

# The 'Brussels Effect' in Digitalisation and the Future of Transatlantic Relations

## Abstract:

Ever since its conception, the EU has been a worldwide leader in setting international norms and standards across markets. With the release of the new DSA-DMA legislative package, the EU wants to echo its 'normative power', or the so-called 'Brussels effect', into the realm of digitalisation. However, the new regulations should not lead to EU's self-isolation, nor should they stifle innovation in a heavily inter-linked market that thrives on open internet and open borders. In 2022, the EU's digital agenda will feature many inter-institutional negotiations on the DSA-DMA package that can lead to a European digital autonomy. As far as this autonomy needs to be open and strategic at the same time, the Trade and Technology Council (TTC) as a forum for dialogue between close allies can also be an important factor in shaping a liberal democratic governance for the world's digital economy.



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## Leading the way is in Europe's DNA

Ever since its conception, the EU has been a worldwide leader in setting international norms and standards across markets. Think of the Single Market – for many, the crowning jewel of European integration – that now comprises of 27 member states. The vision was to create a rules-based economic order that can potentially be joined by, and be beneficial for, every European country. And the task at hand was to create regulations that could be exported, to set standards for products and services that could be widely adopted, and to align policies and legal frameworks across a diverse continent.

With the Trade and Technology Council (TTC), launched in June 2021,<sup>1</sup> the EU is embarking on a dialogue to reduce trade friction between the EU and the US and agree on a common way forward. A successful TTC could become a global blueprint. The General Data Protection Regulation (GDPR) is perhaps the best-known example of a regulation that is now a worldwide benchmark in the protection of personal data privacy online.<sup>2</sup> As an essential component of EU privacy law and human rights law, the GDPR establishes a rigorous regulatory framework.<sup>3</sup> But although it applies only in the EU, companies with an international presence tend to comply with GDPR in their global dealings.

In this sense, the term 'Brussels Effect' – coined in 2012 by the Columbia law professor Anu Bradford – aptly captures one of the most important dimensions of EU power, that of a de facto worldwide regulator.<sup>4</sup> In a wide range of policy sectors, from competition and antitrust laws to the protection of data privacy,<sup>5</sup> the EU is setting standards and rules that the rest of the world follows. And leading the way in ideas about international organisation is in Europe's DNA.

However, for the world to follow, new rules will have to meet high standards in terms of principles and effects. The EU has formulated some of these in respect of the WTO reform,<sup>6</sup> underlining the value of global rules-based trade, non-discrimination, strong due process, and respect for fundamental rights. Meeting these criteria will be key to the success of the EU's digital package.

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1 European Commission (2021). 'EU-US launch Trade and Technology Council to lead values-based global digital transformation', Press Release, 15 June. [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_2990](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_2990).

2 Regulation (EU) 2016/679 (General Data Protection Regulation).

3 Center for Information Policy Leadership (2021), 'White Paper on the Interplay Between the Draft EU Digital Markets Act and the GDPR', Blog post 16 December 2021. <https://www.huntonprivacyblog.com/2021/12/16/cipl-publishes-white-paper-on-the-interplay-between-the-draft-eu-digital-markets-act-and-the-gdpr/>.

4 A. Bradford (2020), *The Brussels Effect: How the European Union Rules the World* (New York: Oxford University Press).

5 As is the case with the GDPR.

6 European Commission (2021), 'Reforming the WTO: towards a sustainable and effective multilateral trading system' (Luxembourg: Publication Office of the European Union). Luxembourg: Publication Office of the European Union. [https://trade.ec.europa.eu/doclib/docs/2021/april/tradoc\\_159544.1329\\_EN\\_02.pdf](https://trade.ec.europa.eu/doclib/docs/2021/april/tradoc_159544.1329_EN_02.pdf).

## Setting the rules for the European digital market

The Digital Markets Act (DMA)<sup>7</sup> and the Digital Services Act (DSA)<sup>8</sup> form the biggest legislative package to attempt to co-ordinate EU rules for digital markets and services since the e-Commerce Directive in 2000.<sup>9</sup> With DSA the Commission aims to consolidate a Digital Single Market across the EU, which will be the cornerstone of European recovery, innovation, and growth in a post-Covid world. The DMA was voted in a plenary session of the European Parliament in December 2021. A period of intense negotiations among the principal EU institutions will follow. A plenary vote for the DSA is envisioned for January 2022, to be followed by more negotiations between the co-legislators of the EU.

An 11th-hour debate in the DSA provisions will necessarily touch upon various points of balance and proportionality in the regulation. Although data-sharing obligations for service providers can establish transparency and a clear accountability framework for online platforms, it may also infringe the privacy of consumers, their fundamental rights, and even public security.<sup>10</sup> The same transparency obligations may also compromise commercially sensitive information and disrupt free and fair competition in the online environment. Finally, disproportionate obligations for online service providers may also impair the ability of SMEs and start-ups to comply and compete with major players, thus stifling innovation and growth within the digital single market.

Nevertheless, beyond the legal specifics, the main concern with the DMA–DSA package is a strategic one.

In setting digital standards, EU Leadership can tip the scales of digitalisation towards rules-based trade, competition, innovation, and international cooperation; but it also runs the risk of isolating the EU and stifling innovation in a market that is naturally interlinked and thrives on an open internet and open borders. In this respect, the state of transatlantic relations and the level of alignment between the

EU and the US will be the litmus test of successful European digitalisation. On the one hand, most of the digital service providers on which the Europeans rely on

7 Proposal for a regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act) COM/2020/842 final. <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=COM%3A2020%3A842%3AFIN>.

8 Proposal for a regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC (COM/2020/825 final). <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=COM%3A2020%3A825%3AFIN>.

9 Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'). <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32000L0031>.

10 Proposal for a regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC (COM/2020/825 final).



are based in the United States. On the other hand, the EU exports chemicals, pharmaceuticals, manufactured goods, and cars to the US.<sup>11</sup> Such interdependencies, represented by trade and foreign direct investment, overall maintain nearly 50 million jobs in the EU.<sup>12</sup>

## Digital strategic autonomy and its discontents

Regrettably, and in part due to Brussels' new favourite buzzword, 'strategic autonomy', the debate on digital sovereignty in the EU seems to focus more on being autonomous and less on being strategic.<sup>13</sup> However, while significant success on the regulatory frameworks – as in the case of the GDPR, NIS Directive, and the proposed regulation on AI – demonstrate the importance of the EU as a de facto digital champion in regulation worldwide, the rules and standards of the digital economy cannot be only a European choice.

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Strategic autonomy in digitalisation means to promote the European digital internal market and ensure that the economic, regulatory, and political framework harnesses the power of new technologies while strengthening independence, resilience, and security.<sup>14</sup> Nevertheless, strategic autonomy is not protectionism,<sup>15</sup> and it cannot work without a strong consensus with EU partners and allies, which will also achieve a delicate power balance with China. Helpfully, the debate is complemented by a strong commitment to openness to trade and investment for the EU economy to recover from the crisis and remain competitive and connected to the world.<sup>16</sup>

No doubt the 'normative power Europe' is more than a theory.<sup>17</sup> It has been proven in practice, for example, in EU environmental leadership against climate change. But even there, the EU is always careful to achieve cooperation not only with traditional allies, like the US, but also with systemic rivals such as China. Similarly, the 'regulatory power Europe' in the digital economy will need a mighty

11 See [EUROSTAT international trade goods database](#); see also: [EU27 \(from 2020\) trade by SITC product group](#).

12 DG Trade, Chief Economist Note (2018), 'How important are EU exports for jobs in the EU?', Issue 4, November. [https://trade.ec.europa.eu/doclib/docs/2018/november/tradoc\\_157551.pdf](https://trade.ec.europa.eu/doclib/docs/2018/november/tradoc_157551.pdf).

13 On the same topic: J. H. Pohl (2021), 'Strategic autonomy as a means to counter protectionism', ERA Forum 22, 183–191. <https://doi.org/10.1007/s12027-021-00670-w>.

14 European Parliamentary Research Service (2020), 'On the path to 'strategic autonomy: the EU in an evolving geopolitical environment'. [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_STU\(2020\)652096](https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU(2020)652096).

15 Pohl, 'Strategic autonomy'.

16 European Commission (2021): [Trade Policy Review: Open Strategic Autonomy](#)

17 See, for instance: R. G. Whitman (2011), *Normative Power Europe: Empirical and Theoretical Perspectives* (London: Palgrave Macmillan).



transatlantic partnership that will be able to promote common rules and principles in the technological and geopolitical sphere.

## TTC shows the way into the future of transatlantic relations

Setting digital standards requires international collaboration and endorsement by a coalition of technologically advanced countries that, in addition, share a common democratic vision for the governance of the world's digital economy. The Trade and Technology Council between the EU and the US shows exactly how this collaboration can be forged in a forum for dialogue between friends and allies that need each other.<sup>18</sup>

The EU's digital agenda for 2022 will be driven by negotiating the DMA–DSA package, as well as many more legislative and non-legislative initiatives, such as the Proposal for the Digital Decade, the Data Act, the European Health Data Space, specific legislation on short-term rental and sharing platforms, and the European Chips Act – all of which can contribute to European (digital) open strategic autonomy if they succeed in strengthening transatlantic and multilateral ties rather than disrupting them.

## Author bio

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## About ELF

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18 EU-US Trade and Technology Council Inaugural Joint Statement [https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_21\\_4951](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_21_4951).

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