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discourses on the EU data protection policy

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Eidesstaatliche Erklärung

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Wien, 4. August 2015

Markéta Hessová

List of abbreviations

CDA	Critical Discourse Analysis
Council	Council of the European Union
Directive	EU Data Privacy Directive 95/47/EC
EC	European Commission
ECHR	European Convention of Human Rights
ECJ	European Court of Justice
EP	European Parliament
EU	European Union
EU Charter	Charter of Fundamental Rights of the European Union
GDPR	General Data Protection Regulation
GT	Grounded Theory
NSA	National Security Agency
RTBF	Right to be forgotten

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1. Introduction

“Secret services – if you had told them 10 years ago, people will be making their own files thousands of pages long, about their daily lives, who they are meeting, who they are calling with, where they are, with whom they eat, where they live, why they do the things they do – they would probably not have believed you.” (PANOPTICON Documentary About Your Privacy)

In the Dutch documentary movie Panopticon (Vlemmix, 2013), the author warns that our privacy is disappearing. Through an excursion into the digital world of data collection, where a customer has to have his or her face screened in order to be allowed to buy alcohol, where psychiatrists are obliged to deliver data about their patients, where a bus monitor controls the identity of passengers in order to spot fare-dodgers, and where social media users voluntarily disclose their private and intimate information in exchange for admiration, the documentary creates a map of a world of data that is still for many people unknown and invisible. Our data almost seem to be living their own life under the command of those who collect them. And we often do not even know it. On the other hand, these technological improvements enable us to efficiently communicate, work, travel, shop, and live, but this for a very high price. The strengthening of surveillance practices by private and public organisations is only one side of the coin. The question is, who can guarantee us our right to privacy remains?

In the first line, it is the citizens who are involved in the privacy issue. It is their data that float in the digital space of the Internet and that are saved for various purposes on anonymous servers with a promise of an authorised access. In the view of several past events – including the famous Yahoo’s major password breach in 2012 (Hamilton, 2012), the well-known Snowden case from 2013 (‘Global surveillance disclosures’, 2013), in which the ex-NSA contractor and whistleblower Edward Snowden revealed operational details about the U.S. National Security Agency (NSA), and the hacking of the security library OpenSSL in April 2014 that allowed encrypted data, including passwords, to be stolen (Hern, 2014) – our data seem to be under a clear and immediate threat. Companies, governments, and media that have been entrusted with the personal information of citizens have not proven to be convincing in the protection of the personal data. The term personal data has become synonymous with the notion of privacy in today’s context, and without privacy democracy could be facing a devastating collapse, since it is the binary concept of private and public life that lies at the heart of the debates about democratic principles (Engelhardt, 2000; Kemp & Moore, 2007). However, these same democratic principles also offer a tool for citizens to protect what is perceived as the private sphere. It is one of the pillars of democratic states and one of the main values upon which the European Union (EU) was built – the rule of law (COM/2014/0158, 2014).

The right to privacy and to personal data protection has been recognized by the European Union as two of the fundamental rights in its Charter of Fundamental Rights. By this, the

European Community has expressed its commitment to the recognition and protection of the private lives of its citizens. However, the protection of privacy as formulated in the current legal frame of the EU appears to be insufficient in the face of the emerging technological innovations. This challenge has been recognized in the European policy-making circles and it has led to the proposal of a new General Data Protection Regulation (GDPR) that was presented in January 2012. This new piece of legislation includes a right that got to be known as the “right to be forgotten” (RTBF). This right was drafted as a promise of a better control over personal data for users and as a tool to balance the relationship between citizens and companies managing their data.

This master thesis studies the representation of the policy-making process of the RTBF in the British and the German press. Media, a manifold actor in the process of policy-making, mediate representation of the policy-making process and so become a bridge between the policy-makers and the public. It is in the media, where the emerging policy gets introduced to the public, where discussions about the policy and its formulation can take place, and where the policy virtually fights for its legitimacy in the public eyes. This thesis will introduce the results of a qualitative analysis of the media coverage from January 2012 until February 2015 from six press titles, three German and three British, which has been inspired by two analytical stances, the Grounded Theory (GT) and the Critical Discourse Analysis (CDA). Firstly, a brief exploration will be made into the contemporary scholarly literature about the role of privacy in the modern society and about the process of policy-making that aims to update the political, economic and social conditions that should warrant the protection of privacy in the digital age. In the second part the research design of the analysis will be introduced, and finally a detailed discussion on the findings will address the most relevant aspects of the media representation of the “right to be forgotten” policy-making.

2. Literature review

2.1. Privacy in the digital society

Media, the academic community, industry and political circles have adopted a discourse¹ that often talks about “disappearing“, or “lost“ privacy. This condition is often seen as a result of transformation of digital technologies in the sphere of communication. As John L. Mills (2008) shows at the beginning of his book *Privacy: The lost right*, our lives and our daily actions are inevitably linked to modern technologies. Mobile phones, computers, security systems, navigation and telecommunication devices became natural parts of our ordinary environments. They have changed the way we do things and how we interact with each other. Through the use of these technologies we have agreed to the conditions under which they operate, which entails consequences – information and spaces that used to be a domain of the private have become more accessible, more traceable, and more difficult to control. To comprehend what contributes to the process of “disappearing” privacy, we have to go beyond the phenomenon of social media and national security measures. Our personal digital foot-prints are generated through every single act in our daily lives, in both, the online and offline worlds, which makes the problem of privacy a problem of each of us..

Citizens are aware of these developments as well. As the Special Eurobarometer 359 from 2010 shows, 70% of Europeans are concerned that their personal data held by companies may be used for a purpose other than that for which it was collected, and 78% of Europeans want to delete personal information on a website whenever they decide to do so, relating to the currently proposed “right to be forgotten”. The citizens feel they are not in control of their data, they are not properly informed of what happens to their personal information, and they do not know how to exercise their rights online (COM/2012/0011, 2012; ‘Special Eurobarometer 359’, 2011). The argument, that users can choose whether they take part in the digital life or not, slowly loses on its relevance, since to “opt out” from the digital services would potentially impact the quality of the life of an individual (Chatfield, 2013). Users, however, also contribute to this process of “loosing” privacy, when they share their own data online. The opinions whether they do so with more or less awareness differ. Either they have too little knowledge to understand what happens with their data, or they have accepted the conditions of trading with their own privacy in order to keep the Internet to a certain level free (Preston, 2014). Be it any of these two, privacy seems to be something that users no longer automatically possess, and so we seem to have

¹ Considering the multiple ways, in which the term discourse can be understood and explained (S. Mills, 1997), the way of using the word discourse in this thesis refers to the conceptualisation by Norman Fairclough. Discourse is here understood as a social phenomena, as semiotic elements of social practices, through which meaning is constructed (Chouliaraki & Fairclough, 1999). Discourse in this way does not refer to one single text, but relates to all semiotic representations of a particular element of social life, and includes language (written or spoken), nonverbal communication and visual images (ibid., 1999: 38).

finally arrived to the stage, where “privacy is no longer a ‘social norm’”, as expressed by the Facebook founder, Mark Zuckerberg (Barnett, 2010).

The question to be asked here is not whether it is true or not, that privacy is disappearing. Privacy is not a stable thing; it is a concept that changes over time and gets assigned different roles according to its particular social context. The question to be discussed here is, whether this process of “loosing” privacy matters. The answer is yes, it does. The notion of privacy contributes to the way we build and understand the organisation of our lifeworld. One of the most influential theorists of public sphere, Jürgen Habermas (1987), sees the public sphere, i.e. the communicative networks that enable private persons to take part in politics, culture and the formation of public opinion, as developing from the private sphere, i.e. family, private households, and intimacy. This initial understanding of privacy as a physical area that is different and closed to the public life has expanded to encompass rights to control information about ourselves. As Daniel Solove (2008: 2) points out, “privacy is an essential issue for freedom and democracy.” Thanks to the guarantee of a private sphere, people have the opportunity to develop their views, political opinions, artistic expressions, and speak anonymously (ibid., 2008: 80). We often realize the value of privacy first when we seek a space where we could withdraw from the public sphere and reconcile with opposing interests that do not correspond with the main strand (ibid., 2008: 87). If there was no promise of privacy, the opportunity for citizens to develop a particular lifestyle, or a chance for personal assessment of the political would disappear (Morozov, 2013).

Privacy represents in this way a corner stone of political life, but can be seen as both, supportive or undermining democracy. By seeing privacy as a sphere of power to enhance the political life, Zizi A. Papacharissi (2010) highlights that the relationship between new communication possibilities, privacy and political engagement is very much complex. At the example of social media, Papacharissi suggests that political activities today are done in private spaces, and so political communication is no longer a domain of strictly public or private sphere. Thanks to its empowering, liquid, and reflexive character, privacy represents a crucial platform for social and political practices. The view of seeing privacy and its exclusively positive qualities for individuals and society does not, however, stay without criticism (e.g. Etzioni, 2012). Christian Fuchs (2011) points at the ideological character of privacy and argues that the liberal view of privacy as unhistorical concept can result in seeing privacy as a universal human principle, which leads to “privacy fetishism” and operates in favour of exploitation and income/wealth inequality. Fuchs therefore invites to establish an alternative concept of privacy that would strengthen the protection of consumers and citizens from corporate surveillance. Also, Hannah Arendt (1958) emphasizes the atomistic character of privacy and points at its ability to keep humans from their fundamental human condition, which is sociality. However, these accounts talk less against the value of privacy, as they call for the need to balance the right to privacy with the broad spectrum of other rights and social challenges. Privacy plays an essential role in underpinning the modern democratic model and as such it should be guaranteed legal protection by the state and the society.

The privacy concerns reflect larger social concerns over “trust in the information society” (Clarke, 1999: 60). The relationship between citizens and the state as a guarantor of their rights has been suffering through the practices that national states deploy to ensure security and order. Similarly, little transparency and openness in handling customers’ data has also lead to difficult trust relations between companies and their customers. Surveillance and the threat of the omnipresent control of the state and private corporations over the lives of citizens have become a major topic in critical social studies (e.g. Andrejevic, 2002, 2007, 2010; Chesterman, 2010; Humphreys, 2011; Monahan, 2011, etc.) . The level of surveillance over the lives of people has been increasing, while the laws that should protect privacy and freedoms of individuals stay flawed (Privacy International, 2007). Moreover, the Internet users often do not even know that they are disclosing their data, and if they do, they are rarely aware of the consequences it may bring (ENISA, n.d.). The analysis of privacy statements carried out by Papacharissi & Fernback (2005: 259) shows, that “privacy statements seldom offer explicit reassurances of privacy protection.” Similarly, Tsoukalas and Siozos (2011: 460) highlight that digital data are collected in manners that we often fail to understand, because they do not offer the user connection between the cause and the effect. The need to protect privacy has not stayed unrecognized in the legal world, however, the existing flaws in the law and its inability to protect the customer threaten to result in an unbalanced state of affairs where citizens are denied or disabled to the control over their own personal data.

2.2. Privacy as a European right

A brief excursion into the modern legal history indicates that there has been a long tradition of the right to privacy. As a milestone in the legal concept of privacy is often recognized Samuel D. Warren and Louis D. Brandeis’ (1890) text “*The Right to Privacy*”, which is seen as the foundation of privacy law in the United States and which defines privacy as the “right to be let alone“ (Solove, 2008). Warren and Brandeis allegedly took inspiration in the legal tradition in Europe and went in their definition further beyond domestic privacy. They campaigned for “private sphere“ as the sphere of personality, thus protecting the right to one’s personality and “the peace of mind”. In the European Union, the legal roots of the right to privacy and data protection usually date back to the Federal Data Protection Law that was issued in Germany in 1977 (González Fuster & Gutwirth, 2013). In 1981 followed the first “pan-European” convention, the European Convention of Human Rights (ECHR) by the Council of Europe that protected the right to privacy under its Article 8 (Sarikakis & Tsapogas, 2013), which was later extended by the Convention 108 covering also automatic processing of personal data. However, countries were not forced legally to implement the Convention 108 through legislation (Fromholz, 2000: 467). The very first legally binding EU document giving detailed instruction on how to implement the protection was the EU Data Privacy Directive 95/47/EC (Directive), which was to set a balance between a high level of protection for the privacy of individuals and the free movement of personal data within

the European Union. The Directive is not self-implementing; each country must pass its own implementing legislation, which results into potentially different legal frameworks in all EU member states (ibid.). The fundamental rights, including the right to privacy and the right to personal data protection, are furthermore protected in the EU legal framework through the Charter of Fundamental Rights of the European Union (EU Charter) in Articles 7 (“Respect for private and family life”) and in the Article 8 (“Protection of personal data”) (Charter of Fundamental Rights of the European Union, 2010).

With the increasing use of digital data, the need to protect them legally has become more urgent. As the EU Charter suggests, the EU law tends to make a distinction between the right to privacy and the right to protection of personal data as two separate notions (Hustinx, 2005). This has inevitable implications for the interpretation of the rights and their applicability (Kokott & Sobotta, 2013). Andrade (2012: 124) offers a legal explanation of separating the two rights. Right to privacy is a substantive right that is to ensure the protection and “promotion of interests that the human individual and society consider important to defend and uphold”. Whereas, data protection right is interpreted as a procedural right, i.e. it sets the “rules, methods and conditions through which substantive rights are effectively enforced and protected”. Here, the US and the EU legal approaches are viewed as totally different (Fromholz, 2000; Papacharissi & Fernback, 2005), as already the ways of using the terms suggest: Americans tend to use the term “privacy,” while Europeans mostly discuss “data protection” (Fromholz, 2000: 470). The European jurisprudence has considered privacy to be at the core of data protection by acknowledging that “the collection, storage, or disclosure of information relating to private life interferes with the right to privacy” (Kokott & Sobotta, 2013: 223). That could be the reason why the right to privacy and right to data protection, despite not being completely legally synonymous, are often used as if they were. While the legal debate about whether data protection might supersede privacy as the preferred legal concept and in what relationship these two rights stand (e.g. Richardson, 2014) proves essential in the future development of both rights, the way terms privacy and data protection are used in this thesis, however, rather correspond with the view that one is at the core of the other. Therefore, the sometimes interchangeable way of using privacy and data protection should not be understood as a disregard of their conceptual distinction.

Until today, the Directive 95/47/EC has been the main EU legal tool in the sphere of privacy and data protection regulation. Nevertheless, in the course of time, it has been recognized that its scope is not able to follow the newest innovations and developments, such as cloud computing, data-mining, or interference into privacy due to security reasons (Kokott & Sobotta, 2013). Since the Lisbon Treaty entered into force in 2009, the Article 16 of the Treaty on the Functioning of the European Union has provided with a new legal basis for the regulation of data protection, including all processing of personal data in the private and the public sector, and in the area of police and judicial cooperation (Privacy International, 2010). However, the biggest milestone that represents a promise of better privacy and data protection for the European citizens is the new legal framework that was proposed by the European Commission (EC) in January, 2012. The General Data

Protection Regulation is set to deal with the problematic issues that have been insufficiently addressed in the contemporary legislative, mostly linked to new technologies, the lack of harmonization between Member States' legislation and the need to ensure better enforcement of data protection rules (Cate, 2011). Following the proposal of the EC, the new framework should consist of a Regulation that will replace the Directive 95/46/EC, setting out a general EU framework for data protection; and a Directive that will replace the Framework Decision 2008/977/JHA16, setting out rules on the protection of personal data processed for the purposes of prevention, detection, investigation or prosecution of criminal offences and related judicial activities (COM/2012/0011, 2012: 4). The proposed regulation introduces a number of new or innovated concepts, including "privacy by design" and "privacy by default" in the Article 23, or the "right to be forgotten", resp. "right to erasure" in the Article 17 (COM/2012/0011, 2012). The attention of this thesis focuses especially on the latter, which promises to guarantee a better control over personal data and privacy to the Internet users.

Already the Directive 95/47/EC includes within its right of access to data in the Article 12(b) provision that everybody has the right to demand "erasure or blocking of data. The "right to be forgotten" as suggested by the new General Data Protection Regulation is therefore not completely new. Technically and practically, however, the right to erasure in the Directive has not found much use. The new regulation takes the right to delete further and offers a more elaborated formulation of such a right, including the cases, in which the right applies. According to the new RTBF:

"the data subject shall have the right to obtain from the controller the erasure of personal data relating to them and the abstention from further dissemination of such data, and to obtain from third parties the erasure of any links to, or copy or replication of that data where one of the following grounds applies: (a) the data are no longer necessary in relation to the purposes for which they were collected or otherwise processed (b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6 (1), or when the storage period consented to has expired, and where there is no other legal ground for the processing of the data; (c) the data subject objects to the processing of personal data pursuant to Article 19; (a) a court or regulatory authority based in the Union has ruled as final and absolute that the data concerned must be erased; (d) the data has been unlawfully processed " (European Commission, n.d.)

The "right to be forgotten" is perceived as a new human right allowing individuals make potentially damaging information disappear after a certain time has elapsed (Weber, 2011). However, as emphasized by the EC, it is not an absolute right and it should be balanced in order to avoid a conflict with the principle of free speech and other human rights (COM(2012) 9, 2012). The scope of the right is defined rather broadly. This is apparent, for example, when interpreting the notion of "expiration time", which does not offer any specifications. When information has expired depends on the circumstances and

is not defined by the authorities in detail. The formulation of the RTBF has evoked a number of reactions among legal scholars. Some have pointed at the inconsistencies of the definitions and its position as subordinated to privacy (e.g. Weber, 2011), others made suggestions for reconceptualisation of the RTBF under the umbrella of other rights, such as the right to identity (Andrade, 2012). However, not only in the world of academia has the suggested right lead to vigorous debates. The widely discussed formulation “right to be forgotten” that took place on the level of the European negotiations and the exceptionally intensive lobbying in the industry have influenced the policy-making process and led to the adoption of a new title of the policy, “right to erasure”, by the European Parliament in March 2014, which is supposed to better limit the right (Ilessexcourt, 2014). Notably, the biggest milestone in the “right to be forgotten” debate represents the ruling of the European Court of Justice (ECJ) in the case *Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González* that decided in May 2014 that every European citizen has the right to have links from search results of a search engine deleted, if the information they lead to “appear to be inadequate, irrelevant or no longer relevant, or excessive in relation to the purposes for which they were processed and in the light of the time that has elapsed“ (‘Press Release No 70/14’, 2014). With this ruling the “right to be forgotten” stopped being a mere theoretical conception and turned into a real right with practical consequences.

2.3. The right to be forgotten becoming a law

The process of making the “right to be forgotten” a law, which should guarantee the European citizens more control over their private data and contribute to the strengthening of protection of privacy, can be characterized by two challenges. Firstly, the policy-makers have to deal with the difficult concept of privacy and its definition, under which data protection and thus the RTBF is legally subordinated. Secondly, the process of policy-making in the European Union is typical for its complex and unprecedented character that can be studied from various approaches, which, however, often fail to deliver the “great picture” of the whole policy-making process (Sarikakis, 2004). Both of these challenges will be now briefly discussed.

One of the challenges that the policy-makers have to deal with is the question how privacy should be defined. The core of the problem is that there is no single definition of privacy. The typologies are rather arbitrary and often not theoretically grounded (Christian Fuchs, 2011: 222). Solove (2008: 1) talks about “a concept in disarray“, which encompasses freedom of thought, control over one’s body, solitude in one’s home, control over personal information, freedom from surveillance, protection of one’s reputation, and protection from searches and interrogations. However, even if there is no single definition, privacy norms, and more generally public/private distinctions can be found in every culture. Privacy is a “cultural universal” (Westin, 1968). There are innumerable ways of classifying and sorting privacy (e.g. Papacharissi & Fernback, 2005,

p. fl; Kemp & Moore, 2007; Tavani, 2008; Floridi, 2014; Solove, 2008). The concepts of privacy mostly express the domains where limiting privacy leads to limiting freedoms of an individual. Privacy can be described from physical proximity and the power to grant access into one's space, over the possibility to make free decisions, express one's self-identity and use own psychological and mental space to oppose, innovate and develop own ideas, up to the most recent conception of informational privacy, which lies at the core of the EU's policy. Moreover, DeCew (1997: 22) points out that privacy can be understood as an "umbrella term" for a "wide variety of interests." Where individual's interests are concerned, Alfino (2001: 7) points at the importance of "being able to lead a rational, autonomous life". The attention goes, in this view, beyond the protection against intrusion of one's "spatial interests" or "reputational interests", it protects one's interest in being able "to think and plan (one's) conduct [...] and to lead a rational life." Privacy is, thereby, not exclusive of autonomy and liberty; they overlap (ibid., 1997: 44). Also, where the "right to be forgotten" is concerned, informational privacy does not only relate to the information unknown to the public, but is more generally based on the autonomy of an individual becoming a right-holder of his or her personal data (Weber, 2011). Still, not even the scope of this conception is according to critiques sufficient, because privacy does not involve only personal information and individual control, but also "the social regulation of information"; the aspect of social structure, and of an architecture of information regulation is equally crucial (Solove, 2008: 29).

As already mentioned above, the scholar discussions about notions of privacy and data protection are often ruled by disagreement. The definition of privacy in the European policy is rather ambiguous. It is clearly separated from data protection, but still inherently connected with it (Kokott & Sobotta, 2013). In a similar manner, the "right to be forgotten" is expressed in relation to the protection of privacy, but a clear agreement of its conceptual underpinning is missing (Andrade, 2012). However, as Morozov (2013) accentuates, it is the fight to preserve democracy – not defending the "right to privacy" – what should drive public policy. The notion of what privacy varies and will be varying with every new social-economic context. But what makes the European policy so crucial is the need for balance between privacy and transparency, between security and freedom, which is to be settled through public debate and always left open for negotiation.

This brings us to the second challenge – how can the European polity face the reality of the information society and its constant dynamic development and reflect this in its policies? The EU has slowly finished its task in the process of European integration, which has been its focus in the past few decades. But now the Community faces new challenges – how to make the union work (Hix, 2006). Following this, the study of the European Union has shifted its subject from "integration" to "governance", which rather than at the process of developing interdependence linkages between the member states, focuses on the exercise of authority (Sarikakis, 2004: 138). Governance is often defined as "processes of interaction and decision-making among the actors involved in a collective problem that lead to the creation, reinforcement, or reproduction of social norms and institutions" (Hufty, 2011: 405). The European Union, as a major policy-

maker in the European region, now focuses besides its primary interests, i.e. competition policy and creating a single market, more on questions of social policies and practices, which brings a number of challenges. When outlining the major decisions and steps that have led to the European Union as we know it today, Dinan (2008) continuously returns to two big issues: firstly about the tension between supranationalism, which has been seen as the optimal solution to the integration, and intergovernmentalism, preferred by the UK and other countries that tried to protect their sovereignty; and secondly the question of liberalisation and protectionism, typical for France, which often caused difficulties while achieving agreement in integration issues. Diverging positions in these areas among the member states still get to be reflected in the negotiations and decision-making of a policy. The supranational character of EU's institutions allows to create policies and laws that harmonize the legal stances in Europe, but it also causes potential changes to the core areas of national economies, such as the monetary regime (Sarikakis, 2004: 49). Policy-making is therefore no longer seen as an exclusive domain of states, but it transcends their national borders. Furthermore, the involvement of the European Parliament (EP) and other European structures has resulted in even more complex decision-making procedures that often do not follow the patterns as known from the national processes and require a specific approach of studying. As Sarikakis (ibid.) points out, to treat the EP as an uniform and one-dimensional actor ignores the range of cultures, ideological differences and possible national affiliations that shape the institution.

Political scholars describe the EU as a policy-maker with tight institutional checks and balances, which prevent it from a wilful "superstate" (Moravcsik, 2002). Since the Lisbon Treaty has entered into force, the policy-making process has gained a reformed design that can be briefly characterised by a distribution of the legislative and executive powers among the European Commission that issues a proposal for policy and the European Union and the Council of the EU (Council) that discuss and deliver suggestions on the preferred form of the policy (Bomberg, Peterson, & Corbett, 2008). To study this policy-making system, often the traditional model of a cycle is being used.

2.4. Policy-making in the EU

The first one to model policy-making as a sequence of stages was Harold D. Lasswell (Jann & Wegrich, 2007: 42). In today's academic work, the differentiation between agenda-setting, policy formulation, decision making, implementation, and evaluation (eventually leading to termination) represent the most widely used way to describe the chronology of a policy process (ibid., 2007: 43). Lasswell's linear model was conceived as a problem-solving model and was based on a rational approach. Decision-making should be in that way observed as a comprehensive analysis of problems and goals, whereas the best alternative out of many possibilities to reach the goal would be indentified. This normative model was very attractive for its rational, evidence-based character and promised an ideal-type policy-making. Seeing the political process as a

continuous process of policy-making allowed to take into account the effects of actors, institutions and other involved forces, which interact to shape the final policy. However, first when the chronological way of seeing the policy process (as a one stage happening after another) was replaced with Easton's input-output model, the policy-making process could be finally transformed into a cyclical model, which takes into consideration the actual never-ending character of the process (Jann & Wegrich, 2007: 44). This perspective emphasizes feed-back between outputs and inputs of policy-making and points at the tendency of policies to create unintended consequences or side-effects (ibid., 2007: 44). Thanks to this, the stage of implementation was more included in the process, in particular, „the reaction of the affected target group (impact) and the wider effects of the policy within the respective social sector (outcome)“ (ibid.). Regardless the number of criticisms of the cycle model (e.g. Sabatier & Weible, 2014) and how well these are founded, understanding policy-making as a sequence of stages in a cycle still remains the ideal approach and the most used analytical perspective (Jann & Wegrich, 2007).

When studying the policy-making process in the EU, the policy cycle model is often applied at the European mechanisms known as the *community method*, one of the most common decision-making methods used in the EU (Moravcsik, 2002). This process of policy-making involves three parts of the EU institutional system: an institution representing the common interest (European Commission), the representation of the national governments (Council of the EU), and the representatives of the citizens (European Parliament). This process is everything but linear. As Simon Hix (1998: 39) puts it, policy-making in the EU is not the same as in a domestic country. There is no central agenda-setting, and the policy-making process, from initiation through adaptation to implementation is complex and involves constant deliberation and cooperation between several levels of state and non-state officials. Moreover, it requires open “policy communities/networks” with active private interest groups, and also the scientific expertise has an unusually high prominence. The European Union is specific for its immense network of interest groups and lobbying groups that also play their role in shaping the public and other policies (e.g. Eising, 2008; Dür, Bernhagen, & Marshall, 2013). The RTBF law is similarly as other public policies conceived through this method and its creation can be studied at the four stages of agenda-setting, formulation of policy, implementation and evaluation. When studying public policy-making, one objective should always stay in the focus. The resulting policy that stands at the end of this process should represent a law that is meant for all citizens without difference. With this aim in mind, we can put a legitimate question: where in this process are the citizens involved? Theories of policy-making refer to representatives of civic society and various organisations representing the interests of the public (Jann & Wegrich, 2007). However, the involvement of the public also happens through another channel: the media.

In this thesis the representation of the policy-making process of creating the RTBF will be studied from the perspective of media, whose role as a crucial actor in the policy-making process has been often recognized in the academic community (e.g. Shanahan, McBeth, Hathaway, & Arnell, 2008; Soroka et al., 2013; Sabatier & Weible, 2014). Media

represent the main, and, often the only, source of information about the objectives of the policy-making for citizens and they “[also] act as the primary conduit between those who want to influence policy and policymakers controlling the scope of political discourse and regulating the flow of information” (AALEP, 2013). According to the latest Eurobarometer, the mass media represent the most important information channel between the citizens and the EU, since the majority of European citizens still identify television² and written press as their main sources of political information in national and EU matters (TNS opinion & social, 2014). There are many views at the question, whether media’s role is more of a *conduit* for policy participants, with articles media being transmitters of multiple beliefs of those who are involved in policy debate, or if media are more of a *contributor*, with media outputs constructing a policy story rather than informing about beliefs (Shanahan et al., 2008:). In their study, Shanahan et al (2008) came to the conclusion that media function more as a contributor. The media overtakes a role in the process by offering incomplete and policy-driven narratives and functions as a policy marketer promoting specific policy alternatives, and not as a linkage mechanism reflecting the diverse beliefs (Shanahan et al., 2008). Similar view share also Koopmans & Pfetsch (2007: 64), who emphasize the role of media as active actors who contribute to opinion formation by commenting on political issues and events. The typical view that media matter only in the early stages of the policy process in helping to set an agenda, which is then adopted by politicians and policy-makers, proves to be insufficient. Media, indeed, play an important role in setting the agenda and they steer the attention towards certain policy themes over others, which is of no small importance (Soroka et al., 2013). But more importantly, they play an integral role in shaping the social context, in which policies are developed. Moreover, media themselves are social entities with specific interests and needs within specific environments. The publication of newspapers is industry, and “like any other business [...] should be profitable” (Fowler, 1991: 20). Since most newspapers are owned by private companies, they depend on their political and economic relationships. The fundamental role of media in a liberal democracy which is to critically scrutinise governmental affairs then tends to suffer under the systematic deregulation of media systems and the growing centralisation of media ownership (AALEP, 2013). These processes result in maintaining the status quo and effectively diminishing the ability of citizens to meaningfully participate in the policy-making process.

² In national matters 82 % citizens get their information from TV and 41 % from written press, in EU matters 77 % citizens get their information from TV and 39 % from written press (TNS opinion & social, 2014: 42-47).

3. Research project

3.1. Research question

The point of departure of this master thesis rests on the assumption that media not only report about others' opinions. In doing so and in deciding whose opinions get attention, in what form and what context, media shape the representation of the policy-making in certain ways and thus become influential voices in the whole process (Schlesinger, Fossum, & Kvaerk, 2007). By appropriation of a certain position, media become non-neutral actors that help to shape the opinions of the public and give priority to certain interests and topics before others. The media's participation on the policy-making process becomes even more relevant, when we realize that the impact of public policy goes far beyond the institutions of the state or the policy-maker because it is not isolated from the rest of the society (Hewitt, 2009: 6). Public policies set rules that impact the economic, political and social conditions in the society. The law about the "right to be forgotten" has the potential to influence how users understand their role as owners and controllers of their personal information as a constitutive part of their privacy, which demands that the understanding of privacy is clearly defined and embedded in the regulatory process. Why media should include the process of privacy definition that happens throughout the policy-making in their reporting has to do with a more ethical question of the role of media as the "fourth estate" of the society. How media do this is a question to be addressed in an academic research, and it is also the question that has shaped the research motivation leading to this thesis.

The definition of privacy is not universally fixed, but is conditioned by the context, in which its formulation takes place. This thesis will engage with the particular context of the European Union and its intention to define privacy for the digital age, and how this intention in the form of creating the "right to be forgotten" gets represented in the media. The research attention is focused on the media representation of the three stages that constitute the policy-making cycle, i.e. agenda-setting and formulation as part of the creation process, and the implementation process of the "right to be forgotten". The leading research question that formed the analysis asks:

RQ: How are the processes of creation and implementation of the EU's 'right to be forgotten' policy represented in British and German print and online media?

Based on this, two research subquestions have been identified:

RSQ1: How do the press media represent the process of creation of the EU's 'right to be forgotten'?

RSQ2: How do the press media represent the process of implementation of the EU's 'right to be forgotten'?

Considering the character of the analysed corpus and how this has been selected and defined, a third research subquestion has been identified:

RSQ3: *How does the representation of the 'right to be forgotten' differ with regard to political affiliation, origin, and type of the medium?*

To pursue answering of these questions, the media coverage was submitted to a qualitative analysis that was inspired by two methodological approaches – the Grounded Theory approach and the Critical Discourse Analysis (CDA) by Norman Fairclough.

3.2. Methodology of the research

The process of analysis has been inspired by two analytical approaches – the Grounded Theory and the Critical Discourse Analysis – however the leading logics that directed the analysis was the formulation of the research subquestions and their grounding in the research material, i.e. the media texts. The categories of the media representation of the policy-making process, which were identified as means to answer the research question, were, therefore, directly withdrawn from the analysed texts. The coding of the corpus that comprises 404 journalistic articles (see Appendix 1) was treated in the style of the Grounded Theory, which was used to draft the coding mechanism and offered a guidance how to analyse the texts so that the theories and concepts founded imminently in the corpus shape the analysis from its beginning (e.g. Charmaz, 2014). This method, which is more of a practical guidance than a real theory as its name could suggest, has also been used as a system of self-control in case the analytical intensions would depart from the analysed corpus.

The analysis of the corpus was organised into three stages. As Meyer (2001: 25) stresses, there is no clear line to be drawn between data collection and analysis. Data collection is not considered to be a specific phase that must be completed before analysis begins. Both processes occur simultaneously, starting already in the initial process of the coding. In order to conduct the analysis of the corpus, the university licence of the analytical software *Atlas.ti* was put into use and served as the main tool to work with the journalistic texts and as a support in the analytical process. The corpus was coded with the help of the software tools including *codes*, *networks* (broader groupings of codes), and *memos* (notes that accompanied the analytical process).

At the first stage, the so-called process of *initial coding* (see Charmaz, 2014) represented the first contact with the corpus and consisted of detailed reading of the texts and a consequent line-by-line examination, which resulted in labelling of passages of the texts with corresponding codes. In order to reduce a subjective interpretation to its minimum and to maintain the potential variety of themes, to which the codes could be referring in the course of the analysis, the codes were either written in a gerundial form (based on Charmaz, 2014) or in the original formulations where possible. The initial coding process

resulted in 1,808 initial codes that were reviewed and sorted in the second step of the coding process. During the second stage, the initial codes were reviewed and organised with respect to the two research subquestions relating to the process of policy creation of the “right to be forgotten”, and to the process of implementation of the “right to be forgotten”. The organisation resulted into two categories – *Creation* and *Implementation* – comprising 126 abstract codes. Consequently, the labelled parts of the texts have inspired more detailed clusters of the initial codes creating the following thematic groupings within each category – *Environments* and *Processes* in the category *Creation*, and *Execution of the ruling*, *Characteristics of the implementation* and *Consequences* in the category *Implementation*.

The inspiration by the Critical Discourse Analysis happened on three levels. Firstly, it is the understanding of discourse as a social practice both, constituting the social world and being constituted by other social practices (Jørgensen & Phillips, 2002). Secondly, it is Fairclough’s (1998) conception of the analysis as a process that encompasses analysis of texts, analysis of discourse practices of text production, distribution and consumption, and analysis of social and cultural practices which frame discourse practices. And finally, the corpus was reviewed and analysed with the focus on CDA’s tools such as intertextuality, assumptions, metaphors, wording (Fairclough, 2003), and grammatical concepts as transitivity and modality (Jørgensen & Phillips, 2002), in order to explain how these elements provide with meanings.

Already during the two first stages of the analysis, possible patterns that were identified as relevant for the linguistic level of the analysis, as inspired by Norman Fairclough (1998, 2001, 2013). These patterns were labelled with codes *Metaphors*, *Wording*, *Misleading formulation*, *Exaggeration*, and *Citation* (by various actors). Throughout the process two more codes were added, *Types of argumentation* and *Devoted attention* (main news versus commentaries), which were based on emerging journalistic strategies used in the texts that served to invoke professionalism. These observations were inspired by Gaye Tuchman’s concept of seeing objectivity as a strategic ritual (1972: 670). The codes were then re-considered in the third stage of the analysis, which included a detailed identification of concepts and strategies that constructed the representation of the policy-making process, and explored how the representation of the policy-making process helps to discover new ways of understanding and new forms of meaning that were not obvious before.

3.3. Researcher in the analytical process

The goal of the analysis was to find interesting patterns and disjunctions that need to be described, interpreted and explained, however, the reader’s location in relation to the texts is structured by a number of factors, both textual and non-textual (Janks, 1997: 331). The reader can be caught in so called “preferred readings” (S. Hall, 1993). Fairclough (2001)

emphasises that discourse analysis can never be objective; it always has particular interests, always comes from a particular perspective, and gives insights that are always partial, incomplete and provisional. This is in accordance with the perceived need for self-reflexivity in the research process as discussed by Katharine Sarikakis (2003), who argues, in line with the feminist scholarship, for seeing the value in accepting that the position of a researcher constitutes a factor in the research process. Constant attempts for self-reflexivity and confrontation with the researched material were pursued throughout the whole process of analysis, while acknowledging that the results of the analysis reflect a certain perspective of the researcher. This is informed by the theoretical background, from which the researcher departs. Therefore, continuous efforts have been made to make this background as transparent as possible.

3.4. Material selected for the analysis

For the purpose of the analysis, press media from two countries, the UK and Germany, have been selected. This selection should provide representation of two out of four European policy traditions, as identified by Francis Castels (1993), the Anglo-Saxon and the Continental (here more concretely Germanic) traditions. Having closer to the Anglo-Saxon tradition, the UK has in comparison to the US still been more influenced by the Continental tradition (Richardson, 2014). As an European country that is member of the EU, Britain has to respect the right to private life as defined in the Article 8 of the ECHR and is together with Germany accountable to the European data protection policy from 1995 (Galetta, de Hert, L'Hoiry, & Norris, 2014). Another reason for choosing the UK was also its difficult relationship towards the European Union. The continuous attempts to resist the influence of the union should peak in the referendum on Britain's membership in the EU that is planned for 2017 ('EU referendum', 2015). In contrast, Germany has been selected for its leading role in data protection policy-making in Europe. The country has a long data protection tradition and its Data Protection Authority even served as a role model in the process of developing the EU data protection directive (Schütz, 2012: 51).

The time frame for the analysis encompassed media coverage from the introduction of the GDPR in January, 2012, until February 2015, when the coding process of the corpus was initiated. The time frame was extended to the most possible present point with the intention to cover events that could have been identified as influencing the policy-making process, such as the ECJ ruling in May 2014, the beginning of the implementation, or the starting discussion on more detailed formulation of the policy based on the experience with the practical application of the right by the end of 2014 (e.g. a debate on extending the right to apply to the global domains of search engines).

3.4.1. Process of selection

The process of selection of the media in the respective countries was threefold – political orientation, type of quality press, and circulation. The research material has been selected with the aim to cover the political spectre of both, left and right political affiliation. The reason for this criterion was the underlying research interest in the relevance of such a division, which seems to be in today's world losing on importance. Categorising newspapers according to this affiliation seems to be less straightforward than it was in the past (Kevin, 2003: 50). The reason for this seems to be, partly, the tendency of centralisation of political ideologies, and partly it is the increasing impact of market forces on the newspaper content. Results of the analysis were expected to either disprove this assumption, or prove it and thus make any distinction between right and left irrelevant. With regard to the qualitative categorization, the media were selected so that the so called "quality press" and "tabloids" are both represented, regardless of the political affiliation. Finally, the circulation played a role in the matter of the social relevance of the coverage. Based on the latest statistics from the UK (Rogers, 2012) and Germany (IVW, n.d.), the titles with the largest circulations have been selected.

In total, six newspapers were chosen, including *The Guardian* and *Guardian.com* (117 articles), *The Daily Telegraph* and *Telegraph.co.uk* (44 articles), and *Daily Mail* and *MailOnline* (87 articles) from the UK. From Germany, the following titles formed the corpus: *Süddeutsche Zeitung* and *Sueddeutsche.de* (78 articles), *Bild* and *Bild.de* (16 articles), and *Die Welt* and *Welt Online* (62 articles).

Coverage that was planned to be used for the analysis was collected via an intensive media articles research based on the keywords "*right to be forgotten*", "*right to erasure*", "*Recht auf Vergessen*", "*Recht auf Vergessenwerden*", and "*Recht auf Löschung*", which generated 506 articles in all mentioned titles together. After reducing duplicates and sorting after the relevance, finally 404 journalistic articles were analysed and coded. The articles were generated from databases such as LexisNexis database for universities and APA Online Manager Library, which were both accessed via VPN access. More articles were also collected through own research directly on the websites of the newspapers.

3.4.2. Brief introduction of the media titles

The Guardian was established in 1821 and is considered one of the United Kingdom's leading newspapers. The newspaper has been appreciated for its investigative journalism, its dispassionate discussion of issues, its literary and artistic coverage and criticism, and its foreign correspondence (Encyclopædia Britannica, n.d.-e). Its political affiliation can be described as centre-left and its editorial stance is considered less conservative than that of *The Daily Telegraph*. According to the latest NRS Print and Digital Data survey, which

combines print and digital figures, *The Guardian* together with *The Observer* and the website *Guardian.com* reach 12,412,000 readers monthly, which makes it the most read quality paper in the UK (National Readership Survey, 2015).

The Daily Telegraph, established in 1855, is generally seen together with *The Times* and *The Guardian*, as one of Britain's "big three" quality newspapers (Encyclopædia Britannica, n.d.-d). Its coverage is praised for a high standard of reporting with the selection of interesting feature articles and is specific for a middle-class, conservative centre-right approach (ibid.). In the NRS survey from April 2014 till March 2015, *The Daily Telegraph* has scored closely behind *The Guardian* and its main paper together with *The Sunday Telegraph* and the website reach to 12,120,000 readers in the UK (National Readership Survey, 2015).

Daily Mail, one of Britain's best-selling newspapers, can be best described as a middle-market tabloid newspaper and is considered the first British newspaper to popularize its coverage to a mass readership (Encyclopædia Britannica, n.d.-a). It was first published in 1896 and throughout its history it became famous as a newspaper for women (Cole, 2005). It is together with *The Sun* one of the biggest selling newspapers and in 2014-2015 its reach even made it to the most read newspaper in the UK with 19,771,000 readers monthly.

Süddeutsche Zeitung, founded in 1945, is one of the largest German national subscription daily newspapers with circulation of 428,745 as recorder in the first quarter of 2014 (IVW, n.d.). Founded in 1945, its editorial stance is liberal and generally of centre-left. *Süddeutsche Zeitung* has won its readership with allegedly careful and accurate presentation of news and by its forthright stands on sensitive issues (Encyclopædia Britannica, n.d.-c).

Die Welt counts to one of the most influential papers in Germany and its editorial inclines towards essentially conservative strand. With its circulation of 214,180 sold papers in the first quarter of 2014 it still belongs to one of the biggest titles in Germany (IVW, n.d.). It was founded in 1946 and is together with *Bild* published by the Axel Springer AG as company's flagship newspaper (Encyclopædia Britannica, n.d.-b).

Finally, *Bild* is a German tabloid published by Axel Springer AG and with its sister paper *Bild am Sonntag* it covers the majority of the German newspaper market. In the first quarter of 2014, the circulation of *Bild* reached 2,305,878, which makes it the biggest newspaper regardless the type of the medium, and one of the biggest national newspapers in the world. *Bild* is famous for its "mix of gossip, inflammatory language, and sensationalism" and as being a dangerous political instrument for German politicians (Steininger, 2012). Its political affiliation can be described as more centre-right, whilst its coverage defines its eurosceptic orientation and an attempt to "turn the slightest news item into a world changing event threatening life as we know it" ('Sex, Smut and Shock', 2006).

4. Analysis and the presentation of findings

This chapter will discuss the findings of the analysis in two categories of the policy process – Creation of the RTBF and Implementation of the RTBF – and it will then address the differences across the selected media with regard to the third research subquestion. At the final stage of the findings, the attention will be shortly devoted to suggestions for a further research, which draw from the observations made during the analysis and which could further explore phenomena that were albeit not relevant for the purpose of this research, however, were identified as scientifically valuable.

4.1. Creation of the policy

This chapter introduces findings that relate to the own process of making the RTBF policy. The process of coding has been challenging especially for one reason – how to deal with the boundaries between what still counts as creation of the policy, where implementation begins, and where the implementation flows back into the creation? During the reading process, it was possible to identify codes, which allowed to concretely address the initial stages of the creating process of the RTBF, including how, why and by whom the agenda was set; who and how contributed to the formulation of the policy; but also how the policy had to be integrated in the context of other rights. It was also possible to follow processes of negotiations that challenged and shaped the RTBF as policy and its recognition in the European polity. This identification allowed organising the codes into three subgroups - environments, processes, and challenges. Each of these subgroups further spreads into more detailed themes, which arose from the corpus.

- Environments
 - Actors
 - RTBF within the existing EU policy
 - Balancing of the RTBF and other rights
- Processes
 - Agenda-setting of the RTBF
 - RTBF as part of the GDPR policy-making process
 - RTBF after the ECJ ruling

4.1.1. Environments

Findings in the subgroup Environments map the representation of the shaping forces around the RTBF. Decision-making consists foremost of conflict resolution within and between public and private actors, governments and other authorities (Jann & Wegrich,

2007). Moreover, the process of decision-making happens also in the context of already existing policies, which place on the decision-makers the responsibility to carry out a balancing act of the emergent and the existing policies. Therefore, the attention to exploring the representation of external environment of the RTBF will be discussed along these themes:

- Actors
- RTBF within the existing EU policy
- Balancing of the RTBF and other rights

4.1.1.1. Actors

As actors are perceived institutions and individuals, who have been involved in the policy-making process. One clarification has to be made regarding the organisation of the codes that relate to the actors involved in the representation of creating the RTBF. Throughout the journalistic articles a number of actors have been mentioned, quoted and put into connection with the RTBF, either to point at their agency in the process or to comment on the policy-making process from an external position (e.g. academics or lawyers discussing the potential effect of the RTBF on society). In this section only those institutions and individuals who had a perceived direct contribution to the policy initiation and formulation are included, i.e. the Court of Justice of the European Union, the European Commission and Viviane Reding, European Parliament and Jan-Philip Albrecht, national governments and the industry.

Court of Justice of the European Union

The Court of Justice of the European Union (ECJ) decided in May 2014 that citizens have the right to be forgotten (Paukner, 2014). This event is seen as having two implications on the ECJ as a relevant actor. The ECJ has through this decision become one of the crucial figures in creating the RTBF policy, because its ruling has made the hypothetical article of a planned regulation to a claimable human right. Secondly, the ECJ, whose competencies had not been until then usually connected with human rights, re-defined its position in the EU and initiated discussions about its role.

The ECJ is represented as a court that stood out of the backdrop of the union and finally came closer to the EU citizens, which gives it a new image (‘12 000 Löschanträge schon am ersten Tag’, 2014). Its position had been closely tighten to the institutional character of the Union, as underpinning the European law culture – “*Google-Urteil untermauert Europas Rechtskultur*” (Bewarder, Gaugele, & Clauß, 2014) and as being the new temple of the European values – “*Neuer Tempel der europäischen Werte*” (Janisch, 2014d). The new image gained after the ruling is depicted in two ways. On one hand, the ECJ is seen as the one who gives citizens more control over their data and even returns what belongs to them, when it allows the citizens to regain back the power over the cyberspace – “*ein*

großer Schritt zur Rückeroberung des Cyberspace für den Internetbenutzer” (Claus, 2014a). The process of “regaining” the power suggests that the power has already once belonged to the citizens. Interestingly, this process of regaining power is not directly connected to the personal data as potentially seen as a space belonging to the users, but to the “cyberspace” as whole. In this view, the ECJ does not only tell citizens that they now have the “right to be forgotten“, but also *“Der EuGH hatte [...] entschieden, dass Europas Bürger Google dazu verpflichten können, Links zu ihnen unangenehmen Dingen aus ihrer Vergangenheit aus dem Netz verschwinden”* (‘12 000 Löschanträge schon am ersten Tag’, 2014), and thanks to this they can “oblige” and stand above the companies.

The other way of representing the ECJ as repositioning itself, views its ruling more critically. The court’s expansion via the RTBF ruling into the sphere of human rights, such as the right to privacy and freedom of expression, which used to be innate to the European Court on Human Rights (Janisch, 2014d; Phillips, 2014) is criticised for its self-imposed authority with direct impact on businesses and the freedom of speech. In his statement, the UK’s Culture Secretary Sajid Javid, criticised *“Luxembourg’s unelected judges’ for forcing search engines to remove links to news stories”* (Thornhill, 2015). The ECJ is blamed for *“unsettling state of affairs”* and for effectively amounting to *“Orwellian declarations that certain stories have been scrubbed from the closest thing that the fractured 21st century has to a public realm”* (B. O’Neill, 2014). In these two articles, we have a series of wording that notably shapes the representation of the ECJ, while using a clearly defined adjective – *“unelected”* - and a culturally embedded metaphor – *“Orwellian declarations”*. Starting with the attribute “unelected”, the reader of the text is reminded that legitimacy of decision-making has to do with the level of democratic representation of the given institution. In the case of the ECJ, the quote of the politician points out that the court has not been elected thus does not directly represent the interests of the citizens. By emphasising the place, where the court has its seat (Luxembourg), the geographical distance amplifies the democratic one. The judges furthermore *“force”* companies to comply with rules that are in conflict with the democratic ideals of press freedom. This connection is being transmitted through the metaphor *“Orwellian declarations”* that can be found in an article of another medium. The well known book *1984* written by George Orwell (1949) creates a world, where freedom of press is suppressed by the Big Brother, an anonymous, distant institution. Metaphor is not a matter of language but of thought (Guo, 2013). It serves as a foundation for the understanding of more abstract domains and as such plays a significant role in the construction of reality. According to Fairclough as cited in Guo (2013), “metaphors are socially motivated; different metaphors may correspond to different interests and perspectives and may have different ideological loadings.” The metaphor of Orwell’s repressed press makes a vivid bridge to the values that we associate with the free press and its ideal role as the “fourth estate“. Through this bridge the ECJ gains a reputation of a distant oppressor that wilfully interferes with the freedom of information.

Moreover, the relationship of the ECJ to the industry has been a frequent subject of the media reports, which referred to it in the context of court’s domination and Google being

forced to follow. Some texts represent the ruling as a redefinition of the power exchange between the EU institution and the private sector. Through defining who is according to the European law, the ruling of ECJ is said to affect companies that used to be seen as neutral before the ruling (‘Leading Article: Google ruling: Good question, bad answer’, 2014). From May 2014 on, the European court has ordered international companies to follow the law of countries, in which they operate and has said “*Das Recht gilt auch für Google*” (Janisch, 2014b). The indirect form of the court’s statement in the article maintains an imperative character and a dominant position, from which this statement was made. Moreover, by adding the adverb “*too*” (original “*auch*”), the statement suggests that other companies have been following the rules, only Google has not, but this will change now. The almost personal level of the statement suggests, as if the court aimed at the American company in order to make it respect the European laws. On the other hand, the ECJ is also depicted as stimulating the debates between EU politicians and Google. The court is ascribed the power to move politicians to start action against Google and revive the negotiation attempts of the EU politicians with antitrust authorities with the aim to limit the market powers of the company and to motivate politicians to do something for the protection of the citizens (Janisch, 2014d).

This ECJ is represented as an institution, which develops itself in the course of the policy-making process (of which it is a part) and which makes use of this process as an opportunity to expand its own field of action. The notion of this expansion remind of two dominant discourses in the European integration – the question of legitimacy of the European Union and its institutions and its increasing role as a public policy-maker, and the struggle of finding a solution to balance the market-oriented nature of the Union versus the necessity to politically and legally deal with the growing power of international corporations.

EU Commission & Viviane Reding

The European Commission represents a dominant actor in the process of creating the RTBF policy, since it is the institution that proposed the new regulation, of which the RTBF is a part. However, the representation of the EC is not restricted to the proposal of the GDPR; it is also represented in relation with the antitrust case against Google and the attempts to regulate Google’s presence at the EU market. The role of the European Commission in dealing with Google and its alleged “*abuse of its dominant position, chiefly by promoting its specialised services*” (‘Google v the EU’, 2014) is considered to be an influential context for the representation of the EC as a creator of the RTBF.

The ongoing anti-monopoly debate presents a context of the relationship between the EC and Google, which is characterized by unsuccessful attempts for settlement also after the ECJ ruling. The EC represents a higher authority to which the European Parliament has called in its attempt to break up Google’ monopoly:

“The European parliament has approved a motion calling for tougher regulation of internet search, including suggesting breaking up Google as a solution to its dominance in Europe. The motion passed as expected by 384 votes to 174 with 56 MEPs abstaining, and encourages the European commission (EC) to consider unbundling Google's search business from its advertising and other businesses. The parliament has no direct power to break up Google in this manner and its calls to the EC have been seen as politicalisation of a regulatory issue.” (Gibbs, 2014a)

Mentioning the “right to be forgotten” in this context gains on relevance, when we consider what dominant position Google is ascribed in the coverage on the RTBF, as will be discussed in the findings regarding Implementation in more detail. The EC is here represented as a determinant shaping Google’s presence in Europe. Moreover, in other articles the role of the Commission is being considered to have been increasing its influence in the European Union, together with the ECJ in the connection to the RTBF (Phillips, 2014). However, the EC is not depicted as a superpower in the Community and even the previous excerpt suggests that what the EC is expected by the EP to do is to “*consider unbundling*”, but the passive agency suggests that the process of unbundling would then be carried out by other actors too.

Other bodies, as for example the EP, are reported to constantly negotiate with the Commission the conditions of the RTBF:

„Allerdings gibt es strengere Strafen bei Datenschutzverstößen als von der Kommission vorgesehen. Sie hatte sich mit zwei Prozent des globalen Jahresumsatzes zufrieden geben wollen, die Parlamentarier wollen fünf Prozent.” (Caceres, 2013d)

While the talking about the European Commission as whole highlights the institutional and thus rather anonymous character of the commission, big part of the corpus deals with the concrete agency of commission’s Vice-president and commissioner responsible for justice, fundamental rights and citizenship, Viviane Reding. It is Viviane Reding who introduced the new data protection proposal and the Article 17 about the RTBF in January 2012. Some codes relating to Reding as introducing the GDPR refer to a representation of the RTBF as something that could be viewed as “her project”:

“New EU rules on the „right to be forgotten“ are being championed by the EU justice commissioner, Viviane Reding, heralding the prospect of serious fines for companies that refuse to honour requests from customers to erase personal data.” (The Guardian, 5.4.2013, Special report: Internet privacy: The web has a long memory - so do we have the right to be 'forgotten': Historical data can wreck reputations, activists say Deleting such information is censorship, says Google)

The emphasis of the object, the RTBF, as being “*championed*” by Reding highlights the relationship between the RTBF and Reding as almost personal. The tendency to represent

the RTBF as Reding's project can be observed in other quotations, including *"ihr geplantes Gesetz für Datenschutz,"* (Busse & Jakob, 2012), *"Die EU-Justizkommissarin warb für die neue EU-Verordnung zum Datenschutz"* ('Besser und billiger', 2012), or *"Erfinderin der Neuregelung"* (Eder, 2014). Reding's fight for the new reform is, furthermore, emphasised as running for years already. In the quotation *"Redings Verordnung war im Vorfeld umstritten und wurde bis kurz vor Verabschiedung noch verändert."* ('Datenschutz: EU-Kommission will künftig Bürger besser schützen', 2012), attributes the regulation to her directly and expresses the struggle that Reding has been through in pursuing her plan, until finally, she gets attention and support she needed in the European countries such as Germany (Bewarder & Vitzthum, 2012), in the European Parliament (Fromme, 2013) and from politicians (Bewarder, Jungholt, & Vitzthum, 2012).

In the way the goals of the new data protection reform are represented by Reding's pursuit to guarantee the well-being and benefits of citizens in combination with setting stricter rules for international companies, Reding can be identified as standing on the side of the citizens in opposition to businesses – corresponding with the tension between the citizens as consumers and the "bad" companies who have entered the "privacy war", which has been announced by the media as in the headline *"Europe's next privacy war is with websites silently tracking users"* (Gibbs, 2014c). At the introduction of the reform proposal, Reding is quoted that *"Kein Unternehmen soll künftig davon profitieren können, wenn es den Schutz der persönlichen Daten seiner Kunden nicht ernst nimmt"* (Bewarder et al., 2012). Even in the context of discussion about Britain wanting to opt out from the planned reform because of the RTBF and the unrealistic expectations such right could cause, Reding is quoted to *"explicitly clarify that people shall have the right - and not only the 'possibility' - to withdraw their consent to data processing"* ('Britain attempts to opt out of EU rules that let people easily delete their online data', 2013). A number of codes strengthen Reding's goal to define personal data as property of citizens (Kuhr, 2012), as also expressed by Reding in welcoming the court's ruling regarding the RTBF that confirmed that *"data belongs to the individual"* (Associated Press, 2014b). Although Reding's voice is represented more in her determination to ensure control for citizen, especially, in the coverage after the ruling, her consideration regarding balancing the right to privacy and to freedom of speech is also tacitly present in the discourse. In an article dated before the Google ruling, Reding can be seen speaking about the need to balance both rights, right to privacy and to free speech – *"Informationsfreiheit und Urheberrechtsschutz dürfen keine Feinde sein, sie müssen Partner sein"* ('Besser und billiger', 2012).

Viviane Reding's agency is represented in the corpus, as fighter for citizens' rights and the *"iron lady"* of data protection (Fromme, 2013). This involvement in the process of preparing the new data protection plan makes her the leader of the European fight for a new data protection and improved privacy, and it personalizes the intention of the EC as an institution. It almost makes the GDPR to (her) personal project and (her) ideological odyssey. Seeing the policy as a pursuit of a specific actor in the coverage could, however,

lead to considerations of the universality of the RTBF as a policy and its representativeness in the area of public interests.

EU Parliament & Jan-Philip Albrecht

Another European institution that is presented as actively involved in the policy-making process of the RTBF is the European Parliament. Contexts in which the parliament is brought up recall debates about its increasing role in the European decision-making system as part of contradicting the European democratic deficit argument (e.g. Hix & Follesdal, 2006; Moravcsik, 2002; Majone, 1994). The European Parliament is presented as an active campaigner for solutions that would help to restrict Google's major share on the European market and achieve more competitive conditions. Here the parliament's initiative is reliant upon the EC, since it lacks the powers and the authority to force a break-up of the company (Rushe, 2014). Nevertheless, the parliament makes use of the right to ask the EC to submit proposals for new legislations and hereby calls *"for tougher regulation of internet search, including suggesting breaking up Google as a solution to its dominance in Europe"*, and encouraging *"the European commission (EC) to consider unbundling Google's search business from its advertising and other businesses"* (Gibbs, 2014a). The EP is said to be having *"no direct power"*, which has also often been the point of criticism of the EP, and causing the EP to seem to be insufficiently representing the citizens' interests in the EU (Corbett, 2011). However, the attempt to bypass its less powerful position through the EC is followed by criticism calling the move *"politicalisation of a regulatory issue"* (ibid). In this statement, the ideological struggle of political interests, which are associated with individual private interests of the political actors, and the vision of an independent and objective regulation, penetrates the discourse. The assumingly clear line between politicalisation and regulation implies that political treatment of economic concerns about monopolies and market supremacy cannot lead to sufficient results, since individual interests dominate the politics. This implication can also be observed in other parts of the coverage, where, for example, the European commissioner in charge of digital economy, Günther Oettinger, warns from using the competition law to create reins for Google and recommends that finding a solution happens *"mit Maß und Ziel"* (Heuzeroth, 2014).

Relating to the attempts of the EP to extend its influence in the European Community, the context of setting new data protection regime in Europe represents the European Parliament as cohesively battling for stricter rules and enhancing in that way the creation of the RTBF policy. As some articles report, the parliament attempts to return a piece of text to the GDPR draft, which was originally there but then removed on the request of the US government. This text should make the exchange of data between the US and Europe more difficult in order to aggravate any spying attempts (Caceres, 2013d). The parliament also plays an important role in speeding up the negotiations regarding the new GDPR and the RTBF. It performs united and fast in approving the new data protection rules, which is seen by one of the members of the parliament, Jan-Philipp Albrecht, as a strong signal to

the national governments (Caceres, 2013c). In aftermath of the ECJ case in May 2014, one of the EU parliament's members, Birgit Sippel, marks the ruling as essential since it confirms that – as already ruled under the Directive from 1995 – *“Nicht jeder Fehltritt aus der Jugend, der heute nicht mehr relevant ist, muss vor Milliarden Internetnutzern ausgebreitet werden”* (Eder, 2014).

Throughout the articles, especially one of the parliament's members, the German politician of the Green Party, Jan-Philipp Albrecht, is mentioned as a driving force of the RTBF. Albrecht is presented as the author of the right in the regulation. The way his satisfaction with the process of making the GDPR and the RTBF is presented, resembles the positive attitude towards the policy as already observed at Viviane Reding. Albrecht appreciates the way the parliament approaches the GDPR and classifies it as helping in order to achieve a better data protection and stronger citizens' information rights (Caceres, 2013c). For Albrecht, *“Der Schutz persönlicher Daten ist eines der zentralen, fundamentalen Grundrechte der digitalisierten Welt”* (‘EU-Parlamentarier kämpft für das Recht auf Vergessenwerden’, 2013), which again puts emphasis on the protection of citizens as priority of the EU.

The European Parliament similarly as the European Commission and the ECJ is represented as active actor that enforces the outlined changes of the European privacy protection regime towards more powers for citizens. However, this representation is not depleted their own developments and transformations as institutions that are with help of the changes extending their areas of influence, or at least attempting to. Furthermore, the reported consonance of the actors with the proposed policy-makes them seem rather uncritical of the contested RTBF and potentially necessary to be treated with caution.

Industry

In June 2013, the EU's transparency register received requests from 5,703 interest representatives – mostly businesses (Dür et al., 2013). Despite the objective level of influence of the industry on EU's legislative is being disputed, the private sector is perceived as playing an irreplaceable role in the policy-making process. In the case of the RTBF policy, the industry lobbying is considered one of the heaviest among all legislative proposals (Caceres, 2013b, 2013c). Although it is multiply highlighted that the GDPR and the RTBF have witnessed much greater interest of lobbying groups than other usual policies (Warman, 2012), no specific companies are being named and the own process of negotiations remains underreported.

The representation of the private sector in the coverage about the creation of GDPR and the RTBF very much rests on discussion about what implication the new regulation and the RTBF could have on companies.

“There is still quite a way to go, but shapes are starting to form in the shifting sands, some of which are quite alarming for business. The bar for compliance

will be much higher under the new regime and the sanctions for not complying far greater, with fines of up to 5% of global annual turnover proposed.” (McKean, 2014)

The notion of “*alarming*” sands and threat of sanctions underline the meaning of the regulation for the companies and implicitly point at the tension that can be expected between businesses and the EU for making the conditions for enterprises. On the other hand, the EU officials are reported to express their confidence that the new conditions will enhance smaller and middle-sized businesses (Kuhr, 2012).

The overall media representation of industry as an actor in the policy-making is therefore limited to a small number of companies that react on and shape the debate on the RTBF. Various companies and search engines, that are said to be directly or indirectly affected by the ECJ ruling, are mostly presented in the context of implementation of the ruling, rather than being actively involved and interfering into the processes of RTBF policy-making, and as such they will be discussed at a later stage in the thesis.

National governments

In general, national governments (also as having representatives in the Council of the EU) are depicted as important parties in the decision-making process, to which the data protection proposal has to be presented and which the representatives of the government have to approve (Bewarder et al., 2014; Caceres, 2013e) .

“Die Abgeordneten möchten das Paket noch in dieser Legislaturperiode abschließen. Dafür müssen sie sich mit den Regierungen einigen, die aber ihre Beratungen über die Verordnung noch nicht abgeschlossen haben. Birgit Sippel (SPD) hofft auf rasche Verhandlungen mit den Regierungen – ,und dass diese dann, das Votum der Parlamentarier respektieren und nicht durch Tricks und Kniffe zu versuchen, das Datenschutzniveau abzusenken.““
(Caceres, 2013e)

The quotation including a statement by a European parliamentarian points at a problematic character of dealing with the governments and highlights the difference in the devotion to the regulation by the EU and the states. Whereas the EU officials are shown as trying to finish their tasks, the governments are represented as slowing down the negotiations and threatening to “seek to lower the level of data protection by tricks” (original: *und nicht durch Tricks und Kniffe zu versuchen, das Datenschutzniveau abzusenken*). The term “*tricks*” contains an evaluation of the governments as having hidden intentions, trying to deceive the counterpart or as pushing through own interests without regards to others and the system. In this way governments are represented as pursuing their own goals, instead of wanting to support the commonly seen good – as seen by the European officials.

In the coverage, positions of mostly two governments are reported – the British and the German. Britain's position is represented as resistant against the attempt to introduce united rules on data protection as proposed in the GDPR and is reported to actively negotiate alternative conditions regarding the RTBF. One of the attempts of the British government is to opt-out of the planned proposal for the RTBF, which is reported as *“clash between Brussels and the [UK's] Ministry of Justice [...] in the final stages of negotiations over the EU's General Data Protection Regulation”* (Bowcott, 2013b). The discussion will be shown at the article *Britain seeks opt-out of new European social media privacy laws* that was published at Guardian.com on 4th April 2013 and was republished as the leading article in the press one day later. One of the quotations reads:

“Britain is attempting to opt out of a European initiative enabling anyone to delete their personal details from online service providers - a power known as the ‘right to be forgotten.’” (Bowcott, 2013a)

The British and the European positions are put here in a clear opposition. The notion of power relations in the context is highlighted through the description of the RTBF as a *“power”*. Through making the citizen's *“right to be forgotten”* to one of EU's tool, the right becomes a force that influences the political ordering of a nation, which tries to escape it through opting out of the legislation. The connection of the RTBF and *“power”* contains also certain grade of autonomy for the legislation, into which the state cannot interfere, therefore impacts the independence of the state.

A fine line can be drawn between reasoning to escape the policy, because the law threatens the state, or because it is seen as wrong in its principal. Both types of reasoning can be identified in the coverage, while the first is more implicit and the second is promoted in the coverage by quotes of representatives of the UK authorities and representatives of businesses. The UK's Information Commissioner's Office', who agrees with the EU that *“new regulation will shift the balance between consumers and ‘data controllers’”*, which is seen as welcome, however, expresses concerns regarding the *“expansive”* title and expectations the policy can cause *“because the controls proposed will be relatively modest in their impact on the way data spreads, or is traded, across websites”* (ibid.). He addresses the potentially misleading character of the law as a motivation for the UK's government to opt out:

“Our concern is about how difficult (or impossible) this may be to achieve in practice and how it could lead individuals to believe falsely that they can achieve the absolute erasure of information about them.” (ibid.)

This view is also promptly confirmed by companies as in the following argument of the article. Richard Allan, Facebook's director of policy for Europe, the Middle East and Africa, is quoted saying:

“The core concept that you as a data subject should be able to delete your personal data is absolutely reasonable. It's something we implement on our service. We have concerns about the workability and consequences of a

mechanism where organisations start sending each other instructions about data that needs to be removed. Our worry is that it will take up resources and won't be effective.” (ibid.)

In this respect, the dimension of the UK's opposition towards the EU's power is moderated and the argumentation turns around the practicability of the ruling. However, the power-dimension stays present in the commentaries made by Viviane Reding who is quoted warning that the move would lead to 27 rules in the EU, and saying that “*it's crazy*” that the UK wants to “*introduce a new layer of complexity, cost and risk of non-compliance by having one set of obligations for domestic operations and one for cross-border operations*”(ibid). This statement again recalls the dimension where the UK stands against the EU as a pronouncement of its opposing position.

UK's move is critically assessed by privacy campaigners who “*accused the government of blocking an 'essential move'*” (ibid.). This criticism gains even more on relevance thanks to seeing the voices as “*privacy campaigners*”, representing an overall opinion by the campaigners, which interestingly generalizes the statement in comparison to other arguments of the article, since these are mostly ascribed to a particular speaker.

Another representation of the UK's and also Ireland's requests to allow different conditions regarding fines when companies do not comply with the RTBF, suggests lower sensitivity in privacy matters. This is backed up by the argument that the island countries play an important role as being the European headquarters for big international Internet companies such as Facebook and Google (Caceres, 2013a), which brings up the question of pursuing economic interest over those of citizens'.

The UK is, however, not alone in its requests for more national responsibility. Other nine countries, including for example Germany, Sweden, Belgium and the US, are said to have been “*lobbying Brussels to ease proposed rules on data protection*” (Arthur, 2013). The German government has been represented as attempting to keep certain spheres of data protection in its national responsibility, and was supported in this by other European countries (“*Einheitlicher Datenschutz bald europaweit,*” 2012; “*Ein ‘Recht auf Vergessen,’*” 2012). This image of the German position can be explained by its fears that the European uniform data protection regime could cause damage to the especially strong German human rights standard that has developed throughout the years (Janisch & Prantl, 2014). However, these fears are disproved by German representatives in the EU who deny these concerns as unfounded already in the earlier stages of the public debate (Caceres, 2013d). Germany's role is also represented as a supportive element to the suggestions made by Viviane Reding and her planned data protection reform (Bewarder & Vitzthum, 2012).

The representation of British and German positions and negotiation strategies suggest certain priorities common to their respective approaches towards data protection. Whereas the UK negotiation attempts are represented as balancing between seeing the RTBF as a threat to its independence and as warning before the imperfect right, that

however, well addresses the need to do something about the data protection, the German position is characterized through its strong emphasis on maintaining its widely developed data protection tradition. The resistant tendencies towards the centralization and harmonizing attempts from the European Union in both cases show, how the countries adhere to their efforts to maintain a certain level of self-governance.

Authority of the EU

Until now, the findings have been devoted to particular players who have been represented in the media coverage as in some way influencing or being involved in the process of making the RTBF. In terms of representation of the European Union as whole, one more dimension could have been tracked during the coding process – the tendency to represent the European Union as an authoritarian institution.

The legitimacy of the legislation and the moral position of the EU are being questioned, when the UK's Justice Minister, Simon Hughes, warns that the EU is risking losing *"the moral high ground to criticise authoritarian regimes if it creates a 'right to be forgotten' online"* (Press Association, 2014). In this context the EU is accused of being almost hypocritical and is associated with *"authoritarian regimes"* that oppress the freedoms of its citizens. This strictly negative representation can be also observed in codes that labelled the way the EU was described as *"illiberal, intolerant authorities in Europe"* or how the *"Euro-officials"* are being accused of *"spiteful authoritarianism"* (B. O'Neill, 2014). Tory Eurosceptic MP Dominic Raab underpins his argument about the *"ruling [as] a draconian attack on free speech and transparency"* that *"highlights the increasingly authoritarian dimension to the EU, which threatens basic freedoms we have long taken for granted"* (Doughty, 2014). The emphasis of *"we"* versus the European Union that is depicted as threatening traditional freedoms suggests the binary understanding of the UK within the EU. It highlights the distance between the speaker and its relation to the EU, as an unrecognized authority. In the excerpt *"The judgment came as an unwelcome surprise to ministers who have opposed EU moves to establish a 'right to be forgotten'."* (ibid.), a similar strategy of identification with the various actors can be observed. The ruling described as *"unwelcomed surprise to ministers"* makes a connection to the ministers, who share *"our"* grievance and who confirm the condemnation of the ruling, and share the respect towards the traditions that we *"took for granted"*.

Notably, the authoritarian character of the European Union is in the coverage accentuated mostly in the British papers as a reaction to the ECJ ruling. However, this position should not be seen as characteristic for the entire British corpus, though it does represent a specific attitude towards the European Union that can be in stronger or weaker form identified in other findings in the corpus.

The representation of the actors that are involved in the policy-making process suggests that the creation is not strictly divided into a neutral, clearly defined sequence of stages, but is rather shaped by power relations and dynamics among the actors and within the structures that shape the process of the policy-making. Media representing the actors therefore not only say, who is involved in the creation. More importantly they highlight the complexity how these actors interact and how they through this interaction challenge and shape their own environment and that of the policy.

4.1.1.2. RTBF within the existing EU policy

Throughout the coverage, the impression could be made that the RTBF is a new right and as such it tends to be presented. However, as several pieces of coverage point out the “right to be forgotten“ is no new right. This notion is however highlighted by legal experts rather than integrated in the arguments of political representatives or businesses. As an Irish solicitor specialising in intellectual property rights and technology points out:

“No new right has [actually] been established, it's just that the scope of an existing right has been interpreted. [...] People who are using the phrase 'right to be forgotten' are trying to frame a much stronger right being proposed with the General Data Protection Regulation.” (Brady, 2014)

This legal framework, on which the RTBF rests, was established in the Data Protection Directive 95/46/EC from 1995, which is still in force. One of the common remarks in the articles is the fact that this Directive was conceived at times, when there was no search engine like Google. The fact that the ECJ leans on this “out-of-date” directive and comes with a new reinterpretation of the right, leads to two sorts of argumentation. On one hand, the “right to be forgotten“ as drafted in the GDPR is as an attempt *“die Regeln für den Datenschutz zu modernisieren und zu harmonisieren”* (Caceres, 2013e). The results of the ECJ ruling are celebrated as a promise of better enforcement of control over own data and as finally taking the data protection rules out of the “stone age” – *“Zudem bestätige das Urteil die Notwendigkeit, die aktuellen Datenschutzregeln aus der „digitalen Steinzeit“ in die heutige Computerwelt zu überführen”* (‘Auch im Internet gibt es ein „Recht auf Vergessen“’, 2014). Such a view has the potential to highlight the need to discuss what privacy is about today and tends to contextualize the RTBF discussion into the sphere of finding a solution to the challenge of data protection.

On the other hand, this reference to the Directive serves in some articles as a base for criticism of the court’s ruling, as being “outdated”. According to the Lords home affairs, health and education EU sub-committee in the UK, *“it was a mistake to assume the "right to be forgotten" even exists in law”* (Barrett, 2014b). This position functions as an argument against the RTBF and contextualizes the debate further in the direction of failing policy.

Each of these arguments enforces the representation of the RTBF in a specific direction – either as an illegitimate invention, or as a long awaited innovation. The adoption of one of

these arguments as a starting point for further debate about the right can notably influence the direction of the representation of it. Especially, if the RTBF is perceived as a new right, it can be seen as demanding a very well grounded foundation that advocates its existence. At the same time, its newsworthy character would then cater for the (sometimes sensational) attention of the media (D. O'Neill & Harcup, 2009).

4.1.1.3. Balancing of the RTBF and other rights

The “right to be forgotten”, as most of laws, is not being made in a legal vacuum (Hogwood & Peters, 1983; Wildavsky, 1972). On the opposite, the new right that is being established through the Article 17 of the GDPR finds itself in one of the most contested legal areas, where basic human rights stemming from different democratic ideals require balancing. The need to balance the “right to be forgotten” with the right to free information, freedom of speech and with public interest seems to be a core topic of the texts. The balancing arguments, however, can unfold throughout the texts in two different directions. Defeat of the right to information lays at one end, the victory of the right to privacy occupies the other. The common starting point for both of them is the presentation of the need to balance the right to privacy and the right to information as the core definition of the RTBF in the GDPR (Article 17) and as emphasized in the ruling of the ECJ (Burrows, 2014b). The emphasis to balance the RTBF with other rights and with the public interest is present across the coverage as a formal definition of the GDPR:

“These rights [the right to be forgotten] will not be absolute; for example data controllers will be required to perform a balancing act against any competing rights to freedom of expression when considering removal requests. Other exceptions, allowing for continued storage of data, are proposed.” (McKean, 2014)

The point where the coverage starts to separate is when the texts report about what implications the RTBF has and for whom. On one hand, the need to balance rights is presented as a responsibility given to the companies whose undertaking is affected by the RTBF. These companies are depicted as “*making the best of a bad job*” and they lay “*claim to the moral high ground by showing [their] willingness to respect the rule of law*”(Rozenberg, 2014). Both of these excerpts demonstrate that the need to balance, which lies originally at the core of the right, becomes a concern of how companies can deal with this uneasy fate. The task to balance the rights is not seen as a necessary moral obligation of any social actor, which might be expected considering the constitutive role businesses play in modern society. The task to balance rights by the companies is rather represented as an invention of the EU, which creates more work for the enterprises. Companies therefore, can either accept this task and then be praised for their “*willingness to respect the rule of law*”, or they fail to sufficiently comply with the law and are represented as “*clumsy*”. A number of quotations show that companies are aware of this task and plan to take it responsibly.

Microsoft: *"While we're still refining that process, our goal is to strike a satisfactory balance between individual privacy interests and the public's interest in free expression."* (Dredge, 2014)

Google: *"'We need to balance the right to information against the rights of privacy,' Schmidt said"* (Garside, 2014)

Whereas other parts of the coverage highlight the inability of companies to comply:

"Google has come under fire for its 'clumsy' approach to obeying Europe's new 'right to be forgotten' law, after it began blocking some name-based searches to articles on the websites of UK news organisations." (Arthur, 2014c)

On the other hand, the emphasis is made on how the RTBF highlights the importance of citizens' right to gain control over their personal data. The ruling that establishes the RTBF is reported as strengthening the position of citizens towards search engines and to it companies are made to accept responsibility - *"Suchmaschinen wie Google könnten sich nun nicht länger darauf zurückziehen, dass sie lediglich die Übermittler von Daten seien. Auch sie müssten Verantwortung übernehmen,"* (‘„Tod der Meinungsfreiheit“ oder „Sieg für Verbraucher“?’, 2014). In this context, companies are still present in the context, however, as preventers of citizens' right to be in control of their privacy. The RTBF is here represented as a tool to make companies take responsibility for the results of their actions and follow the law. By claiming *"to be only a transmitter of data"* companies are accredited attempts to distort the character of their own enterprise and thus avoid the responsibility for the consequences that this character can bring (e.g. that they not only transmit information, but play a role in shaping them). Similar statements that welcome the shift in how companies are being made responsible for their actions, are often assigned to politicians and representatives of governments (ibid.; Bewarder et al., 2014; *"Bürger können kritische Google-Links löschen lassen,"* 2014).

Another aspect of the representation of how the rights should be or are balanced, consists in seeing the RTBF and other rights as partners and not enemies as expressed in Reding's speech and promoted by the EU Commission (‘Besser und billiger’, 2012). The observation of how the relationship between the two human rights is defined as either competing or cooperating, recalls the need to balance privacy and security, as already addressed in the criticism of surveillance. A study that analysed the discourses of European policies on security and privacy claims that the relationship between security and privacy as a fundamental right is in the current EU position perceived as complementary, i.e. not in contradiction. Fundamental right are to be respected rather than balanced. Whereas the language used on the national level still uses the concept of *"balancing"* privacy and security (Bodea et al., 2013: iv). Similar tendency has been identified in the coverage when speaking about balancing the right to privacy and the right to information. The prevailing discourse in the corpus has been seen as talking about

“balancing” more than “respecting”, while the perception as *partners* is addressed by EU officials.

When the balance is not found, then one right suffers under the other. A tendency common in a number of media articles points towards an inevitable repression of freedom of expression in favour of the “right to be forgotten” - despite the possibly good intentions of the EU to protect users and their online identities.

"Balancing the rights to freedom of expression and privacy is never easy, especially online, but this 'right to be forgotten' shouldn't become some sort of 'super right' trumping the others." (Greenslade, 2014e)

The failure to achieve the balance between privacy and the freedom of speech is seen as innate to the very definition of the RTBF:

“'A simple way of understanding what happened here is that you have a collision between a right to be forgotten and a right to know. From Google's perspective that's a balance,' Schmidt added. 'Google believes having looked at the decision, which is binding, that the balance that was struck was wrong.'” (Woollaston, 2014)

The application of the RTBF in practice *“elevates an individual's right to be forgotten over the public's right to know”* (B. O'Neill, 2014)(The Daily Telegraph, 16.08.2014, We must reverse the new tide of censorship sweeping Europe) and makes the RTBF to seem to be a tool of censorship:

“The practical consequences of such a path could amount to a chilling of speech, if not actual censorship.” (The Guardian, 17.05.2014, Leading Article: Google ruling: Good question, bad answer)

The custom of associating the RTBF with censorship is often represented in statements made by the representatives of Wikipedia:

“Private search engines such as Google should not be left in charge of 'censoring history', the Wikipedia founder, Jimmy Wales, has said, after the internet company revealed it had approved half of more than 90,000 'right to be forgotten' requests.” (Mason, 2014)

Or by editors of publications whose articles have been affected by the ruling:

“Calling it a 'right to censorship', O'Neill continued: 'It is an attempt to re-write history.'” (Greenslade, 2014c)

Google and other search engines are put into position, of *“rewriting”* and *“censoring”* history. This information gap that the RTBF threatens to cause, is denied in several cases of the coverage, where the deleted links are not perceived as a dangerous consequence, but rather as a necessary step on the way towards a better control of own data. In her explanation of the RTBF, Reding emphasizes that the EU Commission seeks to balance

these two rights – RTBF means “*Löschen, nicht sperren. Gesperrt wird in China oder im Iran,*” (Busse & Jakob, 2012). Moreover, as one of the experts from Google’s advisory council and the former German Justice Minister, Sabine Leutheusser-Schnarrenberger, says, the ruling on the RTBF signifies that the policy-makers finally found the balance between the rights – right to privacy and right to information (Tieschky, 2014b).

The existing legal framework from which the RTBF arises and the legal context in which the RTBF has to be integrated are constitutional to the very definition of the RTBF. The various ways, in which legitimacy of the RTBF is being displaced or confirmed and in which rights are reported to be balanced, as competing or as coexisting, play profound roles in the representation. This is not to say that the British or the German corpus would follow only one or the other direction – contra-argumentation is present in both of them. However, the inclination towards highlighting the RTBF as a policy that burdens the private sector, threatens the freedom of speech and “*runs contrary to the rights of citizens to access information*” (Garside, 2014) is mostly typical for the British media coverage, whereas the German articles more focus on the ability to control own data and the balance of the relationship between customers and search engines.

4.1.2. Processes

The process how the RTBF is becoming a policy was observed by the reference to the policy-making cycle that includes two initial phases: agenda-setting and formulation of the policy.

Agenda-setting in its first stage consists of the recognition of an issue as being relevant for the political discussion, which is usually influenced by more actors, including political figures, industry, media, agents from the civil society etc. Jann & Wegrich (2007) indicate that this process, rather than being a clear, rational process of selecting more relevant issues over others, is a result of configuration of multiple forces coming from different actors. In the second phase of the agenda-setting the topic is put on the agenda of a decision-making body (Cobb & Elder, 1972; Jann & Wegrich, 2007). Again, this is often not caused by the objective magnitude of the issue, such as the level of danger or amount of people affected by the problem. Instead it is mostly a plausible definition of a problem (Stone, 2001) and the creation of a particular policy image (Baumgartner & Jones, 1993, as cited in Jann & Wegrich, 2007) that secure the position on the agenda-setting. In the European Union, in most of the cases it is the monopolistic role of the European Commission to set the agenda after the initial negotiation of topics is accomplished. In comparison to the national agenda, policy-making in the EU is more focused on the inside access, and is not that much influenced by public agenda and media agenda (Buonanno & Nugent, 2013).

Policy formulation “includes the definition of objectives — what should be achieved with the policy — and the consideration of different action alternatives” (Jann & Wegrich,

2007: 78). The decision-making does not only involve information gathering and processing, but foremost consists of conflict resolution within and between public and private actors and government departments (Wildavsky, 1979). The final adoption of a policy formulation depends on two (or more) factors. Firstly, the decision can be made thanks to enough resources, not only material but also in form of political support, which can play a critical role at this stage. Secondly, it is the allocation of competencies among involved actors (e.g. government, relevant institutions etc.) (Jann & Wegrich, 2007).

Codes that were organised under this subcategory enabled to observe the process of making the RTBF as a non-synchronous chain of actions and events, including the initiation of the agenda, formulation of the policy, and the implementation pouring back into the ongoing process of policy-making. The following thematic clusters help to better navigate the results of the analysis:

- Agenda-setting of the RTBF
- RTBF as part of the GDPR policy-making process
- RTBF after the ECJ ruling

4.1.2.1. Agenda-setting of the RTBF

The corpus points at different actors and reasons to explain, how the “right to be forgotten” found itself in the public discussion and how it finally got to the agenda of the EU Commission. The manner, in which the agenda-setting of the RTBF is represented in the coverage, would probably be best described within the concepts *outside-initiation* and *consolidation* (Jann & Wegrich, 2007). The *outside-initiation* is a result of pressure from outside on the governments and decision-making bodies, either by actors from the public, or by interest groups who often do not involve the public at all. Whereas *consolidation*, describes a case where both, the state and the public, already have a great interest in the issue and the political body only has to initiate the process (Howlett & Ramesh, 2003: 141).

Voices implying the agency from outside, claim that the RTBF has been “*developed by the EU justice commissioners in the face of growing complaints about the way Facebook and other social media giants retain information*” (‘Britain attempts to opt out of EU rules that let people easily delete their online data’, 2013). The RTBF is represented as a response to the unbalanced relationship of trust between the users and the companies that process their data. Trust is named in the media as the cornerstone of the digital economy (Crocoll, 2012). As Viviane Reding highlights in her interview with *Süddeutsche Zeitung*:

“*Dabei führen starke Datenschutzregelndoch dazu, dass Verbraucher wieder mehr Vertrauen zu den Unternehmen haben. Dennwenn sie das nicht haben, geben sie Daten nicht preis und das wiederum schadet der Wirtschaft.*“
(Fromme, 2013).

In this view, the EU justice commissioners react on the need to overtake the responsibility to regulate the space in which trust relationships between the users and the companies can be built again. However, as some articles stress out, the new GDPR “*fails to strike the right balance between protecting individuals' rights to data privacy and preserving the commercial freedoms of companies to engage with consumers*” and the RTBF threatens to “*stifle innovation for social media companies*” (Combemale, 2012). Interestingly, in these articles the role of the RTBF is rarely discussed in relation to the privacy needs of the consumers and it predominantly concentrates on the economic aspects of EU legislative.

As another reason for the EU to take action, is presented the need to find a solution to Google’s monopoly at the European market, while accentuating the role of politicians:

“Criticism of Google's dominance in search - it enjoys a 90 percent market share in Europe - reached a fever pitch this year, with competing search engines and major publishers attacking the company, and even consumer rights groups piling on. Politicians, perhaps smelling a shift in public attitude, began openly using the company as a punching bag. Shortly before European elections, German economic affairs minister Sigmar Gabriel criticized the company for its tax avoidance, privacy policies, and dominance, and suggested it might need to be broken up.” (Associated Press, 2014e)

Despite the recognition of the company’s influence – as having 90 percent of the market share – the attention drifts away from the potential impact of such a monopolistic position and focuses on the will of politicians to restrict Google. “*Politicians smelling a shift in public attitude*” portrays the politicians as waiting for the right moment, when the atmosphere in the public allows them to pursue their intended plan, i.e. punish the company for “*for its tax avoidance, privacy policies, and dominance*”. The verb “*smelling*” could be well substituted by another verb, like “*recognizing*” or “*noticing*”, however, this would fail to deliver the image of animal senses, which satirize the politicians as “sniffing dogs”. Moreover, the shift in the public attitude plays here a secondary role, since no further explanation to what the attitude is or how it reflects on the needs of the citizens is available. The emphasis of the argument is well illustrated in the metaphor “*punching bag*”, which conveys the desire of politicians to vent on Google.

A further perspective offer excerpts that represent the RTBF as a tool used by interest groups such as various consumer rights groups that see in the powerful media industries a threat to freedoms of citizens, and by governments and the European Union who look for ways how to “*unbundle*” the European market (Rushe, 2014). In both above mentioned cases, the RTBF is pictured as a suggested tool of defiance towards the private sphere.

A common knowledge that privacy is being restrained in the online world and the general will to do something about it also underlies the call for the RTBF (‘Ein “Recht auf Vergessen”’, 2012; Judge, 2014). The need to empower citizens, as highlighted in the official EU’s reasoning, is often reinterpreted as a need to deal with the concerns about

internet menacing to go off limits and becoming uncontrollable. In some articles it is recognized that *“the internet and the digital world in general are forces of liberating potency”*, however, *“that does not mean that democratic and legal enforcement of their proper place in modern life can be off limits”* (Kettle, 2014). Cases of internet mobbing and inability of single persons to protect themselves from the power of the spreading word in the internet are used as a way to criticise politicians and policy makers who had been only watching but not doing anything about it for years (Prantl, 2012). The underlying idea of these motifs, therefore, rather supports the voices that call for regulation of the internet as a reckless space, than highlights the autonomy of users.

Finally, several articles present the initiative for the RTBF as coming from the EU Commission and more concretely from Viviane Reding. This view of agenda-setting clearly corresponds with the concept of consolidation, where Reding and the EU Commission introduce the data protection proposal as a response to the pressing needs as felt from the side of the citizens but also as recognized by the policy makers themselves. Moreover, Reding is described as *“a powerful figure in the European commission who has clashed repeatedly with Google over issues about data use, most recently over her proposal that European citizens should have a ‘right to be forgotten’”* (Arthur, 2012). In this way, Reding gets represented as a direct opponent to the private sector.

As shown in the text extracts above, the call to prioritize data protection in the agenda of policy makers is presented as stemming from various sources. Beside the commonly known fact that privacy of citizens is in danger, which also shapes the media discourse, politicians are among the most visible initiators, who, on one hand, react to the public perception of endangered privacy, and, on the other, use the RTBF as an instrument to regulate the rules in the private sector. Motivations behind the agenda are ascribed to miscellaneous driving intensions, however, the apparent ones turn around economic interests and power relations.

4.1.2.2. RTBF as part of the GDPR policy-making process

As Mara S. Sidney (2007: 79) notes, in case of formulation and negotiations of the policy, researchers can expect “more of the work to take place out of the public eye”.

Representations of processes that have led to the formulation of the RTBF policy and that explain how the policy is being negotiated are closely linked to processes of the broader GDPR. At this point it is important to emphasize that the ways in which RTBF and the GDPR are discussed in the coverage are not necessarily always identical.

The initiation of the GDPR by the EU is represented as a necessary step that revives the desire for better conditions of data protection in Europe. The GDPR is founded on the idea to catch up with the modern requirements of the digital era and to equip citizens with a weapon of defence when their rights are threatened, such as in the case of the revelation of the NSA documents (Reilly, 2013). The GDPR is praised for its suggested goals as, for example, *“privacy by default”* (Ehrenstein, 2012), should help customers better

understand their rights ('EU-Parlament fordert höhere Strafen', 2013) or that it should be technically neutral so it can be applied to any future technologies that are unknown today (Fromme, 2013).

However, as it one of the articles introduces, *"Der Teufel steckt im Detail"* and despite the unitary support of the GDPR by data protection groups, the reform is sceptically viewed by the industry and by some politicians as potentially barely applicable – *"Der strengste Datenschutz ist vergeblich, wenn er kaum umsetzbar ist"* (Caceres, 2013e). Especially, the RTBF is often highlighted as a contested part of the data protection reform. Where GDPR is applauded as a welcome initiative, the RTBF is viewed with reservations:

"Credit Services Association chief executive Peter Wallwork said: 'The new regulations are designed to protect consumers, which we would applaud, but in their current guise and the laws of unintended consequences they will have the complete opposite effect.'" (Uren, 2014)

The RTBF is presented as a problematic part of the GDPR. Special attention is given to the unclear conditions of how the RTBF was going to be applied (Ehrenstein, 2012). The proposed version saw several European countries lobbying over the RTBF and demanding its reconceptualisation (Arthur, 2013). After the RTBF was established by the ECJ as a right to be enforced in the EU, by their selection of various statements, the media highlighted opinions that the right is flawed and accepted with reservations. The UK's Justice Minister, Simon Hughes, commented:

"We would not want what is currently in the draft [the right to be forgotten]. We think it's the wrong position. I don't think we want the law to develop in the way that is implied by the ECJ judgment, which is that you close down access to information in the EU which is open in the rest of the world."
(Bowcott, 2014a)

The process of development of the RTBF in the GDPR is depicted by efforts to leave the RTBF out of the GDPR, as suggested by the British government (Prashar, 2014), or by proposals to replace the criticised term "right to be forgotten" with "right to erasure", which apparently proved to be successful ('EU-Parlament fordert höhere Strafen', 2013; McKean, 2014), however no specific details are given about by whom and how these developments and changes took place.

The process of making the GDPR in general is described as being shared among three European institutions – the European Commission, the European Parliament and the Council of the European Union, i.e. representatives of national governments (Kuhr, 2012; Caceres, 2013d). Despite the active talks and consensus in some parts of the decision-making structure, e.g. in the European Parliament, the policy-making process is said to be too slow ('Deutsche Datenschützer sollen für Facebook.de zuständig sein', 2013; Przybilla, 2015). A number of factors are being named that slow down the process – such as governments not being able to find agreement in the issue of data exchange between

the US and the EU (Caceres, 2013d; Greive, Michler, & Mülherr, 2013), countries like Germany, the UK, Sweden or Belgium making decentralisation requests and lobbying the EU Commission (Przybilla, 2015), as well as the need to find a balance between industry interests and privacy of citizens (Bewarder et al., 2014). Reding characterizes the role of the state as:

“Es stehen einige Staaten auf der Bremse, insbesondere die Briten. Und auch Deutschland hat bis jetzt nicht die Vorreiterrolle eingenommen, die ihm eigentlich gebührt hätte mit seinen hohen Datenschutzstandards.” (Fromme, 2013)

This representation of states recalls the critical discussions about effectiveness of EU's policy-making, which suggests that diverging positions of countries slow down the EU's legislative process (König, 2007).

The way the problematic formulation of the RTBF is presented adds to questioning whether the EU can as a policy-maker deliver effective legislations. It is partly the disparities among the actors, which slow down the process and make it ineffective, as well as the imperfect pieces of legislations, such as the RTBF, that need thorough revision and that place the EU into a doubtful position.

4.1.2.3. RTBF after the ECJ ruling

One of the most influential events that elevated the RTBF to the top of the agenda of the GDPR policy-makers and to the public debate was the ECJ ruling in the case *Google Spain SL. v Mario Costeja González* ('Press Release No 70/14', 2014). The result of the ruling is described as surprising because the ECJ decided in the same case against Mario Costeja González and his attempt to enforce the RTBF one year earlier (Janisch, 2014c). The court case deals with the complaint lodged by Mario Costeja González against La Vanguardia Ediciones SL, a Spanish publisher of a daily newspaper, and against Google Spain and Google Inc. Costeja González requested to delete internet search results, which are linked to La Vanguardia's articles from 1998 containing an announcement for a real-estate auction for the recovery of social security debts owed by Costeja González. He argued that the debts were fully resolved since a long time already and that reference to them was now entirely irrelevant, and potentially hurting his reputation ('Press Release No 70/14', 2014).

The ECJ ruling is described as a *“game-changing judgement”* (Greenslade, 2014a). Opinions on its impact expressed in the media, however, differ. On one hand, despite being not perfect, the ruling is considered to be important even by critics of the ECJ (Janisch, 2014e), however its unclear definition of crucial concepts such as “inadequate” or “outdated” caters for concerns (Ball, 2014b). The court's ruling is said to cause *“chaos”* (Tieschky, 2014a) and to give *“search engines a responsibility similar to those traditional publishers always had - judging whether an information is in the public interest”* (Associated Press, 2014g). The ECJ is reported to strengthen the RTBF ('Bürger

können kritische Google-Links löschen lassen’, 2014) and through this it gives people the right “*over their private data, especially if they are not public figures*” (Associated Press, 2014a). The ruling is, furthermore, described as having started “*eine neue Ära des Grundrechtsschutzes in Europa*” (Janisch, 2014d). Moreover, the judgement is represented as a signal of the EU to fight “*gegen die ungezügelter Ökonomisierung der Privatsphäre*” (Clauß, 2014a).

These quotes map the diverse character of the discussion about what the ECJ ruling means for the further development of the data protection in Europe, and signalize the influential role of the ruling in starting (miscellaneous type of) a privacy debate in the public. The various evaluations of the ruling, as will be discussed in the next section, are also accompanied by characteristics of the RTBF that outbalances other rights and which has a direct impact on the representation of the policy. The ruling points at the moment, where the policy that is still in process of creation enters simultaneously the stage of implementation and in this respect gets to be shaped by both – the formal processes of negotiations, and the practical application that necessarily influences the active process of policy-making. The next section focuses mainly at the time after the ECJ ruling and the implementation process. However, it can be considered as an interlinked part of the representation of creating the RTBF in its formulation stage, since the events influence the definition of the law in its effect.

4.2. Implementation of the policy

The Implementation category maps the process of introducing the RTBF into practice, concretely after the European court’s ruling in May 2014. In the course of studying the journalistic articles it became obvious that the involvement of Google in this category often dominates the media discourse. Despite Google being the most iconic example of the implementation, other search engines and companies impacted by the ruling have played their role too. The findings are being discussed in the three following sections:

- Execution of the ruling
 - Actors involved & questions of responsibility
 - Execution of the RTBF
- Characteristics of the implementation
 - Effectiveness
 - Practicability of the ruling
 - Target group
- Consequences
 - Transformation of Google
 - Assessment of the RTBF ruling

The implementation stage can be defined as “what happens between the establishment of an apparent intention on the part of the government to do something, or to stop doing

something, and the ultimate impact in the world of action” (O’Toole, 2000: 266). At this stage, policies are often to be changed or even distorted. The ideal process of implementation includes the specification of program details – i.e., how and by which agencies/organizations the program should be executed and how the law/program should be interpreted; allocation of resources – i.e., how budgets are distributed, which personnel will execute the program, and which units of an organization will be in charge for the execution; and decisions – i.e., how decisions of single cases will be carried out (Jann & Wegrich, 2007: 52). In pursue of a successful policy, an effective mode of governance that better reflects the conditions of modern societies should include modes of coordination between public and private actors and the dynamics of policy networks (Jann & Wegrich, 2007). The following representation of the implementation reflects some of these features of the process and observes how well the implementation has been specified and what determines whether the policy is or is not deemed successful.

4.2.1. Execution of the ruling

In this section, the discussion looks at who and how is involved in the process of implementing the RTBF and what challenges do these actors face, as represented in the corpus. The codes are discussed within the two thematic areas:

- Actors involved & questions of responsibility
- Execution of the RTBF

4.2.1.1. Actors involved & questions of responsibility

The judgement of the European court obliges search engines, that are defined as both, “data collectors” and “data controllers”, to remove links from their research results that direct to information deemed “inadequate, irrelevant or no longer relevant” (‘Press Release No 70/14’, 2014). Google is presented as one of the main businesses involved, since the company controls over 90% of the European search market (Seamark, 2014), however it is not the only search engine active in Europe. The corpus also deals with the implementation made by Microsoft or Yahoo. However, Google still remains as one of the main actors and in the centre of attention.

By analysing the role Google has been assigned through the ruling, a more detailed assessment of involving private actors, i.e. search engines, emerges. The RTBF ruling is presented as adding to challenges that Google has been facing through its expansion in the recent years:

“It has also faced anti-monopoly probes by the European commission and most recently pressure from Europe over the 'right to be forgotten'. This ruling forced Google to remove search listings to information deemed to be

outdated and not in the public interest which saw Britons request over 60,000 links be deleted by October.” (Prigg, 2014)

The geographical identification of the RTBF as coming from and causing “*pressure from Europe*” underlines the distance, from which the speaker, a British editor, talks. While the UK is a member state of the European Union and counts as part of Europe, the emphasis on denoting the EU as “*Europe*” suggests perceived own detachment from the Union. From this position the following statement gains more of a critical character since the observation happens in opposition. In the context of the article, which focuses on seeing Google as a company that finds itself in a difficult process of self-identification, the statement that follows – “*this ruling forced Google to remove search listings to information deemed to be outdated*” – strengthens the adhesive position towards the European decision by stressing out the forcing nature of it and suggests the oppressive impact of the ruling on companies. Google finds itself in a “*huge role in policing the internet, and one it really doesn't seem to want: if it tries to resist removals, it could easily end up mired in numerous cases with Europe's information commissioners, taking up huge time and expense for the company*” (Ball, 2014b). The court has thus entrusted this task to the wrong actor.

Moreover, a representative of a human rights group, Jim Killock, Executive Director of Open Rights Group, is reported to express a concern that the private companies are likely to “*end up making mistakes*” (Burrows, 2014a). Some media report that governments themselves took the initiative and have dealt with Google regarding establishing an arbitration board to clarify uneasy cases and to provide with advice how to balance the right to privacy and access to information (Martin-Jung, 2014). However, the major advisory body that is mostly discussed is Google’s own established Advisory Council to Google on the “right to be forgotten”, which should “*navigate through the ethical shoals*” (Associated Press, 2014f). Despite the efforts to ensure a transparent implementation of the ruling, the very idea of leaving private companies with such decisions is viewed critically. Another international organisation that promotes and defends the right to freedom of expression, Index on Censorship, insists:

“Private companies like Google - no matter how broad and noble their advisory board might be on this issue - should not be the final arbiters of what should and should not be available for people to find on the internet. [...] There's no appeal mechanism, no transparency about how Google and others arrive at decisions about what to remove or not, and very little clarity on what classifies as 'relevant.'” (Greenslade, 2014b)

This statement highlights the weight of the moral task that the EU transposes on the private sector and the fragile reliability on private companies. Opinions shared across the coverage express the importance of having a decision authority that supports Google (Tieschky, 2014b), in particular, these judgments should be made “*the concern of data or privacy regulators*” (‘Leading Article: Google ruling: Good question, bad answer’, 2014). Social organisations and regulatory authorities are desired to “*play a much more*

active role, not just limited to making sure that the removal has taken place. They should be involved in the decision” (Garside, 2014), however, as the coverage suggests, the private companies still remain those who are let by the EU to execute the RTBF.

The actor that is representing the EU and is directly involved in the process of implementation is the EU’s Article 29 working group that is reported to have developed guidelines on pan-European regulatory issues (Gibbs, 2014b) and that is actively shaping the debate on extending the RTBF to global domains of the search engines (Gibbs, 2014b). The Article 29 Working Party, that represents national data authorities in the EU, based on the experience with the implementation, has issued a report which considers this way of implementation insufficient in satisfying the ruling and states *“in practice, this means that in any case de-listing should also be effective on all relevant.com domains”* (Gibbs, 2014b). This brings a new level of discussion into the discourse – a discussion about the limitations and legislative borders of the EU.

4.2.1.2. Execution of the RTBF

The representation of the execution of the ruling is concerned with two things – firstly, with the challenges waiting for the search companies and what the implementation means for the engines in terms of their personnel capacities and work load, secondly, with how sufficiently the companies fulfil their task.

Two months after the court’s decision, Google is reported to:

“have received more than 70,000 requests to remove links to more than 276,000 web pages from Europeans, with most coming from France, Germany, the UK, Spain and Italy respectively. It said it was now receiving about 1,000 requests daily, from a high of more than 12,000 soon after the ruling.” (Arthur, 2014c)

The exact numbers of requests and the links that have been deleted is seized upon in several headlines of the articles (‘Google gets one request every 7 seconds to hide someone’s past’, 2014). On one hand, the indication of the numbers can be regarded as an informative statement, however, these numbers also suggest the amount of work that has been put on the companies by the EU, and also implicitly hint at the threat to free speech, which would be at risk if such numbers of links would really be deleted. In terms of the work load, Google is presented as having to *“painstakingly sort through the requests”* and it is reported to send *“notifications to people who requested a removal, asking them to bear with the search engine”* (Griffiths, 2014). Such statements, assisted with wordings as *“painstakingly”* and *“asking to bear”*, transmit sympathy with Google and show understanding for what Google has to go through. Google is therefore more of a “victim” of the ruling.

Furthermore, the RTBF is represented as directly influencing Google’s corporate structure. Media speak about Google’s need to hire a whole *“Armee von Löschexperten”*

to be able to cope with the mass of requests to come (‘EuGH-Urteil; Google benötigt jetzt eine Armee von Löschexperten’, 2014). Exaggeration as a strategy to highlight the severity of the ruling is present also in other contexts, for example, when the amount of paedophiles who have requested deletion is pointed out, as in the headline – *“Thousands of paedophiles rush to apply for their ‘right to be forgotten’ by having details of their past removed from Google”* (B. Robinson, 2014). Through this a mere technical procedure of filling a deletion form online is transformed into a sudden “raid” of criminals rushing to delete their pasts, which strengthens the acute nature of the ruling. Both statements have in common the urgent threat that is integrated in the execution of the RTBF.

Despite no armies of experts had to be employed at the end, as the coverage shows, the RTBF has caused one structural change in the company – Google established the Advisory Council. As David Drummond, Google's senior vice-president of global development and chief legal officer, stated in his article in the Guardian, the Council consists of *“external experts from the worlds of academia, the media, data protection, civil society and the tech sector”* and they serve *“as independent advisers to Google”* (Drummond, 2014). Through this move the company is presented as seeking transparency and doing its best to meet up with the moral obligations the RTBF carries with it. The Council's work is presented at a report on the RTBF, that the Council delivers to Google including broad criteria to be applied when executing the RTBF requests (Prantl, 2015). Moreover, the Council states that the ECJ ruling has established *no* right to be “forgotten”. Google is not obliged to “forget”, but to delete links that are inadequate, irrelevant or not any more relevant, and Google cannot be forced to delete the links, if that would be against public interest (‘Googles LöschBeirat streitet über das Vergessen; Nach monatelangen Beratungen blockiert WikipediaGründer Jimmy Wales eine Einigung’, 2015). In this the Council plays a supportive role of the ruling and acts unanimously, apart from positions of one of its members, the Wikipedia founder, Jimmy Wales, who repeatedly raises objections against the law, which for example, in the *Süddeutsche Zeitung* is depicted rather as slowing down the decision process (Prantl, 2015). Wales' and other Wikipedia representatives' critical attitudes towards the RTBF are more discussed in other texts, which represent their views on RTBF as censorship in more detail. Interestingly, these are not in detail mentioned in the *Süddeutsche Zeitung*, but can be primarily found in the British coverage:

“Jimmy Wales, the founder of Wikipedia, told Radio 4's Today: ‘The biggest problem we have is that the law seems to indicate Google needs to censor links to information that is clearly public: links to articles in legally published, truthful news stories. That is a very dangerous path to go down, and if we want to go down a path where we are going to be censoring history, there is no way we should leave a private company like Google in charge of making those decisions.’” (e.g. Barrett, 2014a)

And in some cases also in the German *Bild*:

„Wikipedia-Gründer Jimmy Wales befürchtet: „Google ist nur der Anfang.“ Über Twitter äußert Wales seine Angst, dass nun auch das riesige Online-Nachschlagewerk Wikipedia bald ins Visier der Datenschützer geraten könnte.“ (‘„Tod der Meinungsfreiheit“ oder „Sieg für Verbraucher“?’, 2014)

And in the newspaper *Die Welt*, whose quotations and statements remind of those used in the British counterparts:

„In ihrem Blog warnte Wikimedia-Chefin Lila Tretikov schon mal vor dem, was eintreffen könnte. Die Umsetzung des europäischen Urteils unterminiere den direkten Zugriff der Internetnutzer auf genaue und überprüfbare Informationen über Personen und Ereignisse. „Das neue Internet steckt jetzt voller Erinnerungslücken, weil Informationen, die einigen nicht passen, einfach verschwinden.““ (Müller, 2014)

Yahoo and Microsoft are, similarly as Google, reported to follow the ruling. They are presented as being careful when dealing with the task to balance right to privacy with the public interest (Crossley, 2014). Google’s job is assessed in both ways – either as “*showing good faith*” to comply with the ruling despite disagreeing (Griffiths, 2014), as “*being cooperative*” (Bowcott, 2014a), or as “*under fire for its ‘clumsy’ approach to obeying Europe’s new ‘right to be forgotten’ law*” (Arthur, 2014c). Some articles refer to the accusation of Google from deleting links, because it is “*cheaper to say yes*” (Doyle, 2014). The underlying vision behind this statement is the characteristics of companies, who are directed by their profit and make little considerations of the public good.

One of the most controversial areas of the implementation reported is the need to balance the rights as requested by the ECJ. Despite attempts to outweigh the two laws as claimed by Peter Barron, Google’s director of communications for Europe (Weaver, 2014), and the determination to deny requests made from public figures, who are according to the ECJ court to be exempted from the ruling (Woollaston, 2014), Google is “*forced to create “information gaps”*” (Garside, 2014). The idea of the RTBF as “forcing” companies to disturb the free flow of information in the internet rests on a vision of the internet as being neutral of powers. However, this vision omits that the internet is not separated from the “offline” social structures; on the contrary, the political economy of digital memory highlights that the offline world underlies the online structures and thus the internet cannot be seen as free of power relationships, or as neutral flow of information (Reading, 2014).

As the previous two discussions suggest, the coverage the execution of the ruling is a matter of how companies handle their fate. The representation keeps in focus the businesses and how their functioning and environments have been influenced by the RTBF. Considering the way Reding introduced the new regulation in an interview with *Süddeutsche Zeitung* in 2012 (Busse & Jakob, 2012) – as a tool to protect fundamental rights of citizens and balance competing interests of users and industry – the

representation in the studied material covers only one of the two interested parties. The articles offer little to almost no insight into how the RTBF ruling influences the lives of regular citizens, and thus contribute to simplifying of the complexity of the issue to industry matters.

4.2.2. Characteristics of the implementation

In the following three thematic groups, various dimensions of the RTBF and its implementation will be discussed as represented by the media. Miscellaneous statements, opinions and evaluations of the practical applicability of the law create a mediated picture of how the RTBF works in practice.

- Effectiveness
- Practicability of the ruling
- Target group

4.2.2.1. Effectiveness

The debate on the effectiveness of having a link deleted under the RTBF reveals how the effectiveness of the RTBF is seen as one of its defining qualities. Four directions of the discussion have been observed. Firstly, the debate that deals with whether it is possible to delete links completely from the internet, or not, has lead to considerations about the character of the internet and its dimensions. These considerations lead to the second debate on how the question whether information can still be found online or not anymore helps to represent search engines as a gate-keeper to the vast world of the internet. Thirdly, the debate on links being restored again after they have been deleted suggests the defective definition of the RTBF. And finally, the issue of deleting links from local or from global website points at debates dealing with the extension of the field of the RTBF.

Especially in the coverage from 2013, when Google was not yet recognized as responsible for the content of the links it shows in its search results, the possibility to delete information from the sources, and thus from the internet, was seen as almost impossible (Annereau, 2013). As one of the reasons named in the articles was the tendency of unpleasant and curious information to spread fast in the internet (Janisch, 2013). Similarly, the decentralization of the internet was as well seen as making the right to have information deleted pointless (Hofmann, 2013). In 2014, the point of view represented by the media slightly shifts thanks to the establishment of the RTBF, although the right still does not mean that the information disappears from the internet. The vision of the internet as a vast space that is having memory underlies the discourse on the RTBF as a commonly accepted “truth”. The metaphor of a memory of the internet – “*the internet has a long memory*” (Dowling, 2013) or “*ein riesiges Gedächtnis für unliebsame Ereignisse*” (‘12 000 Löschanträge schon am ersten Tag’, 2014) – is used in both, the

German and the British press. On one hand, it personalizes the Internet and depicts the technology in human terms of forgetting and remembering. Through this the internet becomes an imminent part of the collective memory shared among human beings. Its restriction can then be seen as a threat to the continuity of human memory. On the other hand, the fact that the Internet does not forget implies that anything we put online, stays there forever and will not be forgotten, which seems to make the RTBF pointless.

One of the reasons why the debate about the RTBF could be misleading, is the illusory expression “right to be forgotten”, as David Smith, deputy commissioner of UK’s Information Communication Office, states. *“The legislation allows European citizens to request that links to irrelevant information be removed from search results, not that it disappears from the internet”* (Curtis, 2014). What several articles point out, however, is that the information will be much harder to find when the link is deleted (‘Kann jetzt jeder Links bei Google löschen lassen?’, 2014; Ball, 2014b). UK’s Culture Secretary Sajid Javi talks about *“censorship by the back door”*, because even if the articles are not deleted, *“if they cannot be found by the search engines they may as well not be there at all”* (Thornhill, 2015). This view is represented also by a leading advocate of the “right to be forgotten“, Viktor Mayer-Schönberger, in his encouraging speech for the RTBF, when he says that *“if you can be deleted from Google's database, i.e. if you carry out a search on yourself and it no longer shows up, it might be in Google's back-up but if 99% of the population don't have access to it you have effectively been deleted”* (Tremlett, 2013). This argumentation eventually leads to ascribing Google an essential role. The European court’s ruling makes Google not only stronger, since it lies in its responsibility to decide what links can be deleted and what not, the criticism on the RTBF also appoints Google to a crucial gate-keeper to the internet, which holds the key to the information through its search results.

Furthermore, in attempt to make sure that the freedom of expression is balanced with the right to privacy as expressed by Google, the company notified editors about articles that should not be found in the search results any more. This move has resulted in something that the media call “Streisand effect“ – after being notified, media re-publish the article, which can then be found again. Therefore, the “right to be forgotten” is said to be turned into *“right to be remembered”* (Greenslade, 2014c). An editor calls the RTBF *“a completely pointless exercise”* because *“those who ask for these articles to be removed simply invite more publicity on themselves”* (Greenslade, 2014d). Media are even by some authors of the articles openly encouraged to re-publish the stories, e.g. on social media, to *“fight back”* (Ball, 2014a). The EU data watchdogs, who in an attempt to ensure the implementation of the RTBF, discourage from the notifications, are reported as trying to end the notification practice to avoid public debate about who has been asking to be forgotten, and why (B. O’Neill, 2014). These conflicts prove, according to *“privacy advocates and legal experts”*, the *“difficulty of implementing the privacy ruling given the broad criteria laid down by the court for information that is inadequate or irrelevant”* (J. Hall, 2014). Also here the generalization to an unidentifiable and therefore universal group of experts manages to increase the intensity of the statement.

Finally, one of the recent debates that concerns preventing circumvention of the RTBF, deals with the request of the Article 29 “*that search result removals should be carried out beyond local European domains such as google.co.uk, google.fr and google.de*” (Gibbs, 2014b). The fact that the links are deleted only from the local domains means that when users change to the Google.com domain, the results are accessible again, what some media call “*absurd*” (Boie, 2015). The view that links should be deleted from the global domain too evokes two reactions. On one hand, it gets support among politicians. David Smith, UK’s ICO deputy commissioner and director of data protection, is quoted pointing at the fact that “*the internet brings an international element to our work*” and the RTBF should not be circumvented by the limitation to national jurisdiction (Gibbs, 2014b). Therefore “*removing links to a.co.uk search engine, but not to a.com search engine that is readily accessible in the UK, is unlikely to be enough to do what the ruling requires*” (ibid.). Despite the expressed agreement with the view that the RTBF should apply to google.com too, the quotation of David Smith rests on stressing the obligation to comply with the ruling. It does not evaluate the RTBF as such, but rather conveys the will of the politician to show respect of the court’s decision. This impression can be deduced from the end of the sentence – “*is unlikely to be enough to do what the ruling requires*” – which sees the reason to comply with the ruling less in making sure that the RTBF can be enforced. In this way the speaker, i.e. the ICO deputy commissioner, is still granted the space to be not in favour of the RTBF. On the other hand, in her support of the idea that also results on the global domain should be deleted, the former German Justice Minister and current advisor in Google’s Council, Sabine Leutheusser-Schnarrenberger, refers directly to the right to have links deleted, when saying that the right could be bypassed:

“Sie fordert, dass Google „global für alle Domains“ löschen muss. Sie erklärt: ,Wenn ich bei der Google-Suche in Europa über Google.com die Artikel wiederfinde, auf die sich der Lösungsanspruch bezieht, wird der Anspruch umgangen.“ (Prantl, 2015)

In both cases, at UK’s ICO deputy commissioner and the former German Justice Minister, the intention to extend the forcibleness of the RTBF to global domains of Google is represented as well-founded, however, the underpinning relationship towards the RTBF that can be detected in a more detailed reading, shapes the evaluative power of such a statement.

4.2.2.2. *Practicability of the ruling*

Following up on the critical representation of the RTBF as discussed earlier in the findings, some of the views directly or indirectly presented in the corpus address the practical workability of the RTBF. Statements about the RTBF as being un-functional or technically unfeasible may, on one hand, impact the acceptance of the policy, but can also be seen as necessary for a debate that could potentially shape the ongoing process of the RTBF formulation.

After its introduction in 2012, a politician from the German Pirate Party described the planned RTBF as “*naiv und technisch nicht machbar*” (‘Einheitlicher Datenschutz bald europaweit’, 2012). The concerns regarding the workability of the RTBF can be observed throughout the whole corpus. Richard Allan, Facebook's director of policy for Europe, Middle East and Africa, expresses the fear that the mechanisms necessary for the RTBF could “*take up resources and won't be effective*” (Bowcott, 2013a), and the UK's Justice Minister, Simon Hughes, talks about “*a phenomenal task. It's not technically possible to remove all traces of data loaded on to the internet from other sources*” (Bowcott, 2014a). Similar statements also come from the US. American privacy attorney David Keatin, is quoted saying:

“It seems aspirational, not a reality, to comply with such a standard. The reengineering necessary to implement the right to be forgotten is significant.”
(Associated Press, 2014d)

The core of the problem is assigned to the relationship between the legal and the practical reality, which is, in the case of the ECJ ruling, reported to miss the balance, thus results in a judgement incompatible with the real life:

“Maybe in law they were right, but this is where - interpreting a 20-year-old directive - legal theory collides with the practicalities of the real world. A judgment that cannot in practice be complied brings the law into disrepute.”
(Prashar, 2014)

The incompatibility of the RTBF with the real life is also present in picturing Google as making mistakes when implementing the right. In the article with the headline “*Problems for Google as it attempts to obey 'right to be forgotten' judgment: Publishers accuse search engine of being too hasty in removing links to websites*” (Arthur, 2014c) the debate highlights the imperfect and “*clumsy*” compliance of Google with the RTBF. The context of the article, however, suggests that Google's unsuccessful efforts, which are expressed through the formulation “*attempts to obey*”, are a problem of the RTBF and the ruling has defined the right rather than of Google not trying enough. This possible interpretation is strengthened by a statement of Julia Powles, a law researcher at Cambridge University, who is quoted saying:

“The way that the ruling is currently being implemented adds strength to those who take an absolutist position in favour of free speech and free enterprise. The situation is much more subtle, just as it is much more subtle than the unhelpful catchphrase of the 'right to be forgotten'.” (ibid.)

The discussion about the impracticability of the RTBF represents a potentially important moment in the representation of the policy-making, since it offers an occasion to develop a public debate that might lead to re-formulation of the right and to its improvement. Here the media might play an important role as *contributors* to the policy-making process. However, within the framework of the analysed corpus this debate has only been implied through quoting opinions that put the practicality of the RTBF in question. More agency

from the side of the media as offering and opening the space for the debate that could shape and contribute to the policy-making process could not be sufficiently detected throughout the analysis.

4.2.2.3. *Target group*

The RTBF is drafted as a right for every citizen to request for links about them to be removed if the data is “*inadequate, irrelevant or no longer relevant*” (Arthur, 2014a). However, the target group as characterised in its original definition – as including all citizens – is throughout the coverage recontextualised. The concept of recontextualisation is introduced by Norman Fairclough (2003: 32), who defines it as an “appropriation of elements (context) of one social practice within another”, resulting in the transformation of the context. Through a selective focus on certain groups of users whose deletion requests are presented in the articles, the RTBF becomes a right of “*convicted criminals trying to remove records of their past that could be seen by employers, clients or social contacts*” (J. Robinson, 2014).

Google’s official report the company published to inform about requests that have been submitted to the company, is reported with the emphasis on including:

“a politician with a murky past, a convicted paedophile and a man who had attempted to murder his family and wanted to remove links about his crime. [...] Google’s chief executive, Larry Page, has said that nearly a third of the requests received related to a fraud or scam, a fifth concerned serious crime, and 12% were connected to child pornography” (Halliday, 2014).

Media refer to exact statistics about the type of users who want to take advantage of the RTBF including “*more than 60 per cent from fraudsters, criminals and paedophiles*” (Seamark, 2014). Alternatively, some articles base their arguments on likelihood – a “*high proportion of the information expected be lost to European search engine users is likely to be connected to convicted criminals trying to remove records of their past that could be seen by employers, clients or social contacts*” (J. Robinson, 2014). In both cases, the reader is reminded of the severity of criminals using the RTBF as a tool to hide their past, and thus threatening the rest of the society. Furthermore, UK’s Culture Secretary, Sajid Javid, warns from terrorists ordering Google to “*cover up stories about their trial*” and criminals that are said to airbrush their convictions from history “*even if they have since committed other, similar crimes*” (Crossley, 2014). Especially, the word “*terrorists*” is here used almost strategically considering the controversy of the term, which it has been causing in the international politics since 9/11 in 2001.

While reading the articles, a thin balance between directly connecting the request to delete and the very act of deleting in the argumentation was detected, such as in the headline “*Google deletes 18,000 UK links under 'right to be forgotten' laws in just a month: 60% of Europe-wide requests come from fraudsters, criminals and sex offenders*” (Allen & Boyle, 2014). The way “*links that have been deleted*” and “*requests made to*

the company” are placed after another evokes an impression of causal connection, which potentially amplifies the message that the links that were deleted could be hiding criminals’ past. Also examples reported in the media (notably again mostly in the British titles) prioritize referring to a specific groups of users who want to delete their pasts – criminals in connection with politicians.

Despite some articles reporting cases of politicians, who are as trying to hide their pasts, they are as public figures largely excluded from the RTBF (Tieschky, 2014b) and their cases are represented as being balanced with the public interest, mostly in favour of the public, since Google is reported to be denying these applicants (‘25 000 Anträge: Google-Chef Schmidt sieht das Löschen von Links kritisch’, 2014). The UK’s Justice Minister, Simon Hughes, reacts on the concerns regarding politicians saying:

“If politicians think they can delete findings about their expenses, that's not going to . . . (happen). If people think they can delete their criminal history, it won't occur. It's not in the public interest. I hope we can discourage a lot of people.” (Bowcott, 2014a)

Apart from the frequent connection of using RTBF to remove links to criminal convictions or youthful indiscretions, the RTBF is also reported to delete *“other embarrassing information”* (Warman, 2014). The law is therefore seen above all as a tool to remove embarrassing details of our lives or *“unangenehme Dingen aus ihrer Vergangenheit”* from the internet (‘12 000 Löschanträge schon am ersten Tag’, 2014). This shift from talking about “inadequate, irrelevant or no longer relevant” information as synonymous with *“embarrassing”* or *“unpleasant”* changes the perceived importance of the information on people’s lives. The formal genre of describing the information *“inadequate”* or *“irrelevant”* accentuates the concern about the possible negative influence on one’s life as legitimate. While the informal, casual genre describing this information as *“embarrassing”*, influences the legitimacy of such a demand and turns the attention towards the embarrassing feelings of the person who wants to have the links deleted. Consequently, Mario Costeja González whose court case against Google is mentioned as the original case leading to the ECJ ruling and establishing the RTBF in the European law, is in some cases described as *“a touch oversensitive, maybe even a bit self-centred”* (Glover, 2014). Also another person, a pianist from Croatia, who is asking to have links to an old review of his concert removed, is said to be *“overreacting”* (Bradshaw, 2014). Furthermore, a German news article then speaks about the *“Querulanten unter den deutschen Internetnutzern”* who are about to approach Google with their requests (Fuest, 2014).

In this sense, the picture delivered through the media reduces the group of citizens who want to use the RTBF to a specific category of users that does not overlap with the regular citizens. As some articles note it would be against the nature of data protection law if *“anyone who does not like something written about them but which is otherwise factually correct and current can demand that search results are edited”* (Warman & Watt, 2014). The way the target group of the RTBF is presented balances on the edge of

seeing the RTBF as a tool for wilful manipulation of the internet history and deeming the RTBF as a sanctuary for sensitive and embarrassed people, who want to improve their online reputation. Questions about using the RTBF to protect personal information as a tool to maintain the integrity of personal identity tend to be rather underrepresented.

4.2.3. Consequences

This final section introduces findings that have been, on one hand, identified as representing processes of transformation enhanced by the implementation of the RTBF. On the other hand, it reviews the different strategies to assess the RTBF and the ECJ ruling. These themes will be discussed within the following two sections:

- Transformation of Google
- Assessment of the RTBF ruling

4.2.3.1. Transformation of Google

In the course of the analysis, it has been recognized that the way Google is being represented in connection to the RTBF law points at its own transformation during and due to the policy-making process. Google's position at the European market is presented as disputed and as evoking increasing attempts to regulate its operation in Europe. Google is often denoted as *“zu mächtig [...] für die Staaten, zu riesig für die Schranken der Gesetze”* (Janisch, 2014b) and as monopol that does not leave space for competition:

“Minister Alexander Dobrindt (CSU) urteilt in der Welt: ‘Der Weltdatenmarkt ist gar kein Markt, sondern ein Monopol, und das heißt Google.’” (Gast & Mühlaue, 2014).

UK's deputy information commissioner and data protection head, David Smith, expresses his will to:

“see search engines like Google included in European legislation being drawn up to give consumers a ‘right to be forgotten’ by the internet. [...] Google can't just say: I'm just a messenger, I have no responsibility at all for the messages I carry.” (Garside, 2012)

Google is said to have viewed itself not as a publisher and it does not want to be made responsible for policing the internet (Bowcott, 2015). However, with the ECJ ruling, Google has been legally announced to be defined as a *“data controller”* and in effect a publisher of online material (Bowcott, 2014b), which means that Google and other search engines are no longer legally regarded as a *“neutral intermediary”* (Travis, Arthur, & Kassam, 2014). The ECJ is reported to explain its reasoning of the ruling by stating that search engines can intervene into personal life more than single websites, because they

enable online users to create a picture of a person only through looking up her or his name (Janisch, 2014a). Therefore, the coverage indicates the shift from the original resolution of the case in 2013, when Google was claimed to be not *“in a position to 'know' whether data was personal or not”* (Reilly, 2013) and therefore not responsible for the personal data appearing on web pages, up to the 2014 ruling, which represents a great changing point in the European presence of Google. Following the ECJ decision, the company's director, Larry Page, is quoted saying:

“Wir fangen jetzt an, wirklich auf die Leute zuzugehen und mit ihnen zu sprechen“, sagte Page. ‘Wir versuchen jetzt, europäischer zu sein und das Thema vielleicht ein bisschen mehr im europäischen Kontext zu denken.“
(‘Google-Chef kommt Kritikern entgegen’, 2014).

The relationship between the EU and Google is represented in the coverage in terms of multiple tensions. The context of the relationship is formed by bringing in the anti-trust case against Google, which suggests a constant pressure from the EU's authorities on the company. Similar pressure is also present in the wording that is used to describe the ECJ ruling:

“A European court ruling has ordered that search engine Google remove links to webpages which people claim are no longer relevant.” (Spillett, 2014c)

“In its ruling, which cannot be appealed, the EU court said search engines must listen and sometimes comply when people ask for the removal of links to newspaper articles or other sites containing outdated or otherwise objectionable information about themselves. The court provided little guidance on exactly how to make such judgments.” (Associated Press, 2014b)

The imperative character of the verbs *“order”* (which additionally highlights the active agency of the ECJ) or *“must”* express the superiority of the institution, which imposes a decision on the industry from its position as supranational legislator. The companies, however, react and oppose the decision. Through the quotation of the highest representatives of Google, in majority of the cases in the form of direct speech, the reader gets an impression of an active dialogue lead between the EU authorities and the companies. As might be expected, the increasing pressure on Google from the side of the European Union and national politicians does manifest itself on a changing position of the company, however Google is not expected to become less powerful or prosperous, since the ruling does not influence its ads (Associated Press, 2014c). On the opposite, the power of Google is expected to become stronger than weaker, since it will lie in its responsibility to judge between the right to privacy and the right to free information (Janisch, 2014e).

Furthermore, Google is represented as the leading actor representing the whole industry since companies such as Microsoft and Yahoo mostly *“follow in Google's footsteps”* when they start to offer forms for users to request deletion (Woollaston, 2014). This

notion of "*following*" suggests a role of Google as a leader in the search industry. The representation of Google as a market leader is multiply discussed within the coverage in various forms. Besides the explicit statistics that suggest the official market share of Google being 99%, also other representations imply its leading role. Google is denoted as a "*search giant*" – a metaphor widely spread across the coverage, which suggests various meanings.

„Ein Gigant, der ungehindert über das kleinteilige Recht der Nationen hinwegschreitet, als wären es die Gartenzäune der Insel Liliput.“ (Janisch, 2014a)

Firstly, the vision of a "*giant*" can be seen as relating to a fairy tale figure. Giants can be seen as non human creates that are in possession of destructive and productive forces. Giants threat with their size and power other actors – those living on the "*Lilliput island*". This connotation corresponds with another metaphor, which describes Google as "*Google Datenkrake*" (Eisenlauer, 2014), of whom everybody is feared. The EU attempts to restrict and control Google in its size and powers and this accentuates the need to free the market of its dominance.

Despite several inclinations to depict Google as a "victim" of the ECJ ruling (as discussed in the previous findings), the company is called to accept the responsibility for the position, in which the ruling has placed it.

"The company cannot deny it has brought some on the burden upon itself. Google has for years taken a hard line and an increasingly disingenuous position that it is merely one of many digital conduits, while at the same time ruthlessly pursuing its mission to organise the world's information." ('Why should Google judge our histories?', 2014)

This statement represents the call to Google to responsibly manage its role as a company which has a significant impact on the society and highlights the belief that "*[Google] has been successful enough in that regard to become a de facto monopoly. It could and should have led the debate over the 'right to be forgotten' but instead dug in and was beaten in court,*" (ibid.). Google's position shifts from being a purely economic venture to acting as a social actor. The need to open a debate about the "right to be forgotten" is also proposed by Google's representatives, however first after the ruling. One whole article confers Google the opportunity to represent its position on the RTBF. In The Guardian, an article from 11th July 2014 (Drummond, 2014), which was included in the Commentary section of the newspaper, represents views of David Drummond, Google's senior vice-president of global development and chief legal officer, under the headline "*We need to talk about the right to be forgotten: After the European court ruling, we at Google welcome the ongoing robust debate on privacy versus the public interest*". Drummond uses this opportunity to clarify challenges, through which the company has to go, and at the same time adopts a position of defence, explaining that the company does its best:

We're also doing our best to be transparent about removals: for instance, we're informing websites when one of their pages has been removed. But we cannot be specific about why we have removed the information, because that could violate an individual's privacy rights under the court's decision. [...] It's a complex issue, with no easy answers. So a robust debate is both welcome and necessary as, on this issue at least, no search engine has an instant or perfect answer. (ibid.)

The coverage represents the RTBF as a driver and an occasion that force the American company to reconsider its existence in Europe. It also highlights the constitutive role Google has in lives of regular citizens, but also in the functioning of the modern society. Nevertheless, with the permanent attention set on Google and how cope with the situation, the debate about RTBF shifts and becomes a debate about the “search giant” Google.

4.2.3.2. Assessment of the RTBF ruling

Finally, the debate on the RTBF does not happen in an environment free of judgments and values. Instead, the continuous discussions on the implications, challenges and the very own existence of the RTBF take place in a very polarized manner. Throughout the coverage, the RTBF is assigned numerous adjectives and attributes that determine the meanings and values connected with the policy. Moreover, the ways argumentations are built in the articles contribute to the construction of the dominating view.

The RTBF is said to be “*controversial*” (‘Google v the EU’, 2014), “*confusing*” (Ball, 2014b), likely to be misused by governments and competitors (Spillett, 2014a), “*romantic*” (Garside, 2014), or “*flawed*” (Krotoski, 2012). On the other hand, the RTBF is praised as a “*great idea philosophically*” (Associated Press, 2014d), and as helping to defeat “*Ökonomisierung der Privatsphäre*” (Clauß, 2014a). By describing the RTBF with the help of these specific adjectives, the dominant views become more tangible. Despite an attempt to deliver a balanced report that brings argumentations from more points of view, as is expected with regards to the journalistic objectivity, the prevailing opinion stays in the background and shapes the discussion on the RTBF. This is often a result of making these adjectives sound as commonly known without the need to justify them.

“Google is under fresh pressure from the European Union to expand its controversial 'right to be forgotten' tool.” (Zolfagharifard, 2014)

This statement, in which the RTBF is designated to be “*controversial*”, suggests the assumption, that the controversy is innate to the right since it has caused so many heated debates and therefore there is no need to offer further explanations. Also the attribution “*its*” that puts the EU in direct connection with the RTBF as its originator links the controversy with the union.

So for example, in the article *“Google denies removing then reinstating MailOnline story about murderous paedophile under controversial 'right to be forgotten' ruling”* (Burrows, 2014a) Google is reported to have deleted a link to a MailOnline story about a notorious child killer, *“under the controversial 'right to be forgotten' European Court ruling”*(ibid.), which it then reinstated again.

“The search giant had informed MailOnline earlier this month that a story about killer Ronald Castree, which appeared on the website in November 2007, had been removed from European search results. The father of Castree's 11-year-old victim Lesley Molseed had described the removal of the article as 'appalling'. Father Fred Anderson said: 'He hasn't got the right to be forgotten - it's terrible. [...] The ruling by European judges gives people the right to have 'inadequate' and 'irrelevant' results about them wiped from the web, which led to the search engine being bombarded with requests.”
(ibid.)

The emotional intensity of the passage where the father of the murdered girl stresses that *“he [the murder] hasn't got the right to be forgotten - it's terrible”* evokes the pain of the parent and connects the feelings with what the RTBF can cause. This statement is followed by a factual explanation of the *“controversial RTBF”*, which is made by changing the personal, emotional genre into a factual one about the RTBF. This exchange of a strong and emotional style with a cool and rational one enhances the appeal and enunciates the medium as an active reporter with a clear message – the RTBF is used in false ways.

Similarly, the strategy of argumentation as a tool to establish a balanced reporting is used to describe the immediate reactions on the ECJ ruling. The following excerpt, however, shows that the attempt of a fair and balanced reporting, which lets various opinions be presented, functions in a more subtle and effective way in favour of criticism of the ruling.

“The European Court of Justice said this week that an individual has the 'right to be forgotten' when personal data online 'appear to be inadequate, irrelevant or no longer relevant, or excessive in relation to the purpose for which they were processed and in the light of the time that has elapsed'. The ruling only compels Google to remove the links to information, rather than the information itself. [...] Viviane Reding, an EU Commissioner, described the decision as 'a clear victory for the protection of personal data of Europeans', and David Davis MP, a former shadow home secretary, welcomed the ruling as a 'sensible decision'. However, Dominic Raab, a Conservative MP, called the ruling "a draconian attack on free speech, totally at odds with Britain's liberal tradition". Lawyers and campaigners have suggested the unclear ruling will unravel but for now Google must make its own 'balanced judgment' on whether a link to a story should be removed from its web index. If it decides not to remove a link, it faces fines from each

national data protection regulator across Europe, including 16 in Germany alone.” (Warman & Watt, 2014)

The genre of the first sentence refers to an unbiased reporting about the ruling and what the ruling means for companies. The following statements by officials are presented as extracts from interviews in a form of direct speech or a combination of direct and reported speech, which are typical for the press reporting (Fairclough, 2003). This way of reporting as offering conflicting arguments underlies the generic character of the text as being journalistically professional. In the first statement by Viviane Reding, who is introduced as the representative of the EU Commission, which is the initiator of the right, Reding praises the court’s decision and the direct quote expresses her satisfaction about “*a clear victory for the protection of personal data of Europeans*”. This satisfaction seems to be gradually tamed by the next statement of one of the UK’s politicians, who finds the ruling as a “*sensible decision*”. The use of the word “*sensible*” in this context hints at the recognition that there is a problem which needs to be tackled, in this case the question of how individual can control their own data. However, it also implies a possibility that the ECJ decision has not fulfilled its task in a satisfactory manner, or at least to the extent which could be considered ideal, and therefore, the reasons for celebrating a victory seem to be overestimated. Whereas the next quote dissolves the gratification with the ruling completely and calls the ruling “*a draconian attack on free speech, totally at odds with Britain’s liberal tradition*”. In the quote we can observe the changing nature of the genre, going from an official and decent dialogue to a more aggressive voice, which is rather expected to be typical for a lifeworld genre. The terms “*draconian*” and “*totally at odds*” mediate a clear position towards the ruling, which is characterized by honesty and being straight, a quality that is often appreciated in a colloquial discourse.

This gradual reduction of the positive reaction on the ruling functions as a sobering process, where the firstly announced victory is realised to be a tool for criminals. This sobering is amplified by the quotation of “*lawyers and campaigners*” who represent a general opinion among specialists, pointing at the “*unclear*” character of the ruling. This is going to “*unravel*”, thus having more implications than probably intended by the authorities. The missing specification of who the lawyers are and what political or ideological affiliation they might be assigned to, results in generalization of their reported speech to a commonly shared view by all experts. The unclear character of the ruling has immediate effect on the companies that “*must*” rely on their own “*balanced judgement*” how to respond to the requests by users, otherwise they would face a threat of being fined. The strategy of opposing the “*victory for the protection of personal data*” and the “*draconian attack on free speech*” attempts to posit two different opinions on the ruling that can be assigned to a specific group of actors, as it is done here. However, the context of the strategy of the argumentation and the changing genre suggest that the ruling is not properly elaborated and will bring unintended consequences, which make the joy about it rather premature and unreasonable.

The assessment of the RTBF also happens to be delivered through using metaphors as in the case of the MailOnline editor, who is quoted saying:

“MailOnline publisher Martin Clarke said: ‘These examples show what a nonsense the right to be forgotten is. It is the equivalent of going into libraries and burning books you don’t like.’” (Greenhill, 2014)

Through the comparison of links to books and the internet or Google to a library the statement bridges the meanings and values that we usually connect with libraries and books such as intelligence, education and culture to become connotations of internet links in our digital time. The process of burning books is known from the history as an act of censorship, most recently remembered from the time of Nazi propaganda in the Second World War. The comparison of the RTBF to *“going into libraries and burning books you don’t like”* activate these cultural and historical meanings and offer a more intense evaluation of the policy.

4.3. Differences in representations across the media with regard to their origin, type and political affiliation

The selection of the media titles was motivated by the attempt to cover the variety of various media types, such as quality papers and tabloid papers, variety of possible political orientations of the media, ranging from the left, over the centre to the right political affiliation, in two different countries – the UK and Germany. The aim of the third research subquestion was to identify, whether this variety of media brings also a variety of opinions and representations. Based on the analysis of the corpus and a detailed engagement with the findings, the following tendencies have been identified.

Based on the national origin of the title, a certain level of variation could have been identified in the German and British media, as already pointed out throughout the analysis. The British media offer a rather critical representation of the RTBF as a law. While offering a diverse discussion about the RTBF throughout the corpus, the coverage is often identified by a sceptical, edging with negative, evaluation of the RTBF and the ECJ ruling. With recognizable differences in the strategies among the titles, the coverage provides with a discussion about the need to address the question of privacy and how to treat the protection of private data, however, the RTBF policy is depicted as failing to meet these demands. In comparison, the German coverage offers a more welcoming position towards the RTBF especially typical for the *Süddeutsche Zeitung* (e.g. Büchemann, 2014; Janisch, 2014d, Caceres, 2014b, 2014c), the overall representation tends to focus more on the aspect of privacy and private data protection as a goal that should be pursued. Moreover more apparent diversification of standpoints and opinions could be observed in the German coverage, especially in the case of *Süddeutsche Zeitung*, while the articles of the German *Die Welt* often mentioned topics and arguments resembling the British coverage (Bewarder & Ehrenstein, 2014b; “EuGH-Urteil; Google

benötigt jetzt eine Armee von Löschexperten”, 2014; “Google; 70.000 Menschen wollen ‘Recht auf Vergessen’ nutzen”, 2014; Heuzeroth, 2014a).

During the analysis, the attention was devoted to see how the balancing of arguments is used in different media titles. Certain patterns have been discovered in the coverage, which were more typical for *The Guardian* and *Guardian.com*, such as building critical argumentations by offering a broad range of conflicting views and establishing statements based on keeping the “official discourse” on the RTBF, in comparison to *Daily Mail* and *MailOnline*, which were typical for a repetition of opinions made by a specific, and limited, group of actors, such as UK’s Culture Secretary Sajid Javid, Google, the representatives of Wikipedia, or editors of *MailOnline*; and for the tendency to simplify critical discussions into striking and overt conclusions. Interestingly, the attention devoted to the issue of the RTBF across the time in the coverage differed as well. Most significantly, this could be observed in the case of the *Daily Mail*, concretely *MailOnline*, whose coverage before the ECJ ruling in May 2014, consisted of solely two articles, which was dramatically less than in other titles. *The Daily Telegraph*’s strategy was assessed as between the one of *The Guardian* and of the *Daily Mail*, with an overall higher level of scepticism and critical evaluation (Barrett, 2014a, 2014b; Furness, 2014). Among the German titles, the most differentiated, in terms of stylistics and various journalistic genres, including a number of interviews, which were however common in other titles too, was the *Süddeutsche Zeitung*. In case of the *Die Welt*, certain similarities with the British coverage could have been identified in terms of sharing a more critical standpoint and covering similar themes and statements as its English counterparts. The coverage of the *Bild* title represented the smallest sample of a single newspaper with total 18 articles. Despite the expected accent on more sensational and dramatic style of reporting, as characterised by Steininger (2012), the reporting was very moderate and showed a recognizable level of positive attitude towards the RTBF. This is in contrast with its British counterpart, the *Daily Mail*, of which coverage was characteristic of its tendency to sensationalism and exaggeration (Burrows, 2014b; Doughty & Seamark, 2014; Spillett, 2014b).

No significant tendencies have been observed in case of political affiliation, neither in the UK, nor in Germany. A potential divergence can be assumed in the case of German *Süddeutsche Zeitung* and *Die Welt*, however, more focused research would be necessary to determine whether the various styles of reporting can be ascribed to the political affiliation of the medium or rather to the journalistic culture pursued in the newspaper.

Moreover, a certain connection between the way the countries and their respective attitudes towards the RTBF were represented in the media and the representations in the respective national media could have been identified. While the UK was mentioned in the context of wanting to “opt out” from the RTBF policy or suggesting its removal, the British media also showed a more critical representation of the policy-making process, as shown at the examples used for the analysis. The position of the German state has been characterized through its leading role in the issue of privacy and data protection and its reported high level of data protection standards. In this the German coverage embedded

the debate on the RTBF in manifold discussions on Google's role in today's society (Kuhn, 2014), digital revolution (Büchemann, 2014) or Big Data (Clauß, 2014b), and contributed to the discourse about the digital society.

4.4. Limitations of the used methodology

During the analysis several aspects have started to emerge as potential topics for further research of the media discourse on the RTBF that could enrich the debate on the representation of the RTBF policy, which however did not fall under the research interest of this thesis as defined in the research question.

Throughout the analysis, it has been observed that a number of topics have been assumed a common knowledge and their function has been identified as underlying the whole discourse on the RTBF. These "contexts" represent an important part of our daily interaction and constitute a crucial part of rhetoric, which is grounded in the common sense (Klumpp, n.d.). Common sense represents meanings that we establish in the context of our life with others. The "commonalities" identified in the coverage included the idea of the internet as a free space (Denkler & Weiss, 2012), the idea of forgetting or remembering as a part of human nature (Connolly, 2013; Alex Hern, 2014), the state being "Dämon" (Schloemann, 2012), or the quote "*If you have nothing to hide, you've nothing to fear*" (Preston, 2014). All these assumption in some way influence the debates about privacy and shape their directions. The desired research would study the function of common sense and observe how it substantiates the meanings in the discourse on the RTBF.

Another observation refers to the strategies of the newspaper to build the discourse of their own. Certain specificities have been observed in connection to the structural organisation of the newspaper, as divided into sections with "hard" news and into "soft" news, editorials or commentaries. The point of departure for this observation was apart from Gaye Tuchman's (1972) rituals of objectivity used by journalists as a strategy to ensure objectivity in their work, also the notion that media act as own actors and their own opinions can differ from those expressed by external authors who are quoted in the articles (Koopmans & Pfetsch, 2007). It has been observed that in the first wave of reactions on the ECJ ruling, the articles in *The Guardian* that were designated as "leading" were mostly expressing more sceptical views, supported with sceptical opinions expressed by politician (Arthur, 2014b; Ball, 2014b; Halliday, 2014; 'Leading Article: Google ruling: Good question, bad answer', 2014). Whereas, more alternative opinions that addressed the topic in a broader context of the privacy problem found their place in the section "Comments" (Chatfield, 2013; Kettle, 2014). A different situation was detected in the case of the *The Daily Telegraph*, where the articles designated as "editorials" or "commentaries" (therefore expressing the opinions of the authors) were to a great degree negative and critical towards the RTBF (B. O'Neill, 2014; Prashar, 2014;

‘Search aborted’, 2014). The focus of the suggested research in this area would lie in the question how media build their own discourse within the articles that are supposed to deliver opinions of external actors and articles that express the opinions of the own editors and authors. As Koopmans & Pfetsch (2007: 84) have shown in their research, when media speak with their own voice, they are likely to function as “motors of Europeanisation and thereby contribute to the opening up of spaces for transnational communication”, which allows for the possibility that the media act more European than the collective actors they present (ibid., 2007: 6). What the media’s voice would be like in the case of the RTBF would represent an intriguing research objective of a further academic paper.

5. Conclusion

In the analysis of the media discourse on the “right to be forgotten” has been shown how newspapers can function as active players in shaping the representations of the policy-making. Indeed, media fulfil their role in channelling the information from the policy-makers to the public (Soroka et al., 2013), however, in doing so they do not only inform about what has been happening in the European policy-making spheres, but also actively shape, construct and determine the pictures the public gets as a tool to understand how the policy can influence their lives. This constructing and shaping happens through a particular use of the language as a rich semiotic system that works through multiple levels – reaching from grammatical forms to more complex meanings shared in our culture, such as metaphors. Moreover, through a particular use of the journalistic practice, such as genres, argumentation, or selectivity, the media have influenced what values and in what forms determine how the “right to be forgotten” is to be viewed as a tool to empower citizens or as a threat to society.

The policy-making process was studied in two categories of the policy-making cycle – the creation of the policy and its implementation. The representation of the creation has offered an insight into the interplay among the actors who are involved in the process as interacting and at the same time being transformed, as in the case of the European Court of Justice. It has been shown how particular persons get assigned roles and how they function as mediators of specific positions, such as in the case of Viviane Reding. It has also been shown how a specific characteristics of the “right to be forgotten” determines its representation as being a potential threat to other rights, such as the freedom of expression, and how this moment can be used as a strategy of argumentation to support specific, already existing, political views, as demonstrated at the example of the British media, whose coverage of the RTBF often integrated elements of debate about the authority of the EU.

Through the studying of the process of the policy-making, the analysis has also helped to identify how the RTBF was established as a solution to specific problems, which has been partly represented as stemming from the public interest, however, moreover as being motivated by economic-political interests and power relations of the European Union and various interest groups that pursued restriction on the monopolistic position of Google. And finally, the discourse on the RTBF policy has been utilised as an arena of debate about the European Union and its capabilities to fulfil its role as a policy-maker. Through putting the RTBF law into question, the legitimacy of the EU as its originator has been seen as demanded to vindicate its policy.

While the representation of the policy's creation has opened certain questions of legitimacy, power relations and political and economic structures shaping the processes within the EU, the representation of the implementation has focused on the role of the industry. The notion that media influence is strongest with sensational issues, rather than with governmental and regular policy issues (AALEP, 2013), has been observed at the example of the ECJ ruling from May 2014, which functioned as a trigger in activating the public debate on the "right to be forgotten". The attention of the press has dominantly circulated around the question about how Google complies with the ruling and what consequences the ruling has, not only for Google and for other search engines, but for the society as a whole. The aspects of the RTBF's effectiveness, its workability, and its potential aspect on the freedom of speech, have been identified as shaping forces of the representation of the policy's implementation. Especially, the debate on the infeasible character of the RTBF has been identified as a potential opportunity for the media to provide with public space, where a policy-shaping discussion could take place. However, as has become apparent, the media so far have let this opportunity unexploited.

At the particular examples of the target group of the RTBF and the nature of the links that should be subject to deletion according to the law, it has been shown how the news coverage have recontextualized the original statements, which resulted in profound simplification of the public debate and transformed the "right to be forgotten" into a right that is being abused by criminals and people with doubtful past. Another aspect of the media representation was the utilisation of Google's case as a central topic in the debate about the "right to be forgotten". The attention devoted to the involvement of Google has, on one hand, signified the transformation of the company and its role in the European context, on the other hand, it has shifted the attention from the core of the RTBF topic, as a privacy and data protection issue towards Google's role as an information gate-keeper in today's information society.

Moreover, by placing the RTBF and stressing its competitive character towards the freedom of expression, media have kept on emphasizing the view of the right to privacy and the right to freedom of expression as rights in opposition and have made it more difficult to see the rights as being collaborative.

The media discourse on the RTBF has shown to be an intersection of various, already existing discourses, such as discourse of the EU regulating private sector, discourse of

economic interests versus public interests, and from a great part by the discourse about the monopolistic Google. Despite certain distinctions of the media coverage in the German and the British media, as well as within the respective countries, the media discourse on the “right to be forgotten” has remained to be characterized by a variable level of simplification of the RTBF issue as a policy that is governed by economic interests. Moreover, the media have seemed to consequently fail to address the complexity of defining privacy within the policy-making process of the EU and as a problem involving also other actors of the society than just political and corporate ones.

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7. Appendix 1

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Lebenslauf – Marketa Hessova

Ausbildung

- 2014 – 2015 Regional Academy on the United Nations
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- Seit 2012 Mag: Publizistik- und Kommunikationswissenschaft, Universität Wien
- 2007 – 2011 Bc: Marketing Kommunikation und PR, Fakultät für Sozialwissenschaften, Karls-Universität in Prag (mit Auszeichnung)
- 2009 – 2010 - Erasmus Auslandsjahr an der Loughborough University (GB)
- 2007 – 2008 Geisteswissenschaften, Fakultät für Geisteswissenschaften, Karls-Universität in Prag

Praktika & berufliche Erfahrungen

- Seit Oktober 2014 Universität Wien, Wien, Österreich / Fachtutorin am Institut für Publizistik- und Kommunikationswissenschaft
- STEP 1 & STEP 2 – Themen: *Public Service Media in Crisis, To hell with facts. We need stories, Privacy in the digital era*
- Seit April 2013 Media Markt GmbH, Wien, Österreich / Fachberaterin
- 01/11 – 09/12 JWA Prague s.r.o., Prag, Tschechische Republik / Account Manager
- 01/11 – 09/12 International Business Forum, Prag, Tschechische Republik / Assistentin des Business Development Managers
- Juli 2009 Ogilvy and Mather Group, Mather Communications (Werbeagentur), Prag, Tschechische Republik / Account Executive Junior Assistant

Kenntnisse

- Tschechisch (Muttersprache), Slowakisch (fließend in Wort)
- Englisch (CAE, 2007), Deutsch (Goethe-Zertifikat C1, 2012), Italienisch (A2)

Workshops & Kurse

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- Google On-line Marketing Challenge (2009) – Google Adwords
- Student Program “Deliberating in a Democracy” (2005 - 2007)

Abstract

Author	Marketa Hessova
Title	The right to be forgotten: Analysis of European media discourses on the EU data protection policy
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Place, year	Vienna, 2015
Supervisor	Univ.-Prof. Dr. Katharine Sarikakis
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Privacy has been facing numerous challenges in today's society, which can be contextualised within the increasing use of digital communication technologies and the recent data revolution. The private sphere, which has been recognized as a cornerstone of modern democracy (Morozov, 2013), appears to be disrupted by surveillance techniques, social media, and omnipresent data collection that have become a natural part of everyday social life. In this light, privacy is described as disappearing and resulting in what Mills (2008) calls "lost privacy". With regards to these developments, the European policy-makers have announced the need to redefine privacy protection for the digital age and have introduced the new General Data Protection Regulation in 2012, which includes in its Article 17 the "right to be forgotten" (RTBF).

The theoretical part deals with the conceptual definition of the core concepts, such as privacy and private data and policy-making in the EU, that create the theoretical basis of the analysis. Various concepts of privacy as discussed in the contemporary scholarly literature are introduced in order to show that the very idea of privacy cannot be fixed in one single definition. Moreover, its definition depends on the perspective from which it is studied (Solove, 2008). Assuming this character of the privacy concept, the attention is focused on the EU policy-making as a domain, where privacy is to be negotiated for the needs of the modern society.

In this context the role of media in representing the process of policy-making seem to be crucial, since they create a bridge between the policy-makers and the public (Shanahan et al., 2008) and contribute to the creation of the public discourse about the "right to be forgotten". The analysis of the media representation of the policy-making process leans on the model of policy-making as a cycle (Jann & Wegrich, 2007).

The aim of this thesis is to analyse how newspapers represent the development and the recent implementation of the "right to be forgotten" and how this potentially contributes to the definition of privacy in today's world. Press media from two different countries, the UK and Germany, have been included. These were selected with regards to their differing

positions within and towards the EU. Whereas, Germany represents the European leader, also in the data protection standards (Mahony, 2013), the UK is characterized by its resistant position towards the Union, which can be demonstrated by its planned referendum of Britain's membership in the EU (EU referendum, 2015).

The research objective focuses, on one hand, on how the policy-making process is represented as a process of creation and implementation of the RTBF policy. On the other hand, the analysis is also attentive of the potential differences within the media coverage with regards to the origin, political affiliation (left, right) and the type (quality, tabloid) of the newspapers. The sample consists of *The Guardian*, *The Daily Telegraph*, *Daily Mail*, *Süddeutsche Zeitung*, *Die Welt* and *Bild*.

The qualitative analysis is inspired by the Grounded Theory and the Critical Discourse Analysis according to Norman Fairclough. In order to analyse the total 404 online and offline articles, the coding process is based on the method of Charmaz (2014), which enables to use the media coverage as a fundamental basis for creating categories and theories stemming from and being grounded in the research material. Through a three-stage coding and analysis process the 1,808 initial codes are clustered in 126 abstract codes referring to the two research subquestions – representation of the creation process and representation of the implementation of the RTBF. The findings of the analysis are then discussed in thematic groupings within each category, including “Environments” and “Processes” in the category “Creation”, and “Execution of the ruling”, “Characteristics of the implementation” and “Consequences” in the category “Implementation”. The process of analysis is motivated by tools of the Critical Discourse Analysis such as intertextuality, assumptions, metaphors, wording, and grammatical concepts as transitivity (Fairclough, 2003).

The analysis shows how newspapers function as active players in not only mediating but also shaping the representations of the policy-making. Media actively construct and determine the pictures the public gets as a tool to understand how the RTBF policy can influence their lives. This constructing and shaping is identified as happening on multiple levels – reaching from grammatical forms to more complex meanings shared in our culture, such as metaphors. The policy-making process as studied in two categories of the policy-making cycle – the creation of the policy and its implementation – shows how the representation of different actors, institutional processes, and legal contexts of other rights, such as the freedom of speech, influences the discourse about the RTBF in specific ways. At the example of the British coverage, it is shown how already existing political views, penetrate the discussion about the RTBF, which often integrates critical elements of a debate about the authority of the EU. Moreover, it is observed, how media through their strategies of argumentation and recontextualisation influence meanings of statements that were initially perceived as journalistic offers of diversity of opinions, such as in the case of reporting about the different assessments of the RTBF.

The representation of the policy's creation opens questions of legitimacy, power relations and political and economic structures shaping the processes in the EU, the representation

of the implementation, on the other hand, focuses on the role of the industry, especially Google, and the relationship between the private sector and the European institutions. Especially, the discussions about RTBF's effectiveness, its workability, and its potential effect on the freedom of speech, are identified as the main forces shaping the representation of the implementation.

The media discourse on the RTBF is characterised by an intersection of various, already existing discourses, such as discourse of the EU regulating private sector, discourse of economic interests versus public interests, and from a great part by the discourse about the monopolistic Google. Certain distinctions are identified in the German and the British media. The British discourse is assessed as more critical and sceptical of the new right and as being shaped by an opposing attitude towards the EU's authority. However, the media seem to consequently fail to address the complexity of defining privacy within the policy-making process of the EU as a problem also involving other actors of the society than just political and corporate ones.

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Abstrakt

VerfasserIn	Marketa Hessova
Titel	The right to be forgotten: Analysis of European media discourses on the EU data protection policy
Umfang	123 Seiten
Typ	Magisterarbeit am Institut für Publizistik- und Kommunikationswissenschaft der Universität Wien
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BegutachterIn	Univ.-Prof. Dr. Katharine Sarikakis
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Aufgrund des zunehmenden Einsatzes von Kommunikationstechnologien und der neusten Datenrevolution im Internet steht der Datenschutz in der heutigen Gesellschaft vor zahlreichen Herausforderungen. Die Privatsphäre, die als Eckpfeiler der modernen Demokratie (vgl. Morozov, 2013) anerkannt worden ist, scheint von Überwachungstechniken, Social Media, und der allgegenwärtigen Datensammlung, die zu einem natürlichem Bestandteil des gesellschaftlichen Alltags geworden sind, untergraben zu werden. Vor diesem Hintergrund wird die langsam verschwindende Privatsphäre von Mills (2008) als "lost privacy" beschrieben.

Im Hinblick auf diese Entwicklungen haben die europäischen PolitikerInnen anerkannt, dass der Schutz der Privatsphäre im digitalen Zeitalter neu definiert werden muss und daraufhin im Jahr 2012 eine neue Datenschutz-Grundverordnung, die im Artikel 17 das "Recht auf Vergessen" umfasst, vorgestellt.

Der theoretische Teil befasst sich mit Begriffsdefinitionen der Kernkonzepte, wie Privatsphäre, persönliche Daten und Politikgestaltung in der EU, die die theoretische Grundlage der Analyse darstellen. Mit Hilfe der gegenwärtigen wissenschaftlichen Literatur wird eine Übersicht der verschiedenen Konzepte der Privatsphäre geschaffen, um zu zeigen, dass die Idee der Privatsphäre in keiner einheitlichen Definition festgelegt und zusammengefasst werden kann. Ferner hängt die Definition von der Perspektive ab aus der sie untersucht wird (vgl. Solove, 2008). Unter Annahme dieser Definition von Privatsphäre wird die Aufmerksamkeit auf die EU-Gesetzgebung als eine Domäne, in der die Privatsphäre für die Bedürfnisse der modernen Gesellschaft verhandelt wird, konzentriert.

In diesem Zusammenhang scheint die Rolle der Medien in dem Prozess der EU-Politikgestaltung entscheidend zu sein, da sie eine Brücke zwischen den politischen Entscheidungsträgern und der Öffentlichkeit schaffen (vgl. Shanahan et al., 2008), und

einen Beitrag zur Schaffung des öffentlichen Diskurses über das "Recht auf Vergessen" leisten. Die Analyse der medialen Repräsentation des politischen Entscheidungsprozesses lehnt sich an das Modell der Politikgestaltung als Zyklus an (vgl. Jann & Wegrich, 2007).

Das Ziel dieser Arbeit ist es, durch eine qualitative Analyse der Medienberichterstattung festzustellen, wie die Medien die Entwicklung und die Umsetzung des "Rechts auf Vergessen" darstellen und wie diese Prozesse möglicherweise einen Beitrag zur Definition der Privatsphäre in der heutigen Welt leisten können.

Für die vorliegende Arbeit wurde die Presse aus Deutschland und Großbritannien analysiert. Diese wurden im Hinblick auf ihre Stellung innerhalb und unterschiedlichen Positionen zur EU ausgewählt. Während Deutschland als Anführer der Europäischen Union und auch des Europäischen Datenschutzstandards angesehen werden kann (vgl. Mahony, 2013), zeichnet sich Großbritannien durch seine widerstandsfähige Position gegenüber der Union aus, was auch anhand des geplanten Referendums über die Mitgliedschaft Großbritanniens in der EU gezeigt werden kann.

Das Forschungsziel fokussiert auf der einen Seite auf die Darstellung des Prozesses der Erstellung und Umsetzung des „Recht auf Vergessen“. Auf der anderen Seite konzentriert sich die Analyse auf mögliche Unterschiede innerhalb der Medien bezüglich Herkunft, politische Zugehörigkeit (rechte und linke politische Orientierung) und Art (Qualitäts- oder Boulevardmedien) der Zeitungen. Zu den ausgewählten Zeitungen zählen *The Guardian*, *The Daily Telegraph*, *Daily Mail*, *Süddeutsche Zeitung*, *Die Welt* und *Bild*.

Die qualitative Analyse des Forschungsmaterials wird von der Grounded Theory und der Kritischen Diskursanalyse laut Norman Fairclough inspiriert. Zur Analysierung der 404 Online- und Offlineartikeln werden die Codierungsmethode laut Charmaz (2014) angewendet, die eine Erstellung von Kategorien und Theorien, die sich direkt aus den Texten ergeben, ermöglicht. Durch einen dreistufigen Codierungs- und Analyseprozess werden die 1,808 offenen Codes in weiteren 126 abstrakten Codes organisiert, die den beiden *Forschungsteilfragen*: Darstellung des Entstehungsprozesses und Darstellung der Umsetzung des „Recht auf Vergessen“ zuzuordnen sind.

Daraufhin werden die Ergebnisse der Analyse in thematischen Gruppierungen innerhalb der einzelnen Kategorien diskutiert, darunter "Umgebung" und "Prozesse" in der Kategorie "Schöpfung" und "Die Erbringung der Entscheidung", "Merkmale der Umsetzung" und "Konsequenzen" in der Kategorie "Umsetzung". Der Analyseprozess wird durch methodische Werkzeuge der Kritischen Diskursanalyse wie Intertextualität, Annahmen, Metaphern, Wortwahl und grammatischen Begriffen wie Transitivität (vgl. Fairclough, 2003), geprägt.

In der Analyse wird gezeigt, wie Zeitungen eine Funktion als aktive Gestalter übernehmen, indem sie nicht nur die Informationsvermittlung sichern, sondern auch die Darstellungen der Politikgestaltung prägen. Medien konstruieren und bestimmen aktiv welche Bilder der Öffentlichkeit angeboten werden, die sich diese zum Verständnis des potentiellen Einflusses des „Recht auf Vergessen“ auf ihr Leben nutzbar machen können.

Es wird festgestellt, dass der Prozess der Gestaltung und Konstruktion auf mehreren Ebenen parallel geschieht – die von grammatischen Formen hin zu komplexeren Bedeutungen reichen, die wir in unserer Kultur teilen, wie z.B. Metaphern.

Der EU-Entscheidungsprozess wird in zwei Kategorien des politischen Entscheidungszyklus untersucht - die Schaffung des Rechts und seine Umsetzung. Es wird gezeigt, wie die Darstellung verschiedener Akteure, institutioneller Prozesse und Zusammenhänge mit anderen Rechten, wie z.B. das Recht auf Redefreiheit, den Diskurs über das „Recht auf Vergessen“ in spezifische Weise beeinflussen kann. Am Beispiel der britischen Medien wird gezeigt, wie bereits vorhandene politische Ansichten in die Diskussion über das „Recht auf Vergessen“ eindringen, die damit oft kritische Elemente einer Debatte über die Autorität der EU einbringen. Darüber hinaus wird festgestellt, dass die Medien durch ihre Strategien der Argumentation und Rekontextualisierung Bedeutungen von Aussagen beeinflussen, die zunächst als journalistisches Angebot der Meinungsvielfalt angesehen werden, wie am Beispiel der Berichterstattung über die unterschiedlichen Einschätzungen des „Rechts auf Vergessen“ sichtbar wird.

Die mediale Darstellung über die Schaffung des „Rechts auf Vergessen“ eröffnet Fragen der Legitimität, der Machtbeziehungen sowie der politischen und wirtschaftlichen Strukturen in der EU. Dagegen konzentriert sich die Darstellung der Umsetzung des Rechts auf die Rolle der Industrie, insbesondere Google, und die Beziehung zwischen dem privaten Sektor und den europäischen Institutionen. Als Hauptthemen der Umsetzung werden die Diskussionen über die Wirksamkeit, die Verarbeitbarkeit und den potenziellen Effekt des Rechts auf die Redefreiheit identifiziert.

Der Mediendiskurs über das „Recht auf Vergessen“ wird durch eine Überschneidung von verschiedenen bereits bestehenden Diskursen, wie dem Diskurs über die EU Regulierung des privaten Sektors, dem Diskurs der wirtschaftlichen Interessen gegenüber den öffentlichen Interessen, und zum großen Teil vom Diskurs über die Monopolstellung von Google, charakterisiert.

Es werden Unterschiede zwischen den deutschen und den britischen Medien festgestellt. Daraus kennzeichnet sich der britische Diskurs als kritischer und skeptischer hinsichtlich des „Rechts auf Vergessen“ und weist eine abweisende Haltung gegenüber der Autorität der EU auf. Allerdings schien es den Medien misslungen zu sein die Komplexität der Definition von Privatsphäre im politischen Entscheidungsprozess der EU als ein Problem anzugehen welches auch andere als die politischen und wirtschaftlichen Akteure der Gesellschaft miteinbezieht.

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