

## **Strengthening U.S.-EU Cooperation on the Transatlantic Digital Economy: A Proposal to U.S. Policymakers**

*From the Snowden revelations to the invalidation of Safe Harbor to concerns about the Digital Single Market, there appears to be a growing divergence between Americans and Europeans over how to govern our shared digital future. The author argues here that the broad and complicated set of challenges facing policymakers on both sides of the Atlantic calls for closer, consistent cooperation on the digital economy. This proposal to American policymakers recommends the creation of joint U.S.-EU body to achieve this aim. The proposed organization would serve as a convener, where stakeholders can regularly discuss how to govern emerging technologies, and as a forum, where interoperable approaches to regulation can be identified and promoted.*

This proposal for American policymakers is for the creation of an organization to facilitate cooperation between the United States and the European Union on transatlantic digital governance. By more than one measure, the Atlantic is the most dynamic and innovative regions in the world; yet when it comes to setting the rules for the emerging digital economy, it is also a region marked by growing contention. As we witnessed throughout the negotiation of the EU-U.S. Privacy Shield, active cooperation between Washington and Brussels is necessary to avoid costly miscalculations. Given the uncertain future of the Transatlantic Trade and Investment Partnership (TTIP), the organization proposed would preserve U.S. economic interests and ameliorate the so-called “digital imbalance” in international trade policy.

### **The Proposal: A Joint U.S.-EU Body on the Transatlantic Digital Economy**

The proposal is to create a joint body to coordinate U.S. and EU efforts to govern the transatlantic digital economy. The problem at hand is that policymaking on issues as diverse as data privacy, automation, cloud computing, and a host of other emerging technologies are made without consideration of partners on the other side of the Atlantic. While such an approach was natural in the past, the current state of our commercial relations has raised the cost of siloed policymaking. Rules made in Brussels affect how firms based in Silicon Valley operate, not just in the EU, but worldwide.

The organization’s aim would be twofold: 1) to serve as a regular convener where stakeholders from the Department of Commerce, the Federal Trade Commission, the Directorate-General for Justice and Consumers, the European Data Protection Board, among others, can regularly discuss how they govern or aim to govern emerging digital technologies; 2) to act as a forum, where interoperable approaches to regulation can be identified and promoted, with input from industry and civil society. A body with such a holistic mandate will undoubtedly need high-level executive support to function

---

<sup>1</sup> The views and opinions expressed here are solely those of the author.

properly. As some have already suggested, an organization of this type should be placed jointly in the Executive Office of the President and the European Commission.<sup>2</sup>

This proposal makes a number of assumptions that should be stated openly. First, that despite differences in regulatory standards that arise out of distinct political, legal, historical, and cultural contexts, the U.S. and EU typically agree on the benefits and opportunities arising from the digital economy. Second, that when policy differences arise, it is possible and prudent to come to a compromise that achieves interoperability between the respective systems. Third, that the U.S. and EU are economically and politically worse-off when they fail to cooperate on governance of the digital economy both in the Atlantic and globally. Fourth, that both Washington and Brussels maintain an active commitment to democratic values, the rule of law, and open markets. Stating these assumptions is necessary for a worthwhile debate on one of the most contentious issues in the transatlantic relationship.

### **Background: A Growing Divergence Between Washington & Brussels?**

The differences between Washington and Brussels over how to govern markets enabled by digital technologies pale in comparison to the opportunities they generate. The Atlantic is the most dynamic region in today's global digital economy. If we consider Internet traffic, for example, then more data—in the form of emails, Spotify songs, Google searches, WhatsApp messages, Facebook posts, and Skype calls—flows between the U.S. and the EU than anywhere else in the world, 50 percent higher than U.S. traffic with Asia.<sup>3</sup> The U.S. and EU together serve as a fertile breeding ground for so-called 'unicorns,' technology companies of at least a billion dollars in value or more. Sixty-nine unicorns were founded in the U.S. and EU between 2000 and 2014, with Europe contributing thirty of these companies.<sup>4</sup>

Yet, despite these close linkages, there has been no shortage of setbacks to transatlantic cooperation in this sphere. Revelations by Edward Snowden of American government surveillance activities in Europe. The invalidation of the Safe Harbor Agreement by the Court of Justice of the European Union. Suspicions in Washington that the European Commission is engaging in digital protectionism. Investigations of anti-competitive behavior from American tech giants by the Commission. It would be easy to argue that these developments point to a growing divergence between Americans and Europeans over our shared digital future. In truth, this broad set of complicated issues lends itself to a call for closer, consistent cooperation.

Of the lessons learned from the EU-U.S. Privacy Shield negotiations, the importance of proactive cooperation is foremost. Despite very distinct ways of conceiving data privacy and data regulation, the Department of Commerce and the European Commission constructed an interoperable mechanism that benefits both sides. An important element in the final compromise was an annual review process involving all relevant stakeholders; its purpose is to evaluate compliance with the Privacy Shield's principles and to identify problems to be resolved. The significance of such a process cannot be understated: if the transatlantic digital economy is to remain sustainable, regular interactions are a necessity.

### **How the United States Benefits from the Proposal**

---

<sup>2</sup> Burwell, France et al, "[Building a Transatlantic Marketplace: Twenty Steps to 2020](#)," *The Atlantic Council Taskforce on Advancing a Transatlantic Digital Agenda*.

<sup>3</sup> Meltzer, Joshua, "[The Importance of the Internet & Transatlantic Data Flows for U.S. and EU Trade and Investment](#)," *The Brookings Institution*.

<sup>4</sup> Novelli, Catherine, "[Remarks by the Undersecretary of State: Growing the Transatlantic Digital Economy](#)," *Lisbon Council*.

Below are three ways in which the U.S. would gain from the proposal. Lack of space here means that the list is non-exhaustive.

1) *The U.S. Needs an Alternative to the TTIP*

Under the administration of Barack Obama, the U.S. has sought to embed norms favorable to an open digital economy into the architecture of the global trading regime. The chief means for achieving this goal has been large-scale regional trade agreements, including the TTIP. The current political climate has now rendered this strategy untenable. Even before the election of Donald Trump to the U.S. Presidency, the European Commission had stalled discussions on the protection of data flows across borders, a basic requirement for ensuring open digital markets. To quote one EU Commissioner, TTIP is now “in the freezer.”<sup>5</sup> In lieu of new trade disciplines, Washington will need venues to defend and promote these norms on digital trade abroad. The proposed institution is one such venue.

2) *The U.S. Can Address the Digital Trade Imbalance with the EU*

The “digital trade imbalance” refers to the “the imbalance between the U.S.’s enthusiasm for and its major trading partners’ ambivalence toward the creation of a system of trade rules” to govern the global digital economy. In another respect, it “speaks to the divide over what is [digital protectionism] and what comprises a legitimate national policy.”<sup>6</sup> The EU has less invested in the rules governing digital trade as they are currently conceived of by the U.S. Consequently, it has been a half-hearted ally in defending the open Internet against disturbing trends like data localization. By establishing a regular pattern of coordination and cooperative governance with Brussels, the proposed institution can give the EU greater buy-in into the regime that the U.S. seeks to establish. Committed European partners would mean easier TTIP negotiations later and a united front against Russia and China. Both Moscow and Beijing, after all, already cooperate on using digital technologies to close markets and undermine democratic values.<sup>7</sup>

3) *The U.S. Can Protect its Economic Interests*

Digital trade is an increasingly consequential part of the U.S. economy. The U.S. International Trade Commission estimates that trade in digitally intensive industries has resulted in an estimated 3.4 to 4.8 percent increase in U.S. Gross Domestic Product.<sup>8</sup> Likewise, export markets represent a growing share of the user base for U.S. tech companies. In 2008, some 50 percent of Facebook users were outside the U.S.; by 2013, that figure was 86 percent.<sup>9</sup> Washington therefore has an economic interest in heading off market access barriers and in preventing regulatory uncertainty from causing commercial harm. The 2015 invalidation of the Safe Harbor agreement by the European Union Court of Justice, for example, threatened to halt the free flow of data across the Atlantic. While estimated costs to the U.S. are hard to come by, one study found that the proposed fall in EU GDP would have reached .08 to 1.3 percent, or roughly three to four times the economic decline in 2012 due to the Euro crisis.<sup>10</sup>

## Conclusion

---

<sup>5</sup> Dendrinou, Viktoria. “[Trump Election Likely to Put U.S.-EU Trade Talks On Ice.](#)” *The Wall Street Journal*, November 11, 2016.

<sup>6</sup> Aaronson, Susan Ariel, “[The Digital Trade Imbalance and its Implications for Internet Governance.](#)” *Global Commission on Internet Governance.*

<sup>7</sup> Soldatov, Andrei and Irina Borogan, “[Putin brings China’s Great Firewall to Russia in Cybersecurity Pact.](#)” *The Guardian*, November 29, 2016.

<sup>8</sup> United States International Trade Commission, “[Digital Trade in the U.S. & Global Economies, Part 2](#)”

<sup>9</sup> Meeker, Mary, “[Internet Trends 2014 – Code Conference.](#)”

<sup>10</sup> Bauer, Matthias et al. “[The Economic Importance of Getting Data Protection Right: Protecting Privacy, Transmitting Data, Moving Commerce.](#)” *European Centre for International Political Economy.*

The growth and dynamism of the transatlantic digital economy is a testament to the continued relevance of the United States and the European Union's close partnership. With political uncertainty in Washington and in several EU Member States, there is an even greater need to look past policy disagreements, remind ourselves of our shared values, and build greater resiliency into our partnership. The aim of this proposal, for an institution to coordinate efforts to govern digital technologies, is meant to be a modest step forward in this regard. The author's hope is that U.S. policymakers see the value of meaningful cooperation with our most consequential allies.