

契合永續目標之數位基建發展與投資人保護之平衡：以歐盟數位治理規範為例

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摘要

歐盟作為全球數位治理與規範輸出之核心區域，長期以推動資料保護、平台規範與技術標準制定為己任。其在數位轉型過程中，除強調經濟效率外，亦積極導入永續發展價值，尤以數位落差弭平、資訊透明與使用者權益保障為核心，建構所完整的數位治理規範體系。此歐盟數位治理之規範涵蓋資訊近用、隱私保護、資安穩定與數位平台之公平競爭環境，與聯合國永續發展目標（SDGs）高度契合。然而，歐盟對外簽署之國際投資協定（IIAs），多仍承襲傳統以投資人權益為本位之結構，對公共政策所需之規範彈性容納不足，潛存重大制度衝突風險。

本文以歐盟與歐盟數位基礎建設相關規範為分析核心，主要是一般資料保護規則（GDPR）、數位服務法（DSA）及歐盟數位市場法（DMA）等數位治理法案為分析核心，系統檢視其條文所導引之資料在地化、演算法揭露、平台互通性義務等措施，在實踐上是否構成對投資人之差別待遇、不公平待遇，乃至間接徵收。更進一步分析現行歐盟投資協定中是否設有足以支持永續數位基建推動之例外條款、規制權條文或非符合措施保留（NCM）機制。本研究冀由制度設計視角出發，檢討現行 IIAs 在面對永續數位基建政策時之適應性，並評估是否有必要因應永續數位基建需求，增加額外的政策彈性空間。

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Reconciling Sustainable Digital Infrastructure Development with Investor Protection: An Analysis of the EU's Digital Regulatory Framework

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Abstract

As a global frontrunner in digital regulation, the European Union (EU) has actively integrated sustainability values into its digital governance framework, emphasizing data protection, platform accountability, and user rights. While these efforts align with the United Nations Sustainable Development Goals (SDGs), tensions have emerged between such regulatory initiatives and the EU's existing international investment agreements (IIAs), which largely prioritize investor protection. This article examines the EU's digital infrastructure-related regulations—primarily the General Data Protection Regulation (GDPR), Digital Services Act (DSA), and Digital Markets Act (DMA)—and assesses whether measures such as data localization, algorithmic transparency, and interoperability obligations could constitute breaches of investor rights under IIAs, including fair and equitable treatment and protection against indirect expropriation. Through a regulatory design perspective, this study further analyzes whether current EU investment treaties provide sufficient policy space—such as through exceptions, regulatory rights clauses, or non-conforming measures—to accommodate the development of sustainable digital infrastructure. The findings suggest that while the EU has adopted robust safeguards to promote sustainability, its regulatory approach often underestimates the impact on foreign investors and may lack the necessary balancing mechanisms to avoid conflict with investment obligations. The paper concludes by offering recommendations to enhance coherence between sustainability-driven digital governance and international investment law.

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