EU Digital Sovereignty: a Useful Concept or a Distraction?

A. Savin
CBS LAW
Why talk about this topic?

• The wrong answer: the "buzz" generated

• The simple answer: loss of control over own security, data, platforms

• Difficulties not semantic, will not disappaer if we just find a better definition
What would I like to do here?

• Is there policy change? Change in laws?

• What do we do to regain control?
Where is the loss manifesting itself?

• Data: little to no control over data crossing borders, AI manipulation or purposes for which it is used

• Cybersecurity: more frequent, more deadly attacks

• Platforms: little possibility to rein in illegal (or legal but harmful) content
Key points

• Policy: EU does not incorporate sovereignty into its policy documents on digital regulation

• Discourse: EU talks a lot about sovereignty

• Laws: EU nevertheless takes steps to assert sovereignty according to common definitions, new laws are also about control
Definition?

- legitimate control over the digital standards, data, software, infrastructure and services

- A set of tools for asserting regulatory power and maintaining strategic autonomy
Definition?

• regulatory power
  • The power to reach those who need to be regulated – extended scope of EU laws to non-EU actors
  • The power to enforce laws: relevance of EU agencies (e.g. the Commission)

• strategic autonomy
  • The ability not to depend
Three manifestations of EU digital sovereignty

• The “Brussels effect”: control over territorial scope of its laws & the ability to impose their application

• Universal acceptance (because the solutions are good ?)

• The ability to regulate increasingly large number of platforms
Three examples where it is lacking

• Cyberattacks

• Content is created in the US, largest digital businesses all non-EU

• Platforms have the financial capacity to innovate around EU laws
EU Regulatory Framework & Digital Sovereignty

• Not defined in the old pillars (ECD, EECC, AVMSD)
• Not in 2015 DSM
• 2020 DSM
  • Integrity and resilience
  • Ability to develop own capacity
  • Ability to define own rules
• The 2021 Digital Compass: incoherent and clichéd
What is *new* in EU laws today

• *Ex ante* approach (DMA, AI Act)

• Asymmetric regulation (DSA)

• Risk-based compliance (DSA, DMA, NIS2...)

• Massive increase in sector-specific regulation = less certainty about interplay between laws
1 Control over data

- Low investment and adoption of AI compared to China
- Low talent attraction, less patent applications than US
  = dependence on foreign technology

- Massive amounts of data in the control of Google, Apple, Facebook, Amazon and Microsoft
  = dependence on foreign platforms
1 Control over data

• Actions that need to be taken:
  • GDPR review
  • More sector-specific rules
  • ePrivacy Directive review
2 Cybersecurity

- Reliance on Chinese infrastructure
- Reliance on cloud solutions based abroad

- Actions
  - Gaia-X: an EU initiative for cloud sovereignty
  - NIS2
  - Cybersecurity Act
  - Common EU approach to 5G security
2 Cybersecurity

• Actions to be taken or need to be taken
  • Procurement
  • Better Certification
  • Better Coordination
3 Control over platforms

• DSA
  • Risk-based regulation of VLOPs
  • Meaningful sanctions
  • But, uncertain national enforcement

• DMA
  • Ex ante control of gatekeepers
  • But, no enforcement expirience
EU outline of policy tools for protecting digital sovereignty

- Privacy/data protection
- Investment screening
- Trade rules
- Cyber security
- Export control
- Industrial and innovation policy
- Government/public procurement

Atlantic Council
Problems?

Source: United Nations Conference on Trade and Development

Atlantic Council
1. OVERVIEW OF THE TECHNOLOGY SCENARIOS

- Early EU success as GDPR 2.0 and AI rules enter into force
- China and US adopt EU rules to access European market
- Europeans gradually embrace digitization in wake of “digital euro”
- EU finally sets new tech norms having bridged its digital divide
- EU is ground down between the US and China

- EU establishes satellite internet system for “autonomous public sphere”
- Top-heavy EU projects hinder bottom-up innovation
- Digital divide in Europe widens; EU digital market fragments

- China and US take the lead in technology norm-setting
- Huge cyberattacks disrupt infrastructure worldwide
- New era of digital diplomacy (UN Digital Agency)

- Fear in EU of Chinese disinformation
- Pension fund reform spurs innovation in EU
- Chinese launch disinformation campaign

German Council of Foreign Relations
1. OVERVIEW OF THE TECHNOLOGY SCENARIOS

- Early EU success as GDPR 2.0 and AI rules enter into force
- China and US adopt EU rules to access European market
- Pension fund reform spurs innovation in EU
- EU begins to over-regulate; innovation and digitization suffer
- EU finally sets new tech norms having bridged its digital divide
- New era of digital diplomacy (UN Digital Agency)
- Huge cyberattacks disrupt infrastructure worldwide

German Council of Foreign Relations
Problems?

• Sovereignty may not be achievable only through better laws

• Low innovation, lack of competition, low investment in next-gen not problems for which sovereignty is the solution
Alternatives

• Resilience

• Capacity to act