Introduction
Using the Internet, whether for professional or recreational purposes, has become an everyday activity in recent years. But when we look for news or information on the Internet, do business or exchange chatter with friends and acquaintances through social networks, book our next journey or buy our favourite music, most of us are not aware that these activities cause data traffic across national borders. Very often this is the case, because IT services on the Internet are highly linked internationally. The computer centre reserving a flight between two European states may well be located in the United States of America; a financial transaction between two German banks may well be carried out by an IT service provider based in Ireland; and the carrying out of a business transaction by a multinational firm based in the United Kingdom could easily take place on a server owned by the firm but located in India. Such transactions — probably numbering in the millions every day and indispensable for modern economic life — thus cause streams of data which transcend national borders and therefore often also the borders of jurisdictions. But the data that are being transferred are often very valuable, which is why it is important to protect them. They may be of great commercial value, or they may be person related and thus fall under data protection rules. But the level of protection for such data can vary tremendously between jurisdictions, and that is why international data traffic requires rules that are supranational or international. How such rules come about is the topic of this article.

This article describes and analyses the conflicts, negotiations, and agreements in regulating transatlantic data traffic since the mid-1990s. It covers the negotiations between the USA and the European Union, and it focuses on the different interests, actor constellations, ability to exert pressure and the respective perspectives on the problem of data protection. The empirical core of the article rests on a number of case studies — the ‘safe harbor’ agreement, the negotiations about the exchange of flight passenger data, and the struggle over access to financial transactions data within the SWIFT network — that have constituted the empirical reality in this area over the last decade and a half.

In political science literature the issue of the transatlantic dispute over the regulation of exchanging personal data has only been treated cursorily so far. The

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2 This article draws on several prior publications by the author as well as research sponsored by the Economic and Social Research Council (grant RES 062–23–0536), the Social Science Research Centre (WZB) in Berlin, and the Hanse Institute for Advanced Study (HWK).
few authors in this field have so far mainly concentrated on describing approaches to regulation of personal data and the respective differences between the European Union and the United States of America.\(^3\) As far as concrete negotiations in this area have been analysed, the ‘safe harbor’ agreement negotiated towards the end of the 1990s and focused on the then growth area of e-commerce has been the focus of scholarly interest.\(^4,5\) But after the terrorist attacks of September 11, 2001 a shift has taken place in the area of cross-border data traffic from a focus on commercial interest towards one on security. Over the last decade, new transatlantic differences about how to regulate cross-border data streams have therefore sprung up. However, these have hardly been reflected in the academic literature, although they took place in a heavily changed context — and with substantially different results than would have been expected according to the analyses following the ‘safe harbor’ agreement.

The present article therefore contributes three new aspects to the so far existing political science literature on transatlantic data traffic:

- on the one hand, it undertakes an integrated analysis of the field by looking at all three conflict areas that have emerged so far, namely ‘safe harbor’, passenger name records, and access to financial transactions data;
- secondly, it proposes that the theoretical perspective that has so far dominated analyses in this field, namely constructivism – i.e. a theoretical perspective emphasizing the social construction of interests as well as the importance of ideas, norms, and culture –, should be complemented by other theoretical approaches in order to more fully understand the results of these conflicts;
- and thirdly the article tries to also take into consideration the intra-European dimension of the conflict (i.e. the struggles between the European Commission and the European Parliament) which it is argued


