

China's Path to Regulatory Harmonization of Cross-Border Data Flows

CHEN Si

Beijing Polytechnic University, Beijing, China

The regulatory harmonization of cross-border flow of data aims to balance the need for value of cross-border flow of data in each country with the differences in the rules governing the regulation of cross-border flow of data, which is related to a country's data security and national interests. Recently, China has begun to pay attention to the regulation of cross-border flow of data in free trade agreements concluded with foreign countries, but there are still many shortcomings in regulatory harmonization. China's domestic regulatory rules have fitness barriers to international rules, a single way of engaging in regulatory harmonization, and a weak voice in regulatory harmonization practices. In the existing practice of international regulatory coordination, the U.S. exports U.S. regulatory rules on cross-border flow of data to its trading partners through the formulation of free trade agreements to gain a dominant position in regulatory coordination; the EU relies on the Sufficiency Protection Recognition Agreement (SPRA) to reach a unified regulatory standard on cross-border flow of data in order to grasp the initiative of regulatory coordination. The U.S.-European-led approach to regulatory harmonization of cross-border data flows does not meet the real needs of developing countries. China should establish a unified regulatory body for cross-border data flow at the national level, improve the cross-border data security regulatory mechanism, enrich the ways to participate in international regulatory coordination of cross-border data flow, enhance the flexibility of participation, construct a regulatory coordination mechanism of mutual recognition and mutual recognition within the industry, and provide China's solutions for the global regulatory coordination of cross-border data flow.

Keywords: cross-border flow of data, regulatory coordination, data sovereignty, regulatory strategy

Introduction

Currently, there are no uniform regulatory rules for cross-border flow of data globally, which, together with the inconsistency of the objectives pursued by each country, has led to significant differences in the regulatory rules for cross-border flow of data among countries. Differences in value orientation in the regulation of cross-border data flows among countries have directly led to the fragmentation and lack of harmonization of global rules for the regulation of cross-border data flows, and have also led to difficulties in regulatory coordination at the international level. On the basis of analyzing the practice of regulatory coordination of cross-border data flows in the US and Europe, this paper intends to discuss the basic position of regulatory coordination of cross-

border data flows in China, and to construct a strategic path of regulatory coordination of cross-border data flows in China.

Problems in the Regulatory Coordination of Cross-Border Data Flows in China

Adaptability Barriers to Domestic Regulatory Rules for Cross-Border Data Flows

In recent years, China has attached great importance to the development of cross-border data flows, but the existing domestic regulatory regime for cross-border data flows is inadequate in terms of appropriateness and harmonization (Shan & Deng, 2021). On the one hand, the domestic regulatory system for cross-border flow of data is imperfect, the regulatory capacity and level of protection for cross-border flow of data are insufficient, and there is a lack of a coordinated regulatory body at the national level. Stronger regulatory capacity and a high level of data protection are the basis for the regulation of secure cross-border flows of data, and an integrated and coordinated regulatory body can improve the efficiency of China's participation in the international regulatory coordination of cross-border flows of data. Rushing into a highly open digital trade agreement that encourages the free cross-border flow of data when the domestic regulatory system for cross-border data flows is imperfect could very easily lead to data security risks. On the other hand, there is a lack of harmonization of regulatory rules for cross-border flow of data among China's domestic regulations. Domestic regulatory rules on cross-border data flows are the basis for China's participation in international regulatory harmonization, and inconsistencies between domestic regulatory rules will inevitably affect the process of China's participation in international regulatory harmonization of cross-border data flows.

China's Participation in the Regulatory Harmonization of Cross-Border Data Flows in a Single Way

At present, the main ways in which China participates in the regulatory coordination of cross-border data flows are through accession to free trade agreements, membership in international data management associations, and the signing of memorandums of understanding with extra-territorial countries or regions on the coordination and regulation of cross-border data flows. However, among the 19 free trade agreements that China has signed with foreign countries, few of them, except for RCEP, involve provisions on rules for cross-border flow of data (Tan, 2022). The International Data Management Association (IDMA) is a non-profit organization with the goal of promoting guidelines and best practices related to the data field worldwide and has no regulatory effect. The memorandum is also not the end and all of the regulatory coordination, it only means that countries or regions have completed the construction of the regulatory rules framework for cross-border flow of data, and there is a need to continue to consult on the development of the corresponding supporting system, and the memorandum will be implemented into the regular regulation. It can be seen that when China participates in the regulatory coordination of cross-border flow of data, not only is the coordination method relatively homogeneous, but there are also deficiencies in digging and exploring at the level and depth.

China's Weak Voice in the Regulatory Coordination of Cross-Border Data Flows

China's participation in the practice of international regulatory coordination of cross-border flow of data is not sufficiently vocal, and it is difficult to generate international influence. In terms of internal factors, on the one hand, China's participation in international rule-making on cross-border flow of data is relatively low. Although China has complied with the international development trend of regulatory rules for cross-border flow of data

and participated in a number of agreements regulating cross-border flow of data, its participation has been limited and it has not yet been able to establish a systemic advantage. On the other hand, the domestic regulatory system for cross-border flow of data and the international agreements in which China is already a party do not meet a high level of international regulatory standards. Compared to other developed countries, China is relatively inferior in terms of the number and degree of participation in the regulatory rules governing cross-border data flows, and its substantive competitiveness in international regulatory harmonization is weak. In terms of external factors, developed countries have gained dominance in the area of regulation of cross-border data flows through the establishment of high-level digital trade agreements, capitalizing on their competitive advantage in traditional international economic and trade rules. The voice of developing countries, such as China, in the regulatory rules for cross-border flow of data in DTAs has been severely weakened by the high cost of rules involved in joining these DTAs. At present, China's international coordination capacity for the regulation of cross-border flow of data is insufficient, and it has not yet formed a perfect regulatory coordination and lacks all-round and multi-level participation and communication channels. Problems in the regulatory coordination of cross-border data flows will not only threaten China's data security and hinder the implementation of China's data strategy, but also hamper the development of China's digital economy (Burri, 2021).

International Practice in the Regulatory Harmonization of Cross-Border Data Flows

U.S. Practice in Regulatory Harmonization of Cross-Border Flow of Data

The United States holds the right to formulate traditional international trade rules, and with the innovative advantages of digital technology, it has taken a leading position in the rule-making and negotiation process of digital trade agreements, pushed for the achievement of a series of digital trade rule outcomes, and established a competitive advantage in the field of cross-border flow of data, becoming the dominant player and the biggest beneficiary of cross-border flow of data globally. The U.S. advocates the so-called "internationalization program of lesser multilateralism", arguing that the cost of achieving multilateralism in the regulation of cross-border data flows is too high, and that a small number of countries that possess more data resources and have the ability to control the risks of cross-border data flows can first start a small-scale international regulatory coordination and form a small "data cross-border flow regulatory circle" centered on the U.S., and then use the influence of this "data cross-border flow regulatory circle" to attract other countries to join or set regulatory standards for the international community. A small "data cross-border flow regulatory circle" can be formed in the international community, with the United States as the center, to set regulatory standards for cross-border flow of data for the international community, and then utilize the influence of the "data cross-border flow regulatory circle" to attract other countries to join it or to promote regulatory standards to the territories of other countries, thus transforming a small-scale regulatory consensus into a large-scale regulatory consensus. Then, it will utilize the influence of the "regulatory circle" to attract other countries to join or promote regulatory standards in other countries, so that a small regulatory consensus can be transformed into a large global consensus (Flora, 2020).

EU Practice on Regulatory Harmonization of Cross-Border Data Flows

The EU relies heavily on the Sufficiency Protection Recognition Agreement (SPRA) for regulatory harmonization of cross-border data flows. The adequacy of protection determination is essentially an assessment by the EU of the data protection system and level of data protection in the countries with which it conducts data

exchanges, with the intention that the personal data of EU citizens will continue to be protected at a high level even after they have left the EU region. At present, the adequacy of the protection recognition agreement has gradually developed into an important support point for the EU to develop the digital economy and compete for international discourse in the field of cross-border flow of data. Agreements on adequacy protection determinations between the EU and other countries represent a new model of regulatory harmonization of cross-border flow of data, which has resulted in uniform regulatory standards for cross-border flow of data between the two parties to the agreement, and has led to a gradual convergence of the regulatory rules from differentiation to convergence. A growing number of data protection standards have moved closer to the EU, and the scope for the EU to engage in and lead the regulatory harmonization of cross-border data flows using “unilateralism” in the form of adequacy of protection determination agreements is expanding.

Strategic Paths for Regulatory Coordination of Cross-Border Data Flows in China

Strategies for Adjusting Domestic Regulatory Rules on Cross-Border Data Flows

The regulation of cross-border flow of data is anchored in domestic data regulation rules, i.e. effective domestic regulation of cross-border flow of data in the first place. Therefore, China should establish a regulatory body at the national level to coordinate the cross-border flow of data. Data powerhouses such as the EU and Japan have set up specialized cross-border data regulators. The Data Protection Board set up by the EU is responsible for data regulation in a unified manner and coordinates the differences between the various regulatory bodies of the EU member states; The Personal Information Protection Commission, established in Japan, serves as a unified supervisory body to effectively regulate personal data while improving the efficiency of the flow of personal data. At present, China's regulation of cross-border data flow mainly shows a pattern of “multi-headed regulation” by governments at all levels and competent authorities of industries involved in cross-border data flow. Although the competent authorities of industries involved in cross-border data flow have the right to formulate rules and supervise data, there is a lack of overall coordination and regulation of cross-border data at the national level, and it is not possible to clarify the attribution of regulatory responsibilities for cross-border data and improve the internal coordination system for the regulation of cross-border data. Although the competent authorities of the industries involved in cross-border data flow have the right to formulate rules and regulate data, there is a lack of coordination and regulation of cross-border data at the national level, which makes it impossible to clarify the responsibility for cross-border data regulation and improve the internal coordination system for the regulation of cross-border data flow (Ruohonen, 2021). China should establish a unified and coordinated regulatory body for the cross-border flow of data. On the one hand, the national cross-border data regulatory body should unify and coordinate the exercise of the right to audit and confirm cross-border data, so as to avoid regulatory competition among different sectors, industries, and regions in the country due to the different rules and standards for cross-border flow of data; On the other hand, the national cross-border data supervisory authority is to unify the ex-ante assessment and continuous supervision of cross-border data in accordance with the Measures for Security Assessment of Data Exit.

Participation Strategies for Regulatory Coordination of Cross-Border Data Flows in China

Enriching participation in regulatory harmonization. China should actively seek breakthroughs in the regulatory coordination of cross-border data flows and enrich the ways of participating in regulatory coordination.

International harmonization of the regulation of cross-border flows of data can only be achieved if there is a consensus among participating countries on the regulation of cross-border flows of data. China should become an important participant in promoting international regulatory coordination of cross-border data flows, and cooperate with various countries, regions, and international organizations to promote the signing of bilateral and multilateral agreements and the formulation of international rules on cross-border data flows. China should take maintaining data security as the starting point, respecting the data sovereignty of all countries as the focus point, promoting the implementation of the Belt and Road Initiative, signing the RCEP, and applying for membership in the CPTPP and DEPA as the breaking point, removing barriers to cross-border flow of data in China, and making full use of the opportunities of the WTO's multilateral negotiation to establish a free trade zone for cross-border flow of data with a number of countries. The FTA on cross-border flow of data has been established with a number of countries.

Enhancing flexibility to engage in regulatory harmonization. China is a pioneering country in the data industry and a large country in terms of global data resources. The rapid development of the domestic digital economy provides an important basic guarantee for China's participation in the international regulatory coordination of cross-border data flows. China should capitalize on its strengths in the data industry and enhance its flexibility in participating in the regulatory coordination of cross-border data flows. When regulating cross-border flow of data with different countries, China should make full use of its different advantageous positions in the digital economy and data industry, flexibly choose, participate in, and advocate the international regulatory coordination of the regulatory rules on cross-border flow of data that is most conducive to China's interests in light of different circumstances, and scientifically grasp the strength and rhythm of regulatory coordination.

Strategies for building regulatory coordination of cross-border data flows in China. The fundamental purpose of regulatory coordination of cross-border flow of data is to meet the diversified regulatory needs for cross-border data through international coordination mechanisms. China needs to actively seek new ways of regulatory coordination of cross-border flow of data, and strive to become an international leader in regulatory coordination of cross-border flow of data.

The most idealized scenario for the regulation of cross-border flows of data would be the establishment of a binding international regulatory body for cross-border flows of data with powers to coordinate regulation and dispute resolution, both to provide a framework basis for the coordination of the regulation of cross-border flows of data and, to a certain extent, to mitigate the security risks that may be posed by cross-border flows of data. However, in reality, it is difficult to fully reconcile the policy, legal, economic, and technological differences among countries, and it is impossible to formulate internationally harmonized rules for the regulation of cross-border flow of data and modes of regulatory coordination, not to mention the establishment of a global regulatory body for cross-border flow of data. The regulatory harmonization of cross-border flow of data is only an exploration and attempt of international cooperation, and cannot fundamentally solve the problem of non-uniformity of regulatory rules for cross-border flow of data among countries (He, 2022). As a big country with cross-border flow of data, China should assume the responsibility of a big country, pursue the concept of true multilateralism, and push the international community to further explore and try to carry out regulatory coordination within the framework of the United Nations such as the Groups of Governmental Experts (GGE) and the Open-Ended Working Group (OEWG), advocated and chaired by the United Nations, Group of

Governmental Experts (GGE), and the Open-Ended Working Group (OEWG) within the framework of the United Nations to carry out regulatory harmonization of cross-border flow of data. Taking the Charter of the United Nations and the basic principles of international law as the guiding principles, and relying on the community of destiny in cyberspace, we should gradually and steadily build or sign a multilateral, feasible, and binding United Nations legal mechanism for the regulation and coordination of cross-border flow of data or a United Nations convention on the regulation and coordination of cross-border flow of data, so as to harmonize the regulation of cross-border flow of data on the basis of a win-win mentality.

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