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The Narrowing U.S.-EU Tech Policy Divide

The United States is increasingly aligning with the European Union's stricter approach to tech regulation, marking a significant shift in transatlantic digital policy. This convergence is most evident in antitrust enforcement, where U.S. agencies have launched high-profile cases against major tech companies. However, pushback from independent courts and the lack of new federal legislation have limited the extent of this shift. Divergences persist in areas such as data localization and digital taxation, while the outcome of the 2024 U.S. presidential election adds uncertainty to future policy directions. These evolving dynamics carry profound implications for global digital governance, international trade, and technological innovation, potentially reshaping the world's digital economy.

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Introduction

Treaties and official agreements often shape inter-governmental relations, including those across the Atlantic. Technology is no exception. The U.S.-EU Trade and Technology Council (TTC), established in 2021, serves as

a forum for the U.S. and the EU to address technology-related trade issues and strengthen transatlantic cooperation in the digital domain.

However, domestic and regional policies formulated independently of international agreements can also affect how economies and firms behave within and across borders. As technology, including digital platforms, smartphones, and artificial intelligence, becomes increasingly central to society, countries have intensified their focus on policy-making energies in these areas. Recent years have seen significant shifts in how technology is perceived and regulated around the world.

This article focuses solely on the ways in which key technology policies in the U.S. and the EU are converging or diverging, without addressing the normative question of whether these changes are “good” or “bad.” While greater alignment between nations is often viewed positively and is typically a key goal in international relations it is crucial to consider potential trade-offs in the context of technology policy. Even if countries reach consensus, increased agreement on policies that carry significant economic costs may not necessarily be “good.”

The U.S. and the EU have historically adopted different approaches to regulating and managing antitrust issues related to private technological innovation. The U.S. has prioritized innovation and growth through less regulation and a more lenient antitrust policy. In contrast, the EU has been more cautious, with more regulation and more skepticism toward mergers and large-scale operations, particularly when it comes to American companies.

Recently, U.S. policymakers have begun to align more closely with the European approach in antitrust enforcement and digital market regulation. However, U.S. agency losses in the independent court system, along with Congress’s inability to pass significant technology-related legislation (aside from subsidies),

have left the extent of this shift in preferences—and its potential impact—uncertain.

The two sides are not converging in all areas. Both the U.S. and the EU traditionally have opposed “data localization” laws, which require companies to store citizens’ data within national borders. Recently, though, the United States Trade Representative (USTR) announced that the U.S. would no longer oppose such regulations. Additionally, the U.S. and the EU continue to disagree on how to tax large tech firms.

The impact of the outcome of the 2024 U.S. presidential election on tech policy remains uncertain. A Trump victory would likely result in continued strict antitrust actions against and skepticism toward big tech. On the other hand, less is known about Kamala Harris’s stance on technology, but she is often seen as more sympathetic towards tech firms, partly due to her roots in tech-centric San Francisco. Paradoxically, this could mean that a Harris Administration might be more favorable to big tech than a Trump Administration, despite Republicans traditionally being more business-friendly.

Why Domestic and Regional Tech Policies Matter for Transatlantic Relations

While international agreements, such as those facilitated by the TTC, are essential, domestic and regional tech policies in the U.S. and EU have far-reaching implications that extend beyond their own borders. In other words, if the goal of international agreements and institutions like the TTC is to improve global well-being, then the cross-border impact of domestic and regional regulations must also be considered. These policies can have numerous international effects:

1. **Global Economic Impact:** Given the tech sector's highly globalized nature, policy changes in one region can have significant economic repercussions worldwide, influencing where companies choose to operate and innovate.
2. **Regulatory Influence:** Policies in one region can inspire similar regulations elsewhere. Conversely, differences in policy provide tangible evidence of trade-offs, allowing policymakers to assess the costs and benefits of various approaches.
3. **Geopolitical Implications:** Tech policies are increasingly intertwined with foreign policy strategies, as demonstrated by the coordinated U.S.-EU approach to Chinese tech companies.
4. **Global Standards:** U.S. and EU policies often serve as templates for other nations, particularly in the developing world. This "policy export" effect can transform domestic regulations into de facto global standards.
5. **Digital Trade and Data Flows:** Policies on data storage and transfer, such as data localization, have immediate implications for global digital trade and could potentially lead to the fragmentation of the global internet.
6. **Consumer Welfare:** The global reach of tech platforms means that policies in one region can directly affect users in another. For example, EU-mandated changes to platform algorithms often get implemented globally, impacting user experiences worldwide.

Recognizing these cross-border impacts underscores why the convergence or divergence of U.S. and EU tech policies is significant not just for formal diplomatic relations but also for the global economy, technological development, and the daily lives of people worldwide. As we examine the narrowing tech policy divide, it is crucial to consider these broader implications to truly understand the importance of transatlantic alignment in the digital age.

Antitrust Converges

U.S. antitrust policy has traditionally prioritized consumer interests over those of competitors. In contrast, the EU has focused more on the "fairness" of competition and the level of market concentration. A U.S. shift towards the European focus represents one of the most significant recent changes in tech policy.

The shift in U.S. antitrust policy arguably began under the Trump Administration in 2020, when the U.S. Department of Justice (DOJ) filed a lawsuit against Google for "unlawfully maintaining monopolies through anticompetitive and exclusionary practices in the search and search advertising markets." Two months later, the Federal Trade Commission (FTC) and 48 state attorneys general filed separate lawsuits against Facebook, accusing the company of anticompetitive conduct and seeking the divestiture of Instagram and WhatsApp.

Antitrust officials appointed by the Biden Administration further formalized this shift, particularly with the appointment of Lina Khan as chair of the FTC. Her 2017 article on what she saw as antitrust violations by Amazon established her as a prominent advocate for rethinking U.S. antitrust policy.

In 2021, Lina Khan revoked the FTC's approval of the 2020 Vertical Merger Guidelines. Then, in 2023, the FTC and DOJ introduced new Merger Guidelines that focus primarily on competitor dynamics and market concentration, rather than concentrating on consumer impacts.

In recent years, the agencies have pursued major antitrust cases against Facebook, Amazon, Apple, and continue the case against Google. They have also taken action to block significant acquisitions, including Nvidia's acquisition of Arm in 2021 and Microsoft's purchase of Activision in 2022, among others.

The shift towards more aggressive, EU-like antitrust enforcement in the U.S. does not automatically imply that the U.S. will become as strict as the EU. The outcome of these antitrust challenges is ultimately determined by the courts, and, so far, the agencies have had little luck in court, losing many cases. A notable exception is the case brought by the Trump DOJ against Google, which resulted in an August, 2024 District Court decision finding that Google illegally maintained a monopoly in search. Google is expected to appeal this decision.

Laws and Regulations: Similar Directions, But More Action in EU

EU and U.S. policymakers generally share a critical view of big tech today, but the EU has enacted far more legislation and regulation

compared to the U.S., where Congress has passed little new tech-related legislation. In recent years, the EU has passed the General Data Protection Regulation (GDPR), the Digital Markets Act (DMA), the Digital Services Act (DSA), and the AI Act. In contrast, while numerous similar bills introduced in the U.S. Congress, none have become law.

Privacy

The EU's comprehensive GDPR came into effect in 2018, but the U.S. has not passed any comparable legislation despite considerable efforts. In 2023 alone, legislators introduced 12 bills focused on consumer and individual privacy, along with many others addressing specific areas like health and financial privacy. However, no privacy legislation has been passed in recent years, and the U.S. has yet to adopt a privacy law as expansive as the GDPR.

In the absence of federal action, many U.S. states have passed their own privacy laws. The most consequential is the California Consumer Privacy Act (CCPA), largely due to California's size and its pivotal role in the tech industry.

Digital Markets

The most comprehensive law enacted in the EU is the DMA. This regulation targets firms designated as "gatekeepers," i.e. firms that "provide an important gateway between businesses and consumers in relation to core platform services."

Gatekeeper Designations

		Gatekeeper					
		Meta	Alphabet	Apple	Amazon	Microsoft	ByteDance
Core Platform Service	Social Networks	Facebook Instagram				LinkedIn	TikTok
	Intermediation	Meta Meta Marketplace	Google Maps Google Play	App Store	Amazon Marketplace		
	ADS	Meta	Google		Amazon		
	N-IICS	WhatsApp Messenger					
	Video Sharing		Youtube				
	Search		Google Search				
	Browser		Chrome	Safari			
	Operating Systems		Google Android	iOS		Windows PC OS	

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Source: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4328

The DMA prohibits self-preferencing, mandates interoperability between platforms, and forbids the pre-installation of certain software as defaults on devices. Penalties for non-compliance are substantial, reaching up to 10 percent of global revenues for a first offense and 20 percent for repeat offenses.

Although passed in 2022, the DMA came fully into force in March 2024. Some impacts were immediate. Apple, for example, is now required to permit iPhones to work with non-Apple app stores in the EU. The European Commission also promptly fined Apple €1.8 billion for violating DMA regulations. Meanwhile, the EU’s Digital Services Act (DSA) regulates content moderation and online advertising.

One critique of the DMA from the U.S. is that it is a protectionist measure, targeting primarily American companies, with the notable

exception of including ByteDance, a Chinese firm. Even so, U.S. legislators have made efforts to pass similar laws. In 2021, Democratic Senator Amy Klobuchar and Republican Senator Charles Grassley introduced the American Innovation and Choice Online Act, which aimed to implement rules akin to those in the DMA. Although the Act was reintroduced in 2023, it has yet to receive a vote from the full Senate.

Artificial Intelligence

While both U.S. and EU policymakers have expressed concern over AI, only the EU has taken broad legislative action. The EU’s AI Act imposes comprehensive regulations on the development and deployment of AI systems. In contrast, the U.S. federal government has only issued an executive order on AI.

Without federal rules, U.S. states have stepped in to fill the void, resulting in a

patchwork of state-level AI regulations. The most significant of these is California's SB 1047, which the state legislature has approved but still needs to be signed by the governor in order to become law.

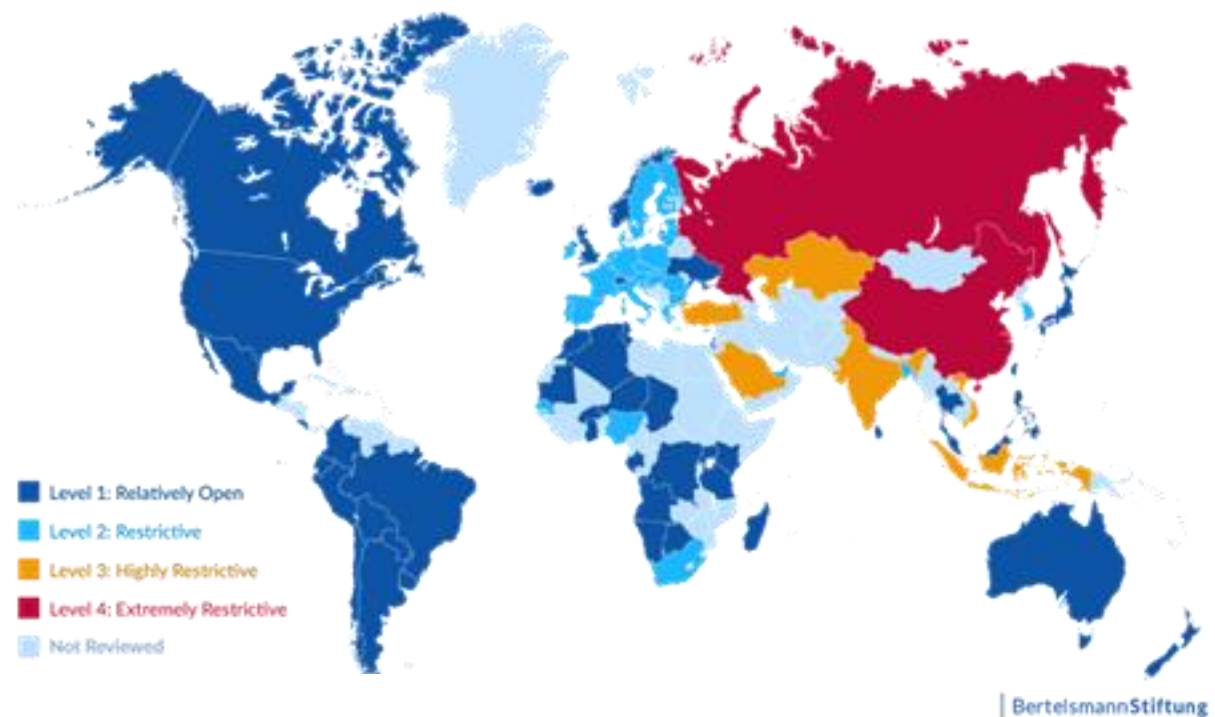
Data Localization Policy Diverges

Companies store data across the globe to improve efficiency, security, redundancy, and more. These cross-border data flows affect nearly every sector of the economy. However, the issue of where data should be stored and used is controversial. Many countries have enacted "data localization" laws that require companies to store and handle certain data domestically.

Governments argue that data localization is crucial for protecting privacy, safeguarding against government surveillance, and upholding freedom of speech and expression. The validity of these arguments often depends on the comparative strength of domestic laws and norms versus those of other countries.

Data localization policies vary widely, as illustrated by the map below. The EU's GDPR mandates that certain types of personal data be stored domestically, setting a standard that is stricter than anything currently in the United States but a far cry from laws in China and Russia. In those countries, data localization laws are extensive and used as a tool for maintaining government control over society.

Cross-Border Data Policies around the World



Source: <https://globaldataalliance.org/resource/cross-border-data-policy-index/>

Aside from the data localization requirements imposed by the GDPR, the U.S. and the EU have generally opposed strict data localization laws. The U.S.-EU Data Privacy Framework says that "personal data can flow freely

from the EU to companies in the United States that participate in the Data Privacy Framework."

However, in October 2023 the USTR reversed its longtime opposition to data

localization laws. This move surprised not only the EU but also many within the U.S. government. Senator Elizabeth Warren was a key advocate for the change, though other Democrats did not necessarily agree. Democratic Senator Ron Wyden criticized the USTR's "unilateral decision," labeling it a "win for China."

Digital Taxation: No Progress

The issue of how much and where to tax large tech firms has been a long-standing controversy. In 2018, the European Commission proposed a 3 percent tax on the revenues of large digital companies—many of which are American, such as Google, Amazon, Facebook, and Apple. The EU argued that these companies shift profits to low-tax jurisdictions, resulting in insufficient tax contributions in the countries where they actually operate.

The U.S. contended that the EU's digital tax plan unfairly targeted American companies. Beginning in 2019, the USTR initiated a Section 301 investigation into digital services taxes adopted or proposed by several countries, including France, Italy, and the United Kingdom. The investigation found that these taxes discriminated against U.S. companies and were inconsistent with international tax principles. As a result, the United States threatened to impose retaliatory tariffs on a range of EU products, such as French wine and Italian cheese.

To avoid a trade war, the U.S. and the EU reached a compromise in 2021. The deal, finalized during the G20 summit in Rome, established a new global tax framework applicable to large multinational companies across all sectors. This framework allows countries

to tax a portion of the profits earned by these companies within their jurisdiction, even without a physical presence there. In exchange, the U.S. agreed to suspend its proposed tariffs on EU products, and the EU agreed to delay implementing its digital tax plan.

The compromise was set to be replaced with a final agreement in 2023, but it has been extended through June, 2024. The resolution of digital taxation controversies remains uncertain.

The Impact of the 2024 U.S. Presidential Election

In many respects, the Biden Administration has continued tech policies initiated during the Trump Administration. The Trump Administration's antitrust agencies launched investigations and lawsuits against major tech companies, including Google, Facebook, Amazon, and Apple. The Biden Administration has carried forward and built upon these efforts, recently achieving a notable victory with a case started by the Trump DOJ. On August 5, 2024, a U.S. District Court found Google guilty of illegally maintaining a monopoly.

Both administrations have also expressed skepticism toward Section 230 of the Communications Decency Act, which provides legal immunity to internet companies for content posted by their users.

The two administrations have also shared similarities in their approach to TikTok and Chinese tech companies. President Trump signed executive orders attempting to ban TikTok and WeChat in the U.S. over national security concerns. Although the Biden administration revoked these orders, President

Biden later signed a [law requiring](#) ByteDance to divest itself of TikTok or face a potential ban in the U.S.

When President Biden was the presumptive Democratic nominee, it seemed unlikely that the outcome of the 2024 election would have much effect on tech policy given the policy similarities between Biden and Trump. Even Trump's vice president pick, JD Vance, [expressed appreciation](#) for the Biden FTC's antitrust approach toward big tech.

Biden's withdrawal from the race has cast doubt on this expectation. Vice President Kamala Harris's views on tech policy are not well known. However, progressives who advocate for more government oversight—through regulation, legislation, or antitrust measures—[seem concerned that](#) Harris might reverse recent trends. This apprehension is based on her public policy history and her background from generally tech-friendly San Francisco.

If Harris's administration were to be more tech-friendly, it would represent an intriguing shift in party positions. Traditionally, Republicans are seen as more business-friendly and Democrats as more open to regulation. In this scenario, we might see Republicans becoming more hostile toward tech firms, largely due to concerns about perceived censorship of conservative viewpoints, whereas Democrats could become marginally more tech-friendly although still suspicious of issues like "misinformation."

Conclusion

As the U.S. and EU navigate the complex landscape of tech policy, the convergence in their approaches to antitrust enforcement and the shifting stances on data localization and AI regulation have significant implications for transatlantic relations. While the TTC may help in addressing some of these challenges, its role is likely to be limited. This is because, apart from data localization, many of these issues are not inherently trade-related.

In international relations, reaching agreement among parties is often viewed as a key objective. However, if the goal is to enhance consumer welfare, U.S. and EU convergence might yield improvements, but it is not guaranteed. Stricter antitrust enforcement related to targeting big tech has popular appeal, but there is no clear evidence that it will benefit consumers. Similarly, while a U.S. privacy law could address the challenges of the current patchwork of state-level regulations, adopting the EU's GDPR model would come with significant costs. There is also broad consensus on the need for AI regulation, but there is no certainty about what those regulations should entail. Finally, having different approaches to emerging technologies in the EU and U.S. can be valuable for evaluating what works and what does not.

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About

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