

Policy brief

US and EU collaboration on data governance and technology platforms

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Introduction

As an example of US and EU collaboration on data governance and technology platforms, the Trade and Technology Council (TTC) Pittsburgh statement¹ gives us a list of issues to be addressed, collaboration modalities, objectives, and specific normative conditions. The table below extracts wording on these points from the related TTC Working Group 5 (WG5) text.

WG5 is firstly about harmful and illegal content, including how these spread and related impact (algorithmic amplification, systemic risks, transparency and access to data for researchers). Secondly, it is about democratic responsibility of tech platforms. Thirdly, about market power of platforms.

Issues	Objectives	Collaboration	Conditions
(Divergence of EU, US approach causing) inconsistency and lack of interoperability	Consistency and interoperability	Exchange information	Where feasible
Illegal and harmful content Algorithmic amplification Transparency Platform data access for researchers Democratic responsibility	Address shared concerns	Exchange information and views	Respect full regulatory autonomy
'Some areas'		Use voluntary and multi-stakeholder initiatives	
Disinformation Product safety Counterfeit products Other harmful content		Cooperation on platform policies	
Systemic risks	Access to data for researchers	Engage with platform companies	
Power of online platforms (Lack of) effective competition and contestable markets	Effective measures	Discussion	
	Common approaches to role of cloud infrastructure and services	Discussion	
General conditions			
Respect regulatory autonomy and legal systems. Feed into coordination in multilateral bodies, and wider efforts with like-minded partners. Have points of contact for stakeholders, separately. Exchange regularly with stakeholders, separately or jointly.			

¹ US-EU (2021).

State of play

Obviously at the level of such a TTC mandate lots of specifics cannot be named. These include specific issues of current legislative work, such as proposed initiatives on platforms regulation and anti-trust in US Congress, the EU Digital Markets Act (DMA) and its potential unbundling, the EU Digital Services Act (DSA)² and its overarching harm and illegal content anchor, specific norms of responsible corporate behavior³ (cf also Facebook whistleblowing⁴) as well as the evolution of competition law (cf recent Google case⁵). There is also a lack of clarity on terms such as consistency and interoperability. Specifics and clarity must be addressed by the instrumental collaboration that flows from the Pittsburgh statement.

Some issues may have been left out intentionally in the TTC WG5 text. Notably this concerns developments in data governance regulation notably in data protection law, as well as data sharing especially in view of transatlantic and international data flows which links to the EU's Data Governance Act. Also not mentioned and related to data exchange is a possible US-EU agreement on e-evidence let alone other issues in extra-territorialism⁶.

Whether by oversight or not⁷, not mentioned in the TTC WG5 text is technological policy for data governance such as distributed and decentralized control (e.g. digital wallets⁸). Neither included is emerging dataspace policy. An imminent example is EU policy for health dataspace.

From ongoing political debates and academic literature other issues on data governance and tech platform governance are being tabled. Without intending to be complete some of these are: information asymmetry between platforms, their users and public authorities; impact of know-your-customer / breaking online anonymity (related to digital ID)⁹; systematic approach to risk assessment and risk mitigation; specific stakeholder roles such as trusted flaggers. This list could be enhanced¹⁰.

Finally, the collaboration modalities in TTC WG5 are weak, likely as wanted at this initial stage. Much more, however, can be done collaboratively. Some recommendations are given below.

Issues for collaboration on data governance and technology platforms

Academic work on International Relations and on competitiveness suggests that strategic alliances are characterised by strategic intent and strategic planning with a long-term perspective. They also have - explicitly or implicitly - a sovereignty dimension (national security, national competitiveness, democratic system, etc). Strategic plans tend to be broad frameworks for action. TTC WG5 is an embryonic strategic alliance on data governance and technology platform governance.

² Access Now (2021), and generally on disinformation Brookings (2021).

³ E.g., EFF, ACLU, CDT (2018).

⁴ Schaake, M. (2021).

⁵ <https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-11/cp210197en.pdf>, 10 Nov 2021.

⁶ E.g. Section 702 of FISA (national intelligence) and US Cloud Act (law enforcement).

⁷ Cohen J. (2019).

⁸ https://ec.europa.eu/commission/presscorner/detail/en/QANDA_21_2664.

⁹ ECIPE (2021).

¹⁰ Two recommendations could be to keep a running list of concrete agenda items and sticking issues and to maintain a list of items that are related but not on the agenda.

Issues for strategic collaboration or strategic alliances fall in three interrelated categories. The list of issues below, derived from literature¹¹, is more widely usable. Here it is applied to data governance and tech platform governance:

A. Strategic intent

Gap between normative and instrumental rationality: national economic interests of US and EU (and inside EU) on data and on tech platforms are different, even if this is not made explicit. The common intention to promote democratic values as a global good maps onto an unclear and ambiguous instrumental approach towards stakeholders.

Recommendation 1: elaborate shared normative ground around ‘democratic models of digital and economic governance.’ (text quoted from TTC Pittsburgh).

Stability vs political change: collaboration needs stability¹² but concerns are high about near-future instability given US and French elections¹³. Collaboration needs to be resilient against swings to uni-/mini-lateralism or isolationism.

Recommendation 2: anchor collaboration strongly in multi-stakeholder platforms; establish a multi-stakeholder collaboration with a long-term perspective, solidly financed; position this as an globally open platform subscribing to democratic values and human rights (cf the approach of Global Partnership on Artificial Intelligence¹⁴).

Lack of balance, necessity to collaborate (‘do we really need you?’). This may be less a concern as the US has a large market and tech platforms with near-global presence while EU has a large market and regulation with a ‘Brussels effect’¹⁵.

B. Strategic planning

Specific objectives, targets, deliverables: in this case the most specific is access to data for researchers, which may also be a low-hanging fruit.

Recommendation 3: develop rapidly more specific objectives, with targets and deliverables.

- 1) Provide common data access specifications and conditions for researchers
- 2) Support development of reporting standards and related benchmarking
- 3) Compare practices in corporate oversight, without undermining regulatory efforts
- 4) Establish a risk assessment framework
- 5) Compare and benchmark national strategies to data and tech platform governance (cf CAIDP approach to AI¹⁶)
- 6) Define joint work program of research for technological support and of standardization, addressing transparency, accountability and information obligations; handling systemic risks, detecting violation of fundamental rights etc.; identify US and EU funding sources
- 7) Consider to formally and jointly launch an Open Partnership for Transparency and Accountability, based on democratic values, open for international involvement

Depth of collaboration vs national security and/or competition concerns: navigating these minefields will require diplomacy.

¹¹ E.g., Tyushka, A., and Czechowska, L. (2019), Holslag, J. (2011), and Cowhey Peter F. , & Aronson Jonathan D. (2017).

¹² SAIS/John Hopkins (2021).

¹³ Barkin, N. (2021).

¹⁴ <https://www.gpai.ai/>.

¹⁵ Bradford, A. (2020).

¹⁶ <https://www.caidp.org/>.

C. Activities for collaboration and approach to collaboration

Selection of activities for collaboration: currently lightweight activities only are included ('information exchange' and 'discussion', quoting from WG5).

Recommendation 4: establish a map of potential activities such as information exchange, research, standardization, pilots, etc; provide a perspective on how to undertake and anchor selected ones.

Policy integration: issues such as transparency and responsible platform behavior are hard to tackle given platform power and their increasing role in the public sphere. A combination of policy approaches is likely needed, even if this is challenging given views on ex-post intervention (antitrust, abuse of dominance) vs ex-ante intervention (market-creating, market-facilitating, market-modifying, market-proscribing, and market-substituting roles of government¹⁷).

Recommendation 5: ensure that all relevant policies are at the table (foreign & trade, digital, industrial, technology, justice, home affairs, education, etc) and integrate their views. In this respect more emphasis is deserved by technology & innovation policy and education policy

Parties and roles: in particular as regards data governance and tech platforms governance there is a remarkable high expectation towards researchers, as well as towards voluntary and multistakeholder initiatives to complement regulatory approaches but it is left open who these are and how to work with them.

Recommendation 6: provide a map of potential actors and relate these to activities; design their involvement consistent with the perspective of data governance as a global democratic commons.

¹⁷ Aggarwal, V. & Reddie, A. (2018).

References

- Access Now (2021). Digital Services Act (DSA), <https://www.accessnow.org/where-the-dsa-is-heading/> .
- Aggarwal, V. & Reddie, A. (2018). Comparative industrial policy and cybersecurity: a framework for analysis, *Journal of Cyber Policy*, DOI: 10.1080/23738871.2018.1553989.
- Barkin, N. (2021). Closing Window: Transatlantic Cooperation on China Under Biden, <https://www.gmfus.org/download/article/20021> .
- Bradford, A. (2020). *The Brussels Effect: How the European Union Rules the World*. : Oxford University Press.
- Brookings (2021). Disinformation <https://www.brookings.edu/topic/disinformation/>.
- Cohen J. (2019). *Between Truth and Power: The Legal Constructions of Informational Capitalism*. Oxford University Press.
- Cowhey Peter F. , & Aronson Jonathan D. (2017). *Digital DNA*. New York: Oxford University Press.
- ECIPE (2021). Know Your Customer, small vs large platforms <https://ecipe.org/publications/digital-services-act-reforming-intermediary-liability-rules/>
- EFF, ACLU, CDT (2018). Transparency and accountability, Santa Clara Principles, <https://santaclaraprinciples.org/> .
- European Parliament Research Service / EP Think Tank (2021). on platforms, DSA, DMA, <https://www.europarl.europa.eu/thinktank/en/home.html>
- GMF (2021). on platforms: <https://www.gmfus.org/news/whats-next-tech-platforms-power-and-accountability>;
- Holslag, J. (2011), *The Elusive Axis, Assessing the EU-China Strategic Partnership*, <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1468-5965.2010.02121.x> .
- SAIS/John Hopkins (2021), *Transatlantic partnership*, https://transatlanticrelations.org/wp-content/uploads/2021/03/TA-economy-2021_CH1.pdf.
- Schaake, M. (2021), *US tech needs to do a great deal better when it comes to democracy*, *Financial Times*, 5 Oct 2021.
- Tyushka, A., and Czechowska, L. (2019) *Strategic partnerships, international politics and IR theory in States*, *International Organizations and Strategic Partnerships*, <https://www.elgaronline.com/view/edcoll/9781788972277/9781788972277.00010.xml>.
- US-EU (2021) *EU-US Trade and Technology Council Inaugural Joint Statement September 29, 2021* Pittsburgh, Pennsylvania, <https://ec.europa.eu/commission/presscorner/api/files/attachment/870149/210929%20Pittsburgh%20Statement.pdf>

Annex

From TTC Pittsburgh on **Working group 5 - Data Governance and Technology Platforms:**

The Data Governance and Technology Platforms working group is tasked to exchange information on our respective approaches to data governance and technology platform governance, seeking consistency and interoperability where feasible. We intend to exchange information and views regarding current and future regulations in both the European Union and the United States with a goal of effectively addressing shared concerns, while respecting the full regulatory autonomy of the European Union and the United States. We have identified common issues of concern around: illegal and harmful content and their algorithmic amplification, transparency, and access to platforms' data for researchers as well as the democratic responsibility of online intermediaries. We have also identified a shared interest in using voluntary and multi-stakeholder initiatives to complement regulatory approaches in some areas. We are committed to transatlantic cooperation regarding platform policies that focus on disinformation, product safety, counterfeit products, and other harmful content. We plan to engage with platform companies to improve researchers' access to data generated by platforms, in order to better understand and be able better to address systemic risks linked to how content spreads online. We also plan to engage in a discussion on effective measures to appropriately address the power of online platforms and ensure effective competition and contestable markets. The working group is also tasked to discuss, alongside other working groups, common approaches on the role of cloud infrastructure and services.