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Problems and Countermeasures of the Legal Rules Model for Cross-border Data Flow in China

Jingying Xi[1,a,*]

[1]*School of Administrative Law, Southwest University of Political Science and Law, Baoshenghu Street, Chongqing, China*
a. 2023041203@stu.swupl.edu.cn
**corresponding author*

Abstract: In the era of big data, due to the positive benefits brought by the free flow of data to China's development, it is an urgent need to optimize the legal and regulatory framework for cross-border data governance in China to solve the problems faced by China today, such as the lack of privacy protection regulations, inadequate regulatory mechanisms, incomplete governance systems, and obstacles to data flow in the international market. Therefore, China should promote the development of digital technology, compare and learn from the experiences of the European Union and the United States, optimize privacy protection legislation, and improve regulatory system. At the same time, actively promote the establishment of multilateral trade agreements, balance differences by setting exception clauses, establish a "partner force" for China's cross-border data flow, contribute Chinese wisdom to the world through the platform of international conferences and forums, promote the formation of unified cross-border data flow rules, and create favorable conditions for China's cross-border data flow.

Keywords: Cross-border data flow, Data governance, European Union, United States.

1. Introduction

Currently, with the development of economic globalization and digital economy, cross-border data continues to play a promoting role in international trade activities, transnational scientific and technological cooperation, data resource sharing and other aspects. The value of global data in 2020 has reached trillions of dollars [1]. According to research, each 10 percent increase in data traffic will lead to a 0.2 percent increase in GDP, and the contribution of data flow to global economic growth is expected to reach $11 trillion by 2025 [2]. Data has become the 'new oil' of the digital age [3]. Therefore, cross-border data flow is becoming more prominent in countries' efforts to promote the development of the digital economy.

The Internet has been growing rapidly in China since the 21st century, and by 2024, the number of Internet users has already reached 1.092 billion [4]. The China Academy of Information and Communications Technology (CAICT) published a Research Report on the Development of China's Digital Economy in 2024. It states that since 2023, the country's digital economy has grown steadily to a size of 53.9 trillion yuan, or 42.8% of GDP. In addition, the *Digital Trade Development and Cooperation Report in 2023* jointly released by the CAIAT and the Foreign Economy Research Department of the Development Research Center of the State Council of China, shows that the total

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value of China's imports and exports of cross-border digital services reached $371.08 billion in 2022, a year-on-year increase of 3.2 percent. The booming development of digital trade based on data flow has made the CPC Central Committee and The State Council of China have successively promulgated a series of laws and regulations such as *Cybersecurity Law of the People's Republic of China, the Data Security Law of the People's Republic of China and the Measures for the Assessment of Data Exit Security* since the 18th National Congress of the CPC, promoting the development of data flow in China. The vigorous promotion of data flow is conducive to China's better adaption to the trend of high-quality development of the digital economy and meet the needs of China's high-level opening-up in the current world pattern.

Through sorting and analyzing existing research results it was found that there are still some problems in the cross-border data flow in China, such as incomplete legislation on data security protection, inadequate legal supervision mechanism, and restricted data flow. In addition, it faces challenges in international cooperation such as different values and difficulty in reaching consensus with other countries or regions on data flow issues. For example, a scholar has pointed out that in international cooperation, there are conflicts in data laws among countries, and information security is difficult to be absolutely guaranteed [5]. Regarding the aforementioned problems, scholars believe that China needs to develop its own security concept in cross-border data, it is necessary to establish a regulatory agency for cross-border data flow and improve the legislation of it, so as to establish a channel for data flow domestically [2,6]. Internationally, China should promote the safe and efficient flow of data across borders by actively formulating exception clauses to balance the differences in the objectives of the rules of various countries, actively participating in the formulation of global and regional trade agreements, and facilitating the formation of a unified international cooperation program. Based on this, this study will adopt a comparative research method and a theoretical research method. It aims to conduct theoretical analysis on the problems, causes, realistic conditions and needs of cross-border data flow that China is facing. On the basis of learning from the experience of the legal rule models of cross-border data flow in Europe Union and the United States, relevant suggestions are put forward to solve the obstacles to cross-border data flow in China.

2. The Obstacles for China to Promote Cross-border Data Flow

In the process of promoting cross-border data flow in China, there are still dual obstacles both domestically and internationally. The flow of data on international platforms is obstructed, and there are issues with insufficient processing capacity and low flow efficiency in domestic regulations.

2.1. The Impact of Current International Rules on China's Data Cross-border Flow

Owing to differences in development and historical evolution, there are significant differences in the values of data flow among countries, resulting in different approaches to data flow processing, making it difficult to form unified cross-border data flow rules internationally.

From the perspective of differences in development levels, there is a clear contradiction between the attitudes of developed and developing economies. The international discourse power, economic strength, and advantages in data processing technology of developed economies make them more inclined to promote the cross-border data flows freely, oppose localized data storage, and eliminate the barriers to cross-border data flow, and thus gain greater benefits; However, some emerging economies and developing countries, represented by China, Russia, etc., have adopted a more conservative attitude towards the flow of data by reason of the development of the data industry and the limitations of economic and technological levels. Thy attach great importance to the localized storage of important data to defend "data sovereignty" [7]. Therefore, from a global perspective, the

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data export governance strategies of major economies present two main types: "Free Flow" dominated by developed countries and "Local Restrictions" dominated by developing countries [5].

From a historical perspective, due to differences in politics, culture, technological development levels, or different development needs, countries have also developed different approaches to data flow and processing. For example, in developed economies, the EU places greater emphasis on high standards of data privacy protection, strengthening restrictions and scrutiny on data flow; The "digital camp", led by the United States, Canada, Singapore and other countries with more open and liberal cultural traditions, advocates reducing interference in data flow.

The different governance attitudes of various countries towards data flow have led to multiple rules restricting the cross-border flow of data in China.

2.2. The Inadequacies of Domestic Regulations within China

Initially, China has established a policy framework and built a "1+3+N" regulatory rule system in the governance of cross-border data flow, continuously optimizing the digital business environment, but there are still many shortcomings.

As the Internet continues to advance and trade demands become increasingly digitalized, China faces significant developmental requirements in the governance of cross-border data flows. Worldwide, while countries attach great importance to development and security, their domestic legislation on the cross-border flow of data is unevenly emphasized among the two. For instance, in the realm of data governance, the European Union places significant emphasis on data privacy protection, whereas the United States prioritizes the unrestricted flow of data. In contrast, China embodies a 'middle way' approach by balancing development and security.

However, due to the late start and short development time of data governance in China, even with the rapid development of digital technology, there is still a gap between China and other developed countries. Currently, there are still challenges for China to balance development and security, and the framework is not yet perfect. Specifically reflected in the following aspects:

2.2.1. Shortcomings in Legislation

First, lack of privacy protection regulations. The security issues faced by cross-border data flow are not only national security issues accompanied by "data sovereignty", but also the security issues of personal data. When personal data flows across borders, security issues also pose a threat to national security.

Personal data has personality attributes and property attributes, so personality attributes also involve personal information rights and privacy rights [8]. The threat to personal data privacy and security will reduce people's willingness and level of participation in the digital economy, which will affect cross-border data flows, limit the growth of digital trade, and reduce economic efficiency. However, due to the cost of information protection involved in the process of digital trade, the emergence of “privacy trafficking for profit” in the market. Nowadays, China has legislation on personal information protection in the form of the *Civil Code of the People's Republic of China,* the *Cybersecurity Law of the People's Republic of China, and* the *Law of the People's Republic of China on the Protection of Personal Information*. The *Provisions on Promoting and Regulating Cross-Border Flow of Data*, issued by the Cyberspace Administration of China, also specifies quantitative thresholds for security assessment, filing of standard contracts, and certification of outbound protection of personal information across borders for sensitive personal information. However, these laws and regulations generally focus on the protection of traditional personality rights, with a lack of attention to the factors affecting big data and the new trends in personal data privacy, as well as a lack of policy tools [9]. Still limited by the pursuit of efficiency and cost considerations, there are cases in

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which personal private information exports without a security assessment of the data because the quantity of such information does not reach the threshold. With billions of China's internet users, the threshold of "10,000 people" for data exit security assessment is also on the low side.

Second, no complete system of data flow governance. The flow of information in the era of big data is no longer just a cyberspace interchange, online interaction has long penetrated into all aspects of offline life. Based on the special characteristics of the development of the times, China should pay more attention to all aspects of its legislation. However, China's cross-border data flow legislation still lacks a clearer and more effective law, and there are still ambiguities in the details of the law. For example, Article 37 of the *Cybersecurity Law* and Article 31 of the *Data Security Law* clearly state that China's regulations on data exit should be formulated by the Internet information department in conjunction with the relevant departments of the State Council, that is, they are not generated by the National People's Congress or by a specialized department independently targeting cross-border data flows. At the same time, there is a lack of relevant supporting systems on cross-border data flow, and the system that can be referred to in judicial practice is even more inadequate - there is no sufficient judicial interpretation of cross-border data flow, and there is also a lack of a sufficient number of high-impact typical cases for practical reference.

2.2.2. Regulatory Rules Are Not Yet Perfect

China has more stringent regulations on cross-border flow of data at the legal level, such as attaching importance to the localization of data store and setting up review hurdles for data outbound security assessment as well as the filing of standard contracts. However, the regulatory model still suffers from a lack of refinement, insufficient operationalization, lack of clarity on data boundary distinctions, and a lack of coordination mechanisms [10]. For example, the *Provisions on Promoting and Regulating Cross-Border Flow of Data* have set up identification and security management links for the exit of important data, emphasizing that data processors should identify and declare important data in accordance with the relevant provisions. However, there are still some industries and regions that have not yet perfected the mechanism for identifying and declaring important data, and they can only refer to the *Principles for Classification and Grading of Technical Data for Data Security* issued by the National Cybersecurity Standardization Technical Committee [11]. This is obviously not rigorous enough, and there is a risk that important data will be improperly supervised and thus compromised.

3. Reference to the Legal Regulatory Models for Data Flow Transmission in the United States and the European Union

With the continuous development of global digital technology, countries around the world generally recognize the importance of enhancing digital development and have accelerated the pace of improving the model of legal rules for cross-border flow of domestic data. As the world's two major economies, the United States and the European Union started early in the establishment of the rules model, and relatively more perfect, with distinctive features, has a good reference value.

3.1. The Legal Regulatory Models for Data Flow Transmission in the United States: Vigorously Facilitate the Flow

The United States began to promote international policies on cross-border flow of data as early as 1983, and the *Global Framework for Electronic Commerce* was introduced in 1977, laying a solid foundation for the U.S. to regulate cross-border flow of data. Stemming from its political, economic and technological underpinnings, and driven by its national character, the United States views free movement as a security guarantee rather than a threat. Therefore, its legislation has generally formed

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a policy model that favors the free flow of data and limited localization. Studies have shown that several documents released by the United States have proposed enhancing the free flow of data across borders and preserving "Internet freedom". Even the 2018 *National Cyber Strategy* mentions that localization policies in other countries can hurt the competitiveness of U.S. businesses [12]. It can be seen that the United States not only tends to promote the free flow of data within its own country, but also opposes the excessive implementation of localization policies in other countries at the international level.

Taking the Clarifying Lawful Overseas Use of Data Act (CLOUD Act), which directly regulates cross-border data in the United States. As an example, the CLOUD Act clearly stipulates that network service providers in the United States or within the United States should only provide data from overseas as required by US law enforcement agencies if they own, store, or control it, unless they meet the defense grounds specified in the Act and can apply for exemption, but still need to be reviewed by US courts. The U.S. has adopted the "Long-arm Jurisdiction" mechanism of the CLOUD Act to gather data from abroad to the Unite States, and then monitor and analyze the data to grasp the needs of the market, so that U.S. enterprises can obtain more benefits in the global data market.

In line with its policy model of promoting the free flow of data, the United States has been active in reaching out to multilateral agreements to enhance its "Partnership Power" and facilitate data flow among member countries within those agreements. This has led to the formation of the "United States camp" of digital trade rules, represented by RCEP and the United States-Mexico-Canada Agreement (USMCA), which mainly advocates support for the free development of digital trade and opposes the obstruction of trade barriers. For example, the OECD Guidelines, formed under the leadership of the U.S., state that member countries should avoid hindering the cross-border flow of personal data and affecting the development of economic and social due to domestic legislation on privacy protection.

3.2. The Legal Regulatory Models for Data Flow Transmission in the European Union: High Priority on Privacy Protection

Compared to the United States, the EU's cross-border data flow legal framework places a high priority on privacy protection. Such differences are largely influenced by historical factors. The importance attached to privacy protection stems mainly from the importance attached to the protection of human rights, and the high sensitivity of human rights protection stems from the fact that modern Europe has a long and arduous history of human rights struggles.

The European Union's model of legal rules for cross-border data flows is dominated by the *General Data Protection Regulation* (GDPR) enacted in 2018. GDPR reflects the EU's high emphasis on the protection and regulation of personal information. It not only categorizes personal data, but also refers to sensitive personal data as "special categories of personal data" and provides stricter protection and processing requirements. It also gives individuals unprecedented rights in relation to their personal data - strictly guaranteeing the data subject's right to know and control, requiring data controllers to obtain the data subject's "valid consent" and the data subject's right to withdraw it at any time.

In general, from the perspectives of human rights and technology, the European Union has formed an "Externally Strict but Internally Lenient" EU model. The "Internally Lenient" policy is manifested in that the EU constructs a data protection system within by combining unified legislation and the legislation of each member state, and actively promotes the free flow of data among member states [13]. In contrast, there are strict requirements for the transfer of data from within the EU to outside the EU, and only white-listed countries that have passed the "Adequacy Agreement" can engage in the free flow of data across borders with the EU, i.e., the "Externally Strict" policy. Such a policy not only safeguards the security and data flow of private information within the EU, but also requires countries that want to engage in data flows with the EU to cooperate with the EU's standard privacy

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protection rules. This will preserve the EU's dominant rule-making power in cyberspace and the EU's competitive advantage in the digital domain [14].

4. Solutions to Problems Specific to China

4.1. Analysis on the Applicability of Experience for China to Draw on

Even though the national conditions and policy preferences may differ, based on China's current conditions, development tendencies, and needs, we can draw experience from the legal rules and models of cross-border data flow in Europe and America to improve the Chinese model.

Promoting the free flow of data is necessary - according to scholar Martina's research, strict data policies can have a significant negative impact on the introduction of data intensive services [15]. In terms of China's existing conditions, China's digital technology has developed rapidly since the 21st century, and the digital industry has also continued to develop and become mature. The gap between China and developed economies has been narrowing at the technological level, which has been able to support the need to strengthen the security of the free flow of data. The degree of localized storage can be appropriately mitigated with reference to the U.S. experience. In addition, China's central authorities have a strong capacity for coordination and control over local authorities, and it has good legislative capacity and can support the implementation of laws and regulations to facilitate the flow of data. At the same time, China has a strong comprehensive national strength and has always endeavored to build up a good image of a peaceful, developing and responsible great power in the international community, especially in the third world countries, where it has a good reputation and strong influence, and has ample room for international cooperation.

In terms of development tendency, China has sought to strike a balance between national security and development more often than not. This, coupled with the maturity of existing conditions in China, allows the country to take advantage of both the U.S. policy experience in promoting the free flow of data and the EU's legislative focus on privacy protection.

Nowadays, although China's digital industry has developed significantly, there is still a gap between its strength in the digital industry and that of developed economies like the United States and Europe. The international digital market is still mostly occupied by developed economies, and China urgently needs to develop in order to strengthen its national power and improve its comprehensive competitiveness in the digital era. Therefore, referring to the mature experience is a good choice for China to break through the “trilemma” [16].

4.2. Consummate, Improve the Domestic Regulations

4.2.1. Optimization of Privacy Protection Legislation

National security and personal data security are tightly linked. Therefore, in order to protect data security, China can learn from the relevant laws and regulations on personal privacy protection in the EU model and increase the importance of protecting individual basic rights. Introducing a personal data and privacy protection strategy to raise the status of personal privacy data protection in cross-border data in the supreme law, and at the same time providing a more comprehensive, systematic and holistic interpretation of laws such as the *Measures for the Security Assessment of Personal Information Exiting the Country* and the *Measures for the Security Assessment of Data Exiting the Country* [14].

At the same time, based on the importance of data flow under the continuous development of the digital era, a complete structure and all-round data security protection system should be established in the process of system construction. Not only does it implement a comprehensive classification and management system for outbound data, but it also refers to the relevant provisions of the EU GDPR

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to refine and classify individual outbound data, granting subjects higher rights. At the same time, it has strengthened the relevant provisions on the security assessment of data exit, grouped a certification mechanism for safeguarding personal information, established a certification feedback mechanism, and strictly limited the exit of data involving sensitive personal information [17].

4.2.2. Regulatory Institutional Improvements

While improving information protection legislation, specialized data protection regulatory agencies should also be established to establish a systematic institutional arrangement for cross-border data flow [18]. To ensure the effective implementation of data classification and management, and the effective implementation of security assessment and review for data export. Some scholars have proposed that a unified regulatory framework for cross-border data flows that complies with China's national conditions can be formed by referring to the typical case of the EU setting up the European Data Protection Commission to coordinate European data security matters, and establishing a specialized, independent, and separate administrative agency for data cross-border supervision [6]. It is also possible to set up different management departments specifically for different data subjects and data processors, strengthen the supervision of outbound data, clarify management responsibilities, and prevent omissions. Meanwhile, the review criteria and responsibility requirements of the security assessment and review departments should be refined to avoid increasing the cost of data flow and reducing the efficiency of the flow due to the redundancy of the process. The innovation and improvement of the regulatory system can first be achieved through pilot projects in free trade zones, exploring a relatively complete management structure that is suitable for China's national conditions and needs, and then promoting it nationwide to save on fault tolerance costs.

4.2.3. Technological Development

Digital technology is the fundamental basis for the efficient flow of data across borders to create greater economic value. If China wants to improve its international competitiveness, enhance its international discourse and maximize the benefits of its own development in the digital era, it is necessary to continuously develop digital technology, overcome sophisticated technological challenges and build a perfect digital industry. Although China has made remarkable achievements in the construction of digital infrastructure in recent years, there is an urgent need to further improve the digital utilization rate and value conversion rate [19]. Against the backdrop of intensified geopolitical risks and challenges in cross-border data flows in China, China should conduct in-depth research on the core digital key technologies required for cross-border data flows, promote breakthroughs in emerging technologies, strengthen the risk resistance capabilities of related supply chains, and make up for the shortcomings of cross-border data flows [7].

4.3. Establish A Good International Platform for Data Flow

China's promotion of cross-border data flows requires not only the support of legal rule models, but also increased participation of Chinese data in the international digital market. In this regard, the policy approach of the United States to promote the free flow of data can be referred to, and multilateral trade agreements can be actively concluded. In multilateral trade negotiations, it is necessary to take the initiative to promote the formation of uniformly applicable rules on cross-border flow of data, so as to form a “partnership force” for cross-border flow of data. At the same time, we can learn from the European Union's model of “Externally Strict but Internally Lenient” and set up a similar “adequacy agreement”. China will leverage the platform of the Belt and Road Initiative to sign cooperation agreements with countries along the route with good relations, establish a "whitelist

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system", promote the free flow of data between countries within the agreement, and build a trust system for cross-border data flow.

Cross-border data restrictions should be reduced to promote the free flow of data across borders. China should actively propose a “Chinese solution” based on the RCEP rules and on the basis of the Global Data Security Initiative through multilateral international organizations and forums, and contribute Chinese wisdom [20]. China should encourage countries to seek common ground while reserving differences in their attitudes towards cross-border data flow, and promote consensus among countries on the free flow of data. At the same time, by setting up exception clauses to harmonize the focus on cross-border data flow of different countries, make up for the shortcomings of “hard law”, and promote the dynamic balance of the rules of various countries, so as to promote the establishment of uniform rules on cross-border data flow.

5. Conclusions

Cross-border data flow, with the rapid development of the digital economy and economic globalization today, has become an important topic in the world because of its positive role in international trade activities, transnational scientific and technological cooperation, and sharing of data resources. However, due to the relatively short period of development, uneven development and constraints imposed by the social conditions of each country, cross-border data flows still have many problems that need to be solved. This study focuses on analyzing the development challenges China faces in cross-border data flows from both international and domestic perspectives. By analyzing the comparable experiences of the EU and U.S. models of cross-border data flow laws and rules, it is pointed out that China should strengthen its data privacy protection legislation, optimize its data regulatory mechanism, and improve the efficiency of data flows through data classification and subclassification. China should simultaneously encourage the development of unified regulations for international data flow, actively engage in international cooperation, and establish conducive conditions for China's data flow on global platforms.

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