Briefing

European Parliament

EU-Brazil cooperation on internet governance and ICT issues

SUMMARY

Following revelations of large-scale Internet surveillance Brazil and the EU have become actively involved in the global debate on internet governance. Since early 2014 cyber policy has become part of the agenda of the EU-Brazil Strategic Partnership. The two have agreed on the need for support for inclusive and transparent internet governance based on a multistakeholder governance model, and are moving forward on a number of related bilateral initiatives in the 2015-2017 Joint Action Plan.

In 2014, Brazil hosted the Global Multistakeholder Meeting on Future Internet Governance (NETMundial) which established principles on internet governance endorsed by both the EU and Brazil. These encompass inclusiveness, legitimacy, accountability, and global public interest. As a move towards greater independence of digital flows between Latin America and the Europe, the Brazilian government and the EU are developing a project to establish a public-private partnership to lay a submarine fibre-optic cable across the Atlantic Ocean, from Fortaleza (Ceará, Brazil) to Lisbon (Portugal).

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Background: the debate on internet governance

In the early days of the world wide web, the term 'internet governance' referred to a limited set of policy issues related to the global synchronisation and management of domain names (.com) and IP addresses. The rapid evolution of the web, however, led to a broadening of the term, with the 2005 World Summit on the Information Society (WSIS), held in Tunis, assigning it the definition of 'the development and application by governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programs that shape the evolution and use of the Internet'.

In recent years, and particularly after the revelation of foreign surveillance by the USA, internet governance has become a controversial and divisive foreign policy and global governance issue. Currently internet governance is based on a multistakeholder system involving governments, the private sector, technical experts and civil society experts. However, there are two main and opposing approaches to how the internet should be governed. The first is an intergovernmental model, with greater control exercised by national governments. In this model, the International Telecommunications Union (ITU), the UN's specialised agency for information and communication technologies, would have the main coordinating role, replacing the Internet Corporation for Assigned Names and Numbers (ICANN). ICANN is the US-based transnational private sector, non-profit-making corporation created in 1998 to assume responsibility for internet protocol (IP) address space allocation, and for the coordination and maintenance of the operational stability of the internet. The second approach supports a multi-stakeholder model consistent with the work promoted by ICANN but with more representative stewardship of the corporation.

Currently ICANN performs the functions of the Internet Assigned Numbers Authority (IANA) on behalf of the global internet community under a contract from the US Department of Commerce. The US has announced that it would not renew its contract with ICANN for its stewardship of the IANA functions after September 2015, provided that an accountable and reliable model were to be put in place.

At the UN-sponsored World Conference on International Telecommunications (WCIT) held in Dubai in 2012, the two sides disagreed in the review of the International Telecommunications Regulations (ITRs). A majority of countries supported greater government control, but the US, Canada, Japan and other actors which defend the multistakeholder process refused to sign an agreement providing for greater national government control of the internet. A resolution which was put to the vote was signed by 89 countries but 55 states refused to sign it, including the EU and its Member States as well as Brazil. At the ITU Plenipotentiary Conference, held in Busan in November 2014, member states agreed that the ITU is vital but decided not to expand its role in internet governance or cybersecurity issues, accepting that many of those issues are outside its mandate. However, those in favour of a multistakeholder approach have not been in full agreement. Revelations of US espionage activities, including of foreign leaders, have led to major powers, including the EU and Brazil, challenging US influence over ICANN, advocating more inclusiveness and more accountability of the Corporation to the multistakeholder community.

Brazil's activism in internet governance issues

The revelations in 2013 of mass surveillance and of the monitoring of foreign citizens and leaders by the National Security Agency (NSA) of the United States provoked a strong reaction from the Brazilian government and society. At the opening of the 68th Session of the UN General Assembly in September 2013, the Brazilian President, Dilma Rousseff, referred to the NSA's activities as a breach of international law, disrespect for national sovereignty and a 'grave violation of human rights and civil liberties'. She highlighted the need to develop a civilian multilateral framework for the governance and use of the internet, capable of ensuring such principles as freedom of expression, privacy, respect for human rights and non-discrimination.

A few weeks later, the CEO of ICANN, Fadi Chehade, and President Rousseff announced that Brazil would host a Global Multistakeholder Meeting on the Future Internet Governance (NETMundial) with official representatives from 80 countries and from the private sector in 2014. The result of the meeting was the eight-page NETMundial Multistakeholder Statement, which included recommendations on (a) Principles governing the internet and (b) a Roadmap for the future evolution of the 'internet governance ecosystem' including how to proceed with the globalisation of ICANN and its transition into a 'truly international and global organisation serving the public interest'. Russia, Cuba and India did not sign the statement. The aim of the signatories was for the statement to feed into the post-2015 development agenda, the WSIS +10 and the 2014 Internet Governance Forum (IGF) in Istanbul, an annual multistakeholder meeting on public policy issues relating to the Internet, which informs policy-makers and other actors. Brazil supports the strengthening of the IGF within the architecture of global internet governance.

NETMundial enabled Brazil to promote its own principles on internet governance, resulting from the country's longstanding interest in the issue. Brazil was part of the UN ICT Task Force, established in 2001 under ECOSOC; in 2011 it was the initiator of the debate on Internet Governance in IBSA; it included cyber policy in the agenda of the Sixth BRICS Summit held in Brazil, which resulted in the Fortaleza Declaration;[1] in 2013 it introduced – together with Germany – a resolution on internet privacy in the UN General Assembly.

The Brazilian Internet Steering Committee (CGI.br) has developed a Charter of Principles for the Governance and Use of Internet which serve as the basis for its position on global internet governance. At national level, these same principles underlie Law 12965/2014 (known as Marco Civil) which was passed by Congress a few days before NETMundial. The Marco Civil establishes the principles, guarantees, rights and obligations for the use of the internet in Brazil. Among its key points is the principle of net neutrality – an isonomic treatment that has to be given to every data packet without any distinction concerning content, origin, destiny, service, terminal or even application. The privacy of personal data for all users is ensured, as is the prohibition on cooperation of internet companies with foreign intelligence agencies, while there are measures to assist the work of the Brazilian police and justice system. The Marco Civil has already served as the basis for legal action against companies acting in Brazil, most famously in the case against the Brazilian telecommunication giant Oi, which was accused of commercialising users' profile with publicity agencies and of mapping their navigation history and data usage through its internet provider service, Velox. During

NETMundial, President Rousseff pointed to the Marco Civil as a symbol of democratisation of the media and as an example for the rest of the world.

The EU and the Multistakeholder model

As a reaction to the breach of trust that had ensued from revelations of mass surveillance by the USA, the European Commission called for more 'transparent, accountable and inclusive' internet governance, and for a common European approach in global negotiations, including the NETMundial. It endorsed the multistakeholder model and proposed a series of reforms, including the speedy globalisation of ICANN and the IANA functions, and the empowerment of ICANN's Government Advisory Committee (GAC) of which the Commission is a member. In March 2014, the European Parliament adopted Resolution 2013/2188 (INI) on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' fundamental rights, and on transatlantic cooperation in Justice and Home Affairs. Among other things, it decided to launch 'A European Digital Habeas Corpus – protecting fundamental rights in a digital age' including in its actions the development of greater EU independence in the IT sector. It called on Member States to support the resolution on 'the right to privacy in the digital age' initiated by Brazil and Germany and adopted by the UN General Assembly Committee (Human Rights Committee) on 27 November 2013, as well as to 'take further action for the defence of the fundamental right to privacy and data protection at an international level while avoiding any facilitation of state control or censorship or the fragmentation of the internet'. The resolution stated that Parliament should only give its consent to the EU-US TTIP under negotiation if the US fully respects, inter alia, the fundamental rights recognised by the EU Charter, and provided the privacy of individuals is protected.

Following NETMundial, the Commission welcomed the initiative and its results reiterating its support for a multistakeholder model for internet governance with a strong role for ICANN and the IGF, and an emphasis on the NETMundial principles of inclusiveness, legitimacy, accountability, global public interest, rule of law and separation of policy and technical functions. In its November 2014 Conclusions on Internet Governance, the Council invited the Commission and the Member states to endorse and promote those principles and multi-stakeholder internet governance. In January 2015, the EP adopted Resolution 2015/2526 on the Renewal of the Mandate of the IGF. The resolution stressed the commitment to the multistakeholder model and called upon the Member States, the Commission and all relevant stakeholders to further strengthen the sustainability of this model by making actors and processes at national, regional and international levels more inclusive, transparent and accountable. It emphasised the importance of the full accountability and transparency of ICANN and of a timely transition of stewardship of IANA functions from the USA to a new arrangement. It also called on the EU institutions concerned to propose the EU itself as a first international partner with ICANN as regards IANA functions, as an important step in ensuring the complete neutrality of ICANN.

The next IGF will be held in João Pessoa, Brazil, on 10-13 November 2015, and will include a presentation of the Global Internet Policy Observatory, a Commission project which aims to act as a clearinghouse for monitoring internet policy, and regulatory and technological developments across the world, with a view to promoting more open and transparent internet governance.

EU-Brazil bilateral cooperation

Strategic Partnership

As of 2014, cyber policy has become part of the agenda of the EU-Brazil Strategic Partnership. The Joint Statement of the Seventh EU-Brazil Summit included an agreement to launch an EU-Brazil Dialogue on International Cyber Policy and to translate it into concrete initiatives in the EU-Brazil Joint Action Plan 2015-2017. In addition, the EU and Brazil reaffirmed their common belief in an inclusive, transparent multi-stakeholder model of internet governance. A bilateral Information Society Dialogue has also existed since 2010 within the framework of the Strategic Partnership. It consists of regular exchanges of views on policies, regulations and standards, research cooperation in the ICT sector and any specific issue of bilateral interest. In 2011, the EU and Brazil allocated joint funding under their research programmes to address 'internet governance and security' with the aim of developing further their respective experience and knowledge of policy and regulatory aspects in the ICT field, such as broadband development, internet governance and security, cloud computing and digital broadcasting and content. In its 2014 Communication on internet policy and governance, the Commission referred to Brazil as a 'prominent example where a multistakeholder process is used in the consultative preparation of policies related to the internet' which might be usefully employed at European level.

The Fortaleza-Lisbon fibre-optic cable

The revelations of NSA surveillance strengthened both the EU's and Brazil's determination for more independence. Today 80-85% of all digital traffic between Latin America and Europe is routed through the USA. A project between the Brazilian government and the EU to establish a public-private partnership to lay a 6 000km-submarine fibre-optic cable across the Atlantic Ocean, from Fortaleza (Ceará, Brazil) to Lisbon (Portugal) has gained attention as a result. The cable between Europe and Latin America will be built by a private consortium (led by Brazilian telecom provider Telebras and Spanish cable operator Islalink). The total cost of the project is estimated at US$185 million. It is expected the Spanish-Brazilian private stake will account for 80% of financing, while 20% will come from investment funds. The Commission will invest €25 million via the BELLA Consortium. In 2011 the ELLA Project received FP7 funding to carry out a feasibility study for a direct Europe–Latin America link with the aim of facilitating and triggering the creation of a private consortium for its implementation. The project highlighted that the deployment of a submarine cable linking Latin America directly with Europe would offer lower prices and better service (lower latency). Based on the growing data flows between the two regions and on the configuration of possible routes, the project identified Fortaleza to Lisbon as one of the most efficient routes for the project. According to Telebrás, this project will make the connection secure and less prone to espionage, but also faster as a result of the use of latest-generation equipment in the construction of the cable. No US-made

Figure 1

BELLA Network Layout

Data source: European Commission, 2015.

technology will be used It is estimated that data transmission will be [15% cheaper](#), a benefit that could spill over to consumers. The cable should be operational in 2017. Recent developments suggest that submarine cables carrying internet communications could become one of the new loci of [hybrid warfare](#).

Data protection

Revelations of espionage have stoked the debate on data protection in Brazil and in the EU. Brazil does not have specific legal protection for personal data. In January 2015, the Brazilian government issued a draft bill for the protection of personal data ([Anteprojeto de Lei para a Proteção de Dados Pessoais](#)) which was made available for public consultation but has not yet been sent to Congress. The EU's data protection law ([Data Protection Directive](#), 95/46) is being [reviewed](#) to give citizens more control over their data and to provide greater legal certainty for companies, translating into economic incentives for innovation. Convergence of both reform processes towards the same direction could mean [more EU-Brazil data exchanges](#).

Outlook

The EU has set as its goal to be an '[honest broker](#)' on global internet governance, aiming to ensure the support and partnership of proactive and important players in the global debate on internet governance. Brazil is a strategic partner of the EU which shares its endorsement of the multistakeholder model, of net neutrality, the empowerment of the IGF and the globalisation of ICANN, and its concern for protection of fundamental human rights, including privacy, in the construction of the institutional architecture of internet governance. An [analysis](#) by the Canadian Think Tank CIGI suggests that Brazil is one of the 'swing states', ideologically positioned as a potential ally of the EU.

Main references

[What is Internet Governance](#), Jonathan Masters, Council on Foreign Relations Backgrounder, April 2014.

[The rise of cyber-diplomacy: the EU, its strategic partners and cyber-security](#), Thomas Renard, European Strategic Partnerships Observatory, June 2014.

Endnotes

[1] While the declaration welcomed the decision of the BRICS National Security Advisors to establish a group of experts of BRICS member states to coordinate the BRICS' positions in international fora on internet governance, the general wording (including regarding NETMundial) was very limited, due to the [divergence](#) in approaches, which also explains the lack of a joint BRICS proposal on either a code of conduct on cyber-security or on a new internet governance body.

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