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# The Influence of the Brussels Effect on the Interpretation of Data Protection Laws in the Gulf

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## Abstract

This article examines the diffusion effect of the General Data Protection Regulation (GDPR) beyond the European Union borders, particularly in the Gulf Cooperation Council (GCC) countries. The article explores how the Brussels Effect (as a concept and observation) can explain non-EU jurisdictions' voluntary adoption of GDPR standards. This article seeks to develop a corpus of reasoning that could be used to determine when and to what extent the provisions in local data protection statutes need to be interpreted and applied in conformity with GDPR-related legal sources.

## Keywords

GDPR – Brussels Effect – DPL in GCC – policy diffusion – data protection laws

## 1 Introduction

Since coming into force on May 25, 2018, the General Data Protection Regulation (GDPR) has brought about profound changes in the world of privacy and data protection. The main objectives of the GDPR, which comprised 99 articles and 173 recitals, were to protect personal information, standardise data privacy laws across Europe, and reform data privacy practices in businesses that deal with information privacy.<sup>1</sup> Furthermore, it was designed to give citizens more control over their data and make it easier to understand how it is used. The GDPR sets out rules for businesses, public authorities, and other organisations that handle or process personal information. In the same context, GDPR came with an external territorial scope. Any company or organisation that handles or processes personal information about people in the EU must comply with the GDPR. GDPR's territorial scope builds upon existing European data protection laws.<sup>2</sup> Through its cross-border reach, the GDPR aims to ensure that EU citizens abroad have the same privacy protection as EU citizens within EU boundaries and protect their rights worldwide.<sup>3</sup>

Aside from its legal application beyond EU borders, the GDPR has sparked a significant wave of data protection regulations outside the EU as a landmark privacy regulation. Japan, for instance, started to design rules with similar underpinnings to the GDPR, along with other non-European countries. Furthermore, numerous data privacy regulators outside the EU appeared to be working on similar data legislation. Globally speaking, European data privacy laws are currently the most widely used. According to Ahlbrecht, 120 privacy laws worldwide have drawn their provisions from the EU data protection policy.<sup>4</sup>

There is no doubt that privacy is a topic of considerable interest in Europe. However, this topic has historically not received much attention in the Gulf Cooperation Council (GCC).<sup>5</sup> However, this situation has changed. Many

1 Rafael Dean Brown, Jon Truby and Imad Antoine Ibrahim, 'Mending Lacunas in the EU's GDPR and Proposed Artificial Intelligence Regulation' [2022] 9 *European Studies* 61–90; Samuel Goldberg, Garrett Johnson and Scott Shriver, 'Regulating Privacy Online: The Early Impact of the GDPR on European Web Traffic & E-Commerce Outcomes' [2019] *SSRN Electronic Journal*.

2 'Territorial Jurisdiction of GDPR and Its Application in India' *International Journal of Law Management & Humanities*.

3 'The Internet and Extra-Territorial Effects of Laws Internet Society Concept Note' (2018).

4 Jan Philipp Albrecht, 'Foreword by How the GDPR Will Change the World' (2016) 2 *European Data Protection Law Review* 287.

5 Cherrayil Naushad, 'Data Privacy Regulators in GCC Countries Get More Muscles to Flex' [2019] *Techradar* <<https://www.techradar.com/news/data-privacy-regulators-in-gcc>>

countries in the region have amended their fundamental perspective on data protection to reflect the changes in the world.<sup>6</sup> They have begun developing their data protection regulations to meet global standards.<sup>7</sup> Several Gulf governments have exhibited greater interest in safeguarding individual data rights and ensuring businesses securely handle personal information.<sup>8</sup> Those countries have, therefore, widely adopted more current data protection laws in recent years to stay abreast of evolving international standards.<sup>9</sup> The legislation was enacted at the national or federal level in the country or only for a specific region (Financial Centre, Global Market). The UAE, for instance, consists of seven emirates. Abu Dhabi and Dubai are within these emirates. The UAE's federal laws apply to the seven emirates. Each emirate's local law applied only within its borders. To a certain extent, the financial and global market centres are independent functional jurisdictions within the UAE. Therefore, they are mostly exempt from federal laws and have their own laws and regulations, as seen in the cases of Dubai International Financial Centre (DIFC) and Abu Dhabi Global Market (ADGM) data protection laws. The GCC nations that recently enacted new data protection legislation (hereafter DPL) or updated it were:

1. Qatar: The Personal Data Privacy Protection, Law No. 13 of 2016
2. Bahrain: Personal Data Protection (PDPL), Law No. 30 of 2018
3. Dubai International Financial Centre: Data Protection Law, DIFC Law No 5 of 2020 (Update)
4. Abu Dhabi Global Market: Data Protection Regulations 2021 (Update)
5. United Arab Emirates: Federal Data Protection Law, Law No. 45/2021
6. Saudi Arabia: Data Protection Law, Royal Decree M/19 2021
7. Oman: Data Protection Law, Royal Decree no 6/2022

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- countries-get-more-muscles-to-flex>; Jon Truby, Rafael Dean Brown & Imad Antoine Ibrahim, 'Regulatory Options for Vehicle Telematics Devices: Balancing Driver Safety, Data Privacy and Data Security' (2024) 38 *International Review of Law, Computers & Technology* 86.
- 6 Xanthidis Dimitrios and Violettas George, 'Security, Privacy, Accessibility and Availability Issues Not a Priority When Developing Web Sites in the GCC' [2016] Article in *Journal of Theoretical and Applied Information Technology* <<https://www.researchgate.net/publication/304496451>> accessed 5 February 2020.
  - 7 Daniela Ježová, 'GDPR-Result of Globalization? Privacy and Data Protection in European Union Law View Project Making the Public Procurement Legislation More Effective and Its Application in the Context of European Union Law View Project GDPR-Result of Globalization?' <<https://www.researchgate.net/publication/338854849>> accessed 13 August 2020.
  - 8 Cherrayil Naushad (n 5).
  - 9 Johansson Sarah and El-Masry Ahmed, 'Dust in The Cloud' (2021).

The GCC's newly enacted data protection laws have attracted scholarly attention from researchers in the European Union and the Gulf Cooperation Council.<sup>10</sup> One of the co-authors of this contribution has executed a complete comparative study of the GCC legislation in an ongoing PhD thesis framework, developing a matrix method for facilitating a comprehensive comparison. This approach can disclose the similarities and divergences when assessing the data protection legislation in non-EU jurisdictions against each other and the GDPR.

The matrix was developed to structure the comparative study. In addition, it paves the way for a computable version of comparison. We have witnessed computation-based analysis methods based on word search and recognition, with which bodies of legal source text can be analysed.<sup>11</sup> The matrix approach attempts to incorporate more doctrinal peculiarities *ex-ante* and reach a more sophisticated taxonomy of the components. When AI-driven language processing reaches the point where the model can execute more of the doctrinal analysis, then our matrix can be seen as necessary groundwork and structure for a model.<sup>12</sup>

When a certain level of reflection of EU standards in foreign law is highlighted, the literature refers to EU law's *de facto* extraterritoriality, as opposed to the legally provided extraterritoriality in Arts. 44–49 GDPR. The literature provides several theoretical premises that explain the effects of European institutions on global regulation.<sup>13</sup> The Brussels Effect by Anu Bradford is one of them,<sup>14</sup> and it has gained traction among EU officials and their observers, who refer

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- 10 Maria Casoria and Eman Mahmood AlSarraf, 'The Impact of the GDPR on Extra-EU Legal Systems' (2020); Jon Truby, Andrew Dahdal and Imad Antoine Ibrahim, Sandboxes in the Desert: Is a Cross-Border 'Gulf Box' Feasible? (2022) 14 *Law, Innovation and Technology* 447; Imad Antoine Ibrahim & Jon Truby, 'Governance in the Era of Blockchain Technology in Qatar: A Roadmap and a Manual for Trade Finance' (2022) 23 *Journal of Banking Regulation* 419.
- 11 See Park, S-H; Lee, D-G; Park, J-S; Kim, J-W, 'A Survey of Research on Data Analytics-Based Legal Tech', *Sustainability* 2021, 13, 8085 for a systematic review.
- 12 Charlotte Siegmann and Markus Anderljung, 'The Brussels Effect and Artificial Intelligence | GovAI' [2022] Centre for the governance of AI <<https://www.governance.ai/research-paper/brussels-effect-ai>> accessed 20 August 2022.
- 13 'Committee and the Committee of the Regions: A Single Market for 21st Century Europe' (2007) <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0724:FIN:EN:PDF>> accessed 13 February 2021.
- 14 *The Brussels Effect* (Oxford University Press 2020) <<https://oxford.universitypressscholarship.com/view/10.1093/oso/9780190088583.001.0001/oso-9780190088583>> accessed 11 February 2021.

to it in connection to the legislative proposal for the AI Act.<sup>15</sup> The diffusion of data protection standards plays a leading role in developing this concept. So far, little work has been published on developing the concept and how to support the conclusions of solid or weak effects with evidence. We believe that our matrix approach offers a promising avenue for exploration. Specifically, we seek to examine whether our comparative matrix can better understand the Brussels Effect's incidence and effects. While existing literature has laid the theoretical groundwork for the Brussels Effect, there remains a gap in understanding how empirical evidence, such as that provided by our matrix, can support or challenge its conclusions.

This article first provides a short overview of the matrix outcome. This is presented in Section 2, whereas Section 3 will shed light on the voluntary adoption of GDPR standards by non-EU jurisdictions and the concept of the Brussels Effect as an explanation for that European regulatory effect. Discovering new methodical pathways for measuring the Brussels effect is in Section 4. Finally, we will give conclusions and topics for discussion and further research in Section 5.

## 2 Overview of GCC Data Protection Laws

### 2.1 *GDPR and GCC's DPLs in Comparison*

The groundwork for this chapter is the study of 6 DPLs (Qatar, Bahrain, the United Arab Emirates "UAE", Dubai International Financial Centre, Abu Dhabi Global Market, and Qatar Financial Centre). The studied DPLs were compared to the GDPR using the matrix method. In the beginning, the comparison started to figure out all the principles, fundamentals, and aspects that could be identified in the GDPR. Thenceforth, specific GDPR components were selected for use in the matrix. These components should be measurable and helpful in understanding the similarities and differences. Moreover, they should be usable for measuring the extent of the effect of the EU regulation on the studied DPLs. These principles are commonly referred to as the "seven golden principles," and they are outlined in Article 5 of the GDPR.

1. Lawfulness, fairness, and transparency
2. Purpose limitation
3. Data minimisation

15 Siegman and Anderljung, (n.12) on p. 20; Natalie Smuha, *Europe's approach to AI governance: time for a vision*, on <https://www.friendsofeurope.org/insights/europes-approach-to-ai-governance-time-for-a-vision/> accessed 20 December 2022.

4. Accuracy
5. Storage limitation
6. Integrity and confidentiality (security)
7. Accountability

Around these principles, there are many other points related to the GDPR. The regulation also has many other essential aspects, including the scope of application, data protection breaches, fees and punishments, certification, children's data, officers and authorities, and impact assessment.

Applying the selected vital aspects to the studied DPL could clarify the similarities and differences between GDPR and the GCC's DPLs. It could give a good overview of where correlation happened. For example, DPL in the UAE, DIFC, and ADGM are strikingly similar to the GDPR. In contrast, DPL in Bahrain contained a different material scope when applied to legal and natural persons. From the territorial side, unlike GDPR, the DPLs in the GCC have a limited scope outside the national boundaries, except in exceptional cases. In this regard, DPL in ADGM has demonstrated a GDPR-like rule. Similar to the GDPR, the DPL exempts the processing of personal data for personal or household purposes from its application. This principle could be seen in all of the studied DPLs. The DPL in the UAE has added personal data related to personal banking and credit to this exemption. Processing personal data without gaining the data subject's consent is principally prohibited, but it is allowed under specific conditions. Bahrain DPL has deviated slightly by including additional cases, such as processing for journalistic or literary purposes.

Genetic and biometric personal data have a specific classification under international data protection laws. This can be seen in the GDPR and the GCC's Data Protection Laws (DPLs). Qatar's DPL asks for permission from the authorities to process this data. This is not only a difference from the global trend of privacy laws but also a procedural barrier in enforcing this provision on Qatari companies. The famous GDPR principle and appropriate organisational and technical measures can be seen in the GCC's DPLs. The purpose behind such a provision is to oblige the data processor to use proper security procedures while processing personal data. The similarity is to be observed by leaving the measurement details to be determined by the data processor depending on the processing conditions and situations. Administrative fines are calculated in the GDPR depending on the total turnover of the enterprise. These calculation principles do not relate to the similarities with the GCC's DPLs.

In general, the fines were defined within a specific range. Bahrain DPL has left the flock, considering personal data violations to be criminal offenses in some cases. That could lead to a punishment of one year of imprisonment.

Such exceptional kinds of punishment could also be seen in the limited scope of Belgian law, which has criminalized some kinds of data breaches.

Table 1, created in matrix form using Qatari data protection law, shows the similarities and differences between the GDPR and the GCC's DPL.<sup>16</sup>

## 2.2 *Applying the Matrix Key Aspects*

### 2.2.1 Matrix Results

Extracting the results from the matrix and the diagram could lead us to conclude that the DPL in this study exhibit wide range of similarities with many GDPR provisions. This analogy could be summarised by saying it occurred mainly in specific data protection areas. For instance, the provisions related to data processing, applying proper organisational and technical measures, applying the golden GDPR principles (data minimization, purpose limitation, amongst others), and data subject rights have the highest number of similarities. On the other hand, the regulations related to fines and punishment show differences. Many GCC DPLs have special provisions that do not derive from GDPR but are adopted as local regulations to address specific national demands.

## 3 The Effect of Extra-territoriality

The extra-territorial effect of legislation could occur as planned or even by accident.<sup>17</sup> This kind of effect has been present for many years. For example, the California effect in emission standards is suggested to be the rationale behind European vehicle manufacturers willingness to adopt this standard.<sup>18</sup> In fact, a single state can use market forces to externalise its rules and laws outside its borders, leading to globalized standards.<sup>19</sup> Anu Bradford argues that the de facto Brussels Effect is adoption of the European Union's high standards by non-EU jurisdictions such as those in the GCC, without being legally required.<sup>20</sup> Data protection is one of the legal areas in which the Brussels Effect manifests.

16 A full comparison of all GCC jurisdiction will be published in a PhD dissertation, to be defended in 2023.

17 'The Internet and Extra-Territorial Effects of Laws Internet Society Concept Note' (n 3).

18 David Vogel, 'Environmental Regulation and Economic Integration' (2000) 3 *Journal of International Economic Law* 265 <<https://academic.oup.com/jiel/article-lookup/doi/10.1093/jiel/3.2.265>> accessed 29 April 2021.

19 René Mahieu and others, 'Measuring the Brussels Effect through Access Requests: Has the European General Data Protection Regulation Influenced the Data Protection Rights of Canadian Citizens?' (2021) 11 *Journal of Information Policy* 301.

20 *The Brussels Effect* (n 14).

TABLE 1 GDPR components vs. Qatar DPL

GDPR component	GDPR	Qatar
Scope of application	Any processing of personal data wholly or partly by automated means and in any manner other than by automated means which is or is intended to be part of a file system	In principle, this applies to all personal data relating to an identifiable individual in electronic form or a combination of electronic and conventional forms, automated or non-automated.
Authorities	EDPB monitors the enforcement of GDPR. DPO is required only in some instances. A DPO is only required in certain cases. Supervisory authorities overseeing the application of the GDPR impose sanctions on violators.	The Ministry of Transport and Communications monitors the law, and relevant departments handle complaints about law violations. There are no obligations to the DPO. MoTC Clerk acted as law enforcement officers.
Purpose limitation	Restriction of data processing to the purposes for which it was collected; the new purpose should be compatible with the original purpose	Controllers must inform individuals about the lawful purposes for processing their data.
Data minimization	Implies the minimum of data from the investigation stage	It is expressly pointed out that the responsible parties must limit the data in use to the extent necessary to achieve these purposes.
Data subject rights	Right to information, disclosure, rectification, data portability, erasure, objection to processing, objection of automated decision-making and profiling	Individuals can review and access their data and purchase copies at standard rates.



TABLE 1 GDPR components vs. Qatar DPL (*cont.*)

GDPR component	GDPR	Qatar
Special types of data	Personal data regarding race or ethnic origin. Political opinions, biometrics, health data, religious beliefs, sex life, and orientation.	Data related to race, ethnicity, health status, children, marital status, religious beliefs, or criminal record are classified as particular types of personal data, genetic and biometric data.
Accuracy	All reasonable steps should be taken to remove or correct inaccurate or incomplete data.	Where necessary, personal data should be kept up to date.
Storage limitation	The controller should assess the retention period and the necessity of personal data.	Personal data must not be kept for longer than needed.
Integrity and accountability	Appropriate organisational and technical measures are required, and there are recommendations for privacy by design and privacy by default.	Apply administrative, technical, and physical measures and precautions to protect personal data from disclosure, loss, damage, or accidental access.
Transfer	A transfer is allowed based on the adequacy concept, binding corporate rule, or contractual clauses.	Data transfer is allowed; procedures for limiting transborder data flow must not be applied unless specific conditions are met.
Data protection breaches notification	Immediately, if possible, within 72 hours of becoming aware of it	Notification must be made as soon as reasonably practicable, not later than 72 hours
Fines and punishments	up to €20 million, or up to 4% of the annual worldwide turnover	up to 5 million

TABLE 1 GDPR components vs. Qatar DPL (*cont.*)

GDPR component	GDPR	Qatar
Certification	The establishment of data protection certification mechanisms should be encouraged.	Not mentioned explicitly
Impact assessment	Required any time when a high-risk project begins	It does not explicitly refer to the obligation of data controllers to conduct a data protection impact assessment (DPIA).

The fact that many countries model their regulations on EU regulations, in this case, in the area of data privacy, can be seen in the reports of the adoption of GDPR in the policies of many large companies in the US. Some even claim that the GDPR is becoming a global norm.<sup>21</sup> Bradford argues that the effect can be observed when states externalize their local laws and regulations to other countries and zones using market mechanisms.<sup>22</sup> The Brussels effect is more theoretical than the California effect and focuses on a broader impact. Unlike the California effect, the Brussels effect has a broader framework that incorporates the role of a jurisdictions' capacity. According to researchers,<sup>23</sup> the EU as a legal body possesses the characteristics necessary to enhance its modern legal framework abroad. As part of its efforts to promote its privacy law as a global standard, the EU has advocated for developing international norms and standards for protecting personal data.<sup>24</sup> The European Commission's ability to regulate beyond the borders of the EU is derived from its regulatory capacity. This ability allows authorities to impose penalties for violations or to

21 Henry Anderson and Jan Stejskal, 'Global Data Privacy: The EU Way' (2019) 7 *Economies* <<https://papers.ssrn.com/abstract=3468554>> accessed 20 August 2022.

22 Joris van Hoboken Siena Anstis, Hadi Asghari, Masashi Crete-Nishihata, Andrew Hilts, René Louis Pierre Mahieu (see profile), Christopher Parsons, 'Measuring the Brussels Effect through Access Requests', *BILETA conference 2021* (2021).

23 Lütz Fabian, 'How the "Brussels Effect" Could Shape the Future Regulation' (2021) 1 *Duodecim Astra* 142 <[https://www.coleurope.eu/sites/default/files/uploads/page/13/Fabian\\_Lütz\\_-\\_How\\_the\\_'Brussels\\_Effect'\\_Could\\_Shape\\_the\\_Future\\_Regulation\\_of\\_Algorithmic\\_Discrimination\\_%28Duodecim\\_Astra%29.pdf](https://www.coleurope.eu/sites/default/files/uploads/page/13/Fabian_Lütz_-_How_the_'Brussels_Effect'_Could_Shape_the_Future_Regulation_of_Algorithmic_Discrimination_%28Duodecim_Astra%29.pdf)> accessed 20 August 2022.

24 'Committee and the Committee of the Regions: A Single Market for 21st Century Europe' (n 13).

exclude offending companies from potential European markets.<sup>25</sup> Therefore, non-European economic operators must comply with EU standards to gain market access, leading to the global adoption of EU standards.<sup>26</sup> Bradford confirmed this hypothesis and declared five critical conditions that must be met for this effect to occur. These conditions are the size of the market, stringent standards, regulatory capacity, no divisibility, and inelastic targets.<sup>27</sup>

Regarding market size, the EU economy is the world's second-largest market and the world's second-largest importer. Furthermore, the EU retains the most crucial market for the customer among other markets. Furthermore, the EU is the most important export market regarding value and size. For many American companies, European users account for most of their user/customer base.<sup>28</sup>

The GDPR is one of the world's most stringent data protection regulations. Since the implementation of GDPR, there has been a widespread global shift towards stricter national data protection regulations. Argentina and India, for instance, are working to implement stricter DPLs.<sup>29</sup> According to the Brussels effect, companies, organisations, and other economic entities want to reduce the risk of errors and legal violations by adopting one of the strictest data protection regulations in the world. In addition, this approach helps international companies avoid the complexities of dealing with regulations that differ from market to market, as they are compliant with many other international regulations.<sup>30</sup>

Bradford argues that globalization's effects were more effective at inelastic targets. She argued that the customer market obliged the producer to follow the data subject's location regulations. In other words, international producers cannot shirk their data protection responsibilities by moving their production operations to a country with lower standards. Therefore, as one of the largest markets, the EU obliged international manufacturers to follow European customer privacy regulations.<sup>31</sup>

25 Raya Kardasheva, 'Package Deals in EU Legislative Politics' (2013) 57 *American Journal of Political Science* 858.

26 *The Brussels Effect* (n 14). P31.

27 *The Brussels Effect* (n 14). P32.

28 'FORM 10-K Facebook Annual Report' (2018) <<https://www.sec.gov/Archives/edgar/data/1326801/000132680119000009/fb-12312018x10k.htm>> accessed 30 April 2021.

29 *The Brussels Effect* (n 14).

30 Mahieu and others (n 20) 330.

31 Siena Anstis, Hadi Asghari, Masashi Crete-Nishihata, Andrew Hiltz, René Louis Pierre Mahieu (see profile), Christopher Parsons (n 23).

An additional condition for the Brussels Effect is to have a regulatory capacity. It could be defined as a jurisdiction's capability to enforce a law. More specifically, regulatory capacity is needed if the jurisdiction aims to translate market power into regulatory impact.<sup>32</sup> For example, large economies such as China and India have astounding economic growth, but their regulatory capacity is limited. As a result, their regulations have not exceeded their boundaries.<sup>33</sup> By contrast, Bradford found that the EU meets these requirements. The European Commission, Council, and Parliament could be considered very supportive EU institutions with approximately 2591 employees. Furthermore, the EU has had a long tradition of data protection authorities since the 1970s.<sup>34</sup> The EU has, therefore, successfully implemented its laws and directives in various jurisdictions where Member States are not permitted to enact alternative laws or regulations.<sup>35</sup>

The fifth condition (non-divisibility) refers to standardization. Adopting a unified, standard privacy policy for all customers in all markets is a recent trend used primarily by dominant tech companies.<sup>36</sup> The difficulty of dividing data privacy across multiple jurisdictions forces companies to adopt higher or stricter standards. Google's adoption of EU standards for global operations reflects this view.<sup>37</sup>

To summarise, Bradford sees the abovementioned conditions as the factors required to trigger the Brussels Effect. The de facto Brussels effect might be attributed to businesses outside the EU that voluntarily amended their policies to comply with the GDPR. This effect is seen when governments outside the EU adopt the GDPR through official actions. It is complicated to verify if the

32 David Bach and Abraham Newman, 'Domestic Drivers of Transgovernmental Regulatory Cooperation' (2014) 8 *Regulation & Governance* 395 <<http://doi.wiley.com/10.1111/rego.12047>> accessed 5 May 2021.

33 Nikhil Kalyanpur and Abraham L Newman, 'Mobilizing Market Power: Jurisdictional Expansion as Economic Statecraft' (2019) 73 *Cambridge University Press* 1 <<https://www.cambridge.org/core/journals/international-organization/article/abs/mobilizing-market-power-jurisdictional-expansion-as-economic-statecraft/88051974FC84FF93C95403A11788147>> accessed 9 April 2022.

34 Andreja Pegan, 'The Bureaucratic Growth of the European Union' (2017) 13 *Journal of Contemporary European Research* 1209 <<https://researchportal.northumbria.ac.uk/en/publications/the-bureaucratic-growth-of-the-european-union>> accessed 5 May 2021.

35 'Consolidated Version of The Treaty on The Functioning of The Eu' (2016) <[https://eur-lex.europa.eu/resource.html?uri=cellar:9e8d52e1-2c70-11e6-b497-01aa75ed71a1.0006.01/DOC\\_3&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:9e8d52e1-2c70-11e6-b497-01aa75ed71a1.0006.01/DOC_3&format=PDF)> accessed 5 May 2021.

36 Anu Bradford, 'Antitrust Law in Global Markets', *Research Handbook on the Economics of Antitrust Law* (Edward Elgar Publishing Ltd 2012).

37 Michael L Rustad and Thomas H Koenig, 'Towards a Global Data Privacy Standard', 71 *Florida Law Review*.

changes in the national DPL have been carried out due to their *de jure* effect. Political treaties or international agreements could be the main reason behind such changes.<sup>38</sup> The Brussels Effect ultimately tried to justify the global propagation of GDPR standards and the consequences of this propagation.<sup>39</sup>

Nevertheless, the EU's undeniable regulatory capacity and perceived influence across multiple sectors in other countries have not been entirely accepted in the literature. It is argued that this phenomenon is neither exclusively a result of economic forces nor a *de facto* condition. It was argued that other factors have contributed to the diffusion of EU data protection law outside EU boundaries. The ease of enactment and comprehensiveness, the popularity of the EU-style data protection regulation, and the large number of jurisdictions adopting GDPR have contributed to its diffusion. These factors were not mentioned in the Brussels Effect.<sup>40</sup> Besides, the Brussels Effect has less or no relevance to financial regulation. That makes the phrase "EU rules the world" not precisely precise. The EU's power could be seen as a strategic action but subjected to the constraints of the global marketplace.<sup>41</sup>

For the next section, it is essential to understand how the complex interplay between EU institutions and the acceptance of outside influences could be implemented. To put it differently, how could the intention of GCC policymakers to adopt GDPR provisions be defined and measured?

#### 4 From the DPL Matrix to the Brussels Effect Measurement

We have shown how a matrix approach can disclose the similarities and divergences when assessing the data protection legislation in non-EU jurisdictions against the GDPR. This is already a handy tool for serving legal practice with the necessary guidance regarding the data protection rules in the jurisdictions included in the matrix. This is particularly true for cases where the language of the original legislation is not easy to access for international

<sup>38</sup> Bradford (n 9) 2–3.

<sup>39</sup> Siena Anstis, Hadi Asghari, Masashi Crete-Nishihata, Andrew Hiltz, René Louis Pierre Mahieu (see profile), Christopher Parsons 7–8 (n 8).

<sup>40</sup> Paul M Schwartz, 'Global Data Privacy: The EU Way' (2019) 94 *New York University Law Review* <<https://www.nyulawreview.org/issues/volume-94-number-4/global-data-privacy-the-eu-way/>> accessed 10 May 2021.

<sup>41</sup> Peter L Lindseth, 'Book Review: Anu Bradford, *The Brussels Effect: How the European Union Rules the World* (Oxford University Press 2020)' [2021] *American Journal of Comparative Law* (Forthcoming) <<https://papers.ssrn.com/abstract=3810798>> accessed 1 September 2022.

legal practice. However, in addition to its practical utility, the matrix approach has the potential to advance our understanding of the Brussels effect in data protection laws and policies. We briefly explained the Brussels effect in the previous section and now discuss how the matrix tool can help assess this effect.

The *de facto* Brussels effect – or market-driven effect – is an empirical narrative about the behavior of major corporate players in a market. Although methodological questions can be asked,<sup>42</sup> this paper focuses on the *de jure* version of the effect, the political harmonization. To assert that non-EU states have adapted their laws and policies convergent with the EU is one thing; to support this with evidence is another. We will first show the traditional approach to such a question and then show our attempt to capitalize on the matrix approach for comparison.

One way to find evidence for policy replication in legislation is to look for the legislator's intentions. In legal doctrine, we traditionally take information on a specific legislator's intentions from documentation collateral to the texts of laws or statutes, such as explanatory memoranda, parliamentary reports, preambles, observations, and recitals preceding the text body, and so on.<sup>43</sup> Since our research team comprises a scholar who can read Arabic, we have been able to try to locate and gain access to such documentation in the jurisdictions of the GCC. However, documentation of the various steps in the legislative process could not be traced, and it is apparently not a standard procedure in the jurisdictions we have studied.

Even if we could draw some conclusion from the legislative documentation regarding the legislator's disclosed intentions, we would still hesitate to state that a *de jure* Brussels effect has been found. We consider this intention approach not unproblematic, mainly when deployed as an isolated tool – as often happens in legal doctrine. As an illustration of our hesitation, we take the following imaginary case of data protection legislation. Based on comments in an explanatory document or declaration, suppose one could conclude that it was the explicit intention of the legislator to implement EU standards or laws. How could the Brussels Effect be maintained, though, if the body of laws significantly differed from EU law? Declarations of intention can also be

42 See the empirical study of Rene Mahieu c.s. Measuring the Brussels Effect through Access Requests, *Journal of Information Policy*, vol 11, 2021, 301–349.

43 See for an example of this incidence – outside the GCC context – the 2017 White Paper of the Committee of Experts on a Data Protection Framework for India, as Bygrave reports, o.c. on 11; Siegmann & Anderljug, o.c. on 64, point at New Zealand.

“pro forma mimicry.”<sup>44</sup> Table 2 shows the doctrinal tool’s relative uselessness in finding the legislator’s intention (vertical column) related to content (horizontal line). There is still uncertainty in 2 out of 4 cells in the simple matrix.<sup>45</sup>

Our matrix, as outlined in Table 1, represents components derived from our doctrinal evaluation of the GDPR. These components are juxtaposed against various jurisdictions represented in the columns. In other words, there is overwhelming indication that regulations in specific DPLs align with the GDPR. However, this assumes an equal weighting for all components, which may not accurately reflect legal reality.<sup>46</sup>

Moreover, we will utilize a filtering matrix with scales ranging from 1 (highest) to 3 (lowest). Components with the lowest sum of points, up to a maximum of 4 points, will be considered indicative of the Brussels Effect *de jure*. This evidence will be instrumental in elucidating the degree of similarity between the GDPR and the Qatar Data Protection Law.<sup>47</sup> Table 3 presents a detailed breakdown of variable scales.

The benefit of this exercise is that it will encourage a more detailed and substantive doctrinal interpretation of the data protection provisions in the jurisdiction of their application. The value given to the *de jure* Brussels Effect can assist in weighing the argument that DPL provisions need to be interpreted and applied in conformity with GDPR law in non-EU countries. Consequently,

TABLE 2 Intention vs. content

Intention/content	Convergent	Divergent
Convergence	De jure Brussels Effect	?
Divergence	?	No de jure Brussels Effect

SOURCE: AUTHORS

44 Lee A. Bygrave, The ‘Strasbourg Effect’ on data protection in light of the “Brussels Effect”: Logic, mechanics and prospects, *Computer Law and Security Review* 40 (2021) 105460 2021, on 9.

45 Likeness only to a limited degree we find in the table of Siegmann & Anderljung o.c. on 23, where the *de jure* effect is either marked “unclear” or as a possibility.

46 A. Mantelero & M.S. Esposito, An evidence-based methodology for human rights impact assessment (HRIA) in the development of AI data-intensive systems, *Computer Law & Security Review* 41 (2021) in press.

47 Further detailed explanations of the variables used in our comparative analysis could be found in the appendix 1.

TABLE 3 Variable scales

GDPR components	Relevancy	Ability to measure	Importance	Sum of points
Scope of application	1	2	1	4
Authorities	1	2	1	4
Purpose limitation	1	1	1	3
Data minimization	1	1	1	3
Data subject rights	1	1	1	3
Special types of data	1	1	1	3
Accuracy	2	1	3	6
Storage limitation	2	2	2	6
Integrity and security	1	2	1	4
Accountability	3	2	2	7
Transfer	1	1	1	3
Data protection breaches notification	3	2	2	7
Fines and punishments	1	2	1	4
Certification	3	2	1	6
Impact assessment	3	2	2	7

SOURCE: AUTHORS

the interpretative weight of the EU Court of Justice case law on data protection, the European Data Protection Board guidelines, and the interpretation of the GDPR in the higher courts of Member States then find serve as authority support within the boundaries of the specific non-EU jurisdiction. The weight is indeed included in the essence of the legislative proclamation by the national authority, which is more authoritative in the legal discourse than the comparative arguments we traditionally see. The courts in GCC countries would know that it is the wish of the legislator to seek concordance with this GDPR law in the cases before them.



## 5 Conclusion, Discussion, and Further Research

In this research, we have developed a route to combine well-structured comparative research of data protection legislation with Bradford's dominant policy diffusion. Therefore, we could build on a detailed study of data protection legislation in GCC jurisdictions using a matrix approach, which we summarised in Section 2. After describing the observation of Anu Bradford, the Brussels Effect, in Section 3, we showed possible steps towards academic and practical use of the combination in Section 4. The conclusion is that such a result can be achieved, although hazardous theoretical exercises are necessary. We admit to the hazards of relative grading and the selection of components in the GDPR that are eligible for grading. We see our discovery, therefore, as a first attempt with a solid invitation for other scholars to discuss it and join us in this endeavor.

## Appendix

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Scope of application	Extent of applicability of data protection laws, including coverage types and exemptions.
Authorities	Regulatory bodies responsible for enforcing data protection laws and overseeing compliance.
Purpose limitation	Principle that personal data should be collected for specified, legitimate purposes.
Data minimization	Principle of minimizing data collection to what is necessary for intended purposes
Data subject rights	Rights conferred upon individuals regarding the processing of their personal data.
Special types of data	Handling of sensitive or special categories of personal data.
Accuracy	Obligation to ensure that personal data is accurate, up-to-date, and relevant.
Storage limitation	Limitations on the retention period of personal data.
Integrity and security	Measures to protect personal data against unauthorized processing or loss.

Accountability	Obligation of data controllers to demonstrate compliance with data protection principles.
Transfer	Transfer of personal data outside the jurisdiction, ensuring adequate safeguards.
Data protection breaches notification	Requirements for notifying data breaches to relevant authorities and affected individuals
Fines and punishments	Sanctions and penalties imposed for violations of data protection laws.
Certification	Mechanisms for certifying compliance with data protection standards.
Impact assessment	Requirement for conducting data protection impact assessments (DPIA s) to assess and mitigate risks.

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