

THE EUROPEAN DATA PROTECTION REGULATION AND GLOBAL POLICY LANDSCAPE

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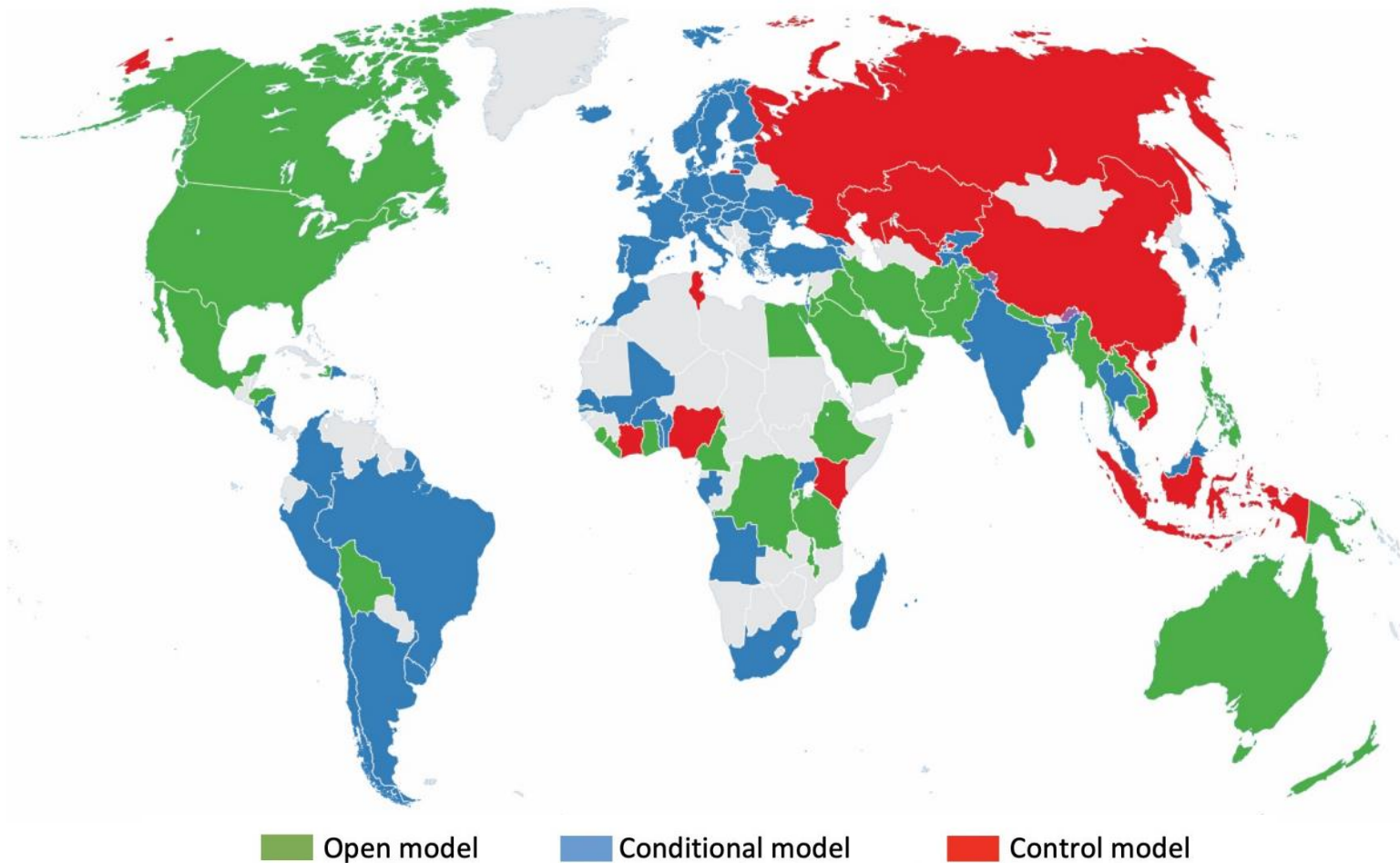
DATA & THE DIGITAL ECONOMY

- The global digital economy is worth over **11.5 trillion USD**, making up more than **15% of global GDP** and growing at a rate that is **2.5 times faster** than total global GDP (Henry-Nickie, Frimpong, and Sun 2019).
- The annual international bandwidth usage globally **tripled** from 405Tbit/s in 2018 to **1,229 Tbits/s in 2022** (ITU, 2022).
- Unlike traditional cross-border trade, data can be **re-traded, shared** without the original losing value, and the physical storage location is unimportant for its use.
- **New governance frameworks** are required.



Image source: American Chamber of Commerce to the European Union. 2021.
<https://www.amchameu.eu/blog/cross-border-data-flows-necessary-part-global-trade>.

GLOBAL DATA PROTECTION LANDSCAPE



Source: Ferracane, Martina F., and Eric van der Marel. 2021. "Regulating Personal Data: Data Models and Digital Services Trade." Policy Research Working Paper. World Bank Group.

THE GENERAL DATA PROTECTION REGULATION (GDPR)

- Main aim: strengthen citizens' rights and control over their personal data, while simplifying requirements for international business
- Entry into force: 25 May 2018
- Applicable in EU, UK, Norway, Iceland, and Liechtenstein
- Extraterritorial in scope



KEY ASPECTS OF THE GDPR I: *General Data Processing*



KEY ASPECTS OF THE GDPR II: *Cross-Border Data Transfers*

With Safeguards



Adequacy Decision

Unrestricted transfers to countries with similar data protection levels.



Standard Contractual Clauses

Standardized contract is signed with the overseas data handler.



Binding Corporate Rules

Group-internal rules approved by authority.



Code of Conduct

Rules by industry associations approved by authority.

Without Safeguards



Explicit & Informed Consent

Inform of risks of transferring data without safeguards.

IMPACTS OF THE GDPR

Increased Operating Costs

- Mid-size European company spent close to 3 million USD (IAPP, 2018)
- Average US Fortune 500 firm spent around 16 million USD (Prasad & Perez, 2020)
- Facebook hired 1000 additional staff globally - from engineers to lawyers (Presidente & Frey, 2022)

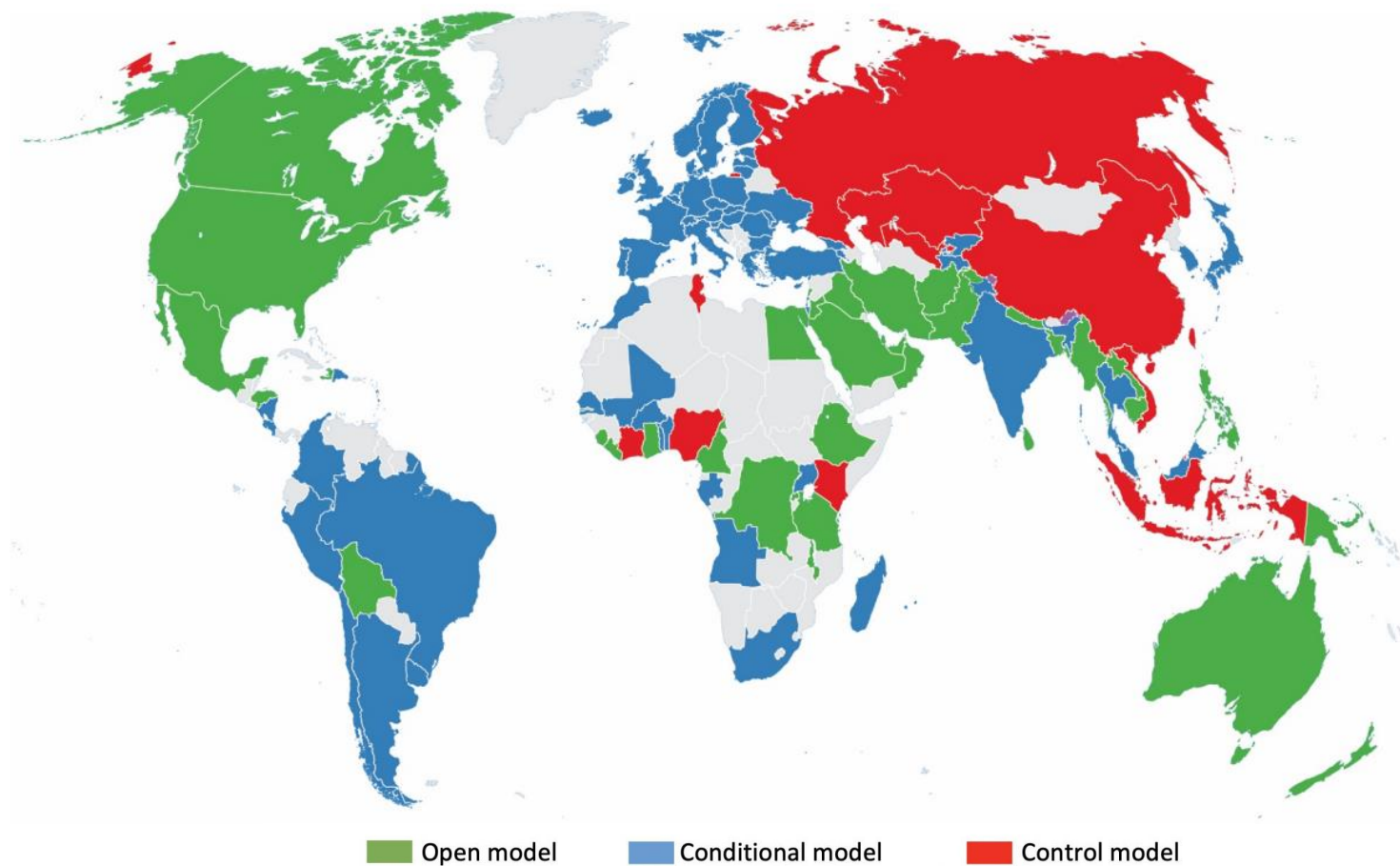
Increased Market Concentration

- Larger tech firms have competitive advantage
- 12% decrease in profits of small tech firms, but no change for big tech firms → potentially offset costs with gains in market share (Chen et al., 2022)
- 17% increase in market concentration in European technology sector in 2018 (Johnson & Shriver, 2020)

Decreased Innovation and Competitiveness

- Limits on merging databases, on collecting data without clear purpose, and on relying solely on AI
- 35% of German firms report that GDPR hampers innovation, only 4.7% report positive effects (Rammer et al., 2022)
- Venture investments in the EU technology sector decreased by 22.2% and 15.8% in the months following the GDPR implementation from US and EU investors, respectively (Jia et al., 2019)

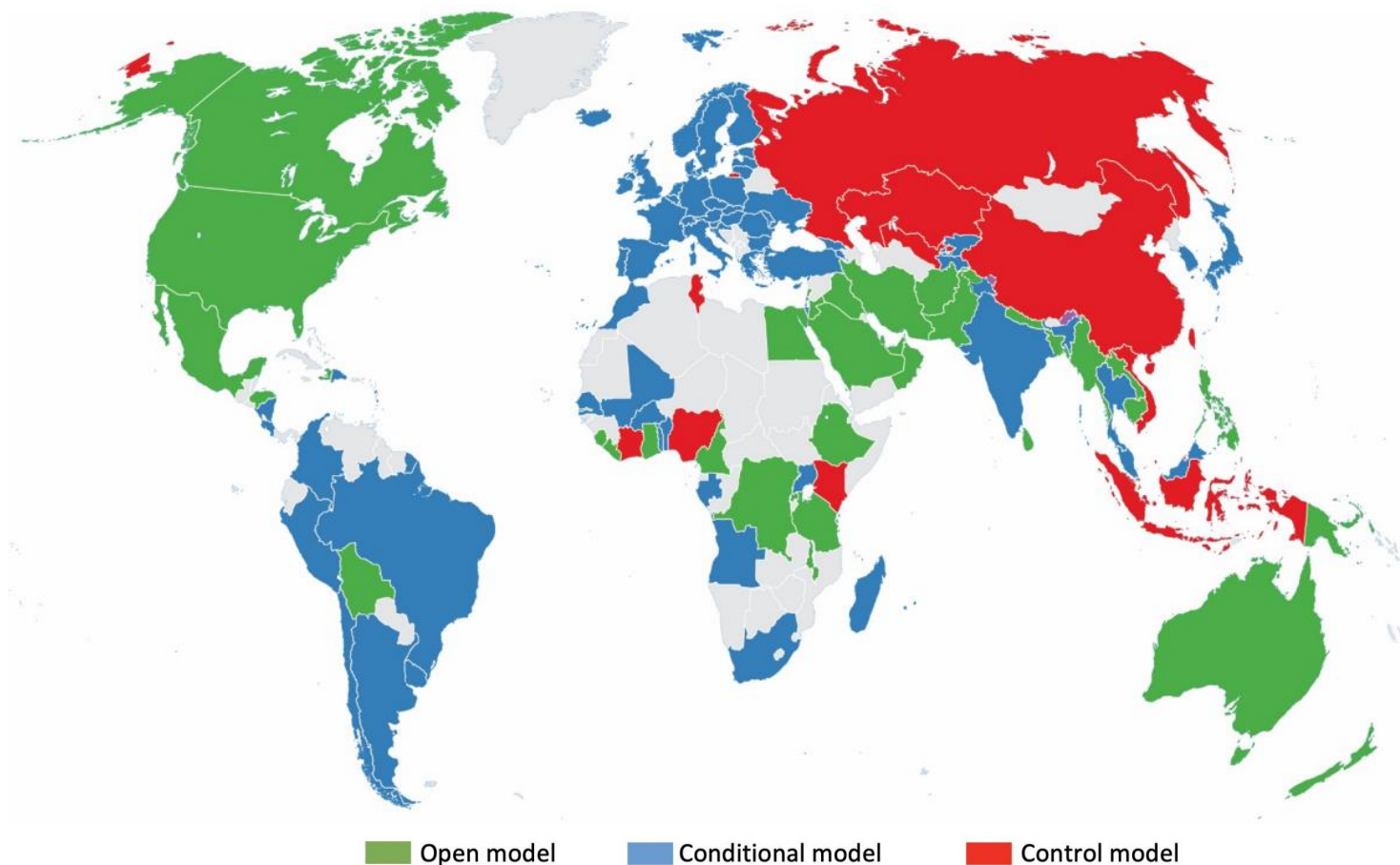
GLOBAL POLICY ENVIRONMENT I : 3 Policy Models



Cross-Border Data Flows

- **Open Model:** self-certification, ex-post accountability, trade-agreements as only regulation on data transfers
- **Conditional Model:** data protection level in recipient country must equal that in home country
- **Control Model:** strict conditions, including ex-ante security assessments and data localization

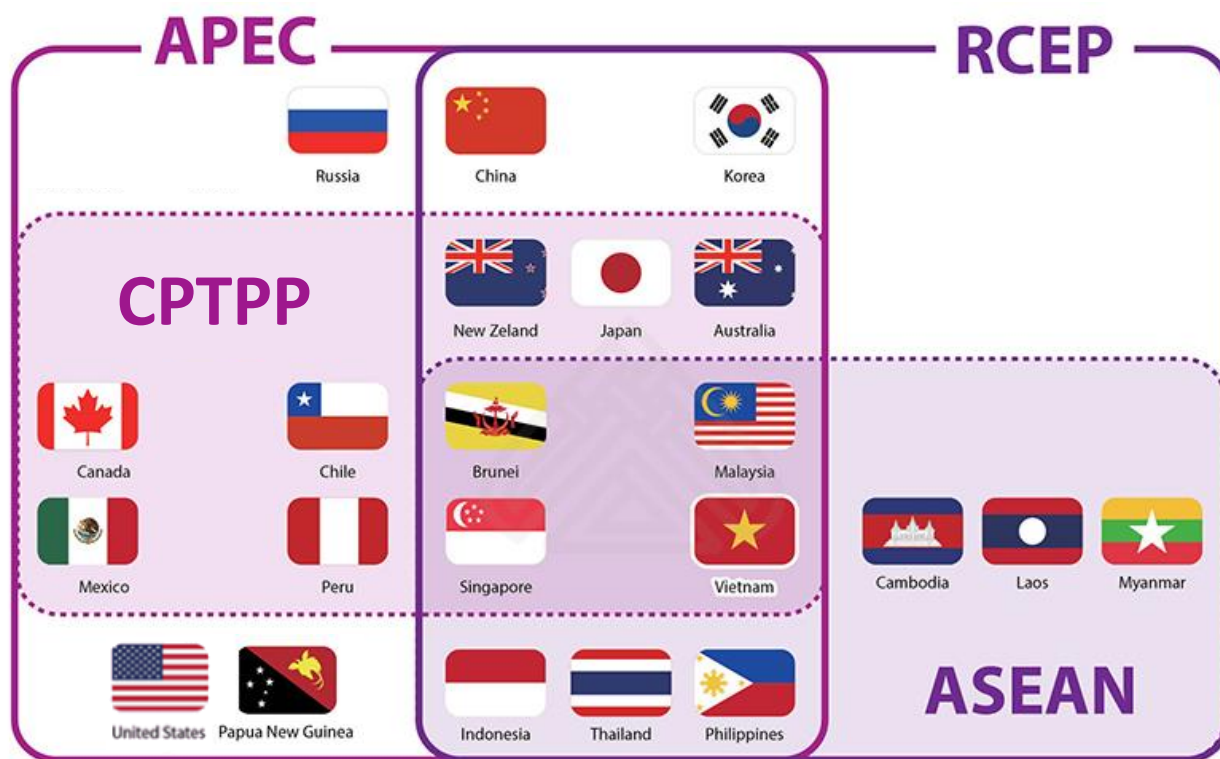
GLOBAL POLICY ENVIRONMENT II: *Effects of the GDPR*



Effects of the GDPR

- Many general data processing principles have been adopted by others.
- Improves **interoperability** for businesses.
- No convergence between the models.
- Maintains **barriers to cross-border data flows**.

GLOBAL POLICY ENVIRONMENT III: *International Agreements*



Examples of international agreements setting rules and standards for data transfers:

- APEC Cross-Border Privacy Rules
- ASEAN Cross Border Data Flow Mechanism, including Model Contractual Clauses
- CPTPP and RCEP clauses on cross-border data transfers and data localization

Adapted from: Asia Briefing Ltd. 2015. <https://www.vietnam-briefing.com/news/vietnams-trade-position-asia-2015.html/>.

KEY TAKEAWAYS

- 3 distinct policy models do not seem to converge
- Additional layer: patchwork of international agreements
 - Provide new options for business-to-business cross-border data transfers
- Will international agreements succeed in bridging the differences between distinct policy models and break down barriers to cross-border data flows?



Image source: American Chamber of Commerce to the European Union. 2021.
<https://www.amchameu.eu/blog/cross-border-data-flows-necessary-part-global-trade>.