

Chasing Transatlantic Alignment on Digital Issues

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While the US-EU digital marketplace is the largest and most productive in the global economy, the integration of this market is not reflected in the approaches of the United States and the European Union to regulating that market. The EU began as early as the 1995 Data Protection Directive, to place limits on companies in the digital arena, seeking to protect the privacy of its citizens and align different approaches of its member states. The 2018 GDPR, coupled with the tsunami wave of EU regulation during the current European Commission, has made the EU the global leader in digital regulation. During the same time, successive US administrations have effectively addressed the tech sector with benign neglect. The US has instead become the leading innovator in the tech sector, as reflected by the global status of leading US tech firms. While now challenged by China, the United States — or rather, its companies — remains a leader in determining the shape and extent of the global digital economy.

The pros and cons of these distinctive EU and US approaches can be debated in seminar rooms and legislatures endlessly. But there is no doubt that these differences make the prospect of aligning US and EU approaches to the digital economy a significant challenge. But it is an ambition worth pursuing, for without that alignment, there will be less chance that the US and EU, along with other like-minded partners, can balance the efforts of China and other “techno-authoritarians” to dominate the digital world. Broadly speaking, the US and Europe do share the same values, rooted in democracy, freedom, and open, private-sector markets. The question is can they agree on how to protect those values in the rapidly evolving digital arena, where the metaverse may soon present even more challenges?

DEFINING THE SCOPE FOR ALIGNMENT

Key to exploring how to build better alignment between the United States and the EU (and its member states) is to define the areas for alignment. What are the specific policy areas or technologies on which alignment is most needed, and which are most possible? Among the topics that have featured in transatlantic debates in recent years are:

- **Emerging technologies:** Whether artificial intelligence (AI), quantum computing, blockchain, or others, these technologies are generally still in development. If in use (as is AI), their full potential is unrealized; there is more promise than performance. For the most part, there is limited regulation aimed specifically at governing these new technologies.
- **Competitive markets:** The emergence of some very large new companies providing multiple services has awakened a strong transatlantic debate about the nature of markets in the digital economy. One reaction, at least in Europe, has been to strengthen rules related to competition, but this approach has also led to potentially protectionist impulses favoring local/national firms.
- **Data governance:** With data (both personal and “industrial”) serving as the new currency of the digital economy, it might seem logical for the US and EU to develop similar — at least compatible — means of regulating the use of that data. This has not been the case. The US and

EU have struggled to design a data transfer system that EU courts will accept and there are now concerns that the EU's proposed Data Act may bring similar challenges for non-personal data.

- **Digital democracy:** A wide ranging topic, perhaps best outlined in the Declaration for the Future of the Internet, which specified priorities for countries seeking to keep the internet a free system that would support democracy. Both Europe and the US have struggled against digital disinformation, as well as extremism and conspiracies shared through social media.

One other topic might also be considered as important for alignment: the **technologies and materials** required to make the digital world function. At the top of that list are semi-conductors, but there are others, including rare earths. Building alignment in this area would require a strong transatlantic consensus on subsidies, export controls, and supply chains.

Defining the scope of the topics on which transatlantic alignment would be desirable, if not essential, is only the first step. But breaking down “digital policy” into several categories allows us to consider whether alignment is likely to be easier in some policy areas, and truly difficult in others. In fact, this is the case — the record of the past two years shows significant alignment in some areas, but mixed results, if any, in others.

IDENTIFYING THE MECHANISMS FOR ALIGNMENT

Alignment can also be affected by the mechanisms available for US-EU discussion and coordination. Given the density of US-EU interaction, there are multiple options. First, there are the normal, everyday US-EU discussions outside of any formal dialogue. These happen frequently, and are certainly opportunities for sharing information and discussing the issue of the day. The approach to any particular issue tends to be *ad hoc*; it arises on the agenda for various reasons and there is no sustained plan for achieving any particular goal. Indeed, the weakness of this approach has been amply demonstrated by the recurring tendency of the Biden Administration and the EU to take difficult issues and assign them to purpose-made task forces. This is not to say that the normal transatlantic diplomatic interaction is useless; on the contrary, it is central to the relationship and makes it possible to identify areas in digital policy and elsewhere where alignment might be possible or desirable.

Second, there are issue specific dialogues, such as the US-EU Cyber Dialogue, the EU-US China Dialogue, and the US-EU Joint Technology Competition Policy Dialogue. These each serve specific purposes and have contributed to some limited alignment in those areas.

- **The Cyber Dialogue** was initially established to allow consultations about cybersecurity threats and particularly to share lessons on the protection of critical infrastructure. In the past year, the EU push to regulate in the cybersecurity area — including the NIS2 directive, the proposed Cyber Resilience Act, and the cybersecurity certification for cloud service providers — has led to a larger role for the Commission in this dialogue and a stronger focus on regulatory issues. This is still very new, and it is unclear whether discussions in this format will address some of the potential regulatory pitfalls. The CRA, for example, will impose some conformity assessment obligations which may or may not prove problematic.
- **The China Dialogue** is not intended as a regulatory discussion, although issues such as export controls and supply chains have been central. The membership emphasizes the foreign and security policy nature of the conversation (it is co-chaired by Deputy Secretary

of State Wendy Sherman and EEAS Secretary General Stefano Sannino). The press release from the December 2022 session noted that the co-chairs “affirmed that the United States and the European Union have never been more aligned in our strategic outlooks.” That strategic alignment is far removed from any regulatory alignment on digital policy, but there is no doubt that it provides an impetus for greater regulatory cooperation in key areas of competition with China.

- ***The Technology Competition Policy Dialogue (TCPD)*** brings together the European Commission (DG Competition), the Federal Trade Commission, and the Department of Justice, and builds on long-established discussions among those parties on competition policy generally (not just on digital and technology policy). Its aim is to go beyond the sharing of information related to specific cases and to consider how new technologies might alter the requirements needed for a contestable marketplace. There have been two meetings to date ([December 7, 2021](#), and [October 13, 2022](#)), as well as some working-level technical sessions. The initial joint statement makes clear that the goal is “sharing insights and experience with an aim towards coordinating as much as possible on policy and enforcement,” and “potentially contributing to greater alignment on these issues.” However, given the different legal approaches of the EU and US to competition policy, joint enforcement seems unlikely in the short term. The question to be answered over the next two years, is whether this exchange, supplemented by the Digital Markets Act, will alter the domestic US approach to major tech companies.

Finally, the major mechanism for US-EU discussions of digital and tech policy is the ***Transatlantic Trade and Technology Council (TTC)***. With ten working groups and top-level political leadership, it should offer the best hope of creating greater US-EU alignment on these issues. The [June 2021 US-EU summit statement](#) identified several goals for the TTC, including “to coordinate, seek common ground, and strengthen global cooperation on technology, digital issues, and supply chains.”

Yet, after three meetings at the principals’ level and countless working group meetings, the verdict on the TTC’s ability to create transatlantic alignment on key issues remains mixed. There is no doubt that the Russian invasion of Ukraine, as well as the growing US-EU strategic alignment on China, have provided powerful external incentives for the transatlantic partners to work together. But on the digital issue areas identified above, alignment has been slow and fitful, and limited to certain forward-looking areas where impacts on domestic regulation are small.

ASSESSING THE PACE OF ALIGNMENT

Emerging Technologies: Since the establishment of the TTC, we have seen a real alignment between the US and EU on AI. This was identified early on as a promising area, and WG1 on Technology Standards set up a subgroup specifically on AI. At the third meeting in College Park, one of the biggest deliverables was a [Joint Roadmap for Trustworthy AI and Risk Management](#). This was preceded by six months during which US statements about AI — which had been scarce in the past — came to sound very similar to those of the EU. Of particular note is the [Blueprint for an AI Bill of Rights](#), developed by the Office of Science and Technology Policy in the White House, which outlines five principles that should guide AI development and deployment: safe and effective systems; algorithmic discrimination protections; data privacy; notice and explanation; and human alternatives, consideration, and fallback. All these are elements in the EU’s proposed AI Act and other components of EU regulation. Moreover, the US

National Institutes of Science and Technology (NIST) has developed an AI risk management framework, indicating that the US will join the EU in approaching AI from a risk-management strategy.

At the College Park TTC, several other emerging technologies were identified as suitable for deeper cooperation, which will not be possible without alignment similar to that achieved on AI. Quantum is the next priority, but other workstreams were launched on additive manufacturing, plastics recycling, and digital identity, with plans for work on post-quantum encryption and Internet of Things (IoT). Despite these potential moves toward alignment, there are some limitations. First, even the relatively successful alignment on AI is focused on nitty gritty foundational steps (as described in the Joint Roadmap), rather than a more ambitious move toward harmonizing regulations. Whether this very technical approach will build even greater alignment is not clear, and it will be some time before we can evaluate whether the Roadmap leads to joint approaches in international standards setting bodies, for example. Second, the alignment is based on shared principles but without explicitly addressing differences in current regulations. The next six months will be a real test, as the AI Act is likely to be completed. How consistent will it be with the Roadmap? Third, when it comes to developing and implementing rules on AI, the EU has opted for passing real regulations, while the US has opted for a “soft law” approach, looking to guidelines such as the Blueprint for an AI Bill of Rights, which does not have the force of law. Finally, clearly there are some new technologies that have been left out. Blockchain has not yet arrived as a priority, and cybersecurity technologies are handled in the Cyber Dialogue. Whether that Dialogue can effectively build alignment in the regulatory space is uncertain.

Competitive Markets: This topic is hardly addressed at all in the TTC, but instead in the TCPD. To date, that dialogue has been about sharing information and exchanging views on “common challenges in competition enforcement in digital investigations, such as network effects, the role of massive amounts of data, interoperability, and other characteristics” in these new markets. There is little evidence of alignment beyond these exchanges of information and views. The TTC has been largely silent on these matters, except for a brief mention in the Pittsburgh statement, which tasked WG5 to “engage in a discussion on effective measures to appropriately address the power of online platforms and ensure effective competition and contestable markets.”

Data Governance: The management and transfer of data — especially personal data — has been one of the most traumatic areas for building transatlantic alignment. That alignment has slowly emerged, thanks to two court cases. But even the current data privacy framework is likely to face additional challenges from EU courts and may not prove permanent. The proposed EU Data Act has set out arrangements for the management and transfers of industrial data and has been met with concerns from US companies, as well as demarches from the US government. This is likely to be an especially difficult discussion, in part because there is not a similar discussion in the US on the need to regulate the management and monetization of data by the private sector.

While the TTC has provided opportunities for the principals and their deputies to discuss these issues, these matters have not been treated formally as a topic for the TTC to address. The Pittsburgh Statement did identify a set of concerns for WG5 on Data Governance and Technology Platforms, including “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.” The statement went on to say “We are committed to transatlantic cooperation regarding platform policies that focus on disinformation, product safety, counterfeit products, and other harmful content.” By the

Paris-Saclay meeting, the agenda of WG5 had become more specific, with a focus on transparency in content moderation (including platforms' terms of service), algorithmic amplification, data access for researchers, and protection of minors online. In the College Park statement, there is little about platform governance except for a commitment to the Declaration on the Future of the Internet. It appears that much of the platform related work of the TTC has evolved into the work on the impact of digitalization on democracy.

Digital Democracy: When the TTC was established, it was largely perceived as focused on trade and technology issues. Among stakeholders, little attention was paid to WG6 on misuse of technology or the gradual evolution of WG5 to focus on content moderation and the [Declaration for the Future of the Internet](#) (DFI). Despite these low expectations, the TTC's work on digital policy and its impact on democracy is one where increasing transatlantic alignment has developed. This process has undoubtedly been helped by the Russian invasion of Ukraine and increasing concerns about Hong Kong and Chinese autocracy, as well as other instances of repression.

From the beginning, WG6 was focused on countering arbitrary or unlawful online surveillance, exploring ways to respond to internet shutdowns, protecting human rights defenders online, and improving cooperation on disinformation, especially state-sponsored information manipulation. At the College Park meeting, the group issued a [statement pledging to protect human rights defenders online](#), including promises of resources and reminders to companies about potential abuse of their platforms. The US and EU also initiated a study on Internet shutdowns and possible responses. This evolution has developed in parallel — but certainly not unrelated — to the focus on the DFI. Initially launched by the Biden White House as a follow up to the Summit of Democracies, the DFI quickly gained EU support and involvement. The DFI challenges its signatories to defend human rights online; promote the development of a global internet; ensure equitable online access; build a trustworthy online ecosystem; and uphold multistakeholder governance. But so far, much of this work has been rhetorical, and especially given the external pressures, it has not been difficult for the US and EU to agree on general principles supporting democracy. It is still early to say whether this alignment will lead to effective cooperation, but the recent ITU elections are a promising step.

Technologies and Materials: Semiconductors, critical minerals, export controls, and investment screening have all been priorities throughout the life of the TTC. Much has been made of the TTC initiatives to identify potential disruptions of semiconductor supply chains and to share information about subsidies and other public support for the semiconductor industry. But whether this alignment will survive the challenges of EU and US industrial policies that are likely to create rivalries across the Atlantic, is not at all clear. The US Inflation Reduction Act, with its massive tax cuts for renewable energy investment and production, demonstrates the challenges facing the US and EU in this sector.

PUSHING ALIGNMENT TO THE NEXT LEVEL

In conclusion, the assessment here that transatlantic alignment across digital issues has been mixed at best and often rather minimal, is not meant to imply that the TTC or other dialogues should be abandoned. Rather, it is intended to push the US and EU to consider how best to encourage alignment and then how to take alignment on principles into the world of action. Both partners have complicated domestic constituencies that will handicap this effort, so we must have realistic expectations. And there is nothing wrong with building alignment from cooperation on nitty-gritty technical matters. But if the

US and EU are to achieve their goals in keeping the internet a safe and secure platform for their citizens, they must take that alignment to another level.