



In the Shadow of EU Governance The Externalisation of EU Digital Privacy Norms beyond the Neighbourhood

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Abstract

With the General Data Protection Directive (GDPR), the European Union (EU) has emerged as the world's data privacy cop by forcing others to comply and by shaping the way in which the topic is discussed globally. With cyberspace continuously growing and the need for global regulation becoming more pressing, it is extremely relevant to determine how the EU effectively exports its rights-based model beyond its neighbourhood. In the literature, the mechanisms of EU external governance beyond the neighbourhood have been underexposed. Accordingly, this study will attempt to answer the following question: under what conditions do third countries converge to EU digital privacy norms? It will be argued that third countries converge towards EU digital privacy norms when the EU has sufficient bargaining power, the economic costs of non-compliance are high and third countries find the norms appealing, both as domestic policy solutions and as appropriate rules of behaviour.

The study is done through a congruence analyses that tests the competing explanatory power of March and Olsen's logics of consequence and appropriateness when applied to the cases of the United States (US) and Japan. The former presumes actors base their actions on rational cost-benefit calculations and choose the action that under the circumstances they think would lead to the biggest profits or the smallest losses. The latter, by contrast, expects actors to act in accordance with what they believe is socially suitable in the socio-cultural context in which the action takes place. The logics are fit into Barbé et al.'s rule selection theory and operationalised using an adapted version of Frank Schimmelfennig's four mechanisms of Europeanisation: bargaining, externalisation, socialisation and imitation. The empirical analysis shows that, although both logics were present, for both the US and Japan the logic of consequence has played a larger role and in general indirect Europeanisation mechanisms have been more prominent. For both, the bargaining proposition could only partially be confirmed which shows that the EU can only to an extent strong-arm third countries outside of the neighbourhood into adopting its rules. Externalisation, by contrast, was distinctively observable in both cases which confirms the passive impact of the EU's market power. The effect of this power is amplified when the rules in question offer suitable policy solutions for domestic problems and domestic demands for change is already considerable. The socialisation proposition could not be confirmed, either because of a lack of evidence or because persuasion efforts by the EU simply were not that effective. Imitation, finally, could be confirmed as well, completely for the US and with caution for Japan. This underlines the importance of normative appeal in the convergence process, especially in the long run.