individuals and businesses can seamlessly access and exercise online activities under conditions of fair competition, and a high level of consumer and personal data protection, irrespective of their nationality or place of residence" (European Commission 2015a: 3).

The term DSM was first introduced prominently in the European Commission's "Digital Agenda for Europe" in May 2010 (European Commission 2010b). The Digital Agenda was one of seven "flagship initiatives" under the EU's overall 10-year strategy *Europe 2020*. "The objective of this Agenda is to chart a course to maximise the social and economic potential of ICT, most notably the internet, a vital medium of economic and societal activity: for doing business, working, playing, communicating and expressing ourselves freely" (ibid.: 3).

The European Commission under President José Manuel Barroso portrayed a flourishing digital economy as a virtuous cycle of increasing demand for digital services, increasing roll-out of networks and an increasing creation of digital content (see *Figure 1*). Seven barriers to this virtuous cycle were identified (ibid.: 5f.): Fragmented online markets shaped by divergent national regulations, a lack of standard-setting and interoperability of ICT systems, a lack of trust in the face of rising levels of cybercrime, a lack of investment in networks, insufficient research and

development, a lack of digital literacy and skills among European citizens and finally, missed opportunities for employing ICT solutions in other sectors such as healthcare and environmental protection. Consequently, the Digital Agenda outlined seven “action areas” to tackle these problems. The first action area was the DSM: fragmented digital markets should be replaced by a digital single market. The creation of a DSM would require opening up access to content, for example, by issuing pan-European licences of media programmes, facilitating online and cross-border transactions, building confidence by harmonising consumer protection as well as a revision of the regulatory framework for telecommunication services (ibid.: 7f.).



*Figure 1: The virtuous cycle of the digital economy (European Commission 2010b: 4).*

Initially, the DSM was thus only a small part of the overall Digital Agenda, focusing on creating a better environment for online businesses. This changed when Jean-Claude Juncker became the new President of the European Commission after the 2014 European elections. The Barroso Commission had, after the launch of the Digital Agenda, published a number of legislative proposals and initiated public consultations for more scheduled legislations. Naturally, given the scope of the Agenda and its 10-year timeframe, only a fraction of all policies could be addressed. Upon his election as new Commission President by the European Parliament, Juncker named the DSM one of the ten priorities for his tenure (Juncker 2014). The importance Juncker attributed to the subject was underlined by its prominent second position on the list, ranking right after the growth and investment package he proposed to face the Eurozone crisis (“Juncker plan”) and before the “Energy Union”, which had gained momentum over the course of the conflict in Ukraine. In the Juncker Commission, two Commissioners are now covering the topic, Andrus Ansip, Commission Vice-President for the DSM and Günther Oettinger, Commissioner for Digital Economy and Society.

This prioritisation comes with a semantic shift. The Digital Agenda had been streamlined towards the DSM. While the content remained unchanged, digital policy in the EU was suddenly framed exclusively as economic policy. In a research paper, Lorenzani and Varga (2014), two Commission officials, spoke of “digital structural reforms”, adopting the language of the management of the Eurozone crisis. In what is known as the “5-Presidents’ Report”, Juncker and the presidents of the other EU institutions described the completion of the Single Market as a core step for the long-term economic stabilisation of the Economic and Monetary Union – explicitly referencing the lack of integration in digital markets (Juncker et al. 2015: 7). While the issue of framing raises a number of interesting questions on how digital policy is conducted in the EU, this is not the topic of the present study. It provides, however, the label for the set of heterogeneous policies related to ICT, which are the subject of this study.

In May 2015, the Juncker Commission published its “Digital Single Market Strategy for Europe”. Following the European Parliamentary Research Service (2015), the Strategy anticipates a growth potential of 415 billion euros a year for a fully functioning DSM (European Commission 2015a: 3). The DSM Strategy restructured the contents of the Digital Agenda in three partly overlapping pillars: (1) “Better access for consumers and businesses to online goods and services across Europe”, (2) “Creating the right conditions for digital networks and services to flourish” and (3) “Maximising the growth potential of our European Digital Economy” (European Commission 2015a).

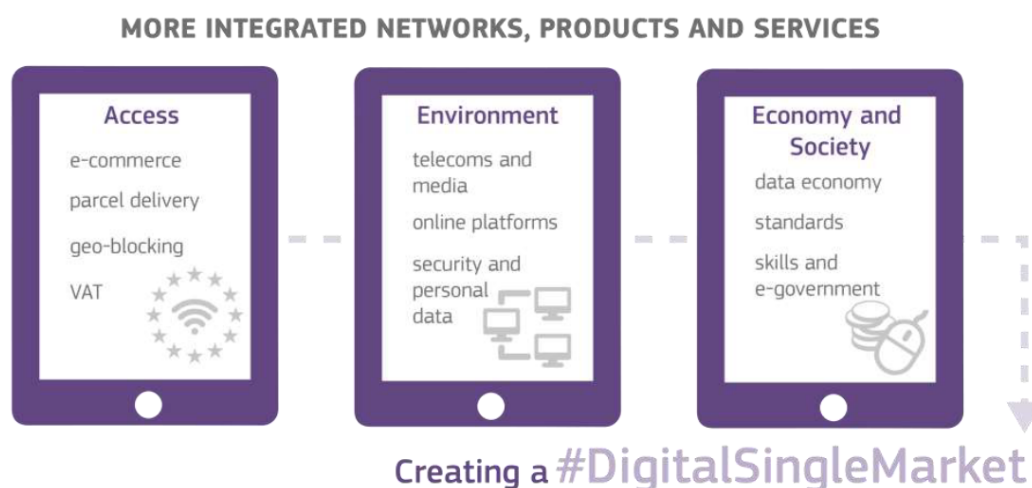


Figure 2: The pillars of the Digital Single Market (European Commission 2015b: 3)

The first pillar consists of policies aimed at facilitating e-commerce in a broad sense (European Commission 2016a). This starts with buying physical goods online: Can consumers easily order products from online shops established in a different member state? How does parcel delivery practices impede or promote cross-border online-shopping? More newsworthy are issues that arise genuinely for digital goods and services such as music downloads or video streaming: How to secure cross-border portability of paid-for digital services – can you use your movie streaming subscription abroad during your holiday? Are there legitimate grounds for “geo-blocking” certain services depending on a consumer’s location? These questions address fundamental questions of copyright and the licensing of creative works (European Commission 2015a: 6f.). On a more basic level, this pillar is also concerned with consumer rights, contract rules and administrative burdens stemming from different value added tax systems (ibid.: 8).

Policies in the second pillar seek to create a fruitful regulatory environment for the digital economy. First of all, there needs to be a network infrastructure in place that connects citizens and businesses and provides the capacity for increasing internet traffic. The regulatory framework for networks has to promote competition and prevent the exploitation of natural monopolies but at the same time must not hamper investment in fibre-based “next generation access” networks. The European Commission will propose a reform of the current telecom rules (European Commission 2015a: 9f.).

But at the same time, a thriving digital economy relies on consumer trust. In spring 2016, the data protection reform was finalised (European Commission 2016e). As a next step, the Commission is reviewing the e-Privacy Directive which guarantees the privacy of digital communications. Moreover, steps to foster cybersecurity are taken. Another issue to foster trust is dealing with illegal content such as hate speech or child pornography. In the online economy, so-called “platforms”, for example search engines, social media sides or sharing economy hubs, are becoming more and more important and dominant. The European Commission is investigating their role from the perspectives of competition policy and their impact on information control (European Commission 2016f).

The third pillar of the DSM aims at maximising the growth potential of the digital economy through initiatives such as ICT standardisation (European Commission 2016d), the European Cloud Initiative (European Commission 2016c) and the new e-Government Action Plan (European Commission 2016b).

Besides pursuing new legislative projects or reforming existent laws, the EU is also using its

structural funds to support the DSM. For the period of 2014-2020, 20 billion euro from the Regional Development Fund and the Cohesion Fund will be invested in ICT projects (European Commission 2015b: 8).

All these policies have been on the agenda in 2015 and 2016. Three of them are investigated in this study.

The member states have expressed their support for the DSM. The European Council endorsed the DSM at a summit in October 2013, recognising that “[a] strong digital economy is vital for growth and European competitiveness in a globalised world. [...] There is urgent need for an integrated single digital and telecoms market, benefiting consumers and companies” (European Council 2013: 1). The heads of states and governments agreed that there needs to be a harmonised framework for consumer protection but also for businesses in the DSM. They also pointed to the need for investments in networks, research and development and the digital skills of citizens. “Special consideration should be given to supporting the reduction of the digital gap among member states” (ibid.). In May 2015, the Council of Ministers welcomed the European Commission’s DSM Strategy (Council of the European Union 2015a). Additionally, the Council called for “an action plan for the digitalisation of industry”, an issue that was not featured prominently in the DSM Strategy (ibid.: 4). The European Commission (2016g) heeded the call and, in April 2016, released a Communication on Digitising European Industry that focuses on the use of digital technologies for manufacturing.

The European Parliament, too, has endorsed the objectives of the DSM in two resolutions (European Parliament 2012, 2013c): “[U]nlocking the full potential of the digital single market is crucial to making the EU a more competitive and dynamic knowledge-based economy, to both its citizens and businesses” (European Parliament 2013c). The resolutions list a broad range of issues for which they want see legislative initiatives by the European Commission. They also call for swifter implementation and more consistent enforcement of already existing EU rules in the member states, matters who are identified as contributing to the fragmentation of digital markets (ibid.). Covering all action areas of the Digital Agenda, a particular focus of the European Parliament are consumer rights and measures to foster consumer trust and security (European Parliament 2012). The two resolutions, however, did not concern themselves with detailed rule-setting preferences in the outlined issue areas.

A consensus among EU institutions about what issues should be addressed does of course not mean that they agree on how to approach them and what kind of rules are appropriate. Naturally, inter- and intra-institutional contestations over rules and regulation occur: between the Council and the European Parliament, between member states in the Council and between political groups or individual MEPs in the Parliament. This thesis explores the latter: How do the political groups in the European Parliament position themselves towards the DSM? How do they address and amend the legislative proposals of the European Commission? In other words, what pattern of political contestation arises in the European Parliament?

### **3. Political Contestation in the European Parliament**

Contestation lies at the heart of democratic politics. In elections, political parties compete for offices, allowing citizens to choose who should lead their polity and hold politicians accountable. Beyond personnel, parties – ideally – develop contrasting policy options, so that voters can choose between different visions on how to address the challenges ahead.

“Democratic contestation can also have a formative effect. In both America and in European countries, the operation of competitive party systems played a central role in the replacement of local identities by national identities” (Hix et al. 2007: 147). Correspondingly, Hix (2008) has argued that more (visible) contestation in the EU could help overcome the project’s legitimacy and democratic deficits. Instead of opposing the EU as a whole, European citizens would learn to oppose particular actors and coalitions who govern at the EU level.

This chapter reviews the theoretical and empirical literature on political contestation and party groups in the European Parliament. Expectations for the patterns of contestation over the DSM are derived from this body of literature. The chapter, however, also highlights the methodological critique of these works. Based on the critical reflection of the drawbacks of roll-call vote analysis, it is argued that more attention should be paid to the amendment activity of MEPs on the committee level of the EP. Accordingly, a new research design will be developed in Chapter 4 in order to test the hypotheses made.

#### **3.1 Theories of political contestation in the EU**

The central reference point in the literature on political contestation is Lipset and Rokkan’s (1967) seminal work on the development of party systems in Western democracies. Lipset and Rokkan show how cleavages in European societies, regarding class, religion and territory, have shaped the formation of political parties, which in turn have frozen these patterns into place. In particular, Lipset and Rokkan's socio-economic cleavage, dating back to the Industrial Revolution, has until today remained the focus of both scholarly and public attention. As Marks and Steenbergen (2002: 880) put it: “The ideological continuum from Left to Right is a central organising dimension in Western Europe”.



It is remarkable then, that the classical theories of European integration, (neo)functionalism as well as the realist and liberal schools of intergovernmentalism have neglected party competition and in particular the left/right dimension in their explanation of EU politics. In the realist school, European integration serves states – presented as unitary actors – as a strategy to mitigate geopolitical pressures (cf. Hoffmann 1966). Liberal intergovernmentalism does consider domestic politics, focusing, however, on economic interest group not party contestation. Governments' stances on integration follow from the interest of the dominant domestic pressure groups, be it exporters or sectors competing with imports, irrespective of the governing parties' own ideology on the domestic left/right spectrum (cf. Moravcsik 1998). Neofunctionalism, pre-occupied with technocratic problem-solving and functional spill-over effects, reflects the EU's enduring character as an elite project, driven by bureaucrats and politicians rather independent from public opinion and electoral competition (cf. Haas 1958).

Marks and Steenbergen (2002: 882f.) group these theories together as the “international relations model” of political contestation in the EU. “Contestation takes place on a single anti-integration versus pro-integration dimension”, which is “divorced from the ideological underpinnings of domestic politics”. In the terminology of Lipset and Rokkan, in the “international relations model” a territorial centre-periphery cleavage prevails over a socio-economic left/right cleavage.

It was only in 1997, that the release of Hix and Lord's (1997) book “Political Parties in the European Union” pioneered a focus on the party dynamics of European integration. Hix (2008: 1254) recalls: “When Chris Lord and I suggested [...] that political parties should be regarded as the central actors in European Union politics, many people thought we were crazy!” The Hix-Lord model proposes two orthogonal dimensions to capture political contestation in the EU: a left/right and a pro/contra integration dimension. These two dimensions mobilise cross-cutting policy coalitions. Parties and their voter bases are internally divided over European integration (Hix & Lord 1997: 26). “Correspondingly, the four possible dichotomous alternatives – Left/more integration, Left/less integration, Right/more integration, and Right/less integration – are all feasible policy positions” (Marks & Steenbergen 2002: 884).

Contrary, Tsebelis and Garrett (2000) have argued that the pro/contra-integration dimension can be subsumed into the left/right dimension due to the general primacy of domestic politics in Europe. They argue that voting behaviour in European elections is primarily motivated by national issues, turning them into second-order elections. Similarly, government representatives in the Council are

constrained by their national left/right dimension. Marks and Steenbergen (2002) have labelled this argument the Regulation model.

Even though the socio-economic left/right cleavage is still omnipresent in academic as well as in public discourse, it is often argued that a unitary dimension is no longer enough to capture today's political landscape. "Post-materialist" (Inglehart 1990) issues such as environment protection and cultural diversity have given rise to "new politics" (Franklin 1992). Kitschelt (1994) has shown how this development has split the traditional voter base of social democratic parties in conservative workers and higher-educated left-libertarians. Consequently, a purely economic left/right dimension is cross-cut by a "libertarian/authoritarian" dimensions capturing socio-cultural issues. Hooghe et al. (2002) have labelled this second dimension GAL/TAN – green/alternative/libertarian vs. traditional/authoritarian/nationalist. Testing this GAL/TAN dimension on stances towards European integration, Hooghe et al. show that parties close to the TAN pole are "without exception highly Euro-sceptical" (ibid.: 977). On the GAL end of the spectrum, results are less clear-cut. According to the authors, Green parties support European integration primarily in cases in which it favours their interests such as immigration and environmental protection (ibid.: 984). Nevertheless, Hooghe et al. subsume the integration cleavage into their GAL/TAN dimension. The Hooghe-et-al. model thus proposes – like the Hix-Lord model – a two-dimensional framework for studying political contestation in the EU. They put a stronger focus on post-materialist values, however, whereas Hix and Lord maintain that socio-cultural issues can be subsumed into the left/right dimension (Hix & Lord 1997: 25). From this two-dimensional approach follows that one has to "disaggregate European integration into its particular policies" in order to capture political competition appropriately (Hooghe et al. 2002: 966).

Taken together, the models of Hix and Lord, Tsebelis and Garrett and Hooghe and colleagues represent a comparative politics approach, treating the EU as a political system of multi-level governance, in contrast to the international relations paradigm of the classical integration theories (Hix & Lord 1997: 201-204; Hooghe & Marks 2001; Marks & Steenbergen 2002: 881).

### **3.2 Contestation in the European Parliament: A European party system?**

Since these models have been put forward, a considerable amount of empirical research on party dynamics on the EU level has been conducted. The continuous empowerment of the European Parliament (EP) has doubtlessly contributed to this research interest. Voting patterns in the plenary, distribution of committee seats and reports as well as inter-institutional bargaining strategies have been investigated through the lens of party contestation (e.g. Hagemann & Høyland 2010; Hix et al. 2007; Hurka & Kaeding 2012; Jensen & Winzen 2012). Recently, the effects of on-going crises such as the Euro crisis on established voting patterns have received attention (Otjes & van Der Veer 2016).

The initial question at the centre of this research field has been whether the EU has a competitive party system. A central element of democratic systems, a party system is characterised internally by hierarchical organisation and externally by contestation between different party organisations (cf. Hix et al. 2003: 309). On the level of the EP, it had to be seen then whether political groups firstly, are able to achieve internal party discipline and secondly, are competing with each other.

Members of the European Parliament (MEPs) are agents with two principals (Hix 2002). They are, on the one hand, members of a national political party which has enabled them to run for a seat in the first place and supported the election campaign. On the other hand, once elected, MEPs join one of the political group in the EP. This is necessary to effectively advance their policy preferences as well as to gain offices inside the EP – committee chairs, rapporteurships et cetera. Last but not least, MEPs have their own policy preferences which they seek to advance. What happens if the position of the national party and the political group diverge? How does the MEP behave? How can the leadership of a political group ensure a certain level of cohesion within their group?

The second characteristic of a party system would require competition between the political groups inside the European Parliament. Does this take place? Or does the EP reflect the consensus nature of the Council of Ministers and the European Council? The focus here lies on the behaviour of the two largest groups, the European People's Party (EPP) and the Socialists (S&D). Do they compete or do they form a grand coalition, in effect marginalising smaller groups such as the Liberals and the Greens?

### *Empirical findings*

Taking a long-term perspective, Hix (2008) observes two trends: Transnational political groups have become more cohesive internally, and there is indeed increasing contestation between the EPP and the S&D. Nevertheless, in case of conflict, MEPs vote rather with their national party than with their European political group. The latter finding has led to the interpretation that it is the national parties that are the driving force behind those two trends.

These observations rely on one key measurement: the analysis of roll-call votes in the EP. Capturing all roll-call votes since the EP's first direct election in 1979 until 2001, Hix et al. (2006) have found that the socio-economic left/right dimension is indeed the best predictor for voting behaviour of and competition between political groups. The researchers have also found a second dimension, reflecting pro and contra stances on European integration as such. However, this second dimension is "considerably less salient and less stable" (Hix et al. 2006: 509). Hix and Noury (2009) have shown that this mode of political contestation has remained valid even after the "big-bang" enlargement of 2004. The empirical results confirm the expectations of the Hix-Lord model of political contestation. Hix et al. (2007: 60) provide a theoretical explanation for this finding: Territorial issues about the competences of the EU-level and the sovereignty of the member states are resolved by means of constitutional design. In turn, daily legislative business concerns socio-economic questions, thus leading to the dominance of the left/right dimension (Hix et al. 2007: 66).

However, despite these signs of contestation, grand coalitions remain prevalent. Between 2004 and 2013, grand coalitions, including the EPP and the S&D group, or super grand coalitions that additionally include the liberal ALDE group constituted 70% of all roll-call votes. The remaining 30% were equally split between centre-right – EPP, ALDE, ECR – and centre-left – S&D, ALDE, Greens plus sometimes GUE-NGL – coalitions (Hix & Høyland 2013: 179). The patterns of coalition-formation vary significantly across policy areas (*ibid.*). Centre-right coalitions usually prevail when it comes to economic and social policy, while in the areas of civil liberties, justice and home affairs and public health, centre-left coalitions are more likely to be formed (*ibid.*: 180f.). Most often it is the ALDE group that tips the scale.

Grand coalitions have traditionally been formed on matter such as trade and foreign policy (Hix et al. 2003). More recently, it has been shown that inter-institutional negotiations with the Council affect the patterns of coalition-building inside the EP. Larger coalitions are formed if positions between the co-legislators diverge more (Hagemann & Høyland 2010). This also reflects shifting

patterns of party contestation over the course of the legislative process. In the plenary, when the EP faces the Council, grand coalitions happen more often. Moreover, in the second reading, the plenary needs an absolute majority to pass a law. This institutional rule further contributes to the tendency of forming larger coalitions. In contrast, during the amendment procedure on the committee level competition is much fiercer (Hix et al. 2003).

In light of these diverse patterns of coalition-building, the insistence of Hooghe et al. (2002) that one needs to look at the various policy areas in order to fully understand the patterns of political contestation in the EU appears to be relevant. Considering the decisive role of the liberal group, Hooghe et al.'s use of a non-economic GAL/TAN dimension (which is not simply a pro/contra integration dimension) is very valuable. Liberal parties are economically free-market oriented and thus in the right-half of the left/right dimension. At the same time, they score closer to the GAL pole on the second dimension. Consequently, EU politics often lead to a mix of economically liberal and socially progressive policies (Hix & Høyland 2013).

### **3.3 Does the analysis of roll-call votes lead to biased results?**

Methodologically, the studies discussed rely on the analysis of roll-call votes.<sup>1</sup> Alternative ways of voting in the EP are by hand or by an electronic device. However, only in the case of roll-calls the names of the voting MEPs are actually recorded. For a roll-call vote to take place, a party group or a group of at least 32 MEPs have to request this procedure. Consequently, roll-call data is only a sample of the total votes cast in the Parliament. Roll-call votes constitute about one third of the total number of votes (Carrubba et al. 2009; Hix et al. 2007). There are, however, significant differences between the share of roll-calls for legislative and non-legislative votes. The biggest share of roll-calls can be found in parliamentary resolution, which are non-legislative, whereas only few legislative votes are actually roll-calls (Carrubba et al. 2006; Thiem 2006).

This raises questions about the ability to infer from the roll-call sample to the whole population of votes. If roll-call votes simply represented a random selection of votes, inferences would be possible. However, if this was not the case, a roll-call sample will be subject to bias and

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<sup>1</sup> The dominant methodological approach to analysing roll-call votes is spatial modelling (Hix and colleagues). Alternative approaches employ Bayesian statistics (Han 2007) or regression techniques (Otjes & van Der Veer 2016).

generalisation will be problematic.

A number of studies have concluded that roll-call votes are in fact not a random selection of all votes, but the result of a strategic selection bias (Carrubba et al. 2009; Høyland 2010; Thiem 2006; Yordanova & Mühlböck 2015). Two main theoretical explanations have been put forward: party group leaders either request roll-call votes in order to signal their group's policy preference to voters and the public (Thiem 2006) or to enforce party discipline in a particular vote as recorded votes enable group leaders to punish deviant votes (Carrubba et al. 2008). The conclusion mostly drawn from the selection bias is that an analysis of roll-calls overestimate party group cohesion (Carrubba et al. 2008; Thiem 2006). Yordanova and Mühlböck (2015), however, have found that roll-calls of final legislative votes rather underestimate the actual party group cohesion. The authors argue that this is because rolls are called on predominantly contentious issues (Yordanova & Mühlböck 2015: 381). Finke (2015) comes to a similar empirical result. On the other side, in a recent working paper, Hix et al. (2014) seek to empirically refute the notion of a selection bias in EP roll-call votes. In short, the existence of a roll-call selection bias is still disputed and so are its potential effects and theoretical explanations.

Nevertheless, the debate shows that there might be “negative consequences for the use of roll-call votes to estimate legislators’ ideal points, the dimensionality of the policy space, and party influence on legislative voting” (Carrubba et al. 2008: 544). Besides, the scarcity of roll-calls poses a problem for case studies interested in individual legislative procedures and policies. These drawbacks inspire a different approach to researching political contestation in the EP. While voting might be “the ultimate form of preference revelation, [...] it is only the last stage of political coalition-building” (Finke 2012b: 488). Indeed, “legislative coalitions” already coordinate themselves in the proposal and amendment stages, that is on the committee level of the Parliament (ibid.; cf. Baron 1990).

A shift of focus to the committee level is therefore not only methodologically called for, it also makes sense conceptually. As discussed above, grand coalitions often form out of strategic considerations in the face of inter-institutional negotiations with the Council. Free from such pressures, contestation among the political groups is more intense in the committees during the amendment phase.

### 3.4 Committees: a different level of analysis

Proposal stage coalition-formation in the EP has so far received not much attention, Finke (2012) being a notable exception. Research on the EP's committees has mainly focused on the role and influence of the *rapporteur*, who drafts a preliminary report on the respective legislative proposal of the European Commission and who is the EP's chief negotiator in the inter-institutional negotiations with the Council (e.g. Benedetto 2005; Costello & Thomson 2010). Investigating determinants of amendment success in the ENVI (environment, public health and food safety) committee, Hurka (2013) has found evidence for a gate-keeper role of the *rapporteur*. Similarly, Finke (2012) puts the *rapporteur* at the centre of his analysis.

Switching the locus of investigation to committees means focusing not on voting but on amendment behaviour of MEPs. A prominent approach is the analysis of co-sponsorship networks (cf. Desposato et al. 2011). This approach looks at which parliamentarians propose amendments together in order to assess their ideal position. Co-sponsorship analysis has so far mainly focused on the US Congress (e.g. Woon 2008). Whereas in parliamentary democracies, coalition-formation serves the making and sustaining of a government majority, the US Congress (and parliaments in other presidential systems) does not elect the US government. Coalition-building in the Congress therefore focuses on "legislative coalitions" (Finke 2012b: 489). In this respect, the EP is similar to the US Congress, which makes co-sponsorship a promising research strategy.

Co-sponsorship analysis may be a valuable method because it can reveal legislative coalitions between MEPs from different member states, political groups or different co-sponsorship networks inside the same group pointing to intra-group disagreement and contestation. However, by itself, it does not tell anything about the content of the proposed amendments and how it relates to the legislative proposal coming from the Commission. Neither can it discover preference proximities of MEPs who do not co-sponsor each other. For these purposes, it is necessary to look into the content of the amendment. In the next chapter, a measurement strategy is developed that – based on content analysis of amendments – identifies MEP's policy preferences and maps the resulting patterns of political contestation.

### 3.5 Conclusions

The following conclusions can be drawn from this survey of the literature on party group contestation in the EP: According to analyses of roll-call votes, there is indeed a developed party system on the level of the EP which can be characterised by increasing inter-group competition and intra-group cohesiveness. A territorial pro- vs. contra integration cleavage is rather absent from the daily legislative activities of the EP. Instead, competition takes place mainly on the left/right dimension in the same way it does on the member state level. Nevertheless, the importance of a GAL/TAN dimension orthogonal to the economic one cannot be neglected. Notwithstanding these patterns of party group contestation, grand coalitions are still highly important. This can, in part, be attributed to the strategic dynamics of bicameral politics with the Council when a legislative proposal reaches the plenary. However, all these observations rely on the assumption that generalisations from the roll-call sample are possible. A selection bias of roll-call votes can lead to misunderstanding the actual cohesiveness of the party groups in the EP.

### 3.6 Hypotheses

This study asks: *What are the patterns of political contestation over the Digital Single Market?* As discussed above, existing research has demonstrated that contestation patterns vary significantly between different policy areas (cf. Hix & Høyland 2013: 179). The diversity of policies in the DSM therefore warrant a disaggregated investigation of contestation over EU digital policy. By analysing the patterns of contestation in the individual policies of the DSM insights can be gained in whether there is a unified pattern of contestation over digital policy. The main hypothesis for the following analysis is therefore:

**H1:** The patterns of contestation are the same across the various policy issues of the Digital Single Market frame.

Accordingly, the null hypothesis expects different patterns of contestation across the DSM policy issues under consideration (**H0**).

Previous research has pointed to a prevalence of the left/right dimension in the EP. With the DSM, a strong economic frame has been created for the EU's digital policy. Does this imply that the socio-



economic left/right pattern of contestation also takes place in the DSM policies?

**H2:** Political contestation between European political groups takes place along the left/right dimension.

**H3:** The ALDE group is positioned between the S&D and the EPP groups.

Do the ALDE group's policy preferences lie closer to the left or to the right end of the spectrum of political groups? There is no straightforward prediction. The answer might depend on how the group perceives the nature of the DSM. Is it regarded as a matter of civil liberties or economic (de)regulation? Due to their relatively unique characteristic of scoring economically right but socio-culturally closer to the GAL pole, intra-group conflicts appear to be more likely in the ALDE group than in the other political groups.

**H4:** Intra-group splits are more likely to occur in the ALDE group.

**H5:** Intra-group splits of all groups are the result of divergent policy preferences of the national parties united in a political group.

## 4. Methodology

In this chapter, a research design is developed that enables the identification and comparison of the individual policy preferences of MEPs. As discussed in the previous chapter, the two dominant strategies for measuring positions in a parliamentary arena are unsatisfactory in this regard. Roll-call data is scarce and subject to selection biases; co-sponsorship analysis may give insights into the formation of legislative coalitions but not into the substantial positions taken by these coalitions.

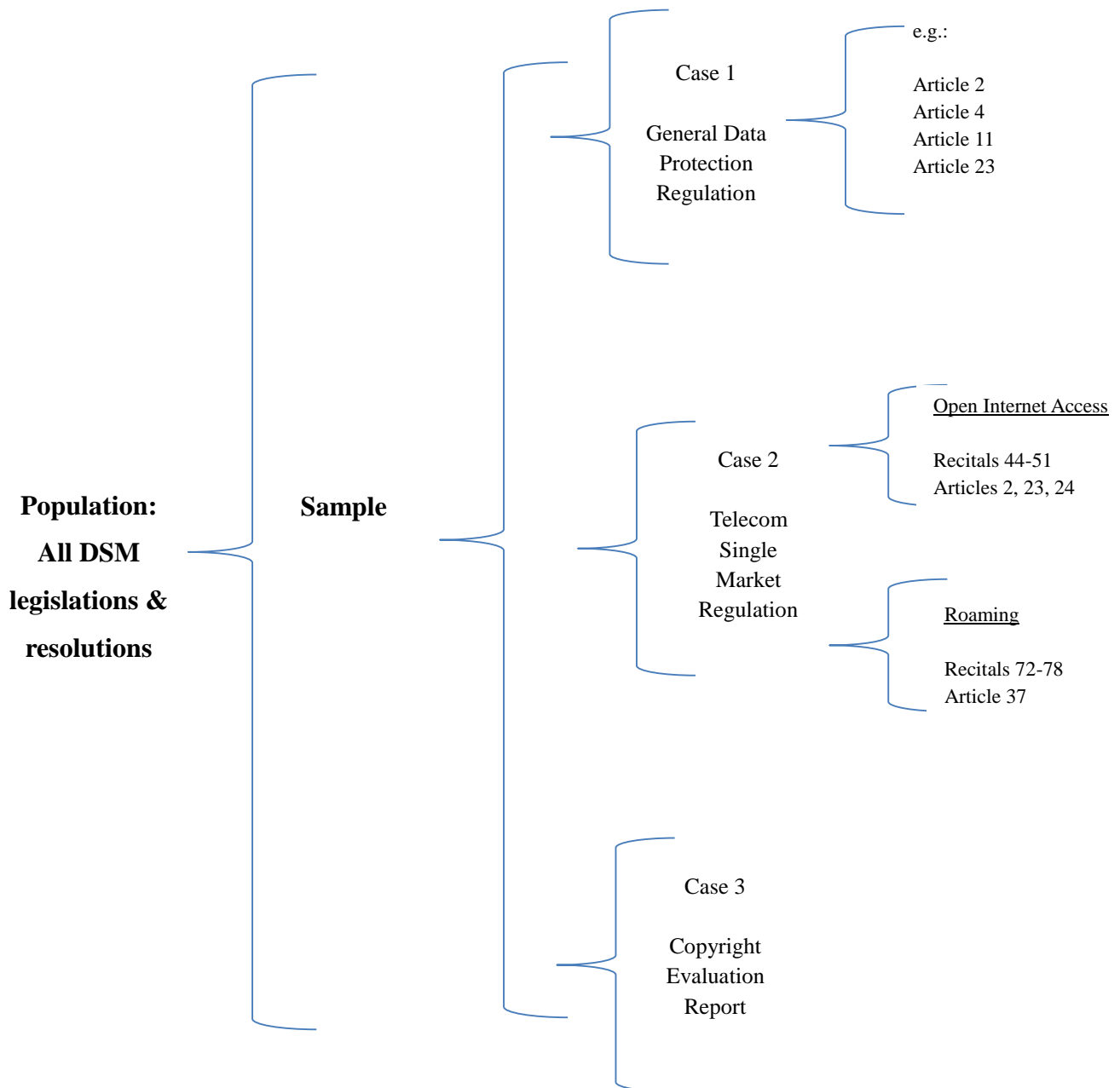
Instead, the present study employs a mixed-methods approach. It conceptualises the policy space of the EP as a *two-mode network* or *bipartite graph* (cf. Leifeld & Malang 2009: 372). A two-mode network  $G$  is composed of two classes of *nodes*  $U$  and  $V$  and the *edges*  $E$  connecting them. The first class of nodes are MEPs ( $U$ ). They work on legislative proposal ( $V$ ) coming from the European Commission. This legislative work consists of amending the proposal. Amendments therefore represent the edges  $E$  between the MEPs and the proposals. In order to gain more detailed observations, the proposals are broken down into their individual articles which are linked to MEPs by amendments that specifically address a certain article. Amendments are used as a proxy for MEPs' policy preferences. Through the MEPs' amendment activity, a network emerges, locating them in a policy space based on their links to legislative proposals.

In the first step, a data set is constructed for each legislative proposal under investigation. A qualitative content analysis of legislative amendments measures the policy preferences of the MEPs. In the second step, this data is visualised, mapping a policy space for the respective proposal. In this way, the patterns of political contestation are revealed. Finally, the patterns found in each case study are compared to each other, in order to assess whether DSM policies are subject to a common pattern of contestation.

Content analysis is resource-intensive, a characteristic that restricts the use of this methods to small- $N$  research designs. Consequently, a careful selection of cases – here legislative proposals – is necessary. This also means that the method developed here cannot replace established techniques for identifying policy preferences, which are more easily scalable for a large number of cases over time, such as the analysis of roll-call votes. Nevertheless, the research design presented here is a promising approach for exploratory studies of novel policy issues and emerging policy fields for which large- $N$  data is not yet available.

## 4.2 Case selection and identification of contested issues

The case study research conducted here seeks to identify the patterns of political contestation over EU legislation under the banner of the DSM. Legislative proposals are the cases and the population of cases are all legislative proposals of the DSM. A sample of three cases is drawn from this population (see *Figure 3*).



*Figure 3: Case Selection*

Small-N research requires deliberate case selection (Gerring 2006: 86f.). The selection strategy employed reflects what Gerring calls *diverse case* selection. This selection technique aims at achieving “maximum variance along relevant dimensions” (ibid.: 97). As discussed above, the DSM unites a diverse set of policy issues. In order to assess the patterns of political contestation over DSM policies, the diversity of the DSM proposals needs to be reflected in the sample. Consequently, the chosen legislative proposal should deal with distinct, non-overlapping policy issues. Additionally, two institutional variables should be taken into account. Established policy areas are usually reflected in the committee structure of the EP. The ENVI committee, for example, is in charge of environmental policy. There is, however, no DSM committee. Instead, depending on the proposal in question, a different committee is responsible. Research on committee membership shows, that MEPs often self-select into committees (Yordanova 2009). This may result in varying patterns of party contestation across committees. Therefore, the cases should be spread over different responsible committees. Secondly, political competition might depend on whether the EP works on a legislative or a non-legislative text, e.g. a resolution or an opinion on a subject it has no competences to legislate on. The sample should therefore contain both legislative and non-legislative cases.

In the EU, the right to initiative lies with the European Commission. The Commission’s legislative proposal is subsequently amended by the EP and the Council, the two co-legislators, before a final text is negotiated between the institutions. For this study, the amendments proposed by the MEPs are the observations or data points collected in order to measure policy preferences. Since ideal points, not end results are of interest, all proposed amendments are observed, not only the ones that are adopted.

However, not all proposed amendments can be analysed. On the one hand, this is due to resource considerations. The number of amendments may very well go into the thousands for major legislations and also for smaller directives or regulations makes up at least several hundred. More importantly, conceptually, including all amendments may prove counterproductive. Often, amendments make only technical or semantic changes, which do not affect the substance of a legal rule set out in the proposal. In other cases, amendments address provisions that are not relevant to the core issues of a legislation. From this follows that there should be an a priori selection of those parts of each case, that are actually crucial for the legislation at stake. Very often, this will be definitions, which if formulated too vague, will create loopholes or if too narrow, will hinder the effectiveness of the law. Crucial aspects could, for example, also be the severity of possible

sanctions or the allocation of enforcement powers to certain administrative bodies. Laws and legislative proposals are composed of topical articles. So in the present context, an a priori selection of the relevant articles of the selected legislative proposals is made. Only the amendments to those articles are analysed. The relevant articles are chosen by way of a qualitative argument. The criteria include their importance for the legal act as such and their prominence in public debate. The number of amendments proposed for an article may serve as an additional quantitative indicator.

*Figure 3* illustrates the case selection procedure and its results. The chosen cases are the General Data Protection Regulation, the Telecom Single Market Regulation and the non-legislative Copyright Evaluation Report.

## **4.2 Content analysis and coding**

Policy preferences are measured through content analysis of legislative amendments. Amendments are conceptualised as relational data, linking their authors to a particular article of a legislative proposal. To a certain degree, amendments therefore reflect salience – an MEP wants to change the Commission's proposal. But proposals can be changed in different directions, this means that the data has to be valued to be meaningful. Binary data would only express whether there is a link between an MEP and a proposal or not, irrespective of the direction of its content (cf. Leifeld & Malang 2009: 372). The value of an edge expresses the policy preference of an MEP.

In order to assess the policy preferences of MEPs, typically an analytical framework or point of reference would be needed. One could, for example, try to locate the MEP's ideal point in the two-dimensional model of Hooghe et al. (2002) introduced above. However, this would require complex operationalisations. Contrary to, for example, party manifestos or plenary speeches, legislative amendments do not (explicitly) lay out the underlying ideology or contextual motivations for a certain preference. Instead, they are very detailed changes to specific legal provisions. Amendments thus have a clear reference point: the legal text they want to change. Therefore, the European Commission's proposal is the reference point of the content analysis of the amendments and the value they are assigned in the network.

Amendments may strengthen or weaken a regulatory standard, raise or lower the amount of a fine, transfer more or less competences to the EU level or to an independent agency. This requires an a

priori definition of the dimension on which political contestation takes place: more or less regulation, more or less integration et cetera. Only after the specification of the dimension of contestation, the coding can take place. The following coding scheme is used: +1 for raising a standard, -1 for weakening a standard or 0 for no substantial change. These codes make up the values of the edges in the network.

**Example for the coding scheme:**

General Data Protection Regulation: Article 4 (Definitions) – paragraph 1 – point 1

**Text proposed by the Commission**

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

**Amendment 714:** Sophie in't Veld

*(1) 'data subject' means an identified natural person or a natural person who can be identified or singled out, directly or indirectly, alone or in combination with associated data, by means reasonably likely to be used by the controller or by any other natural or legal person, in particular by reference to a unique identifier, an identification code, location data, online identifiers or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, social or gender identity or sexual orientation of that person;*

**Code: 1**

**Amendment 716:** Louis Michel

*(1) 'data subject' means an identified natural person or a natural person who can be identified, directly or indirectly, by means reasonably likely to be used by the controller, in particular by reference to an identification number or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person. A natural person shall not be considered identifiable if identification requires a disproportionate amount of time, effort or material resources;*

**Code: -1**

### 4.3 Mapping the policy space

After identifying the policy preferences of MEPs, the next step is to locate them in the policy space. So far a policy space has been conceptualised as a two-mode network made up of two classes of nodes – MEPs and legislative proposals (and the amendments linking them). However, it is the relationships among the MEPs themselves, that is of interest. In order to (visually) show how close (or distant) the MEPs' policy preferences are, the two-mode network has to be transformed into a one-mode network, in which the only class of nodes are MEPs. The locations and connections of MEPs in this new network depend on their connections (that is edges meaning amendment activity) in the two-mode network. “The goal here is to create an actor-by-actor matrix of the similarity (or distance) measures” (Hanneman & Riddle 2005: 208). Afterwards, “techniques for visualizing the similarities in the actor's patterns of relations with other actors” can be applied (ibid.).

The two-mode networks in the case studies are the graph theoretical expression of the respective data sets generated by the content analysis of amendments. The data sets have the form of an affiliation matrix (cf. Leifeld & Malang 2009: 371). These affiliation matrices need to be transformed into adjacency or actor-by-actor matrices, the form for data sets of one-mode networks (cf. Leifeld & Malang 2009: 382). The mathematical transformation of the matrices is conducted algorithmically according to the sum-of-cross-products using the software UCInet, a specialised program to conduct social network analysis (Borgatti et al. 2016).<sup>2</sup> In order to eliminate loops, the connection of MEPs to themselves, the diagonal of the new actor-by-actor matrix is set to zero.

The new one-mode network visualises the positions of MEPs in the policy space based on the structural equivalence of their policy preferences. Equivalence refers to the similarity or dissimilarity of entities determine by their connections in a network (Hanneman & Riddle 2005: 205). In the present context, two MEPs are structurally equivalent if they have proposed amendments with the same value to the same articles of a legislative proposal. The goal of an equivalence analysis is to identify clusters of actors. This allows the discovery of groups of MEPs, legislative coalitions, that compete with each other. In other words, the patterns of political contestation are revealed. The measure of structural equivalence employed is Euclidean distance (ibid.: 210).<sup>3</sup>

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<sup>2</sup> The transformation is performed via the *data>affiliations* function in UCInet (Borgatti et al. 2016).

<sup>3</sup> “The Euclidean distance between two vectors is equal to the square root of the sum of the squared differences between them. That is, the strength of actor A's tie to C is subtracted from the strength of actor B's tie to C, and the difference is squared. This is then repeated across all the other actors (D, E, F, etc.), and summed. The square root of the

Network analysis offers a number of techniques for visualising equivalences. One of them is *multidimensional scaling* (MDS), which is an appropriate method if one “simply wishes to display the proximities among actors” (Wasserman & Faust 1997: 287; cf. Hanneman & Riddle 2005: 215f.). MDS “seeks to represent proximities (similarities and dissimilarities) among a set of entities in low-dimensional space so that entities that are more proximate to each other in the input data are closer in the space, and entities that are less proximate are further apart in the space” (Wasserman & Faust 1997: 288). MDS thus shows “which subsets of actors are relatively close to each other in a graph theoretical sense” (ibid.). In essence, MDS is an algorithm to visualise similarities. It is therefore a strictly descriptive method. It produces a scatter plot, which can in turn be easily interpreted by the researchers. The main value of the output graph is that distances between the entities can be interpreted. MDS is performed using the UCInet software (Borgatti et al. 2016).

The output graphs of each case study are used to describe the patterns of political contestation of the respective legislation and its policy issues. The findings are compared to the roll-call votes – if existing – for the same proposal. This might give insights in whether the mode of contestation has changed over the course of the legislative process.

In the final step, the identified patterns are compared to each other. This gives insights in potential variations of the patterns across the various policy issues of the DSM.

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sum is then taken” (Hanneman & Riddle 2005: 210).



## 5. Case Studies

### 5.1 Case selection

The patterns of political contestation in the DSM are examined in three case studies aimed at capturing the diversity of policies brought together under this frame. The cases are therefore chosen according to Gerring's (2006) strategy of diverse case selection (see above). For the selection, the following is taken into account: First, the cases should reflect how different the policy issues are content-wise. Moreover, institutionally, two aspects are considered: Different committees should be responsible for the legislations. This takes into account that there might be committee-specific conflict patterns that could be explained by, for example, self-selection of their members (cf. Yordanova 2009). Moreover, a non-legislative procedure should be examined as well. The EP does not only write laws but also works out resolutions and reports on issues for which it has either no competence or for which the European Commission has not yet made use of its right to initiative. Non-legislative procedures may be subject to different political logics than legislative procedures. An indicator for this is the fact that there are more roll-call votes in non-legislative than in legislative procedures (cf. Carrubba et al. 2006).

The three chosen cases are the General Data Protection Regulation, the Telecom Single Market Regulation and the EP's Copyright Evaluation Report (see *Figure 3* above).

The General Data Protection Regulation was one of the major legislative projects of the last five years. Revising the 1995 Data Protection Directive, it regulates the collection and use of personal data by private and public organisations. What makes this law particularly interesting is that it transposes a fundamental right into secondary EU law: Data protection is one of the fundamental freedoms enshrined in the EU's Charter of Fundamental Rights. Even though data has become a trade-able good that lies at the heart of many online businesses, the legal status of data protection shows that digital policy is not just economic policy but that it has a considerable civil rights dimension as well. Accordingly, the General Data Protection has been primarily discussed in the Committee on Civil Liberties, Justice and Home Affairs (LIBE). It was drafted under the ordinary legislative procedure, meaning that the EP acted as an equal co-legislator together with the Council. The General Data Protection Regulation makes for an interesting case with regard to the methodology developed for this study. In the first reading in the EP plenary, 95% of MEPs voted "yes" (Vote Watch Europe 2014). An analysis of roll-call votes would therefore not reveal the real

policy preferences of MEPs.

The second case selected is the Telecom Single Market Regulation. This proposal is an example for sectoral economic policy, the EU has been regulating the telecom market since the late 1980s. This latest initiative addresses, among other issues, roaming charges and net neutrality. It thus reflects that the regulation of network infrastructure requires a strong consumer protection component. The Commission proposal has been discussed in the Committee on Industry, Research and Energy (ITRE). Like the General Data Protection Regulation, the Telecom Single Market falls under the ordinary legislative procedure. However, following the committee report, there was no consensus in the plenary. In both plenary readings, additional amendments were tabled. This case therefore allows the comparison of roll-call voting and the amendment preferences as measured with the methodology developed here.

The third and final case to be discussed in this study, is the EP's Copyright Evaluation Report. What sets it apart from the other two cases, is its non-legislative nature. The report has been initiated by the EP itself and drafted in the Committee on Legal Affairs (JURI). Copyright has become very politicised in a time, in which content can be easily shared online. A new balance between the interest of artists and right holders – property rights are, after all, a cornerstone of a market economy – and consumers, whose everyday online behaviour is often in conflict with the law. Does the non-legislative character of the report affect the patterns of political contestation? Having this case in the sample gives the opportunity to detect a possible institutional effect when comparing it to the two legislative dossiers.

## 5.2 Case Study: General Data Protection Regulation

### 5.2.1 Legislative Background

In the EU, the protection of personal data is regarded as a fundamental right, related to but distinct from the right to the privacy of home and communications (Gutwirth & Gellert 2011). It is enshrined in Article 8 of the Charter of Fundamental Rights of the EU.<sup>4</sup>

From the 1960s onwards, national data protection laws were introduced across Europe. Since then, technological developments have repeatedly led to changes in data processing practises, an on-going challenge to the effectiveness of legislative efforts. Over time, the focus of regulation shifted from centralised, mostly public databases to decentralised, often private data processing practices (Mayer-Schönberger 1997). This trend also caused an internationalisation of data flows, bringing national laws to their limits. After repeated calls by the EP, the European Commission proposed a European Data Protection Directive in 1990. By employing an economic framing to the issue – it was the time of the establishment of the Single Market – member states could be convinced that harmonisation was necessary (Bennet & Raab 2006: 93; Heisenberg 2005). Coming into force in October 1995, *Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data* positioned the EU as a global front runner in data protection (Bennet & Raab 2006; Heisenberg 2005: 73). The Directive contained a comprehensive set of rules for both the private and the public sector, excluding, however, law enforcement. In 2001, *Regulation (EC) 45/2001* followed, addressing data protection within EU institutions. The law enforcement context was covered by *Council Framework Decision 2008/977/JHA*.

### 5.2.2 The General Data Protection Regulation

The technological developments since the early 1990s, when the Data Protection Directive was conceived, has altered the technical but also the societal context in which personal data is collected and used. “The digitisation of just about everything” (Brynjolfsson & McAfee 2014: 57) is turning more and more aspects of citizens’ lives into data, which can be collected and analysed: friendship

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<sup>4</sup> The right to a private and family life, home and communications is enshrined separately in Article 7 of the Charter.

networks, online search patterns, body functions during work-out sessions et cetera. New techniques for data analysis are being applied to this “big data” in order to make predictions about individuals’ behaviour and offer them personalised services.

By 2010, it had become clear that European data protection law has to be updated in order to keep up with these challenges. At the same time, it was recognised that the Data Protection Directive had fallen short of its harmonisation aims. Differences between the national data protection laws of the member states remained, both in substantial standards and in supervision and enforcement efforts. A consequence was so-called “data havens”, attracting multinational companies with lower standards and in turn weakening the protection of all EU citizens’ data.

The European Commission (2010a) therefore outlined a “comprehensive” reform of the EU data protection framework. Two objectives were formulated: addressing the impact of new technologies and improving the consistency of rule implementation and enforcement across member states by providing better institutional arrangements and more effective sanctioning. In 2012, the Commission proposed a General Data Protection Regulation (GDPR) that would replace the existing Directive (European Commission 2012). Data protection in the law enforcement context was to be strengthened by a complementing proposal for a Directive substituting the Council Framework Decision. This case study focuses on the GDPR due to its relevance for the DSM.

The reform was a huge undertaking. The proposed GDPR consisted of 91 articles covering, among other aspects, the rights of individuals, the responsibility of data controllers and processors, the competences of and the cooperation between supervisory authorities and the transfer of personal data to third countries. Subject to immense lobbying from interest groups (Cáceres 2013), slow-paced deliberations in the Council (Ebbinghaus et al. 2014) and 3133 proposed amendments in the EP’s Committee on Civil Liberties, Justice and Home Affairs (LIBE), the legislative process took four years until the GDPR was finally passed into law in April 2016.

The sheer number of proposed amendments has made it impossible to analyse and code all of the them for this study. To achieve a manageable sample, 34 articles of the proposed Regulation have been selected for analysis. This selection has been made based on a qualitative assessment of the individual articles importance for the GDPR as a whole. Moreover, the number of proposed amendments for each article has been taken into account, serving as an additional quantitative indicator for the perceived importance but also controversial nature of articles from the point of

view of the MEPs. Due to those capacity concerns, the Regulation’s recitals have been excluded from the analysis. *Table 1* presents the selected articles. In the end, 1777 amendments have been coded for the research.<sup>5</sup> +1 is the code for amendments which raise the level of protection by reducing exceptions, strengthening enforcement, specifying rules or extending their scope are coded +1. Amendments are coded -1 if they reduce the level of protection by adding exceptions, softening the obligations of data controllers and processors, weakening supervisors or formulating provisions in a vaguer manner.

Article	Title	no. AMs	Significance
<b>Chapter I: General Provisions</b>			
Art. 2	Material Scope	43	<i>In what cases does the GDPR apply?</i>
Art. 4	Definitions	110	<i>Definitions of the central concepts of the law. Unclear or vague definitions may turn out to be loopholes.</i>
<b>Chapter II: Principles</b>			
Art. 5	Principles relating to personal data processing	46	<i>The principles on which the EU data protection law is built.</i>
Art. 6	Lawfulness of processing	120	<i>The different legal grounds on which personal data may be processed.</i>
Art. 7	Conditions for consent	42	<i>The data subject’s consent is a frequently used legal basis for processing personal data.</i>
Art. 9	Processing of special categories of personal data	41	<i>The processing of sensitive data requires higher safeguards.</i>
<b>Chapter III: Rights of the data subject</b>			
Art. 11	Transparent information and communication	15	<i>Means for the data subjects to exercise their rights vis-à-vis the data controller.</i>
Art. 12	Procedures and mechanism for exercising the rights of the data subjects	49	
Art. 17	Right to be forgotten and erasure	118	<i>Clarification of the controversial right to be forgotten after the landmark judgement of the Court of Justice of the European Union (2014).</i>
Art. 18	Right to data portability	44	<i>This right is an innovation of the GDPR. It seeks to reduce lock-in effects in the relation of data subjects and data controllers, making it easier for consumers to change to different service providers.</i>
Art. 20	Measures based on profiling	85	<i>Profiling is considered to be one of the greatest challenges to data protection at the moment (cf. Hildebrandt &amp; Gutwirth 2008).</i>
<b>Chapter IV: Controller and Processor</b>			

<sup>5</sup> The journalistic project Lobbyplag.eu has also evaluated amendments to the GDPR with the aim of comparing them to lobby papers of interest groups (Open Data City & europe-v-facebook 2015). The coding done here has been cross-checked with the Lobbyplag assessments to ensure valid measurement.

Art. 22	Responsibility of the controller	62	<i>The data controller determines the means and purposes of data processing and is the main actor responsible for compliance with the GDPR.</i>
Art. 23	Data protection by design and by default	40	<i>This principle demands a cradle-to-grave approach to data protection in the design of data processing systems. It becomes binding law for the first time in the GDPR (cf. Hildebrandt &amp; Tielemans 2013).</i>
Art. 26	Processor	53	<i>Processors conduct data processing operations on behalf of controllers and are consequently also subject to the regulation.</i>
Art. 33	Data protection impact assessment	84	<i>Ex ante impact assessment is seen as a central element in the GDPR's self-regulatory dimension.</i>
Art. 34	Prior authorisation and prior consultation	59	<i>Prior authorisation was a controversial form of ex ante control which hasn't made it in the final text.</i>
Art. 35	Designation of data protection officer	127	<i>Data protection officers are monitoring the compliance of the organisations they are working for. This is an interesting element of self-regulation in the GDPR.</i>
Art. 36	Position of data protection officer	35	
Art. 37	Tasks of the data protection officer	49	
<b>Chapter V: Transfer of personal data to third countries or international organisations</b>			
Art. 41	Transfers with an adequacy decision	38	<i>The transfer of personal data to third countries has become a very politicised issue, in particular with regard to the US after the Snowden leaks, which lead to the CJEU's invalidation of the Safe Harbour Agreement Court of Justice of the European Union (2015).</i>
Art. 42	Transfer by way of appropriate safeguards	54	
Art. 43	Transfers by way of binding corporate rules	32	
Art. 44	Derogations	43	
<b>Chapter VI: Independent Supervisory Authorities</b>			
Art. 51	[Supervisory Authority] Competences	25	<i>National supervisory authorities are the main enforcement bodies of the GDPR.</i>
Art. 52	[Supervisory Authority] Duties	21	
Art. 53	[Supervisory Authority] Powers	22	
<b>Chapter VII: Co-operation and consistency</b>			
Art. 58	Opinion by the European Data Protection Board	31	<i>The newly formed European Data Protection Board institutionalises the co-operation of national supervisors and is responsible for a consistent application and enforcement of the law.</i>
Art. 66	Tasks of the European Data Protection Board	32	
<b>Chapter VIII: Remedies, liabilities and sanctions</b>			
Art. 73	Right to lodge a complaint with a supervisory authority	20	<i>Remedies, liabilities and sanctions are crucial for effective enforcement. Increased and harmonised administrative fines seek to deter non-compliance and prevent "data havens".</i>
Art. 77	Right to compensation and liability	23	
Art. 78	Penalties	6	
Art. 79	Administrative sanctions	115	
<b>Chapter IX: Provisions relating to specific data processing situations</b>			
Art. 81	Processing personal data concerning health	35	<i>Example for the protection of sensitive data.</i>
Art. 83	Processing for historical, statistical and scientific research purposes	58	<i>This clause is often used as a legal basis for big data analyses (cf. Mayer-Schönberger &amp; Padova 2016).</i>

Table 1: Articles of the GDPR included in the analysis

### 5.2.3 Analysis

What pattern of political contestation shaped the legislative process in the EP's LIBE committee? *Figure 4* maps the policy preferences of the MEPs as derived from their amendment input. The scatter plot is the result of multidimensional scaling (MDS), visualising the similarity of the MEPs' policy preferences. The spectrum ranges from MEPs who want to increase the level of protection proposed by the European Commission (at the left end of the graph) and those who prefer less strict regulation (at the right end).

The result confirms *Hypothesis 2*: In the case of the GDPR, political contestation took place along the classical left/right dimension. A big cluster of MEPs from the EPP group is located to the right of the centre, indicating their preference for lower regulatory standards. MEPs from the S&D group, on the other hand, cluster to the left of the centre. For the left side of the spectrum, this pattern is confirmed by the smaller parties. Cornelia Ernst and Marie-Christine Vergiat, representing the far-left GUE-NGL group, prefer even higher standards than most of the social democrats of the S&D group. The rapporteur for this dossier, the Green MEP Jan-Philipp Albrecht marks the pro-regulation extreme.

The members of the liberal ALDE group, however, appear very heterogeneous in their policy preferences. Having co-sponsored each other's amendments, Adina-Ioana Vălean from Romania and the Dane Jens Rohde mark the "less regulation" end of the political spectrum. They are accompanied by the Belgian MEP Louis Michel. This small cluster seems to ideal-typically represent the free-market aspect of liberalism, taking a stronger stance against regulation than the EPP's Christian democrats. More moderate are the British Sarah Ludford and the German Alexander Alvaro, whose positions seem to reflect those of the EPP cluster. On the other side, the Dutch MEP Sophie in't Veld is located next to the social democrats in the "more regulation" camp. Reflecting ALDE's reputation as a centrist group, the MEPs Jan Mulder, Riika Manner and Nils Torvalds can be found at the cluttered centre of their policy space, where EPP and S&D are overlapping. This dispersion of liberal MEPs support *Hypothesis 4* – ALDE is prone to intra-group splits.

How can this be explained? In data protection policy, the two dimensions of political liberalism collide. While economically free-market oriented, liberal parties are, on the socio-cultural dimension, usually supportive of individual rights and civil liberties. In other words, they score high

on the economic left/right axis but also close to the GAL pole on the socio-cultural axis of the Hooghe-et-al. model (2002). Historically, both economic freedom and civil rights had to be wrested from authoritarian governments. Like the privacy of home and communications, data protection has its roots as a negative freedom (Gutwirth & Gellert 2011). After all, the first data protection laws were passed to regulate government databases (Mayer-Schönberger 1997: 222). Even though the GDPR also encompasses public authorities – excluding the particularly sensitive domains of law enforcement and national security – private, economically-motivated processing of personal data was the focus of the debate about the Regulation. Stronger protection of the personal data of individuals, however, meant more regulation of private companies and their business-models. It is therefore not surprising that the liberal group had divergent preferences. *Hypothesis 5* proclaims that the various preferences can be explained by the political orientation of the MEPs’ national parties.

The Chapel Hill Expert Survey estimates party positions on ideology, European integration and selected policy issues for European countries (Bakker et al. 2015). Among other measures, party ideology is measured according to the two-dimensional model of Hooghe et al. (2002). *Table 2* presents these scores for the ALDE MEPs who were active in the amendment phase for the GDPR.

MEP	National party	Chapel Hill scores (2014)	
		Economic left/right dimension ( <i>salience</i> )	Socio-cultural GAL/TAN dimension ( <i>salience</i> )
Alvaro, Alexander	FDP	8 (8.7)	3.4 (5.5)
in’t Veld, Sophie	D66	6.6 (6.4)	1 (6.2)
Ludford, Sarah	Liberal Democrats	5.1 (7.9)	2.4 (4.9)
Manner, Riika	KESK	5.4 (7.6)	7 (5.1)
Michel, Louis	MR	7.6 (8.6)	3 (3.2)
Mulder, Jan	VVD	8.3 (7.8)	5.1 (4.1)
Rohde, Jens	Venstre	7.3 (8)	5.7 (5.1)
Torvalds, Nils	SFP	7.3 (6.2)	2.1 (7.1)
Vălean, Adina-Ioana	PNL	6.6 (7.5)	5.4 (4.5)
		0 = extreme left 5 = centre 10 = extreme right  (0 = no importance 10 = great importance)	0 = Libertarian/Post-materialist 5 = centre 10 = Traditional/Authoritarian  (0 = no importance 10 = great importance)

*Table 2: ALDE MEPs’ national party ideology according to the 2014 Chapel Hill Expert survey (own table, based on Bakker et al. 2015).*



Does the varying orientation of the MEPs' national parties explain the intra-party split? Looking at the two extremes within the ALDE group, this appears to be the case. Sophie in't Veld has taken the strongest "pro-regulation" stance among liberals. Her national party, the Dutch D66 scores on the economic dimension (6.6) close to the ALDE average. But it stands out with a GAL/TAN score of 1, right at the GAL pole. This remarkable position indicates that support for a strong protection of personal data should indeed trump potential economic concerns. In contrast, the ALDE cluster at the "less regulation" extreme of the policy space represents national parties – the Belgian Movement Reformateur (MR), The Danish Venstre and the Romanian Partidu National Liberal (PNL) – that are more moderate on the socio-cultural dimension while tending to be more free-market oriented than the D66. Pivotal seems the greater salience they attribute to the economic dimension compared to the socio-cultural dimension. Michel's MR, for example, is also close to the GAL pole (scoring 3) but only attributes law salience to the dimension (3.2) – in contrast to the very high salience (8.6) reserved for economic issues. It can thus be concluded that, as hypothesised, the preferences of national parties can explain intra-group splits.

Notwithstanding the large number of amendments and the different policy preferences they reflect, the LIBE committee was able to draft a report that, on the one hand, amended the Commission proposal significantly and, on the other hand, was acceptable for the EP as a whole. In March 2014, the plenary adopted almost consensually the LIBE text – 95% of MEPs voted in favour (European Parliament 2014c; Vote Watch Europe 2014). Following lengthy *trilogue* negotiations with the Council and the European Commission, the second reading took place in April 2016. The plenary passed the GDPR into law, this time without roll-call votes.

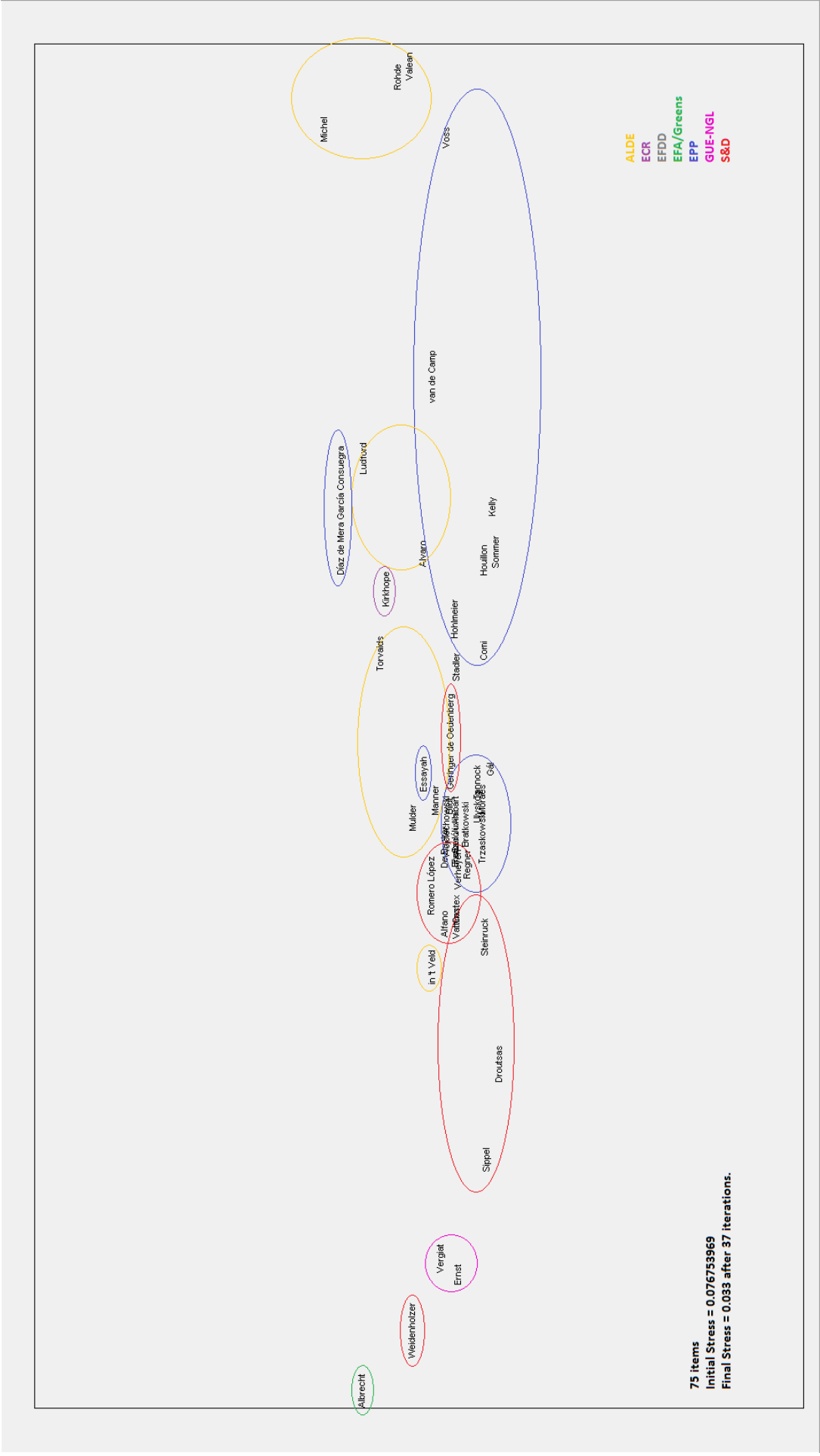


Figure 4: The policy space of the General Data Protection Regulation in the EP's LIBE committee (multidimensional scaling)

#### **5.2.4 Conclusions**

By using the methodology developed above, the analysis of legislative amendments has been able to demonstrate that there was political contestation over the GDPR in the LIBE committee, even though the plenary vote was consensual.

The policy space resulting from MEPs' amendment input confirms the long-term patterns found in roll-call analysis (Hix & Høyland 2013). Political contestation takes place among a left/right dimension. The left part of the party spectrum, S&D, Greens and GUE-NGL support higher regulatory standards for the protection of personal data. The conservative groups EPP and ECR, on the other side, have predominantly submitted amendments that would weaken the level of protection which had been proposed by the European Commission. The MEPs of the ALDE group, often tipping the scale in favour of the centre-left or centre-right preferences, however, appear to have diverging policy preferences. This intra-group split can be explained by differences in ideological orientation and issue salience of their national parties.

### **5.3 Case Study: Telecom Single Market Regulation**

Infrastructure policy is a cornerstone of the DSM. Telecommunications networks, both fixed-line and mobile, are the backbone of any digital economy. The EU has a long history in regulating these networks. The key objective of such regulation is to prevent network operators from exploiting the natural monopoly that is inherent to this type of infrastructure. On the one hand, it guarantees competing providers of telecommunications services access to networks fostering competition and consumer choice. On the other hand, regulation grants consumers rights with regard to their contractual agreements with service providers. Both of these facets were addressed in the European Commission's (2013c) ambitious proposal for a Telecom Single Market Regulation published in 2013.

#### **5.3.1 Legislative Background and the Telecom Single Market Proposal**

Traditionally, the telecommunications sector used to be in the hands of state monopolies all over Europe. When member states of the then European Community started to privatise their monopolies during the 1980s, the European Commission positioned itself as an actor in telecommunications policy. Boosted by the Single European Act of 1986 which set the goal of establishing a single market within the European Community, the Commission advocated privatisation and regulatory harmonisation (Schneider 2001: 236f.). First directives prescribing liberalisation were adopted in 1988 and 1989 (ibid.: 238). Focusing on the promotion of competition, a more comprehensive regulatory framework for the telecommunications sector was legislated in 1998. Since then it has been updated two times, in 2002 and 2007 (Tintor et al. 2010). These successive legislative packages unbundled networks, introduced access regulations to safeguard competition, established or harmonised consumer rights, set price caps on roaming charges for cross-border wireless communication and fostered cooperation between the national regulatory authorities.

However, today's telecommunications market still bears the legacy of the former state monopolies. Telecommunications companies continue to operate largely among national lines. This can be partly attributed to fragmented regulations for fixed as well as wireless telecommunications networks, hindering the establishment of transnational networks (European Commission 2013a). Cross-border competition is not taking place. An immediate consequence for consumers in the EU are, for example, roaming surcharges, that is additional charges for calls, text messages and internet access

when using their mobile devices in another EU country (ibid.: 4).

In order to overcome this state of affairs, the European Commission published a proposal for a Telecom Single Market Regulation in 2013. According to the Commission, a genuine single market in the telecommunications sector means that telecommunications companies are able to offer their services outside of their home member states and that consumers can obtain services from any EU-based supplier as well as the removal of excessive charges for intra-EU calls (ibid.: 5). The proposed regulation was certainly ambitious. It included a simplification of regulation for companies, more coordination between member states in the allocation of spectra for wireless networks, standardised wholesale products to promote competition, harmonised consumer rights, incentives to eliminate roaming surcharges as well as safeguards for an “open access” to the internet, the so-called “net neutrality” principle (European Commission 2013c).

However, when the regulation was finally passed by the European Parliament and the Council in October 2015, only the latter two provisions – roaming and open internet access were retained. Instead of a Telecom Single Market Regulation comprehensively overhauling the regulatory framework of the telecommunications sector, the result of the legislative process was a more modest *Regulation (EU) 2015/2120 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users’ rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union*.

It was the Council who caused this reduction of content. When the EP adopted its position on the proposal in April 2014, it stuck to the complete range of issues, passing 233 amendments (European Parliament 2014a). The Council, on the other hand, decided to focus on roaming and open internet access and entered the inter-institutional negotiations with the Parliament only in these two areas (Council of the European Union 2015b). The other issues included in the proposal were not completely abandoned though. They are part of the Commission's current review of the telecom framework which will lead to new legislative initiatives by the end of 2016. On 30 June 2015, the EP and the Council agreed on the reduced legislation. The EP passed the agreed text without further amendments on 27 October 2015.

### 5.3.2 The Policy Issues

#### *Net Neutrality/Open Internet Access*

In the final Regulation (EU) 2015/2120, *open internet access* is regulated in Articles 3-6. To a certain degree the term *open internet access* paraphrases the principle of *net neutrality*. In public debate, the term net neutrality is prevalent and has been used to garner public support for strict rules. Net neutrality, often portrayed as a guiding principal on which the internet was built, states that internet access providers should treat all internet traffic on its network equally, without blocking, slowing down or speeding up individual kinds of data, services or applications (cf. Wu 2003). In its first reading, the EP added a definition for net neutrality to the Regulation: “net neutrality’ means the principle according to which all internet traffic is treated equally, without discrimination, restriction or interference, independently of its sender, recipient, type, content, device, service or application” (European Parliament 2014a: 83). The final text of the adopted Regulation, however, does not include this definition anymore – a decision that consequently has to be attributed to the Council.

Net neutrality has been described as a crucial provision for innovation and competition in an online economy as well as a critical safeguard for media plurality and the freedom of expression (European Parliament 2014d: 262; Wu 2003). Without rules on net neutrality, internet service providers could become gate keepers between online businesses and consumers, for example, by slowing down certain online services. They could charge firms for “fast lanes” to the consumers. Such a practice would generate market entry costs for start-ups, thus consolidating an existing market structure. Another example for a violation of the net neutrality principle is zero-rating, a practice often used in mobile networks (cf. Kak 2015). Zero-rating means that the use certain web services is not credited in the data volume purchased by a consumer. Such a practice is the result of agreements between internet service providers and online businesses, in the mobile environment frequently Facebook or the streaming service Spotify. Such deals generate the incentive for consumers to use the zero-rated services and not those of competitors, because that would increase their costs for data.

In the last years, telecom operators have started to criticise the net neutrality principle arguing that online businesses whose services are responsible for increasing internet traffic, should co-finance the expansion of the network infrastructure (e.g. Höttges 2015). At the same time, internet service providers such as Deutsche Telekom have themselves started to offer internet-based services such as

voice-over-IP telephony or online television (IPTV). This has raised concerns that they intend to assign privileged speeds to their own offers, discriminating competitors (cf. van Schewick 2016). In turn, consumer organisations and digital rights groups have painted a bleak picture of a future internet without net neutrality, which they stated would not be recognised to today's users. Accordingly, they titled their online company advocating strict rules on net neutrality "save the internet".<sup>6</sup>

The European Commission has taken a middle ground, advocating exceptions from the general prohibition to discriminate between internet traffic. The Commission proposal lists a number of legitimate reasons for traffic management, that is the intervention in internet traffic. It also allows so-called specialised services, which are excluded from the net neutrality rules, if they do not function as a substitution to "regular" internet services (European Commission 2013c). The Commission has argued that such services would require a guaranteed speed to function properly, a requirement that could not be secured under net neutrality where speeds depend on the amount of traffic at the time (European Commission 2013a: 6). To promote its position, the European Commission has pointed to eHealth applications and internet-connected cars as critical infrastructure. However, the Commission also lists internet television and video conferences as specialised services (ibid.).

In the EP, the main line of conflict on net neutrality thus was whether there should be more or less or no exceptions at all for the general prohibition of discrimination. A secondary line of conflict addressed the question of how much competences national regulatory authorities should have with regard to defining, restricting and scrutinising potential restrictions. The diverging preferences of MEPs on these two lines of conflict can be captured very well with the method outlined in Chapter 4 above.

### ***Roaming***

If a mobile phone user is abroad, he usually cannot access the mobile network he is a customer of due to the lack of cross-border telecommunications networks. Instead he will have to access a different network in order to make (or receive) calls and text messages or to use the internet. This is referred to as *roaming*. However, the costs for calls, texts or data roaming are usually higher than domestic tariffs. The additional costs for consumers are called roaming surcharges. Mobile network

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<sup>6</sup> See [www.savetheinternet.eu](http://www.savetheinternet.eu) (Accessed: 01/06/2016).

operators have to acquire roaming capacity from foreign network operators in order to provide their customers network access abroad. Consequently, they pass the costs on to their customers, thus causing roaming surcharges for consumers.

Roaming charges are unpopular among consumers. MEPs have long expressed their will to abolish them. Already before the proposal for the Telecom Single Market Regulation, roaming was heavily regulated by EU law. Price caps for roaming surcharges were set and consumer information requirements implemented. The latest roaming regulation – often referred to as the Roaming III Regulation – stemmed from 2012 (Regulation 531/2012). Nevertheless, roaming surcharges have remained high. From the view of the European Commission, this situation is the opposite of a single market for communications (European Commission 2013b: 16). Roaming charges “constitute a practical impediment to exercising single market freedoms” (European Commission 2013a: 4).

But the Commission’s Telecom Single Market proposal did not simply name a date from which on roaming surcharges would be prohibited. Instead it foresaw a more complex “stick-and-carrot” system to reach the desired market outcome (European Commission 2013b: 16). While charges for incoming calls would be abolished, mobile network operators would have a choice. They could either voluntarily abandon roaming premiums and charge their customers domestic tariffs even abroad and as a consequence be free of further regulation on roaming (“the carrot”). Or they would continue to charge (capped) premiums but be subject to regulation (“the stick”). This regulation would force them to allow their customers to switch to an alternative – cheaper – roaming provider when abroad, without having to change SIM cards. In this way, price competition between roaming providers could be sparked, or so the Commission hoped.

How could MEPs react to this proposal? First of all, they could either support the Commission’s incentive approach or they could opt for simply demanding an end to surcharging. In the latter case, conflict may arise about the date of the abolishment, i.e. the transition period until the “end of roaming”. In both systems, contestation over the height of price caps might occur.

In the final Regulation, Article 7 amends the Roaming III Regulation. Rejecting the Commission’s approach, the adopted text states that from 15 June 2017, no surcharges may be levied. In order to prevent a misuse – e.g. permanently using a SIM card from a member state with a lower price level than the user’s country of residence – providers may implement a fair use policy in boundaries set by the European Commission in implementing acts. Roaming providers may also apply for



authorisation to apply a surcharge in specific and exceptional circumstances to ensure the sustainability of their domestic pricing model.

### 5.3.3 Analysis

#### *Open Internet Access*

What pattern of political contestation over net neutrality can be observed in the EP's ITRE committee? *Figure 5* shows the result of MDS. The visualisation reveals a spectrum ranging from the S&D member Petra Kammerevert on the one end to the ALDE MEP Jürgen Creutzmann on the other end. This means that the two MEPs proposed the most conflicting amendments.<sup>7</sup> The content analysis of their respective amendments shows that Kammerevert pressed for stricter rules on net neutrality and less exceptions, whereas Creutzmann advocated the opposite. The other MEPs involved in the amendment process are spread in between these two extremes. This already indicates a left/right pattern of contestation between supporters of more and those of less regulation (*H2*). Does this first impression hold for a closer look?

Rapporteur Pilar del Castillo Vera (EPP), is placed roughly at the centre of the spectrum, indicating a moderate position in the committee. Slightly to her right, a cluster of fellow EPP members can be found. The cluster does, however, also include Dimitrios Droutsas from the S&D group. Overall, the “right” side of the policy space is dominated by the EPP. To the left of the rapporteur, the situation is more mixed and includes members from S&D, ALDE, EPP, ECR and the Greens.

With the exception of the EPP, the analysis does not reveal a clear clustering of MEPs according to their political groups. The relatively homogeneous position of the EPP is not contested by a homogeneous rival camp. It is possible, however, that the accumulation of amendments with Kammerevert is a result of an internal division of labour of the S&D group. If that would be the case, the distance between Kammerevert and her fellow social democrats would not imply diverging policy preferences.

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<sup>7</sup> A look at the data set (see appendix) confirms this. Their relation is valued -22, the lowest value in the data set, expressing the biggest distance between two MEPs in the policy space.

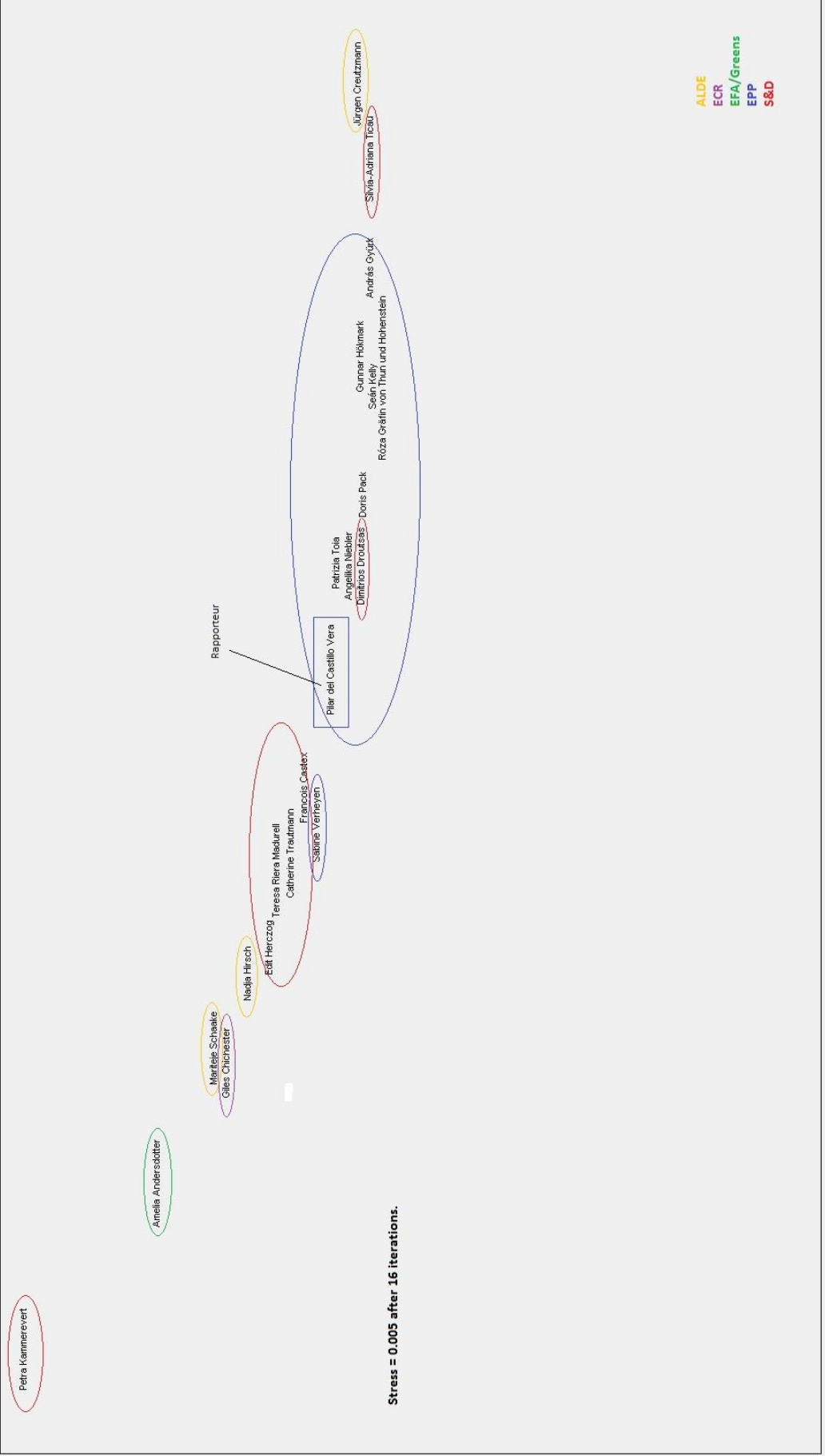


Figure 5: The policy space of net neutrality (multidimensional scaling)

In any case, a left/right competition as hypothesised (*H2*) can be roughly identified with the Kammerevert and the Swedish Pirate Amelia Andersdotter, a member of the Green group, positioning themselves opposite of the EPP. This hints at a classical more-vs.-less regulation conflict following a left/right logic. From this perspective, it also seems logical that the German liberal Creutzmann – whose national party, the FDP, is economically very free-market oriented (cf. Bakker et al. 2015) – takes the extreme position for less regulation. However, there are also liberal economic arguments for strict rules on net neutrality. Legally guaranteed net neutrality safeguards a level-playing field for competition between online businesses. Moreover, civil rights arguments pro net neutrality have been used in the political debate. It is therefore not surprising that the ALDE group appears to be internally split on the issue. Besides Creutzmann, two other ALDE MEPs have been active on the issue. Marietje Schaake from the Dutch party D66, which has a stronger focus on civil liberties than on economic freedoms (cf. Bakker et al. 2015), is among the strongest advocates of strict legal rules. Still, even a FDP colleague of Creutzmann, Nadja Hirsch, is located in the pro-regulation half of the spectrum. The findings for the liberal MEPs confirms Hypothesis 4, which envisaged a split inside the ALDE group.

#### ***Plenary amendments and roll-call votes***

While this study focuses on amendment input to determine MEPs' policy preferences, it is useful to compare them to roll-call voting where it is available. Eight distinct amendments to the committee report concerning net neutrality were introduced for the plenary's first reading (European Parliament 2014d). Most of them were actually proposed twice by two different sets of sponsors but with equal text. On behalf of the ALDE group, Marietje Schaake sponsored six of the amendments. Seven were co-sponsored by the social democrat Catherine Trautmann, Amelia Andersdotter of the Greens and Cornelia Ernst and Rina Roja Kari of the GUE-NGL. One amendment was introduced by Christian Engström, a member of the Green group. All the amendments favoured a stronger protection of open internet access. That this aim was presented by two different sponsorship coalitions – a liberal and a leftist one – might show reservations of the two camps vis-à-vis each other. Aside from that, a centre-left coalition including even the far-left GUE-NGL group positioned itself in favour of strong net neutrality legislation. The conservative spectrum of the EP, the EPP, the ECR as well as the Eurosceptic EFDD proved to be against the explicit mentioning of the term net neutrality in the law. Consequently, there was a majority for all eight amendments (European Parliament 2014b). ALDE, Greens and GUE-NGL voted unanimously in favour. The three conservative groups but also the S&D group had some dissenters voting with the opposite camp respectively. This voting pattern reaffirms Hypothesis 2. It also confirms Hypothesis 3: ALDE

placed in between the centre-left and centre-right camps, in this case tipping the scales in favour for stricter regulations.

However, as mentioned before, the term net neutrality is missing from the final Regulation. The informal *trilogue* negotiations with the Council and the European Commission reversed the EP's first reading resolution. Nevertheless, before the second reading in the plenary, the ITRE committee recommended to approve the Council's position without further changes. This was a controversial stance even inside the committee. Therefore, rolls were called on the recommendation. The Greens, GUE-NGL and EFDD voted against the recommendation whereas the other groups voted in favour (European Parliament 2015c). There were no deviations, not even among the liberal MEPs who had supported net neutrality before. It has to be noted, though, that in the meantime the 2014 European elections did change the composition of the EP as a whole but also of the committee. Schaake, for example, the pro-net neutrality spokesperson of ALDE, had been re-elected but switched to the trade committee.

Notwithstanding ITRE's support for the position of the Council, a considerable amount of amendments was introduced during the plenary's second reading. They ranged from an overall rejection of the Council's position (sponsored by the EFDD group) to a restoration of the EP's first reading resolution on matters such as the definition of net neutrality and specifications of what constitutes specialised services or legitimate traffic management (sponsored by Greens and the far-left). All amendments got rejected and the Council's position was endorsed and thus turned into law (European Parliament 2015b). Nevertheless, the voting patterns for these amendments are interesting. They reveal considerable splits in both, the ALDE and the S&D groups. The majority of the two group including their respective leadership rejected the amendments but could obviously not achieve party discipline.

Recalling that these two groups essentially voted against a position they had supported in the first reading, it raises the question what caused this change of mind. It has been argued that the EP engaged in a "pork-barrel" deal with the Council, trading net neutrality against a quick end to roaming surcharges (Beckedahl 2015; Järvinen 2015). This can be seen as a move to appease telecom operators. Moreover, roaming charges are highly visible for voters promising whereas net neutrality is a rather technical aspect. From a re-election perspective, there was clearly an incentive to choose the abolition of roaming surcharges over strict net neutrality rules.

## *Roaming*

Analysing the proposed amendments to the roaming provisions in the Telecom Single Market proposal, it becomes clear that contestation does barely take place between MEPs or party groups. Instead, the EP appears almost united in rejecting the incentive-based approach the European Commission had proposed to reach an end of the surcharging practice.

In her draft report for the ITRE committee, rapporteur Pilar de Castillo Vera (EPP) argues: “The Commission proposal on tackling roaming through voluntary agreements, as an alternative to the current obligations of the Roaming III regulation, generates a high degree of uncertainty”. Instead, “[a]fter three regulations, in a six-year period, the Rapporteur proposes to finally abolish retail roaming charges for voice, SMS and data”. In Amendment 130 de Castillo Vera sets the date for abolishing roaming surcharges: “With effect from 1 July 2016, roaming providers shall not levy any surcharge in comparison to the charges for mobile communications services at domestic level on roaming customers for any regulated roaming call made or received, for any regulated roaming SMS message sent or for any regulated data roaming services used, without prejudice to measures taken to prevent anomalous or fraudulent usage.” The following amendments by the rapporteur are of a more technical nature, bringing the Commission proposal in line with this new objective (European Parliament 2013a).

Similarly, almost all of the amendments proposed by the other MEPs in the committee are more or less technical, implicitly or explicitly following the rapporteur’s position on the end of roaming. Two amendments are noteworthy, however. Catherine Trautmann and Dimitrios Droutsas, both members of the S&D group, introduce the notion of a fair-use policy “[t]o prevent an unlimited use of retail roaming services at domestic price level” (European Parliament 2013b: 170). This is an exception to the abolition of roaming surcharges. The position is not shared in any of the amendments by other MEPs. In fact, it seems closer to the position of the Council, as will be discussed later on. The other amendment diverging from the rapporteur’s position was proposed by a group of 12 MEPs, which included the Danish Jens Rohde (ALDE), 10 British liberals and the Dutch Judith Merkies (S&D). The co-authors demanded the abolition to occur already one year earlier on the 1 July 2015 (ibid.: 171). Neither of the two amendments was adopted in the plenary’s first reading (cf. European Parliament 2014a).

Since all proposed amendments reject the European Commission’s approach and there is little internal divergence with most amendments being rather technical, it does not make sense to MDS

analysis to the roaming case. For the internal contestation of the EP, a rough pattern could be sketched, which shows that only 11 MEPs – 10 of which were members of the ALDE group – advocated an earlier abolition of roaming surcharges (European Parliament 2013b: 171). But the main finding here is that the EP as an institution took a position opposite to the European Commission. The pattern of political contestation is inter-institutional.

This finding raises the question, however, where the EP's relatively homogeneous policy preference came from. In fact, the EP was just adopting a *Resolution on the Digital Agenda for Growth, Mobility and Employment: time to move up a gear (2013/2593(RSP))* when the European Commission published its proposal for the Telecom Single Market Regulation. The end of roaming was its central aspect. In the resolution, the EP had set the goal of closing “the gap between roaming and national tariffs [...] by 2015” (European Parliament 2013d). It can thus be concluded that the EP's position on the Telecom Single Market Proposal stems from this resolution. The logical next step for assessing the intra-parliamentary contestation over the subject is then to apply this study's research design to the resolution as well. But the analysis of the resolution's first draft – introduced by the liberal Jens Rohde – as well as of the amendments proposed by other MEPs comes to the same result. Even though Rohde's draft was challenged on a couple of details, the central point, abolishing roaming by 2015, was not challenged. There is little internal conflict about roaming in the EP.

Having analysed both the EP's amendment behaviour vis-à-vis the Commission proposal as well as the making of the earlier resolution, it has to be concluded that there was no major political conflict about the abolition of roaming in the EP. On the contrary, the EP was able to face the Commission and the Council with a common position. The pattern of political contestation over roaming was essentially inter-institutional. The EP preferred an earlier end to roaming surcharges than the Council and was willing to employ a stronger measure – setting an end date in law – than the European Commission, which had proposed an incentive-based approach.

### 5.3.4 Conclusion

The Telecom Single Market proposal placed the EP in inter-institutional opposition to the European Commission and to a lesser degree to the Council. On roaming, the EP more or less uniformly preferred setting a date for the abolition of surcharges instead of the incentive-based approach of the Commission. With regard to open internet access, a large centre-left coalition ranging from ALDE to the far-left GUE-NGL group supported stronger safeguards and the explicit inclusion of the term net neutrality in the Regulation. In the first reading, this coalition outvoted the EPP and ECR groups who were less eager to tighten the legal rules. This pattern is in line with the long-term observation that political contestation takes place along a left/right dimension with the liberals located at the centre and tipping the scale (cf. Hix & Høyland 2013). In the second reading, however, the majority of S&D MEPs as well as a large part of ALDE were willing to compromise with the Council on net neutrality – potentially to secure their preference on roaming. The second reading thus reflects the pattern of a grand coalition albeit with a considerable number of deviants among the ALDE and S&D ranks.

This case has shown the limitations of the research design developed for this case study research. If the EP has a relatively homogeneous preference and the political conflict occurs not among MEPs but mainly between the different EU institutions, the proposed method might fall short. The roaming case shows this very well. Even so, in the case of net neutrality, the MDS analysis indicates the contrast between the conservative groups (represented by the EPP) and the centre-left coalition. Both, roll-call votes and a look at the amendments also shows how the majority of S&D MEPs and many liberals were willing to compromise on their initial policy preference.

## 5.4 The EP's Copyright Report

### 5.4.1 Background

Copyright is a field of law that has been challenged by ICT and its impacts on society. Creative works such as music, film or photography now exist in digital formats and are easily shared via the internet, often in disregard of the copyrights creators and right holders have to these works. Copyright is infringed through the illegal exchange of works online (“piracy”) but also through creative processes such as sampling or remixing. Previously a subject limited to the creative sectors, copyright has become an issue for millions of internet users. Affected industries, such as the music and the film businesses, have long struggled to find a response to these developments and to develop their own business-models for the online environment. Instead they have reacted with increased enforcement measures: implementing technical copy protection mechanisms, initiating legal proceedings and demanding high fines from individuals. Many consumers regard these reactions as disproportionate and demand reforms while artists fear for their bread and butter. Copyright has become politicised. Attempts to lock-in existing copyright rules and to strengthen enforcement measures in trade agreements failed in the face of protests, most famously in the case of ACTA, the Anti-Counterfeiting Trade Agreement (Losey 2014). The issue even became a driver for the founding of new political parties in various European countries.<sup>8</sup> In Sweden and Germany, these Pirate parties enjoyed some surprising albeit short lived electoral success.

There is no encompassing European copyright act. Various directives, however, harmonise certain aspects of national copyright laws, including, among other things, resale (Directive 2001/84/EC), renting and lending (Directive 2006/115/EC), enforcement of intellectual property rights (Directive 2004/48/EC) and, most recently, collective copyright management and multi-territorial licencing of rights (Directive 2014/26/EU). The most comprehensive set of harmonised provisions are laid down in *Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society* (InfoSoc Directive).<sup>9</sup>

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<sup>8</sup> Pirate parties highlighted various internet-related policy issues which had been neglected by the established party system, including, besides copyright, data protection and technologically-enabled participation of citizens in political decision-making.

<sup>9</sup> An overview of the EU copyright framework is available at: <https://ec.europa.eu/digital-single-market/eu-copyright-legislation> (Accessed: 09/06/2016).



The European Commission has identified fragmented copyright law as a major obstacle for the DSM, focusing its assessment on cross-border access and portability but also highlighting legal uncertainty resulting from diverging implementation of exceptions (European Commission 2015a: 7). The DSM Strategy outlines five fields of action: “The Commission will make legislative proposals before the end of 2015 to reduce the differences between national copyright regimes and allow for wider online access to works by users across the EU, including through further harmonisation measures. The proposals will include: (i) portability of legally acquired content, (ii) ensuring cross-border access to legally purchased online services while respecting the value of rights in the audiovisual sector, (iii) greater legal certainty for the cross-border use of content for specific purposes (e.g. research, education, text and data mining, etc.) through harmonised exceptions, (iv) clarifying the rules on the activities of intermediaries in relation to copyright-protected content and, in 2016, (v) modernising enforcement of intellectual property rights, focusing on commercial-scale infringements (the 'follow the money' approach) as well as its cross-border applicability” (ibid.: 8).

#### **5.4.2 The EP’s Copyright Evaluation Report**

In January 2015, Julia Reda, sole MEP of the German Pirate Party and member of the Green group in the EP, drafted a report on the implementation of the InfoSoc Directive. Determined to push copyright reform on the EU agenda but lacking the right to initiate legislation, Reda opted for a non-legislative report according to Rule 52 of the EP’s Rules of Procedure (“Own-initiative reports”) in the Committee on Legal Affairs (JURI).

The InfoSoc Directive includes a lot of limitations to and exceptions from copyright protection but makes their adoption voluntary to the member states. In her draft, Reda pushed for a more harmonised copyrights by turning all exceptions and limitations mandatory for member states. Reda also proposed the introduction of a single European Copyright title. Next to these harmonisation efforts, the draft also advocated, among other issues, lowering the barriers for the re-use of public sector information, broad copyright exceptions for research and educational purposes, a clarification on the legality of hyperlinks (even if they link to protected works) and an expansion of the right to quote from text to audio-visual material (European Parliament 2015a).

Two lines of conflict with regard to the Report’s assessment appear: Firstly, should copyright law be

harmonised further and secondly, regarding the level of protection, should there be more or less exceptions from the baseline protection of copyrights?

Due to its nature as an own-initiative, the Copyright Evaluation Report does not have a Commission proposal as a reference point for assessing the policy preferences of MEPs. This means that the rapporteur's draft should be the reference point for the analysis of the amendments. However, due to her membership in the German Pirate Party, it can be assumed that Reda is an outlier in the policy space of copyright law taking an extreme position on the subject. This is confirmed by the reactions of MEPs from other political groups, both to the right and to the left of the centre. S&D shadow rapporteur Mary Honeyball criticised Reda's approach towards the report: "This was meant to be an evaluation of the 2001 InfoSoc directive. We've seen a lot of new stuff in this report, some of which I think is quite dangerous, and we haven't actually seen a lot of evaluation of what went before. I think we need a lot of amendments and a lot further consideration" (cf. Reda 2015a). In a similar vein, Therese Comodini Cachia, shadow rapporteur for the EPP, commented: "I think the report has fallen into a trap. And that is the trap of taking a polarised view of this outcome. The way forward for this report definitely is to have amendments in order to bring in the balance between rights-holders and users in it" (ibid.). Consequently, many amendments tabled in the JURI committee opposed Reda's proposal, often advocating the erasure of whole paragraphs. In this light, it makes little sense to regard Reda's draft as a neutral point, coding the amendments of the other MEPs involved as 1 or -1. A cursory look at the amendments indicates that such a coding scheme would put almost all MEPs in one cluster. A nuanced picture of the policy space would not be gained. Therefore, a different coding scheme is used. Reda's draft is coded 2. So are all amendments that parallel the objective of the draft. Amendments that go the same direction as the draft but are less extreme are coded 1; amendments going into the opposite direction -1 or, if they are an outright rejection of the draft, -2. Amendments that bring in issues which were not addressed in Reda's draft are coded 0.

### Example for the coding scheme:

Paragraph 19 of the Copyright Report addresses exceptions from copyright protection for research and educational purposes. To illustrate the coding scheme employed in this case study, Reda's proposal is compared to three amendments. The highlighted parts of the amendments indicate the differences between the four versions and why they are coded differently.

**Draft report:** Julia Reda

19. Calls for a broad exception for research and education purposes, which should cover not only educational establishments but any kind of educational or research activity, including non-formal education;

**Coded: 2**

**Amendment 457:** Juan Fernando López Aguilar, Sergio Gutiérrez Prieto, Eider Gardiazabal Rubial, José Blanco López

19. Calls for a broad exception for research and education purposes, which should cover not only educational establishments but any kind of educational or research activity run under the aegis of educational programmes or institutions;

**Coded: 1**

**Amendment 462:** Angel Dzhambazki, Sajjad Karim

19. Calls for targeted exceptions for research and education purposes;

**Coded: -1**

**Amendment 454:** Cecilia Wikström

- Delete -

**Coded: -2**

### 5.4.3 Analysis

Figure 6 maps the policy space of copyright reform in the EP's JURI committee. The scatter plot resulting from MDS highlights the extreme position of the rapporteur, the Pirate Party politician Julia Reda. It also shows the strong opposition from the EPP and a S&D group whose members are spread almost across the whole spectrum.

The centre of the graph marks the split between those MEPs who are relatively supportive of the direction Reda's draft and those who tend to oppose her proposals. The line can be drawn next to Laura Ferrara. The member of the Italian protest party 5 Star Movement was the only shadow rapporteur (for the Eurosceptic EFDD group) who praised Reda's draft before the amendment phase,

calling it “excellent work” (cf. Reda 2015a). Likewise, at the centre are three MEPs from the Green group, signalling the general support of the group for their rapporteur without feeling the need to make a lot of amendments.

A bit closer to Reda’s position are two liberal MEPs, Marietje Schaake and Cecilia Wikström. Coming from the Dutch party D66, Schaake represents the socio-culturally libertarian facet of the liberal party family: According to the Chapel Hill Expert Survey, D66 is located right at the GAL pole of the Hooghe-et-al. model (Bakker et al. 2015). On the other hand, Wikström’s Swedish party Liberalerna, while also leaning towards the GAL pole (with a score of 3.1 in the Chapel Hill dataset), has a strong free-market focus (7.5 on the socio-economic dimension and a high salience of 7.1) (ibid.). This indicates that there is broad support in the ALDE group – both from economic and socio-cultural liberals – for a copyright reform which aims at more harmonisation and more exceptions to the protection of copyright.

Even so, another liberal is placed right at the opposite extreme of the spectrum, the French centrist Jean-Marie Cavada. His national party, the Nouveau Centre, is a bit more moderate on the economic dimension (6.8) but is located in the TAN half of the socio-cultural dimension (6.2). This score is remarkable for a party whose members are part of the ALDE group. It expresses a moderate conservatism more kin to Christian democrats and the EPP. This divergence from the ALDE “mainstream” might explain the discrepancy between Cavada’s and Schaake and Wikström’s policy preferences on copyright.

MEP	National party	Chapel Hill scores (2014)	
		Economic left/right dimension (salience)	Socio-cultural GAL/TAN dimension (salience)
Cavada, Jean-Marie	Nouveau Centre	6.8 (7.6)	6.2 (5.7)
Schaake, Marietje	D66	6.6 (6.4)	1 (6.2)
Wikström, Cecilia	Liberalerna	7.6 (7.1)	3.1 (5.9)
		0 = extreme left 5 = centre 10 = extreme right  (0 = no importance 10 = great importance)	0 = Libertarian/Post-materialist 5 = centre 10 = Traditional/Authoritarian  (0 = no importance 10 = great importance)

Table 3: ALDE MEPs’ national party ideology according to the 2014 Chapel Hill Expert survey (own table, based on Bakker et al. 2015).

A second explanation for Cavada's position in the policy space may be his nationality. All French MEPs involved took a highly critical position towards Reda's draft. A French cluster could be easily drawn at the right-side of the space and would include Cavada, several French EPP members but also Virginie Rozière (S&D) and Marie-Christine Boutonnet from the Front National. The French MEPs acted as engaged defenders of their national copyrights provisions. Their stance on the so-called "freedom of panorama", the right to photograph works which "are permanently located in public places" (paragraph 16 of the draft report), caused a controversy in the JURI committee and received attention in the wider public (Klein 2015).

Policy preferences among S&D members vary noticeably. The Austrian Josef Weidenholzer is closest to Reda, having co-sponsored some of her own amendments to the original draft. Victor Negrescu from Romania and Polish MEP Lidia Geringer de Oedenberg also support Reda's direction. However, there is also cluster of S&D members opposing this course, including four Spanish socialists and the British shadow rapporteur Mary Honeyball. Even more opposed is Virginie Rozière, who finds herself in the big EPP cluster. A similar stance has been taken by the far-left GUE-NGL group. The EPP cluster, finally, illustrates a relatively homogeneous rejection of Reda's proposal.

Altogether, the policy space does not really reflect a left/right contestation (*H2*), not least because the GUE-NGL has more or less taken the position of S&D and EPP. It makes more sense to speak of a grand coalition (dominated by the EPP) opposing a proposal coming from the Green group. Intra-group differences can be found for ALDE (*H4*) but also in the S&D group.

Consequently, many amendments were adopted, altering the report in significant ways. Most importantly, the principle of territoriality in copyright law was reaffirmed – in opposition to Reda's aim of more harmonisation. Moreover, the necessity of effective enforcement was included. Due to Reda's background as a member of the Pirate party, it can be argued that she deliberately ignored this important aspect. Her draft had focused very much on the perspective of users/consumers. In contrast, the interests of creators and right holders were stressed throughout the adopted text.

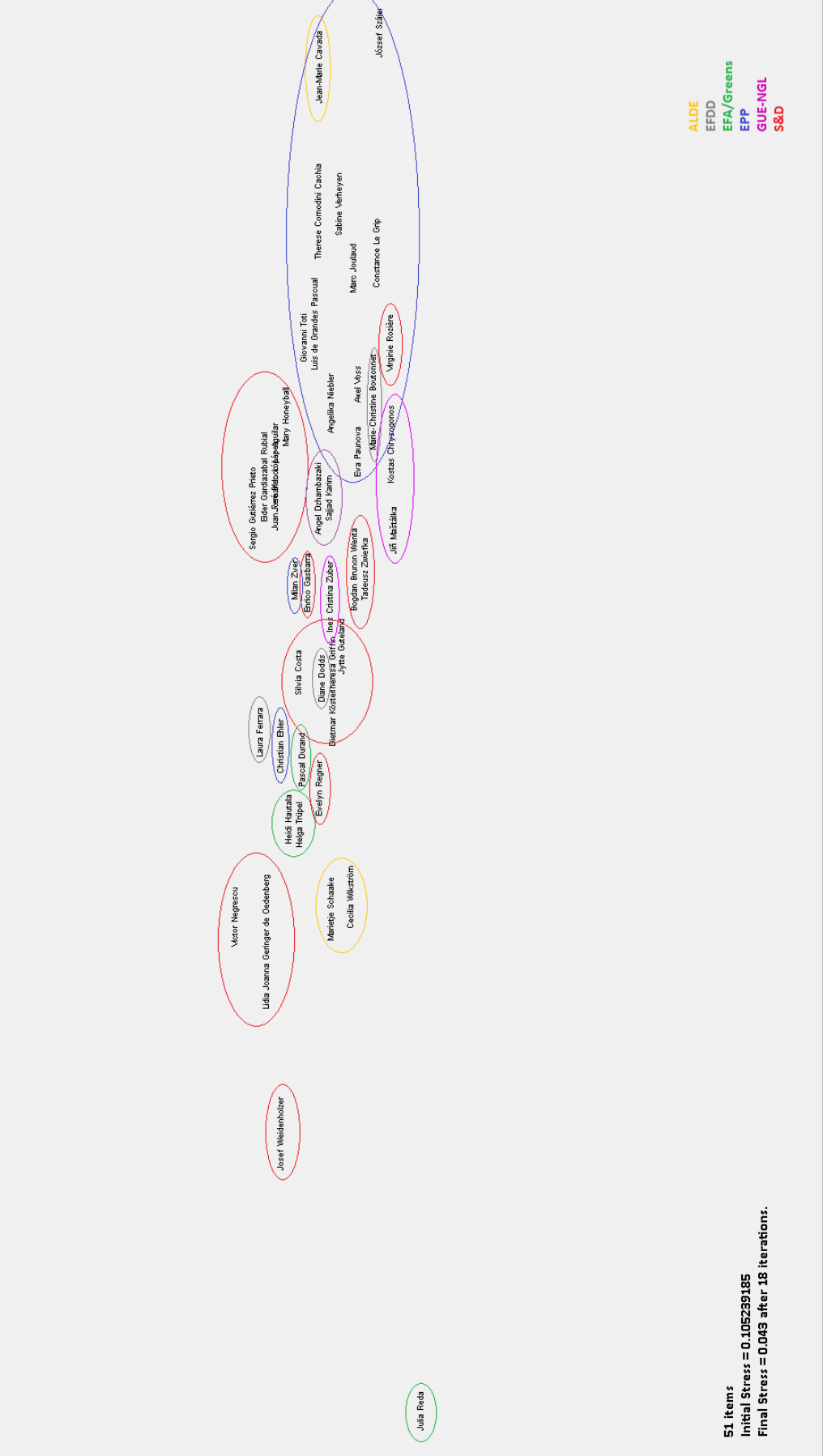


Figure 6: The policy space of the EP's Copyright Evaluation Report (multidimensional scaling)

Despite the changes, Reda expressed her satisfaction with the result: “It calls on the Commission to consider a wide variety of measures to bring copyright law up to speed with changing realities and improve cross-border access to our cultural diversity, going further than the plans so far announced by the Commissioners. The report marks a turning point: After decades in which the focus was on introducing new restrictions to protect the material interests of right holders, this is the strongest demand yet to reconsider the rights of the public – of users, cultural heritage institutions and scientists, and of authors who build on what has come before” (Reda 2015b).

In July 2015, the amended Copyright Evaluation Report was adopted in the plenary. Reda and her Green group, as well as her supporters among ALDE and S&D, supported the new text. In the end a super grand coalition of EPP, ECR, S&D, ALDE and Greens voted in favour, making up 82% of the vote. The two far-right groups EFDD and ENF voted against the report. The far-left GUE-NGL group was split with some voting yes, others no and a large number of abstentions (Vote Watch Europe 2015).

With regard to the roll-call votes in the plenary, the existence of a (super) grand voting coalition is nothing unusual (cf. Hix & Høyland 2013). Recalling the GDPR case, a consensual vote in the plenary does not preclude contestation between political groups at the committee level. What does stand out here, is the finding that EPP and a big part of the S&D group already shared the same policy preferences at the committee stage. The two political groups do not appear to support far-reaching harmonisation and large-scale extension of exceptions from copyright protection.

#### **5.4.4 Conclusion**

A reform of copyright law as envisioned by Julia Reda would have encompassed more EU-wide harmonisation. Exceptions from copyright protections, which have been implemented differently across member states, would have become mandatory for all. While there was support for this vision among Greens, liberals and some social democrats, Reda’s draft was largely opposed in the committee, in particular by the EPP and a considerable part of the S&D group. In effect, the adopted Evaluation Report in many ways contradicted Reda’s draft. In the final text, the EP reaffirms the principle of territoriality in copyright law and the value of cultural diversity it reflects – a strong statement in opposition to further harmonisation. The adopted amendments also stress the importance of effective enforcement, an aspect that was missing from Reda’s draft.

It is a surprising finding that this case displays a grand coalition pattern already at the committee stage. Usually, more contestation is expected at this level since it “allows the groups to stake out their diverse ideological positions for later compromise without undermining the need to present a united front against the Council and Commission to secure the policy goals of the EP as a whole” (Hix et al. 2003: 320).

Following its own DSM Strategy, the European Commission has published a proposal for a *Regulation on ensuring the cross-border portability of online content services in the internal market* (COM(2015) 627 final) which touches on the copyright issue. A proposal for a *Regulation on addressing geo-blocking* (COM(2016) 289 final) from May 2016, however, explicitly excludes the sensitive issue of copyright. According to Commission Vice-President Andrus Ansip, a proposal addressing geo-blocking of works protected by copyright will be following soon (Plucinska et al. 2016). Political debates about copyright reform will thus continue in the EP and provide opportunity to further map this policy space. What this case study indicates, is that it will be difficult to achieve a far-reaching copyright reform given the preference congruence of S&D and EPP.



## 6. Discussion

### 6.1 Overall patterns of contestation

Having studied political contestation in three cases, the General Data Protection Regulation, the Telecom Single Market Regulation and the EP's Copyright Evaluation Report, it is time to return to the main research question: *What are the patterns of political contestation over the Digital Single Market in the European Parliament?*

It was hypothesised that *“the patterns of contestation are the same across the various policy issues of the Digital Single Market” (H1)*. What are the results of the case studies? First, in the case of the GDPR, a clear left/right cleavage emerges from the analysis of the MEPs' amendment input (*Figure 4*). This confirms *Hypothesis 2* on the predominance of the left/right dimension. A left “coalition” of S&D, Greens and GUE-NGL advocated higher standards for data protections, whereas EPP and ECR supported lower standards, i.e. less or weaker regulation for data processing companies and public authorities. The liberal ALDE group, however, is very much split (see *H4*). As expected (*H5*), the differences between the preferences among liberal MEPs can be explained by the orientation of their national parties, in particular by their position in the two-dimensional model of Hooghe et al. (2002). The LIBE committee eventually came up with a compromise position which got adopted in the plenary almost without any dissenting votes. The research design of this study has thus been able to reveal the true patterns of contestation obfuscated by the consensus vote.

For the second case study, two distinct policy issues were picked from the much larger Telecom Single Market proposal which was later scaled down significantly by the Council: open internet access/net neutrality and roaming. With regard to open internet access, the analysis of amendment input revealed a centre-left camp supporting strong net neutrality safeguards which ranged from ALDE to the far-left GUE-NGL. The EPP and ECR groups, by contrast, preferred less strict legal rules (*Figure 5*). The roll call vote in the plenary's first reading is consistent with this pattern. In the second reading, however, the plenary adopted the Council's position which reversed some of the core provisions that originated from the EP's first reading resolution. In that role-call vote, a majority of ALDE and S&D MEPs abandoned their original policy preference causing intra-group splits. This has been explained by a package deal with the Council. The EP compromised on its position on net neutrality in order to secure the Council's approval for its position on roaming. Indeed, when it comes to the abolition of roaming surcharges, the EP acted very homogeneously with

almost no internal contestation. Instead, roaming was subject to inter-institutional contestation between the EP and the European Commission and the Council. This case study underlines that for assessing MEPs' true policy preferences it is not enough to only look at roll-call votes which can be influenced by strategic considerations. Content analysis of legislative amendments can resolve this problem.

The last case that has been examined is the Copyright Evaluation Report, a non-legislative initiative by the EP. The first draft by the rapporteur Julia Reda, a Pirate party member representing the Greens/EFA was heavily opposed by a grand "coalition" of EPP and S&D. Curiously, the MEPs of the far-left GUE-NGL fit into the EPP/S&D cluster. Reda's draft did get some support from fellow Greens, some liberals and a couple of social democrats diverging from their party group majority (*Figure 6*). The final text of the Report consequently differed significantly from the first draft, in particular in its reaffirmation of a territorial conception of copyright which Reda originally wanted to overcome. Even so, the report was adopted with the roll-call votes of a super grand coalition in the plenary that included EPP, ECR, S&D, ALDE and the Greens – including Reda herself. However, disregarding the general tendency to vote in grand coalitions in the plenary, the match of preferences between EPP and S&D already at the committee level stands out.

Summing up, the case studies yield the following findings. 1. Data protection was contested on the traditional left/right dimension but with an internally split liberal group. 2. Strong rules on net neutrality were favoured by a centre-left coalition including ALDE. This coalition, however, fell apart during the inter-institutional negotiations with the Council. 3. The EP had a consensual preference for a quick abolition of roaming surcharges. 4. A grand coalition of EPP and S&D oppose ambitious harmonisation of copyright.

Do these findings reflect a homogeneous pattern of contestation for the DSM? Both data protection and net neutrality followed a left/right pattern, in which the political groups at the left side of this dimension prefer stricter regulations. This finding corresponds to the overall voting patterns in the EP. In the field of copyright, on the other hand, a grand coalition prevailed against the smaller groups. To be sure, grand coalitions, in general, still make up the majority of (roll-call) votes. This can be observed in the plenary votes on the Copyright Report and, in the second reading, on the Telecom Single Market Regulation. However, in the copyright case, the grand coalition already existed in the amendment phase, a finding that indicates that accordance on this topic is really strong between the two biggest political groups. It remains to be seen whether the grand coalition of

the copyright case is an exception or whether EPP and S&D are taking the same stances on other issues in the DSM as well.

Two out of three cases in this analysis therefore indicate that DSM policies tend towards a left/right pattern of party group contestation. The position of the ALDE group on this dimension, however, is not yet consolidated. Previous research has shown that, depending on the policy field, ALDE tips the scale either in favour of a centre-left or a centre-right outcome. During the amendment phase of the net neutrality case, the liberals decided for a centre-left coalition and so they did during the plenary's first reading. In the second reading, the group was split. In the case of the GDPR, preferences diverged greatly already at the amendment stage. This heterogeneity within the ALDE group can be traced back to the different ideological orientations of the national parties of its MEPs.

## **6.2 Reflections on the methodology**

This study has developed and applied a new mixed-method approach to identifying policy preferences and patterns of contestation in the EP. It has been criticised that roll-call analysis is subject to selection biases (Carrubba et al. 2006). Moreover, the tendency of forming grand voting coalitions in EP – be it due to strategic considerations with regard to the inter-institutional bargaining with the Council or for other reasons (Hagemann & Høyland 2010) – often obscures the original policy preferences of MEPs. For these reasons, the method developed here uses legislative amendments not votes for measuring MEPs' ideal points. Using *multidimensional scaling*, MEPs are then located in a policy space, visualising the similarities of their policy preferences. In this way, patterns of contestation over certain legislative initiatives become visible. This approach also reveals whether political groups in the EP act consistently in the committee stages where amendments are discussed, or whether there are internal differences over what direction a policy should take. The methodology has been applied in three case studies. Has it fulfilled its promises? The research has shown both its advantages and its limits.

The case of the GDPR shows how the approach can enhance the understanding of conflict over specific policies. The EP's plenary roll-call vote saw over 90% of "yes" votes. However, beforehand, more than 3000 amendments had been proposed in the LIBE committee. This extraordinary number indicates that the policy was actually heavily contested. Using the developed methodology, it has been possible to reveal that there has actually been a left/right contestation over

the legislation. Admittedly, since there were no roll-call votes on individual amendments in the committee, no statement can be made on how these differences were resolved in the end.

Compared to the other cases, the GDPR case also shows under what condition the method works best. The coding scheme used, takes the Commission proposal as the reference point for assessing policy preferences. The proposal can be amended in two directions, e.g. more regulation or less regulation, more harmonisation or less harmonisation et cetera. Amendments are thus coded +1 or -1. In other words, it is assumed that the European Commission's proposal is more or less at the centre of the policy space. The GDPR illustrates that, if this is the case, the method works well.

However, if most MEPs want to amend the Commission proposal in the same direction, the danger arises that other factors influence the measurement. The net neutrality case might be an example for that. The social democrat Petra Kammerevert had an extreme position in the policy space and appeared to be quite different in her preferences than her fellow S&D MEPs. It cannot be conclusively said whether this was because there were indeed diverging preferences or that this result simply stemmed from the fact that Kammerevert introduced more amendments than her colleagues. It could, for example, be that the S&D group selected her to act on its behalf. Division of labour within groups could thus distort the validity of the findings.

A related objection could be that some MEPs decide not to propose a certain amendment because an equivalent one was already tabled by someone else. This research, does not find evidence for this. In fact, there have been plenty of amendments with the same or very similar content.

The roaming case illustrates another limitation of the method: If there is little to none contestation inside the EP but significant inter-institutional contestation between the EP and either the Council or the European Commission, this approach does not help.

From these experiences, the following can be said: The methodology developed here is a promising approach in cases in which policy preferences are diverse and in which there consequently is significant contestation over the direction a certain legislation should take. In contrast, if there is not a lot of contestation in the EP and preferences among MEPs are rather homogeneous, the methodology will be less suitable. In this sense, the case studies lie on a continuum: The method worked well in case of the GDPR and for the Copyright Evaluation Report (albeit with an adapted coding scheme). In the case of net neutrality, the results should be taken with more caution. Finally,

the roaming case showed when the method doesn't work at all – but the finding that the EP's position was not internally contested is an important finding in itself.

## 7. Concluding Remarks

In a time of rapid technological progress, managing and shaping the digital transformation of the economy and citizens' everyday lives is an important political task. The EU's response to this challenge is the creation of a Digital Single Market. This study has explored the party politics of this process, answering the research question: *What are the patterns of political contestation over the Digital Single Market in the European Parliament?*

Taking into account the diversity of policies grouped together in the DSM, this research questions has been addressed in three case studies: The General Data Protection Regulation, the Telecom Single Market Regulation, more specifically net neutrality and roaming therein, and the Copyright Evaluation Report of the European Parliament.

Data protection and net neutrality indicate that the DSM follows a rather traditional left/right pattern of political contestation between party groups that prefer more and those advocate for less regulation. However, the place of the liberal ALDE group on this dimension is not yet consolidated. Indeed, the group appears to be internally divided over the question of how to approach the DSM.

This pattern cannot be generalised, however. The roaming example showed that the EP is able to unify behind one policy preference and carry it through even against the preferences of other EU institutions. Moreover, in the case of the Copyright Report, a grand coalition of EPP and S&D opposed the reform intentions of the Greens. This coalition already formed at the committee level, indicating that there is a genuine overlap in preferences between the two largest political groups. Copyright will continue to play a major role in the creation of the DSM with a set of newly published and upcoming proposals of the European Commission. That EPP and S&D appear to share preferences on this issue shows that political contestation over the DSM cannot be reduced to a left/right, more-vs-less regulation pattern.

Reflecting on the drawbacks of roll-call vote analysis for determining the policy preferences of MEPs and accurately assessing the patterns of political contestation, a novel methodology has been developed to answer this question. Policy preferences of individual MEPs have been identified by content analysis of legislative amendments. Using *multidimensional scaling*, MEPs have then been located in a policy space illustrating the similarity of their preferences. In this way, patterns of contestation have been revealed that do not become evident from a look at voting behaviour alone.

As discussed in chapter 6.2, the application of this approach has underlined its promises (in the case of the GDPR and of Copyright) but also showed its limits (Roaming).

Digital policy is often perceived as becoming a distinct policy field of its own like, for example, environmental policy. This study can help to shed some light on this process. Parliamentary party politics are, of course, only reflect one aspect of this development. To get a full picture of the political struggle over the DSM, the other EU institutions have to be taken into account as well. Political contestation between the EU's member states takes place in the Council. Having the right to initiate new legislation, the European Commission has an agenda-setting and first-mover advantage. But what shapes the internal decision-making in these two institutions? And how does inter-institutional bargaining determine the eventual rules for the DSM? Leaving the legislative arena, what are the patterns of interest group politics? And finally, is digital policy able to mobilise citizens, social movements and influence voting behaviour? These questions outline that a broad research agenda necessary to get a full grasp of digital policy, its characteristics and impacts.

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## Appendix

### 1. Data sets

All data collected and analysed for this study can be found in an accompanying file, which is available at request. The data set contains the data for all three case studies in form of affiliation and adjacency matrices as well as in the original coding scheme.

### 2. Documentation of the application of multidimensional scaling

In this appendix, the .log files of the multidimensional scaling operations conducted using the UCInet software (Borgatti et al. 2016) are presented.

#### a. General Data Protection Regulation

```
METRIC MULTIDIMENSIONAL SCALING
-----
Starting config:          GOWER'S PRINCIPAL COORDINATES
Type of Data:            Dissimilarities
Input dataset:           GDPRRows-newdiag-Euc-R (J:\UCINET\Output\GDPRRows-newdiag-Euc-R)

75 items
Initial Stress = 0.076753969
Final Stress = 0.033 after 37 iterations.

Metric MDS coordinates (stress = 0.033)

          1   2
          -----
1         Albrecht -0.473 0.107
2         Alfano -0.108 -0.009
3         Alvaro 0.182 0.023
4         Bildt -0.015 -0.016
5         Bratkowski -0.029 -0.038
6         Castex -0.096 -0.024
7         Comi 0.107 -0.063
8         De Backer -0.047 -0.008
9 Daz de Mera Garcia Consuegra 0.216 0.136
10        Geringer de Oedenberg 0.035 -0.018
11        Droutsas -0.217 -0.085
12        Enciu -0.055 -0.009
13        Engel -0.032 0.001
14        Ernst -0.382 -0.028
15        Essayah 0.010 0.022
16        Ferber -0.050 -0.008
17        Flautre -0.047 -0.017
18        Giel 0.013 -0.073
19        Griesbeck -0.042 -0.013
```

20	Guillaume	-0.081	-0.021
21	Harkin	-0.049	-0.012
22	Hedh	-0.016	-0.032
23	Hirsch	0.017	-0.004
24	Hohlmeier	0.132	-0.023
25	Houillon	0.177	-0.064
26	Iacolino	0.031	-0.005
27	Ilchev	-0.070	-0.021
28	in 't Veld	-0.141	0.009
29	Jiménez-Becerril Barrio	0.006	0.026
30	Juvin	-0.029	-0.008
31	Kammerevert	-0.065	-0.012
32	Kelly	0.219	-0.075
33	Kirkhope	0.155	0.074
34	Korhola	-0.015	-0.000
35	Lange	-0.049	-0.007
36	Ludford	0.257	0.105
37	Luhan	-0.016	-0.012
38	Manner	-0.011	0.007
39	Michel	0.515	0.160
40	Moraes	-0.010	-0.048
41	Mulder	-0.024	0.037
42	Papanikolaou	0.008	-0.019
43	Pietikinen	-0.055	-0.007
44	Pirker	-0.029	0.019
45	Protasiewicz	-0.040	-0.041
46	Regner	-0.061	-0.028
47	Rohde	0.556	0.057
48	Romero López	-0.077	0.011
49	Sargentini	-0.049	0.002
50	Schaldehose	-0.025	-0.018
51	Sedlář Alabart	-0.030	0.004
52	Senyszyn	-0.079	-0.012
53	Sippel	-0.292	-0.068
54	Szgor	-0.068	-0.006
55	Sommer	0.184	-0.079
56	Stadler	0.094	-0.025
57	Steinruck	-0.117	-0.065
58	Striffler	-0.049	-0.009
59	Tannock	0.004	-0.035
60	Tavares	-0.054	-0.010
61	Thein	-0.051	-0.010
62	Ticau	-0.051	-0.009
63	Torvalds	0.104	0.081
64	Trzaskowski	-0.040	-0.041
65	Ulvskog	-0.016	-0.032
66	Valean	0.564	0.054
67	van de Camp	0.321	0.010
68	Vattimo	-0.108	-0.009
69	Vergiat	-0.370	-0.002
70	Voss	0.508	-0.012
71	Weidenholzer	-0.426	0.037
72	Willmott	-0.010	-0.048
73	Wojciechowski	-0.031	0.009
74	Weber	-0.070	-0.013
75	Verheyen	-0.065	-0.012

Coordinates saved as dataset GDPR MetricMdsCoord

Running time: 00:00:01

Output generated: 14 jun 16 13:08:48

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## b. Open Internet Access in the Telecom Single Market Regulation

```
METRIC MULTIDIMENSIONAL SCALING
-----
Starting configuration:      RANDOM

Type of Data:              Dissimilarities
Input dataset:             NetNeutralityRows-newdiag-Pea-R (J:\UCINET\Output\NetNeutralityRows-newdiag-Pea-R)

25 items
Initial Stress = 0.677541449
Final Stress = 0.005 after 18 iterations.

Metric MDS coordinates (stress = 0.005)

          1   2
          ---
1      Amelia Andersdotter 0.255 0.662
2      Andr s Gy rk 0.945 0.519
3      Angelika Niebler 0.731 0.497
4      Catherine Trautmann 0.518 0.547
5      Dimitrios Droutsas 0.731 0.497
6      Doris Pack 0.784 0.489
7      Edit Herczog 0.445 0.553
8      Francois Castex 0.565 0.527
9      Giles Chichester 0.360 0.609
10     Gunnar H kmark 0.881 0.508
11     Ioannis Tsoukalas 0.795 0.503
12     Ivo Belet 0.712 0.497
13     Jean-Pierre Audy 0.773 0.504
14     J rgen Creutzmann 1.072 0.545
15     Lambert van Nistelrooij 0.949 0.508
16     Marietje Schaake 0.357 0.590
17     Nadja Hirsch 0.422 0.574
18     Patrizia Toia 0.730 0.513
19     Petra Kammerevert 0.109 0.809
20     Pilar del Castillo Vera 0.654 0.508
21     R za Gr fin von Thun und Hohenstein 0.867 0.496
22     Sabine Verheyen 0.541 0.515
23     Se n Kelly 0.860 0.505
24     Silvia-Adriana Ticau 1.021 0.529
25     Teresa Riera Madurell 0.497 0.536

Coordinates saved as dataset NetNeutralityMetricMdsCoord
-----
Running time: 00:00:01
Output generated: 06 jun 16 16:23:29
UCINET 6.614 Copyright (c) 1992-2016 Analytic Technologies
```

### c. Copyright Evaluation Report

#### METRIC MULTIDIMENSIONAL SCALING

Starting config: GOWER'S PRINCIPAL COORDINATES

Type of Data: Dissimilarities

Input dataset: CopyrightRows-newdiag-Euc-R (J:\UCINET\Output\CopyrightRows-newdiag-Euc-R)

51 items

Initial Stress = 0.105239185

Final Stress = 0.043 after 18 iterations.

Metric MDS coordinates (stress = 0.043)

	1	2
1	Angel Dzhambazaki	0.062 0.004
2	Angelika Niebler	0.135 -0.013
3	Axel Voss	0.150 -0.049
4	Bogdan Brunon Wenta	0.008 -0.045
5	Cecilia Wikström	-0.243 -0.040
6	Christian Ehler	-0.128 0.055
7	Constance Le Grip	0.251 -0.075
8	Diane Dodds	-0.076 -0.001
9	Dietmar Köster	-0.106 -0.002
10	Eider Gardiazabal Rubial	0.079 0.077
11	Enrico Gasbarra	-0.003 0.019
12	Eva Paunova	0.098 -0.050
13	Evelyn Regner	-0.160 0.003
14	Giovanni Toti	0.186 0.023
15	Heidi Hautala	-0.185 0.044
16	Helga Tröpel	-0.189 0.035
17	Ines Cristina Zuber	-0.013 -0.012
18	Isabella Adinolfi	-0.102 0.010
19	Ivan Jakovcic	-0.068 -0.009
20	Jean-Marie Cavada	0.394 0.003
21	Jirka Matilka	0.039 -0.098
22	José Blanco López	0.079 0.077
23	Josef Weidenholzer	-0.426 0.056
24	József Széjer	0.420 -0.080
25	Juan Fernando López Aguilar	0.079 0.077
26	Julia Reda	-0.639 -0.136
27	Jytte Guteland	-0.051 -0.028
28	Kostas Chrysogonos	0.104 -0.095
29	Laura Ferrara	-0.118 0.083
30	Lidia Joanna Geringer de Oedenberg	-0.278 0.074
31	Luis de Grandes Pascual	0.196 0.020
32	Mady Delvaux	-0.054 0.008
33	Marc Joulaud	0.240 -0.043
34	Marie-Christine Boutonnet	0.137 -0.071
35	Marietje Schaake	-0.252 -0.013
36	Mary Honeyball	0.125 0.062
37	Milan Zver	-0.000 0.035
38	Pascal Durand	-0.138 0.025
39	Pavel Svoboda	0.099 0.011
40	Rosa Estaràs Ferragut	0.196 0.020
41	Sabine Verheyen	0.288 -0.024
42	Sajjad Karim	0.063 0.004
43	Sergio Gaetano Cofferati	-0.158 0.065
44	Sergio Gutiérrez Prieto	0.055 0.093
45	Silvia Costa	-0.071 0.031
46	Tadeusz Zwiefka	0.008 -0.045

47	Theresa Griffin	-0.065	-0.001
48	Therese Comodini Cachia	0.283	0.004
49	Tonino Picula	-0.090	-0.006
50	Victor Negrescu	-0.259	0.117
51	Virginie Rozière	0.182	-0.094

Coordinates saved as dataset Copyright\_MetricMdsCoord

-----  
Running time: 00:00:01

Output generated: 09 jun 16 10:49:23

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