ISSUE BRIEF

Proposal for a US-EU Digital Council:

Building a Comprehensive Conversation

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INTRODUCTION

As the Joe Biden administration seeks to rebuild the transatlantic partnership, one of the key areas to address will be tech and digital policy. Digitalization has proven to be a key engine of economic growth for both the United States and Europe, and the COVID-19 pandemic has accelerated that trend. For the United States, Europe is an especially valuable market for digitally enabled services—in 2019, the United States exported $245 billion in digitally enabled services to Europe, almost triple such exports to Latin America and twice those to the entire Asia-Pacific.[1]

Yet, while President Biden and European leaders largely see eye to eye on many strategic issues—including NATO, climate change, Russia, Iran, and (mostly) China—there are very real differences when it comes to the online world. The United States has mostly taken a laissez faire approach to the emergence of new technologies and networks, although there is now growing congressional attention. The European Union has become the digital regulatory superpower, imposing restrictions on government and corporate behavior online.

As a result of these distinct approaches, significant policy differences are now emerging across the Atlantic. Successive judgments of the European Court of Justice have overturned key parts of the legal framework allowing companies to move the personal data from European Union (EU) territory to the United States, with potentially immense consequences for any business operating on both sides of the Atlantic. European proposals for taxing digital companies have moved forward despite US threats of tariffs and the ongoing negotiations at the Organisation for Economic Co-operation and Development (OECD). The

The Atlantic Council's **Transatlantic Digital Marketplace Initiative** seeks to foster greater US-EU understanding and collaboration on digital policy matters and makes recommendations for building cooperation and ameliorating differences in this fast-growing area of the transatlantic economy.

The Europe Center conducts research and uses real-time commentary and analysis to guide the actions and strategy of key transatlantic decision-makers on the issues that will shape the future of the transatlantic relationship and convenes US and European leaders through public events and workshops to promote dialogue and to bolster the transatlantic partnership.

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1   Daniel S. Hamilton and Joseph P. Quinlan, "Transatlantic Economy 2021," Foreign Policy Institute, Johns Hopkins University SAIS/Woodrow Wilson Center, 2021, 46, https://www.wilsoncenter.org/sites/default/files/media/uploads/documents/TransatlanticEconomy2021_FullReportHR.pdf.

Biden administration has reengaged these discussions, and recently submitted its own proposal focused on taxing the largest corporations (not just digital companies). EU competition authorities have conducted investigations into practices of US companies in Europe, resulting in huge fines (and US competition authorities may now follow that path). EU discussions of "digital sovereignty" seem, at times, to advocate discrimination against non-EU firms, although it is unclear if that rhetoric will become reality. What is clear is that unless the United States and EU find some way to accommodate their differences, others—mostly authoritarian powers with distinctly different views of how the Internet should be run—will emerge as the leaders of the global digital economy.

To reach a common understanding on digital issues, the United States and the EU must engage in a strategic and comprehensive discussion. Ideally, this would not be a one-time consultation, but an ongoing high-level dialogue that can both build consensus and provide guidance for resolving sensitive issues. The EU has proposed the establishment of an EU-US Trade and Technology Council (TTC) as a forum "to strengthen our technological and industrial leadership and expand bilateral trade and investment."[2] The focus of the TTC would be on "reducing trade barriers, developing compatible standards and regulatory approaches for new technologies, ensuring critical supply chain security, deepening research collaboration and promoting innovation and fair competition." Promoting digital trade and fostering the innovation and management of new technologies are laudable aims. There

French President Emmanuel Macron, British Prime Minister Boris Johnson, German Chancellor Angela Merkel, Canada's Prime Minister Justin Trudeau, and former European Council President Donald Tusk attend a working lunch without US representation to discuss digital transformation during the 2019 G7 summit in France. Source: REUTERS/Philippe Wojazer/Pool

is a large, positive transatlantic agenda to be found in such efforts, including the development of compatible cybersecurity and other standards that will help ensure that key emerging technologies are safe and effective for all users.

The EU has also proposed a "transatlantic dialogue on the responsibility of online platforms and Big Tech," based on the idea that such platforms "raise issues which threaten our societies and democracies."[3] While the United States is unlikely to enter into a dialogue based on that specific premise, there is clearly a need for transatlantic discussions on content moderation, disinformation, and the need for greater transparency and user protections in the online world.

The proposed scope of the TTC, along with the less-defined platforms dialogue, still seems to leave some key issues—including data transfers, regulation of online platforms, and digital taxation—searching for a home. Instead of dividing digital issues into distinct silos, the most effective solution would be the creation of a high-level Digital Council that could address all the relevant issues in a comprehensive format. Such a council would demonstrate the importance placed on technology and the digital economy by both the EU and United States, and would provide leadership as they navigate this swiftly evolving economic sector. A Digital Council would provide an opportunity to develop closer understanding and

European Commission Executive Vice President for a Europe Fit for the Digital Age Margrethe Vestager and European Commissioner for the Internal Market Thierry Breton discuss the EU's plan for 5G security issued January 2020. Source: REUTERS/Yves Herman

2   "Joint Communication to the European Parliament, the European Council, and the Council on a New EU-US Agenda for Global Change," European Commission, December 2, 2020, https://ec.europa.eu/info/sites/info/files/joint-communication-eu-us-agenda_en.pdf.

3   Ibid.

Facebook's CEO Mark Zuckerberg met with then-European Parliament President Antonio Tajani in 2018 to discuss how Facebook handles the data of its more than 400 million users in the EU. Source: REUTERS/Yves Herman

consensus across all issues. It would most likely not be a decision-making body, but would have the reach and authority to provide guidance to other bodies and empower them to find specific solutions. Such a multilayer approach may seem overly complex, but building a transatlantic consensus on digital and tech policy will require discussions of values such as privacy and free speech, as well as negotiations on arcane technical capabilities.

Moreover, the need for a comprehensive dialogue is increasingly urgent. While the US government largely ignored the tech sector during the Donald Trump administration, the EU was beginning to move forcefully with its own agenda. Its General Data Protection Regulation, which took effect in May 2018, has become the dominant global rule on privacy. As Ursula von der Leyen took up the presidency of the European Commission in late 2019, she identified creating "A Europe Fit for the Digital Age" as one of her two key priorities (the other being the EU Green Deal). By early 2020, the European Commission had laid out a communication on Shaping Europe's Digital Future, along with a white paper on artificial intelligence (AI) and a strategy for data. In November 2020, the commission issued a proposal for a Data Governance Act, and the next month presented a comprehensive scheme for regulation of online platforms with proposals for a Digital Services Act and a Digital Market Act. A formal proposal for regulation of AI was issued in April 2021, and an expected Democracy Action Plan will address online content and advertising as it related to political campaigns. In short, the EU is embarking on a legislative agenda that will have very real consequences—both good and bad—for US companies that want to be active in the EU single market. Yet, the level

of engagement between the United States and EU on these issues still leaves much to be desired. The United States is still struggling to put Biden administration officials in place, and has yet to define its approach to digital policy, either domestically or in global markets. In the meantime, the EU is forging ahead.

SHAPING A US-EU DIGITAL COUNCIL

Any proposal for a new forum for discussion between the United States and EU must take into account that the history of US-EU relations is littered with bilateral dialogues of varying effectiveness. All too often, these dialogues have been stale interactions driven more by the need to have annual meetings than by real results. The Transatlantic Consumer Dialogue, the Transatlantic Legislators Dialogue, and the Transatlantic Business Dialogue have all seen long periods of dormancy, and none would be considered seriously active today. The High-Level Regulatory Cooperation Forum of the George W. Bush and Barack Obama administrations has also become inactive. The reasons for this mediocre track record are many, from lack of commitment at high levels and turf battles between relevant players, to the very real complexity of the issues. There are some bright spots: the US-EU Joint Financial Regulatory Forum has met biannually since 2014 to share perspectives on a wide range of financial and banking issues, and the EU-US Energy Council has met at ministerial level during both Democratic and Republican administrations to discuss energy markets, energy security, sustainability, and research. Most recently, a decision by EU High Representative Josep Borrell and then-Secretary of State Mike Pompeo to establish a US-EU Dialogue on China has been confirmed by Secretary of State Antony Blinken.

European Commission Executive Vice President Margrethe Vestager speaks on the European Commission's 2030 Digital Compass paper. Source: Olivier Hoslet/Pool via REUTERS

EU Digital Legislation and Initiatives

LEGISLATION/INITIATIVE	EXPLAINER	DATE ENTERED INTO FORCE/PUBLISHED
General Data Protection Regulation (GDPR)	Governs the collection, processing, and transfer of personal data of EU residents.	Entered into force May 2018
Directive on Copyright in the Digital Single Market	Establishes rules for online platforms regarding the use of copyrighted material and obligations towards news publications.	Entered into force June 2019
Communication on a European Strategy for Data	Lays out the EU's ambition to become a major data power, especially in industrial data, and to create the supporting governance and infrastructure, including cloud services.	Published February 2020
Communication on a New Industrial Strategy for Europe	Outlines the EU's plan to address green and digital transformations.	Published March 2020
Data Governance Act	Would facilitate sharing of public sector and industrial data located in the EU.	Proposed November 2020
Digital Markets Act (DMA)	Would establish specialized competition rules for large digital platform companies doing business in the EU.	Proposed December 2020; under legislative review in the European Parliament and European Council
Digital Services Act (DSA)	Would establish common rules for platforms' obligations on content moderation and transparency, while retaining intermediary liability protections.	Proposed December 2020; under legislative review in the European Parliament and European Council
European Democracy Action Plan	Outlines anticipated proposal for legislation governing political ads and other rules intended to safeguard democratic processes, including elections.	Published December 3, 2020
Digital Services Tax (DST)	Would allow states to tax digital service companies on revenues from interactions with users in states where the companies lack physical presence.	In force in several EU member states including Austria, France, and Italy (and the United Kingdom, no longer an EU member). May be proposed at EU level in 2021.
Regulation on a European approach for Artificial Intelligence	Establishes rules for the use of Artificial Intelligence, banning a few uses outright while identifying "high-risk" uses and the obligations required for providers of that AI.	Proposed April 21, 2021

Source: European Commission compiled by the Atlantic Council

Katherine C. Tai, US Trade Representative, speaks at her confirmation hearing before the Senate Finance Committee on February 25, 2021. Source: Bill O'Leary/Pool via REUTERS

These other dialogues—even the ones that failed—offer valuable lessons for a US-EU Digital Council. In particular, they suggest that US and EU policymakers, in order to design the most effective means of addressing tech and digital issues, should look to establish a forum that will do the following.

- **Gain the commitment of top-level officials with authority over digital and tech policy.** Within the EU, the most obvious person to chair any delegation would be Margrethe Vestager, the European Commission's executive vice president for a Europe Fit for a Digital Age. Other members of the commission with strong digital portfolios include: Valdis Dombrovskis, executive vice president for an Economy that Works for People; Vera Jourova, vice president for Values and Transparency; and Thierry Breton, commissioner for the Internal Market. On the US side, the membership is less clear, as the administration is not as focused on digital and tech policy. Secretary of State Tony Blinken should be involved, along with Commerce Secretary Gina Raimondo and US Trade Representative (USTR) Katherine Tai. Because of the need for a close connection with the White House, the US delegation might be also include Brian Deese, head of the National Economic Council. But, given how few of these US officials have serious tech experience— or a specific mandate for these issues in their current portfolio—this might also be a case in which President Biden's chief of staff, Ron Klain, a former tech investor, should take a direct role. For both the EU and the United States, there will be a need to include other senior-level

individuals on occasion, depending on the expertise required for the issues under discussion. But, whoever is in the room for the EU and the United States, there must be a commitment at the leadership level to participate in an ongoing dialogue, even if a physical meeting only takes place once per year.

- **Focus on strategic discussions.** A ministerial-level Digital Council is not about resolving technical disputes. Such matters are rightly delegated to the working level, as has been seen with the post-Schrems II negotiations on the Privacy Shield arrangement on transatlantic data transfers. Instead, this council is about sharing perspectives, identifying areas of cooperation, and deescalating conflicts. A comparable example is the EU-US Energy Council, which did not resolve US-EU differences over climate change during the last administration, but provided a useful forum for discussions of energy security and shifting supply chains, including the export of US liquefied natural gas (LNG). A Digital Council could usefully have an agenda that focused on fostering and managing new technologies, maintaining a competitive and open digital marketplace, and strengthening democracy in the digital age. The council could, for example, outline the parameters of a US-EU accord on artificial intelligence (as proposed by the EU) and turn it over to specialists for negotiation. It would provide an opportunity to compare strategies for enhancing resilience in supply chains and balancing privacy and national security concerns. A Digital Council would be the logical place for the United States and EU

US Commerce Secretary Gina Raimondo speaking at a briefing at the White House. Source: REUTERS/Kevin Lamarque

to coordinate their efforts on countering disinformation and other harmful online content, and to scope out the digital agenda for the Summit of Democracies and other multilateral forums. With the Group of Seven (G7) now tackling digital trade issues, the OECD examining digital tax and AI principles, and the Group of Twenty (G20) fostering the idea of "data free flow with trust," a US-EU Digital Council could offer a valuable bilateral format for preliminary discussions.

- **Do not shy away from differences between the United States and EU.** A comprehensive format is especially well suited to the discussion of differences, so that they do not dominate the agenda. Comprehensive formats can also provide opportunities for "horse-trading" (i.e., bargaining across issue areas). With a focus on strategic-level discussions, a Digital Council would allow both sides to present their perspectives on tough issues such as data transfers or digital tax and develop a high-level understanding, even if the specific negotiations are handled elsewhere. Such a council could also be the ideal place for allaying US concerns about EU "digital sovereignty" as a protectionist impulse, by providing an opportunity for direct questioning and discussion. Indeed, this is probably one of the core issues that should be discussed in a high-level dialogue, given the way notions of digital sovereignty permeate the EU approach to tech and digital policy across many issues.

- **Have the authority to engage agencies and departments across government.** The complexity of digital and tech policy requires that the principals engaged in a Digital Council must be able to insist that other agencies in the administration (or the commission) follow through on the council's work. The commission is relatively well structured in this regard, with Vestager the clear leader on digital policy and also holding the competition portfolio. It also helps that digital policy—along with the Green Deal—is one of the von der Leyen commission's very top priorities, and, thus, important throughout the bureaucracy. In Washington, however, authority over digital and tech issues is widely disseminated, with the State Department responsible for international multilateral engagement, the USTR for trade-related issues, and the Commerce Department focused on US export policy (and holding the lead on the Privacy Shield negotiations). None of these departments has authority over independent agencies such as the Federal Communications Commission, Federal Trade Commission, National Institute of Standards and Technology, or many others engaged in some element of tech and digital policy. For

US Senator John Thune (R-SD) questioning Facebook CEO Mark Zuckerberg, on October 28, 2020.
Source: Greg Nash/Pool via REUTERS

that reason, White House engagement is essential. In the past, regulatory dialogues established between the USTR and the commission's Directorate General Trade have suffered from their inability to enlist cooperation from other elements in their bureaucracies, and it was only after intense work during the Transatlantic Trade and Investment Partnership (TTIP) negotiations that real progress began to be made. For any Digital Council to be effective, it must be clear from the beginning that other agencies will be brought in when relevant.

- **Delegate specific issues to relevant decision-makers, while providing guidance and tracking their progress.** If the Digital Council can engage policymakers across government, it must also be able to track the results of that engagement. Ministerial-level councils are unlikely to meet more frequently than annually—although, in the post-COVID age, it may seem entirely natural to supplement an in-person annual gathering with virtual discussions. However the meetings are conducted, the agendas need to provide for follow-up on those tasks assigned to others, allowing the Digital Council principals to intercede if necessary and push toward a conclusion. This will also ensure that the Digital Council focuses its strategic discussions tightly enough that appropriate actionable items can be identified.

- **Provide an opportunity for stakeholders—business, consumers, and legislators—to engage directly.** Stakeholders should be key partners of the Digital Council. Legislators in both the US Congress and the European Parliament are already active on digital and tech issues. Bringing them into some Digital Council

consultations could encourage more discussion of US and EU differences in perspective and regulatory approaches. Having members of Congress and the European Parliament meet on the fringes of the Digital Council and then meet with council leadership would underscore the key role of legislation on both sides of the Atlantic, and could help reduce some of the friction involved in that process. Even more important, the Digital Council should leave time during its meetings for interaction with representatives of consumers and business. This could happen either separately or together. The Energy Council, for example, at least once hosted a conference alongside its meeting and a lunch between stakeholder chief executive officers (CEOs) and the US

European Commission President Ursula von der Leyen consults with Executive Vice President Margrethe Vestager and Executive Vice President for the European Green Deal Frans Timmermans during a plenary session of the European Parliament.
Source: REUTERS/Yves Herman

energy secretary. However such interaction is arranged, the Digital Council will only be truly successful if it takes into account the views of those who have built the digital economy and those whom it serves.

RAISING THE LEVEL OF US-EU AMBITION

Establishing a US-EU Digital Council could be an early hallmark of the revitalized transatlantic relationship advocated by the Biden administration. While the TTC could certainly be an integral part of such a council, this more comprehensive structure would undoubtedly raise the level of ambition. Given that it would require the engagement of top leadership in both the European Union and the Biden administration, the most appropriate launching pad might be the US-EU summit, scheduled for June 2021. But, the parties should not wait long to establish such a council—the EU is moving forward with legislation that will do much to shape its digital economy, and the United States will soon find many decisions already made.

Setting up a Digital Council would not be a risk-free undertaking, as greater discussion may uncover even more differences and highlight the challenges facing any effort to reach accommodation. But, even if the council does not generate agreement across all issues—an impossible ambition—it will provide vital opportunities for sharing perspectives and for developing a more strategic imperative for collaboration, especially given the growing influence of other powers in the global arena. Most importantly, it would provide a concrete manifestation of transatlantic engagement on the vital issue of the digital economy, allowing the United States and the European Union to demonstrate their leadership on technology and digital policy at a key moment in history.

ABOUT THE AUTHOR

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Her most recent report is *Engaging Europe: A Transatlantic Digital Agenda for the Biden Administration*. Among her other publications are: *The European Union and the Search for Digital Sovereignty: Building "Fortress Europe" or Preparing for a New World?* (co-authored); *Making America First in the Digital Economy: The Case for Engaging Europe* (2018); *After Brexit: Alternate Forms of Brexit and their Implications* (co-authored); *Europe in 2022: Alternative Futures* (co-authored with Mathew Burrows); *A Transatlantic Approach to Europe's East: Relaunching the Eastern Partnership*; *Shoulder to Shoulder: Forging a Strategic US-EU Partnership*; *Rethinking the Russia Reset*; and *Transatlantic Leadership for a New Global Economy.* She is also a frequent commentator on European politics and transatlantic relations, with interviews and op-eds appearing in the *Huffington Post, Handelsblatt Global Edition, Financial Times*, al-Jazeera, BBC, National Public Radio, CNBC, CCTV, among others.

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