

Data Compliance Dilemma and Optimization Path for Public-Private Partnership Model in Digital Governance

Zinan Mo

School of Law, Guangdong University of Finance & Economics, Guangzhou, 510320, China

Abstract: The problems of digital governance public-private partnership under the pressure of data compliance supervision and law enforcement have accelerated in terms of the collaborative relationship of subjects, risk-benefit distribution model, official planning and execution effectiveness and governance capacity. Moreover, the characteristics of data and compliance requirements have formed a new two-way risk transmission phenomenon in digital governance cooperation, and the means of risk avoidance through contracts are gradually failing. Against the background of relatively unsound development norms, defective cooperation models and insufficient supply of governance capacity, three major development dilemmas of tripartite game, model imbalance and insufficient effectiveness have been formed. The imbalance of benefits, risks and responsibilities will shackle the development momentum of public-private partnerships. The supervision, collaboration and development of public-private partnership in digital governance, on the one hand, need efficient top-level design, integrated planning and implementation measures. On the other hand, there is a need to clarify the boundaries of authority and responsibility of subjects, and to regulate their behavior in order to adapt to the dynamic legislative and regulatory environment of digital security. In order to solve this dilemma, we need to propose strategies to strengthen coordination, improve rules, innovate systems, regulate internally and externally, optimize the model, and take into account incentives from the legislative, judicial and compliance levels.

Keywords: Digital Governance; Public-Private Partnership; Data Compliance.

1. Introduction

Under constant in-depth development of digital technologies and digital economy, big data, cloud computing and artificial intelligence are more closely integrated with public governance field, and the tension between governing efficiency and expected goal urges the intervention of digital technology to fill in the lack of demand in this field. The introduction of digital technology achieves the effect of improving governmental management structure, optimizing public service supply and expediting the reforming process of a service-oriented government, besides, it is also reshaping the specific model, participating subject, external environment and governing paradigm of governmental governance from time to time, and has promoted the emergence and development of public-private partnership in the field of digital governance. Since the enterprises with advanced technology can make up for the deficiency of government in related capability and resource, the cooperation of the both can facilitate to improve social governance rules, enrich the composition of subjects and product supply in social governance, give a better play to the public value of government and enterprise in social governance and the compound value of data in social operation, and propel the modernization of social governance system and governing capability.

Meanwhile, the data security system network dominated by the government has been tightly woven increasingly, and the top framework of China's data security system composed of Cybersecurity Law of the People's Republic of China, Data Security Law of the People's Republic of China, Personal Information Protection Law of the People's Republic of China, and Regulations on the Administration of Network Data Security organized and drafted by Cyberspace Administration of China has already taken its shape. The supporting standard

specification guide, industrial rules and regulations, departmental regulations and departmental working paper for data security are also intensified to formulate and unveil. In terms of law enforcement, on the one hand, the formulation of related regulations are jointly promoted with improvement and compliance work, forming dynamic data compliance development characteristics; on the other hand, the supervision practices gradually show professional and refined feature. Special regulations for specific fields and scenarios of some vertical industries come out continuously, and relevant legislation, supervision and law enforcement work shows a refined development trend.

On June 23rd 2022, the State Council's Guideline for Enhancing Digital Government Construction released by the State Council of the People's Republic of China emphasized that, on the one hand, we should adhere to holistic coordination and promote technical fusion, business fusion and data fusion as a whole; on the other hand, we should insist on the combination of promoting development and law-based management as well as attaching equal importance to security controllability and open innovation. During the exploration of public-private partnership in new governance model under digital era, new governance requirements and compliance challenges have been created in the case of data security problem has been stressed constantly.

2. Data Compliance Challenge for Public-Private Partnership in Digital Governance

Data compliance as an important component of information construction is an effective means of leading digital legal construction and the development base point of China's information system construction and governance modernization strategy as well. Taking a positive observation

on pressure, a high-pressure supervision state provides a good institutional guarantee for collaborative governance of data security, and also requires highly on data source compliance, data security compliance and data management system compliance of public-private partnership in digital governance field. Looking into the reverse side of pressure, such phenomena as network attack, information leakage, and personal data rights and interest being infringed rising from the development of social informatization are also on the rise. The public authorities will handle with huge amount of data in social governance and public service. The data processing behavior of public authorities shows the following characteristics: wide internal coverage, that's to say they handle with data throughout data acquisition, storage, usage, transmission, publicity, destruction and other links, almost covering the full life cycle of data; strong external control, that's to say, the legitimate foundation of data processing by public authorities is not only based on the commonly used processing model with "inform-agree" as its core rules, they can also legalize their data processing behavior based on what is stipulated in Personal Information Protection Law of the People's Republic of China, such as "necessary for the performance of statutory duties or obligations", "reasonably implement to safeguard public interest or the legal rights and interests of a nature person", "necessary to handle with personal information based on the conclusion and performance of contract and the implementation of personnel management" and so on (Peng Yu, 2022:173-174). Moreover, public authorities have natural superiority over individuals, making them to obtain personal data under less obstruction. This makes it possible for them to ignore processing purpose, collection cycle, frequency and scope in practice, thus resulting in the emergence of non-compliance treatment such as excessive collection and repeated collection. While, after digital governance is introduced to public-private partnership model, its data compliance risk coefficient is rising. Internally, on the one hand, it is essential to reinforce data compliance capacity building, regulate their own data processing behavior, enhance insiders' compliance awareness and ability, drive the establishment of full-flow data security management system, set up compliance warning system, formulate risk assessment mechanism and supervision warning mechanism, and establish security incident response mechanism, to guarantee emergency warning, response and support processing capabilities; on the other hand, it is necessary to propel the refined development of data processing behavior norm, and supplement the supporting data protection technical measures, organization and management measures, and relevant authorization approval procedures and norms. Externally, it is required to collaborate with cooperative enterprises, formulate supporting data processing authority, security norms and processing data type, regulate enterprises' subcontracting behavior, and encrypt and control the authority of data involved in cooperation, especially the sensitive data. Besides, it is imperative to supervise the cooperative enterprises, in order to prevent illegal data processing, retention and tampering, commercial utilization without permission or compliance, data leakage and other security risks. At present, there have been data breach events in the area of public-private cooperation for digital governance: recently, Shanghai travel code database was auctioned off on a dark web for 4,000 dollars, and the poster said the data come from Shanghai Big Data Center and the database contained the data of 48.5 million users, including

user name, mobile number, ID number, travel code color and UUID. A reporter verified the mobile number, name and ID provided by the leaker with the residents to be true and they had ever registered Shanghai travel code. A staff of Shanghai Big Data Center said the center was only responsible for the research and development of Shanghai travel code, but the personal information being sold online wasn't leaked by them. Introducing enterprises to digital governance field is riskier and more uncertain compared to traditional cooperation model.

At present, the focus of data compliance in implementation and promotion mainly concentrates on the enterprises in public-private partnership model. That's to say, the enterprises should internally establish compliance system and make special rectification to dissolve potential and easily exposed compliance risks or avoid risk though compliance non-prosecution system. However, in the context of public-private partnership, the unbalance between governance and compliance may also lead to governance dilemma. In the face of the challenge of data compliance, digital governance gradually forms a development dilemma with subject value conflict and game as background, insufficient governance and supervision efficiency supply as reason, and imbalance of profit and risk allocation as characteristic. It is collectively embodied by three core issues: incompatibility between governance capability supply and development demand caused by slow iteration of top design and rule, surge of associated risk caused by insufficient development standardization degree and rapid updating rate of compliance environment, and development stall caused by imbalanced distribution model and inadequate incentives allocation. For above development dilemma and symptoms, the enterprises couldn't completely settle by themselves through improving data compliance capabilities or making rectification, but they should rely on the coordination of public authorities under public-private partnership model, to meet the requirements of new supervision state and digital construction and development goal. This is the key link that public-private partnership can achieve data compliance requirement under data governance.

This paper will discuss the practice and exploration of public-private partnership in regional digital governance field in China, identify the risks for public-private partnership practice under new supervision trend, analyze the actual difficulties and causes for public-private partnership in data compliance practices. Further, put forward countermeasures of public-private partnership model in the face of data compliance supervision.

3. Dilemma and Cause Analysis of Digital Governance Public-Private Partnership Practice

3.1. Game pattern of "market-government-society" structure

Introducing enterprises to participate in the development of digital governance construction by the subject of public authorities, at the micro level, there exists value conflict between public and private sectors under entrust-agency mechanism; and at the macro level, there also exists hidden game pattern with social governance function, citizens' lawful rights and interests and market value law as elements.

3.1.1. Subjects' conflict of interest under public-private partnership model

In the micro public-private partnership model, the relationship of two parties' subjects is characterized by conflict of interest. On the one hand, under the entrust-agency mechanism, social public interests represented by the subjects of public authorities pose a pressure on them to perform public service function, which naturally contradicts to the value orientation of enterprises which pursue maximal private interest; on the other hand, the discrepancy of purpose and evaluation criterion caused by identity, social position, ability and resource, and the information gap between two parties arising from collaboration crack, lead to the heterogeneous conflict between public authorities' subject and private subject (Yue Yujun, 2020:106). The deviating value orientation represents different value evaluation criterion, that's to say, both parties would consciously ignore the purpose or interest of the other party based on the consideration of necessity and priority. Such contradiction is normally dominated by the dominant party in the partnership model, and they would transmit risk and cost to the other party through such partnership so as to avoid loss result. Therefore, when such value contradiction appears in public-private partnership practice, the dominant party will oppress the other party. In the case of two-party game, no matter which party in the partnership model puts its purpose at a prior place, the other party will be oppressed to lower its standard or deviate from norm, further aggravating the dominant party's confidence crisis on the other party, finally making the partnership to trap in a vicious circle that both parties restrain each other and output falls below expectation.

3.1.2. Imbalance of subject position and interest in a ternary structure

In the macroscopic ternary game pattern, the public authorities, enterprise and social public shape a ternary structure with public benefit as the core of interest balance (Xu Jiujiu,2017:111-113). In this ternary structure, the correlation of three parties' subjects is generally manifested as: the public authorities' subjects based on governance function will squeeze the profit space of enterprises, huge platforms or enterprises with exclusive technology will make use of the partnership with public authorities' subjects to invade public interest and citizens' interest, and laws and regulations could regulate the behavior of public authorities and enterprises to protect the lawful rights and interest of citizens. Viewing this relationship imbalance chain from the perspective of governance, it is discovered that traditional governance model focusing on the relationship between public authorities' subjects and citizens has been broken by the participation of private subjects. The addition of new subject pushes the role of public authorities to transform and the status of private sectors to rise (David Páez-Pérez, 2016:567-594).[8] On the one hand, this increases the legitimacy and compliance difficulty of governing activities of public authorities' subjects due to more subjects and behaviors. Meanwhile, the increasingly perfect data compliance laws and enhanced supervision situation tend to broaden the risk exposure of partnership model; on the other hand, the original relief channels under binary subject incompatible with traditional supervision framework may give rise to the hysteresis and failure of supervision and law enforcement, thus resulting in the civil data rights and interest being infringed (Zhang Luping,2017:50). Hence, when inspecting the legitimacy and compliance of both parties'

behavior in public-private partnership, orienting towards the protection of civil rights is the key to guarantee both parties' behavior to have legal basis. "The legal reservation principle based on rule by law and democratic principle requires that the disposal of all important matters should have legal basis, especially when it comes to the area of the realization of fundamental rights, such as the matter of entrusting private person to exercise public power, using private person to deal with sensitive information, and carry out private departmentalization" (Center for Public Law, School of Law, National Chengchi University, 2011:235).

3.2. Imbalance allocation situation of "benefit-risk-duty"

3.2.1. Unequal distribution of benefit and risk under supervision situation

The status difference and purpose deviation during cooperation as well as uncertain benefit realization expectation and guarantee make both parties to fail to generate cohesion in partnership, as a result, the motivation will be insufficient, the completion of specifications and standard will be not up to standard, or even the partnership will degenerate to a situation of using each other for their own ends. So, in the practice, when public authorities face to a balance or trade-off between social public benefit and project interest, they would always give priority to public benefit while ignore the profit space of enterprise. However, after an enterprise is authorized by public authorities, due to technical need or profit purpose, it would usually conclude contract with other subjects to improve project construction, operation and management efficiency, thus forming an entrust-agency relationship between this enterprise and other subjects (Fu Cunjin,2016:67). The means adopted by enterprises to achieve entrust purpose and the entrust-agency relationship between enterprises and other subjects are possible to influence digital governance compliance under data compliance context. The addition of data compliance requirements allows supervision to not only cover the behavior of public authorities but also all subjects through which data flows. The examination of data source legitimacy and compliance, data lifecycle safety, personal data rights and interest, special handling specifications for important and special data categories, and data exit security let public and private subjects in partnership and other subjects involved in data processing in digital governance subject to the equivalent regulatory requirements, further increasing the collaborative difficulty of public-private partnership. By this moment, governance difficulty is reflected at that public authorities' subjects have to supervise not only the data security capability and data processing behavior of the subjects of partnership formed through contract, but also other subjects involved in data processing in digital governance. It is also reflected at that enterprises together with other subjects involved in data processing in digital governance need to build or enhance their own data compliance capability because their handling of public authorities' data, so as to meet the security requirement of data processing of public authorities. For the development of public-private partnership in digital governance, the requirement of security measures and compliance capability raises costs and admittance criterion, so the scope of public-private partnership in digital governance is compressed.

3.2.2. Uneven assumption of risk and responsibilities of both parties in partnership

In the digital governance partnership practice, the new governance paradigm of multiple co-governance and risk sharing not only injects external vitality to digital governance, but also expand the scope of risk source of public authorities (Chang Zheng,2017:9). For one thing, enterprises participating in the whole process of governance will require higher on the collaborative capability and supervision mechanism of public authorities. In digital governance context, the enterprises and public authorities take actions based on the same governing purpose. If public authorities put the entrusted and authorized cooperative enterprises in a black box state in technical field, they can't effectively and accurately identify the legitimacy and compliance situation of enterprises on their technological realization efficiency, path and results. Lacking perfect systematic and mechanism guidance, public authorities make improper choice at project identification stage due to industrial information gap, which will have an impact on follow-up cooperation projects (He Xiongjiu,2017:139). In addition, on account of different social positions, resources and habits, both parties are easy to fall back into suspicion pattern in traditional cooperation model: public authorities are unable to adequately share their resources due to distrust to outside world, and excessively intervene enterprise behavior from decision-making efficiency and risk control, which results in decreased efficiency and effect of enterprises in cooperation and further falling into a vicious cycle of unilateral output and resource information closure caused by the overaggressive party; for the other thing, though the obscure demarcation of "decision-execution" between public and private subjects endows the subjects in this partnership with more flexible and deeper element flow and collaboration window, it also impairs the risk isolation between public authorities and enterprises in traditional model. At the meantime, under the background of data compliance, the risk that the subjects in public-private partnership handle with data in violation of laws and regulations in digital governance field will propagate bidirectionally with data transmission and both parties' partnership. In traditional public-private partnership model, the failure of risk control means of distributing risk to enterprises through contract means that the behavior of cooperative enterprises would directly affect the realization of public authorities' governance purpose and the formation of compliance risk. In other words, under the background of data compliance, public authorities will become the principal risk undertaker in such partnership. In the case of risk-averse decision orientation, system and public opinion supervision environment as well as lacking predictable fair return, it will be rational choice for public authorities to intervene actively in the partnership and emphasize its strong position and controlling role. But the occurrence of such situation will often have a negative effect on the partnership of both parties.

3.3. Insufficient efficiency supply of "governance-collaboration-supervision"

3.3.1. Collaborative governance difficulty resulted from regional disparity and insufficient coordination

Macroscopically, due to the divergence of economic and information development degree in various regions, the regional collaboration under data compliance supervision also have development problems due to lacking unified digital governance capability. The problem of insufficient regional

digital governance construction collaboration is significantly reflected in data governance and compliance related documents released by various regions. By observing the data regulations and public data management measures issued by various provinces and cities, it can be found that each province and city has its own tendency in the distribution of power and responsibility in internal data management: the power and responsibility are mainly distributed to the government of various levels, public data authorities, public administration and service agencies. While in preparing and implementing relevant mechanism, specifications and standards, some tasks are not clearly defined to the subject at all levels, some responsibilities lack measures to ensure implementation, some implementation rules have not defined the subject of formulation and implementation, the regulations are too macro without implementation rules, or the regulations fail to cover the data life process, and so on.

Microscopically, in China's practice of public-private partnership, the absence of unified and efficient top-level design and overall planning still lacks an effective solution (He Xiongjiu, 2017:139). In the field of digital governance, public authorities need to face two key contradictions: the open flow of data and data security, and data security and judicial and administrative efficiency. In the new situation of data compliance, the traditional governing path that defines the rights and responsibilities of public and private sectors through contract (Fu Jincun, 2016:69) shows some problems such as inadequate binding force on cooperative subject, limited scope of constraint, deadlock in negotiations, and so on. In this regard, the balance between power delegation and control of enterprises by public authorities in partnership model has become a difficult point in governance: technology upgrade or function realization by enterprise will inevitably involve data security issues, but excessive control over cooperative enterprises will lead to rigid relations between two sides. Public-private partnership is a kind of collective actions, and the two parties in the partnership can reach a collective consensus through information interaction and collective studying, to form the interdependent relationship in project cooperation(Khalid Almarri, 2014:847—856).[16] Meanwhile, in reality, overstrict security measures and procedures will reduce the efficiency of justice and administration, and problems such as insufficient supply and resource crowding caused by low efficiency will further aggravate the governing difficulties of public authorities.

3.3.2. The problem of insufficient supply of supervision effectiveness and incompatibility of governance practice

In the absence of supervisor, public authorities are lack of supervision on data processing legitimacy and compliance of public sectors or enterprises, the likelihood of opportunistic behavior of enterprises rises. It may eventually lead to security incidents such as leakage, attack, tampering and loss of data in the collection, storage, use, transmission, disclosure, destruction and other links in the construction of digital governance, and the data quality, legitimacy and compliance may be not up to standard and affect the subsequent data processing. In the case of supervisor offside, the boundary of public authorities' behavior and power and responsibility are not clear. Under the traditional block system, supervision organs of urban utilities in China are scattered across multiple sectors, without clear distinction of the authority of the subject (Fu Jincun, 2016:69). On the one hand, this tends to give rise to excessive interference of public authorities in the

operation freedom and business decision of enterprises (including project company SPV); on the other hand, due to unclear responsibility boundaries between sectors and unclear accountability relationships at all levels, it is easy to produce multiple management, offside management, buck-shifting, opaque decisions, and some governance mechanisms and institutions left idle or unable to play a full role, which affects the supervision efficiency in digital governance (Darin Grimsay, 2016:265).

In theory, public authorities has the “dual identity” of execution and supervision. If the multiple functions and roles of government are not clearly designed and regulated in law, it is very easy to cause the lack of necessary code of conduct and process setting or the inaccurate understanding of actual implementers on data compliance related provisions in the governance practice, resulting in the overall supervision absence. In this case, it is difficult for public authorities to timely detect and correct by setting up feedback channels for civil information rights and interests, public opinion, and self-behavior detection, as a result, a larger range of data security events or illegal behaviors may occur. The lack of effective regulatory means may even accelerate the exposure of the conflict between government self-interest and public welfare, result in the government’s power expansion and self-expansion and making improper decisions driven by utilitarianism, and exacerbate the problem of interest imbalance (Xu Jiujiu, 2017:110).

4. The Bailout Path from the Data Compliance Perspective

4.1. Refinement of data governance rules and practice dimension

Public-private partnership refers to the model in which public authorities establish long-term cooperative relations with enterprises and other subjects through signing contracts to complete public planned projects (Zhou Xiaomei, 2020:8). Based on the security level requirements of the data involved in digital governance, the speed of technological iteration, the stability of use scenario, the high standard of admittance subject and other factors, the public-private partnership also requires both parties to clarify the rights, responsibilities and obligations of the public and private subjects in the long-term partnership through a stable link.

Therefore, in the dimension of governance rules, it is necessary to clarify how to standardize the development of public-private partnership to reduce various risks and legal problems in practice. At present, most of the relevant provisions of public-private partnership in digital government are scattered among various sector laws, judicial interpretation, administrative regulations, departmental regulations and normative documents, which presents the characteristics of fragmentation of data governance rules. In this regard, we can refer to the exploration of some countries on the development path that stipulates in advance the basic rules, benefit distribution, risk sharing and other aspects agreed upon by the two sides in public-private cooperation at the legislative level. For example, Germany promulgated the Law on Accelerating the Implementation of Public-Private Partnership and Improving Its Legal Framework Conditions (namely the Law on the Promotion of Public-Private Partnership) in 2005, which sets out the legal framework conditions to promote the development of public-private partnership (Chen Yiman, 2019:35). It not only clearly

defines the identity of private sector and the nature of PPP contracts in law, so as to control the legal risk and uncertainty of PPP contracts (Chen Wanling, 2014:80-82), but also unifies and standardizes PPP contracts and clearly specifies the supervision subject’s comprehensive review obligation for PPP contracts. (Fu Jincun, 2016:68) Under the legal framework of the European Union, the French government has formulated normative measures for the PPP model mainly at the contract level. In June 2004, the No.17 Special Motion on Contracts for PPP Projects was promulgated to regulate the construction, financing, operation and management of PPP projects (Zhu Xiaolong, 2017:83).

In terms of governance practice, there are regional differences in the distribution of governance practice, which are promoted more by regional public authorities based on their own abilities and needs. In terms of responsibility allocation, there are differences in the focus of authority subject and responsibility subject in regional data regulations and data governance methods, and the governance means and regulation methods they focus on are also different. In the field of digital governance, different public authorities have different organizational structures, data types involved and data processing requirements. Hence, in the absence of a unified and long-term top-level structure and special laws, it is difficult to meet the changing practices of public-private partnership. The solution to this situation can refer to foreign governance paths. Taking the common law system as an example, the UK and Australia have not formulated special statutory laws in the field of public-private partnership, but formulate and issue corresponding policies or guidelines to regulate relevant subjects and relationships; civil law countries represented by France and Germany generally adjust public-private partnership through administrative legislation; Canada’s legislation system in the field of public-private partnership has the characteristics of diversification, which is divided into national legislation, local legislation and related policies, so its system is relatively complete (Ding Xinzhen, 2020:133).

4.2. Innovation at the supervision level of public-private partnership

At the level of supervision of public-private partnership, it can be divided into institutional text dimension and organizational structure dimension, and refined improvement can be made in combination with the characteristics of digital governance and the requirements of data governance. The authorities can standardize the cooperation subject by unifying the cooperation system text and innovating the supervision of organizational structure in cooperation.

At the level of text norm, the system documents such as personal information processing rules, data processing standard agreement, data processing standard contract terms, sensitive personal information informed consent form, etc. applicable to various scenarios are released, or the contracts and standard contract terms submitted by the public-private partnership parties are reviewed. Officially approved provisions that provide adequate safeguard for data protection can be applied to digital governance public-private partnership. Through standardizing the basic institutional documents involved in the digital governance public-private partnership, the requirements of data compliance are transmitted to the partners through the terms of contract to: clarify the obligations and responsibilities of both parties, screen the participants of public-private partnership in the

entry stage and regulate in the governance stage, so as to ensure governance quality and compliance requirements. At this level, we can learn from the relevant provisions of the European Union on the cross-border transmission of personal data. In accordance with Paragraph 2 c and d of Article 46 of General Data Protection Regulation(GDPR), by publishing Standard Contractual Clauses published by the European Commission or agreed by member countries' data protection supervisors, the authorities confirm the clauses can provide full safeguard to data protection and clarify the standards of cross-border data transmission and the obligations assumed by both parties, and the safeguard of cross-border data transmission is stipulated(Jin Jing, 2022:26). Applied to the field of digital governance, it not only meets the need of protecting data security and personal data rights and interest, but also facilitates the construction of a unified and standardized public-private cooperation market in the field of digital governance, and promotes high standards of data protection.

At the level of organizational structure, first, the public and private parties can be required to set up data security leaders to clarify each party's responsibilities, strengthen data supervision and security protection, and optimize data relations and collaborative applications (Tan Yanbo, 2022:144-145). China can refer to the practical experience of American government's chief data officer system, and set up our government's chief data officer system according to national conditions and concrete scenarios (Zhang Tao, 2021:68). Second, in order to improve the efficiency of digital governance and ensure data security, we can learn from the EU's regulations on data transmission within large group companies in the field of cross-border data transmission. In accordance with the Binding Corporate Rules (BCRs) stipulated in Article 47 of the General Data Protection Regulation, the implementation of data compliance, internal data transmission specifications and a series of standards of transnational and group corporations are reviewed, and after EU member states' data management organizations review and approve them, the cross-border data transmission within the group can be carried out directly, with no need of additional approval. In digital governance, public authorities and enterprises in public-private partnership can be regarded as a "consortium", in which, the data compliance and compliance capability construction could be evaluated in detail. If the compliance requirements stipulated by laws and regulations are met, the data processing of public-private partnership subjects under this "consortium" can be excluded from the scope of routine supervision. In other words, when the data compliance capability and security mechanism of both parties in the public-private partnership remain unchanged, they only need to be subject to regular and necessary supervision. Third, we can learn from the EU's Adequacy Decision applicable to the countries and regions in the field of cross-border data transmission. Under Article 45(2) of the General Data Protection Regulation, the European Commission can take into account standards such as the data protection level of the country to which data is transferred, to ensure that the level of data protection in that country is in fact "substantially comparable" to that of the EU, so as to determine that such data transmission behavior will not prejudice the data rights of citizens in the EU economic area(Jin Jing, 2021:95). In the field of digital governance, by reviewing the holistic data protection level of public authorities and partners in a certain region and certifying the

data protection capabilities provided by both parties, the regional data protection level rating can be determined, and the digital governance activities in this region can be downgraded in terms of supervision intensity and frequency.

4.3. Optimization of "supervision-incentive" model

In the situation of gradually strict supervision, the supporting law enforcement actions also show a trend of normalization. In this context, adding incentive mechanism is an objective demand for great supervision difficulty in reality, and incentive mechanism can provide support for data compliance (Li Yuhua, 2021:14). The addition of data compliance requirements limits the behavior of public and private subjects in the field of digital governance, and puts forward the compliance requirements to increase cooperation cost and difficulty. Under the constraint of bounded rationality, the public-private partnership makes the social responsibility of enterprises heavier, which requires them to balance the dual goals of profit generation and public interest. The contrary value orientation is easy to lead to opportunistic behavior in public-private cooperation due to the emergence of special circumstances, resulting in increased risks. So it is necessary to guide the cooperation to the scope of legitimacy and compliance through external incentives. To realize the incentive measures under supervision, first of all, it is required to strengthen the coordination function of the main responsible units under the supervision system, set up a supervision mechanism with clear power and responsibilities, and prevent multiple management, offside management, repeated penalties and other out-of-order situations to produce multiple pressure on the partnership subjects and lead to incentive failure(He Xiongjiu, 2017:139). Secondly, use positive incentives to guide the compliance promotion in the field of digital governance. From the perspective of publicity and incentives of legal norms, the introduction of relief paths for data illegal behaviors such as compliance non-prosecution system and administrative reconciliation system in the field of data security supervision can provide internal impetus for enterprises to promote compliance rectification and the development of partnership model compliance in the public-private partnership of digital governance. Combined with the existing judicial practice in China, the system is more suitable in the domestic public-private partnership of digital governance: the procuratorial organs will also evaluate the decision not to prosecute the enterprise based on the perspective of social public interest and value pursuit (Sun Guoxiang, 2022:85). Therefore, "in the pilot practice of enterprise compliance, the presence and size of enterprise social benefits become an important content of substantive assessment." (Ye Weizhong, 2021) In March 2020, the Supreme People's Procuratorate launched the pilot reform of "enterprise compliance supervision" to carry out compliance reform of the enterprises involved in the case, and eligible enterprises can be exempted from criminal responsibility through compliance rectification (Zhu Liang, 2022:136). In May 2022, the Putuo District Procuratorate decided not to prosecute the suspect, becoming the first representative case of data compliance nonprosecution in China. From the perspective of punishment and warning of legal norms, "requiring enterprises to complete compliance rectification, which is a non-penal sanction, not only requires them to invest economic costs in compliance construction, but also to complete transformation in governance structure, business

model and personnel, which is more severe than fine”(Liu Yanhong, 2022). Finally, it is also feasible to use negative incentives to perform high pressure supervision on the subjects of public-private partnership involving public interest, that is, high intensity supervision and strict punishment measure. We can learn from the relevant provisions of the EU’s General Data Protection Regulation, and promote enterprises to develop compliance plans by increasing the intensity of sanctions against non-compliance and emphasizing the influence of enterprise compliance degree on the sanction intensity (Voss, 2016:783-820).[36]

5. Conclusions

The initial purpose of public-private partnership introduced into the field of digital governance is to make use of social subjects’ advantages in technology, capital, management and so on to promote the digital transformation of public authorities. This not only provides convenient support for the cost reduction and efficiency improvement of public authorities at the technical level, but also facilitates the optimization of the organizational structure of public authorities. It avoids the development problems that may exist in “omnipotent government”, such as organization bloat, function redundancy and insufficient performance, and promotes the modernization construction of “limited government” governance capability.

After the domestic legal system of data security and personal information protection is improved day by day, when the relevant subjects in the digital governance public-private partnership face the trend of stricter data compliance supervision and law enforcement, due to their own model still to be optimized, insufficient supply of governance capability, and the absence or not in-place implementation of supporting governance norms, etc., the problems therein are gradually exposed. In regard of this, it is essential to adjust the distribution of benefits and risks in the public-private partnership model from the perspective of regulatory subject at a micro level. Besides, it is possible to innovate rules in practice and organizational regulation methods, and promote public authorities to improve their governance and coordination ability. At the macro level, we can balance and allocate the game pattern of the three parties of public-private partnership from the internal relationship dimension. From external relationship dimension, we can refine and supplement the supervision means and incentive mechanism of data compliance according to the characteristics of the subjects in digital governance public-private partnership and their relations, so as to promote the compliance development of public-private partnership model in this field.

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