

Evaluating the EU's role as a global actor in the digital space

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Abstract: *The new Digital Strategy of the European Union (EU) emphasizes the need for a more assertive Union as regards digital leadership, claiming a role of a global actor in terms of digital policies. Moreover, the new policy documents on digital transformation promote the idea European technological sovereignty, thus pointing to a crystallization of a European approach towards digital policies that would be projected on the international stage. The purpose of this article is to investigate the sources of the proclaimed assertiveness of Digital Europe in international affairs. The hypothesis is that it stems from harmonization of legislation claimed by the Digital Single Market. However, the article aims to identify and assess the EU's recognition, authority, autonomy, markers proposed by Jupille and Caporaso (1998), in an approach meant to provide an overview of the EU's actorness in the digital space.*

Keywords: *European Union, actorness, digital space, digital policy*

Introduction

The European Union has embarked on a new path of digital transformation, along with the announcement of the European Digital Strategy and its accompanying policy documents on Artificial Intelligence (AI) and Data². If the Digital Single Market Strategy was focused more on building an internal regulatory framework, the international dimension of Digital Europe is much more pronounced within the European Digital Strategy. The Digital Strategy provides some arguments with regards to this title, namely that internal legislation with regards to data protection is slowly becoming an international norm and that a greater involvement of EU values in digital transformation is necessary. The so-called 'Brussels effect' emphasizes this exact idea, namely that the EU has been setting the standards in several policy fields. Most recently, the area of digital economy was documented as one where the EU is setting the standards globally, thus contributing to its status of global regulatory power³.

Still, discourses on the EU shy away from the "actor" concept, and refer instead to it as a "player" or a "power". This is not surprising, given the disputed statute of the EU in international affairs dominated by states. Nevertheless, by means of its actions and the explicit idea that the EU must become more assertive as regards digital transformation internationally, it seems that the EU is moving towards actor behaviour. This is where this research aims to intervene, namely to map out the markers of the EU as an actor in the digital space. If the EU claims more assertiveness, then it follows that the EU considers itself a significant actor and this research aims to identify the sources

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² European Commission, 'White Paper - on Artificial Intelligence - a European Approach to Excellence and Trust', 2020, https://ec.europa.eu/info/sites/info/files/commission-white-paper-artificial-intelligence-feb2020_en.pdf, accessed 25 February 2020.

³ Anu Bradford, *The Brussels Effect: How the European Union Rules the World* (Oxford, New York, 2020).

of such assertiveness.

The hypothesis of the research is thus that EU has been building up a case to become a digital actor based on its internally regulated environment and the focus on values. This paper is an analytical endeavour, as it aims to provide a justification for the EU's assertiveness in digital policy. In order to do so, it uses the extensively used framework of Jupille and Caporaso (1998) to assess the sources of assertiveness of the EU in global digital policy, but first it details some of the main theoretical markers on EU actorness.

Theoretical framework

There has been extensive research on the idea of actorness ever since the 1970s, when Sjöstedt elaborated on the external role of the European Economic Community (EEC) by defining actorness as an established capacity to engage with other actors in a deliberative and active manner⁴. In a traditional IR system, Sjöstedt's analysis emphasized actorness based on a state model. The idea that the EU should fit the mould of states and their norms has been referenced by other researchers as well⁵.

However, by virtue of its organization, the EU cannot be compared to a state. In this sense, Rosamond states that an assessment based on statehood characteristics might miss its overall impact in international affairs, given that its presence and role have already been recognized by other actors, for instance by virtue of its competence to sign international trade agreements as a single body⁶. However, in other policy domains, the EU acts only alongside the Member States (MS) by virtue of shared competences or it even takes the backseat in issues more tied to national sovereignty. This division in competences leaves room to several modes of governance, as identified by Wallace, meaning that the EU does not act in a unitary manner by virtue of its existence⁷. These modes of governance are reflected internationally, as they shape the areas where the EU can exert real influence⁸. With the accepted existence of multiple modes of internal governance, Ben Rosamond's words that the EU is *becoming* rather than *being* seem fitting⁹. In this sense, this article aims to provide a snapshot of EU's actorness in digital policy, a field in which the EU has been slowly constructing itself as an actor.

One of the most widely cited frameworks on actorness comes from Jupille and Caporaso, whose analysis began with an observation that previous research had lacked clear criteria to assess actorness¹⁰. The criteria used are recognition, authority, and autonomy¹¹. *Recognition* can be either *de facto* or *de jure* and it concerns the relations with the external environment. While *de jure* recognition refers to the ability of the EU

⁴ Gunnar Sjöstedt, *The External Role of the European Community* (1977), VII.

⁵ Ian Manners and Richard Whitman, 'The "difference Engine": Constructing and Representing the International Identity of the European Union', *Journal of European Public Policy*, 10/3 (2003), pp. 380–404.

⁶ Ben Rosamond, 'Conceptualizing the EU Model of Governance in World Politics', *European Foreign Affairs Review*, 10 (2005), p. 463.

⁷ Helen Wallace, Mark Pollack and Alasdair R. Young, *Elaborarea Politicilor în Uniunea Europeană*, [Policy-making in the EU], Bucharest, 2010.

⁸ Anu Bradford, 'The Brussels Effect', *Northwestern University Law Review*, Columbia Law & Economics Working Paper No. 533, 107 (2012), p. 42 https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2967&context=faculty_scholarship.

⁹ Rosamond, 'Conceptualizing the EU Model of Governance in World Politics', p. 463.

¹⁰ Joseph Jupille and James A. Caporaso, 'States, Agency, and Rules: The European Union in Global Environmental Politics', *The European Union in the World Community*, 17 (1998), 157–182.

¹¹ *Ibidem*, 157–182.

to be a formal part of international negotiations due to its legal personality, *de facto* recognition is rooted in the perception and willingness of third parties to deal with the EU directly. *Authority* is rooted in the political system of the EU and is organized around the competences of the EU, as they are designated by the Lisbon Treaty. Of course, they vary across policy area and authority can be granted formally or informally by mechanisms, such as spill overs. Finally, *autonomy* regards the EU's independence from its member states in negotiations or dealing with other issues. The next section will analyse briefly the manner in which the EU manifests as an actor in global digital policy based on the aforementioned criteria.

EU actorness in digital policy

Before delving into a thorough analysis of EU actorness and its assertiveness, a proper definition of digital policy is necessary. Given that digital encompasses a wide array of sub-domains, this is not an easy feat. To be more exact, digital policy refers to regulatory or non-regulatory interventions, verifications or limitations by entities, such as the EU or states, meant to oversee digital transformation that will ultimately underpin other policy areas. Main areas of digital policy include data protection, Artificial Intelligence and technological development, digital content, as well as the digital economy, and the technical underpinnings of digital transformation, such as standardization and connectivity.

In terms of *recognition*, the European Union is acknowledged as an actor by various entities. The Lisbon Treaty grants *de jure* recognition in terms of international agreements that the EU can sign, and digital issues have become an increasingly significant policy domain of these agreements. For instance, EU and Japan have recognized their data protection systems as being 'equivalent'. This adequacy decision is a complementary document to the EU-Japan Trade Agreement, which entered into force in February 2019¹². Such a decision is a part of the coordinated strategy of the Commission to ensure proper data flows with non-EU countries that ensure an equivalent high level of protection of data¹³. Several other countries have such adequacy agreements, with the notable exception of the USA, which does not have a federal framework for data protection and US companies rely on Privacy Shields for the movement of personal data to the US¹⁴. The recent Court of Justice of the EU decision has complicated this issue, by invalidating the adequacy decision of the Commission¹⁵. This decision upholds the superiority of the European data protection model, cementing the EU's status as a regulatory actor by claiming the higher level of data protection that it offers.

On *de facto* recognition, the EU has opened dialogue on digital issues with

¹² European Commission, 'European Commission Adopts Adequacy Decision on Japan, Creating the World's Largest Area of Safe Data Flows', *European Commission - European Commission*, 2019 https://ec.europa.eu/commission/presscorner/detail/en/IP_19_421, accessed 9 August 2020.

¹³ European Commission, 'Communication from the Commission to the European Parliament and the Council. Exchanging and Protecting Personal Data in a Globalised World', 2017, 7 http://ec.europa.eu/newsroom/document.cfm?doc_id=41157.

¹⁴ European Commission, 'EU-US Data Transfers', 2018, <https://ec.europa.eu/info/law/law-topic/data-protection/international-dimension-data-protection/eu-us-data-transfers>, accessed 9 August 2020.

¹⁵ Court of Justice of the European Union, 'The Court of Justice Invalidates Decision 2016/1250 on the Adequacy of the Protection Provided by the EU-US Data Protection Shield', 2020, 3 <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-07/cp200091en.pdf>, accessed 19 August 2020.

both states and other entities. Digital transformation has been one of the major topics of the EU-India summit in July 2020, as the EU has advocated for stronger cooperation in terms of data protection that would allow the facilitation of data transfers¹⁶. This can be construed as a subtle push towards higher data protection in India. Other topics have also been debated, such as the shared human capital capability in artificial intelligence.

The EU is also a frequent participant in the Internet Governance Forum, an organization that debates on the future of the Internet and its current challenges. Similarly, the EU has opened up dialogue with the African Union on the digital economy in 2018, which can be considered as part of the commitment of the EU to promote its values in the development of digital economy and society¹⁷.

The *authority* of the EU to engage in global digital policy stems from the Digital Single Market, namely the regulatory effort of the past five years to eliminate barriers in the movement of data, information or content. The so-called ‘Brussels effect’ can be used as an argument for the global authority, given that major platforms have extended some of the EU regulations to their global operations. Although the DSM was regulated based on the internal market competence, which is shared with the MS, it is a powerful tool of influence. For instance, any company that provides customers online content is obligated to make it available across country borders, thus ensuring a higher level of consumer protection. The copyright directive has also attracted sufficient attention to the EU, given that will deem platforms responsible for hosting copyrighted content¹⁸. Although it is not clear yet how this will impact the Internet globally, the sheer size of the DSM might cause the extension of the ‘Brussels effect’ to copyright legislation, whereby major global platforms would extend these rules globally in an effort to save costs. This issue has brought up discussions about “a European Internet” or protectionism, which have re-appeared as soon as the term ‘technological sovereignty’ has been coined by the new Commission¹⁹.

Normally, such characterizations would contribute to the consideration that the EU enjoys wide *authority* in digital matters. However, the reality can be quite different, as its autonomy is in some matters limited by Member States, but also by its investment capabilities. The diversity of digital policy areas proves to be a weakness for the assessment that it is an actor, in that it enjoys recognition as a regulatory actor, but not as technological one. The EU has suffered from a competitiveness gap in this respect and its ability to create massive investment programs to boost research and innovation has always been faltered by the Member States and their unwillingness to commit to serious financing instruments, as previous research on the matter has shown²⁰. Most recently, the final negotiations on the Multiannual Financial Mechanism (MFF) have

¹⁶ Ursula von der Leyen, ‘President von Der Leyen on the EU-India Summit’, *European Commission - European Commission*, 2020, https://ec.europa.eu/commission/presscorner/detail/en/statement_20_1354, accessed 9 August 2020.

¹⁷ European Commission, ‘European Union and African Union Launch a Digital Economy Task Force’, *Shaping Europe’s Digital Future - European Commission*, 2018, <https://ec.europa.eu/digital-single-market/en/news/european-union-and-african-union-launch-digital-economy-task-force>, accessed 9 August 2020.

¹⁸ Casey Newton, ‘Europe Is Splitting the Internet into Three’, *The Verge*, 2019, <https://www.theverge.com/2019/3/27/18283541/european-union-copyright-directive-internet-13>, accessed 10 August 2020.

¹⁹ Mark Scott, ‘What’s Driving Europe’s New Aggressive Stance on Tech’, *POLITICO*, 2019, <https://www.politico.eu/article/europe-digital-technological-sovereignty-facebook-google-amazon-ursula-von-der-leyen/>, accessed 10 August 2020.

²⁰ Mirela Mărcuț, *Crystallizing the EU Digital Policy. An Exploration into the Digital Single Market* (Cham, 2017).

shrunk the proposed budget of the Digital Europe Programme²¹. However, the digital component of Connecting Europe Facility has seen its budget doubled compared to the previous. These examples point to the idea that the authority of the EU is *limited* to that of a regulatory actor.

Split *authority* in overall digital policy contributes also to a limited *autonomy* in international negotiations and assertiveness in general. Digital issues are negotiated as part of international trade agreements or other foreign policy approaches, with global EU delegations engaging in discussions on digital matters directly with non-EU countries. Also, the EU has developed its digital advocacy in the European Neighbourhood, developing the EU4Digital programme for the Eastern Partnership countries, encouraging the development of a strong and connected digital society²². As regards major on-going issues, the EU could not steer the development of a Coronavirus tracing app, as well as the on-going debate on 5G, being limited to provide recommendations and guidance to MS in both cases. MS have resorted to national decisions with regards to the inclusion of Huawei in their national procurement operations for 5G infrastructure²³.

Conclusion

Given that researchers have accepted that the EU enjoys different modes of governance, the EU as an actor tends to behave differently on the international stage, depending on the policy area in question. To that respect, this brief article has aimed to probe whether the EU is a fully-fledged actor in digital policy.

Using the framework of Jupille and Caporaso, the article has assessed the recognition, authority, and autonomy of the EU to manifest as an actor in digital policy on the global stage. It does enjoy both *de facto* and *de jure recognition* as an actor in regulatory matters, so much so that the rules have been exported to other jurisdictions or it uses its advantage to advocate for a higher level of data protection.

The Digital Single Market grants the EU its *authority*, although the authority is rooted in the political system of the EU. Digital policy can be performed either as a shared or a support competence. The foundation of this authority still stems from the regulatory issues that have created different discussions, both in a multilateral setting, as the Internet Governance Forum, or in a bilateral one in trade agreements with states. Still, the authority of the EU is tested when it comes to a transition from a regulatory to a technological actor. Hence, it is limited from within. Finally, the autonomy of the EU is a reflection of the limited authority in various areas, but digital issues have been inserted into foreign policy.

The research has aimed to bridge a gap in the literature, given that targeted analyses on the EU actorness in digital issues have not been identified. However, it does have its limitations, namely that a larger theoretical framework would have allowed for an extended discussion of the EU's actorness from different IR perspectives. Still, this article can be seen as a starting point for further analyses using different criteria or for constructivist analyses of EU discourse on digital issues.

²¹ Samuel Stolton, 'Digital Brief: EU Digital Cuts', *www.Euractiv.com*, 2020, <https://www.euractiv.com/section/digital/news/digital-brief-eu-digital-cuts/>, accessed 10 August 2020.

²² EU4Digital, 'The EU4Digital Initiative', *EU4Digital*, 2020, <https://eufordigital.eu/discover-eu/the-eu4digital-initiative/>, accessed 10 August 2020.

²³ 'As Britain Bans Huawei, U.S. Pressure Mounts on Europe to Follow Suit', *Reuters*, 14 July 2020, <https://www.reuters.com/article/us-britain-huawei-europe-idUSKCN24F1XG>, accessed 24 July 2020.

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