

**THE EU AS
A DIGITAL
REGULATORY
SUPERPOWER:
IMPLICATIONS
FOR THE
UNITED STATES**

A VIEW FROM WASHINGTON

Foreword



Over the past five years, the EU has led the charge on digital regulation, enforcing digital taxes, raising privacy standards, and levying landmark antitrust fines. The bloc also leads the conversation on hot topics such as ethical artificial intelligence, regulation of social media platforms, and reduction of online harms such as disinformation.

Given the size of the EU market and relative US inaction in this area, Brussels has been able to assume this leadership role in digital regulation, with countries and companies around the world either voluntarily or involuntarily adopting some of its standards. This has often brought the EU into direct conflict with US tech companies and subsequently the current US administration, further complicating a strained transatlantic relationship.

It was with this in mind that the European Council on Foreign Relations organised a closed-door workshop in Washington DC on 23 October 2019 in collaboration with Telefónica and the Carnegie Endowment for International Peace to discuss the implications of EU regulation on the US and whether a common trans-Atlantic vision for the digital realm can prevail.

The EU approach

The European Commission has set itself an ambitious agenda to promote European solutions to digital questions and achieve tech sovereignty via a whole raft of initiatives on everything from artificial intelligence to cybersecurity. One EU participant explained that Europe's bid for tech sovereignty is simply a drive to acquire the independence and capacity to put its house in order and lead by example on digital issues (as opposed to geopolitical arm-twisting which it is not equipped to do).

Various voices on the US side questioned this narrative, asking whether tech sovereignty was truly about the capacity to act or in fact the capacity to act alone, given the EU's recent unilateral moves on digital issues. US participants also highlighted the EU's propensity for arm-twisting not only on digital questions but in other areas such as its normatively designed commercial policies.

There was consensus however that Europe is relatively late to the game when it comes to integrating economic instruments with geopolitical priorities. The US is much more advanced in weaponising its economic might to defend its interests and impose its foreign policy agenda. Meanwhile in the EU, the national security and foreign policy dimensions have been largely absent in similar trade and economic policy debates. Furthermore, the EU will struggle to become a true regulatory superpower in the digital space if it is not a digital superpower itself. The bloc should avoid pursuing a solely defensive approach to the issue; regulation should go hand in hand with clear investment in tech and digital education of the workforce. US participants

warned of the business risks for European entrepreneurs and start-ups posed by the European Commission's unpredictable and inconsistent regulations, citing the legal uncertainty surrounding copyright laws.

“We saw all the benefits but now we're seeing the ugly side of user generated content [...] On the one hand, we do not want to stifle innovation, at the same time, we would like to disincentivise the creation of harmful content.”

*– Peter Fatelnig,
Minister – Counselor for Digital
Economy Policy
European Union Delegation to the
United States.¹*

¹ This quote along with all others in the document are taken from publicly available video interviews conducted with participants following the workshop discussion. To see the full interviews, visit [\[link al video\]](#).”

The US approach

European participants countered that while the EU may be falling behind on the economic side of the equation, Brussels is aware of the issue and is trying to work on it. Meanwhile, EU participants found it far more concerning that the US “has no idea how to regulate” and continues to show little enthusiasm for it, leaving it to Europe to generate and implement ideas on online regulation. US failure to legislate in this new area is tantamount to a lack of leadership, allowing other actors to shape the digital rulebook which will partially govern US companies.

Far from being clueless on online regulation, one US participant contended that it is harder to make laws in the US than in Europe and that that is a positive thing, “we shouldn’t legislate for the sake of legislation”. Yet several US representatives did admit that the current Administration suffers from a lack of policymakers and expertise on digital issues when compared to the previous one, presenting a significant short-term challenge.

Nevertheless, even if the policymakers were in place, the US side stressed that the United States will never jump aboard the EU’s regulatory train, pointing towards

President Obama’s failed attempts to introduce privacy legislation throughout his mandate as an illustration. The US diverges from the EU on three key points relevant for digital regulation: anti-trust law enforcement is more problematic, favouring government less than in Europe; there is no real regulatory framework; and the first amendment affords a degree of protection to online platforms.

“Europe is taking the lead but the US needs to learn from what Europe is doing and adjust its own policy framework.”

– Gene Kimmelman,
Senior advisor Public Knowledge.¹

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A roadmap for transatlantic cooperation

Yet several participants argued that there are more commonalities between the US and EU positions than there are differences – particularly a shared support for open society values online – which provide fertile ground upon which to base regulation and policymaking. In light of the wholly

“We have a lot of optimism that policy makers, civil society and industry can come together [...] to find smart solutions.”

*– Astri Kimball van Dyke,
Senior Counsel Google.¹*

different Chinese position (vis a vis privacy, surveillance, and freedom of speech), the US and EU should not see themselves as two points in a triangle but instead as two allies in need of a harmonised approach.

Meanwhile key actors such as India – potentially a pivot player given its significant market size and digital prowess – are currently deciding how they will address several of these issues. A united transatlantic position may have significant implications on the direction these actors decide to take and subsequently on the future standardisation of technology.

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How can the US and EU move beyond their persistent regulatory and technological disputes to achieve this common position? Firstly, they should focus on their underlying values and goals as opposed to the approaches and tools used to achieve them which will likely continue to differ. Admittedly, this will not be entirely painless as it should first involve a process of defining policy goals which may hit major bumps when discussing more contentious issues such as the creation of a level playing field in the digital ecosystem.

As such, a relationship based on mutual recognition without having to share identical views is key. This flexible arrangement should allow for parties to adopt different frameworks in the pursuit of similar results. Meanwhile, the US and EU can begin advancing on several areas where alignment should be relatively straightforward such as the creation of a transatlantic marketplace and on cybersecurity. This would eventually enable both actors to move beyond the US-EU question and together focus on the big picture; defining the shape the digital ecosystem is going to take.

“GDPR is adapting the rules to defend privacy taking into account the fact that data is part of a fundamental right which is dignity.”

*– Pablo de Carvajal,
General Counsel and Regulatory
Affairs, Telefonica SA.¹*

¹ This quote along with all others in the document are taken from publicly available video interviews conducted with participants following the workshop discussion. To see the full interviews, visit [\[link al video\]](#)."

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WHAT COULD BE POSSIBLE SOLUTIONS FOR THESE ISSUES?

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