

## **Proposal for E.U.-U.S. Digital Democracy, Trust, and Fairness Accord**

Technological innovation thrives on scale. And with 1.4 billion people, China has a major scale advantage over the European Union and the United States, particularly when it comes to the development and deployment of emerging technologies like AI. Both U.S. and E.U. technology companies will be more competitive vis-à-vis their Chinese counterparts, however, if they have access to a combined transatlantic market of over 600 million people, rather than just to a domestic market half as large. It therefore is in the interests of both the E.U. and the U.S. to remain part of a common, mutually beneficial technology ecosystem.

Yet, at present, persistent regulatory divergence between the E.U. and the U.S. threatens to fracture that ecosystem. The recently announced E.U.-U.S. Trade and Technology Council (TTC) is a promising vehicle to reverse this trend. But without some agreement on a meaningful agenda and a set of tangible deliverables in the short term, the TTC easily could become just another high-level international dialogue that produces upbeat, non-binding statements but does little to bridge substantive differences. To ensure that this new endeavor does not meet such a fate, we propose that the E.U. and the U.S. use the TTC as a venue for accelerated negotiations on the terms of an “E.U.-U.S. Digital Democracy, Trust, and Fairness Accord” (the Accord) that could be completed by the end of 2021.

The Accord would not be a “digital trade agreement” like the U.S.-Japan Digital Trade Agreement or the plurilateral eCommerce agreement being negotiated at the WTO. Rather than focus on market access, the Accord’s primary purpose would be to bind the parties to a series of limited, but nonetheless substantive obligations to protect shared values while allowing digital services companies to compete fairly, inclusively, and responsibly on both sides of the Atlantic. Ideally, the Accord would be the first building block toward a higher-standard, comprehensive digital agreement governing issues like data localization and cross-border data flows and addressing a broader range of shared technology-related policy concerns like cybersecurity, technology supply chain security and resiliency, cooperation on R&D for emerging technologies, digital inclusion, and the role of technology in fostering environmental sustainability. This second-stage, more ambitious agreement perhaps could include other democracies as well. But given the current level of divergence between the E.U. and the U.S. on these issues—as well as the political constraints under which both are operating—a less ambitious but still meaningful bilateral pact is the best-case scenario in the short-to-medium term.

***Key Components of the Accord.*** Although limited in scope and calibrated in ambition, a binding agreement along the lines set forth below would be a major achievement that could serve as the cornerstone for more ambitious commitments in the years to come. Such an agreement also seems politically palatable and achievable by the end of 2021, if not earlier.

- I. ***Strengthening Democratic Resilience.*** The Parties would condemn election interference and attacks on election infrastructure and vow to coordinate in responding to breaches of these norms and assisting other democracies to defend themselves against such actions, consistent with the G7 commitments in these

areas,<sup>1</sup> Principle 3 of the Paris Call for Trust and Security in Cyberspace,<sup>2</sup> and the Transatlantic Commission on Election Integrity.<sup>3</sup> They would also commit to cooperating to combat the dissemination of disinformation online.

- II. ***Norms for Responsible Government Conduct.*** The Accord would commit the Parties to work together to develop policies regarding government use of emerging technologies that reinforce democratic processes (in particular, transparency and accountability regarding AI), prevent indiscriminate harm, and are consistent with international human rights law<sup>4</sup>.
- III. ***Norms for Responsible Industry Conduct.*** The agreement would similarly commit the governments to cooperate on fostering ethical and responsible use of emerging technologies like AI by the U.S. and E.U. private sectors, across businesses of every size and in every industry. In addition, the governments would agree to promote the adoption of voluntary codes of business conduct that aim to prevent a race to the bottom that undermines democratic values.
- IV. ***Open Data.*** Building on Article 18.19 of the USMCA, the parties would commit to enhancing public access to and use of government data, while safeguarding privacy and security. This chapter would include a binding obligation to provide government information in a machine-readable, open format and to prioritize making available information that can assist in research, including transatlantic cooperation on public health and sustainability. Open data commitments should also emphasize the need to empower small and medium-sized businesses.
- V. ***Fairness in Standards Setting.*** The purpose of this Chapter would be to close an existing gap in the parties' WTO obligations by requiring that any standards governing digital trade be adopted in a manner consistent with the WTO Technical Barriers to Trade Committee Decision on International Standards and in accordance with the principle of national treatment.

The attached appendix includes illustrative language for each of the relevant sections of the Accord.

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<sup>1</sup> [Defending democracy from foreign threats and championing shared values - GOV.UK \(www.gov.uk\)](#), G7 Communiqué, 5 May 2021.

<sup>2</sup> [The call and the 9 principles — Paris Call](#).

<sup>3</sup> [Transatlantic Commission on Election Integrity – Alliance of Democracies](#).

<sup>4</sup> Article 8.2 of the New Zealand/Chile/Singapore Digital Economy Partnership Agreement (DEPA) is a useful point of reference for this topic.

## **APPENDIX**

### **Illustrative Text for E.U.-U.S. Digital Democracy, Trust, and Fairness Accord**

#### **I. *Strengthening Democratic Resilience.***

1. The Parties agree that the use of malicious cyber activities to weaken election infrastructure and/or manipulate election results is unacceptable.
2. The Parties will work to strengthen their capacity to prevent malign interference by foreign actors aimed at undermining electoral processes through cyber activities.
3. The Parties will seek to support efforts to enhance the resiliency of election systems in other democracies and promote good practices in that regard.

#### **II. *Norms for Responsible Government Conduct with respect to AI.***

1. The Parties recognize that the use and adoption of Artificial Intelligence (AI) technologies have grown increasingly widespread in the digital economy.<sup>5</sup>
2. The Parties recognize the economic and social importance of developing and enacting governance frameworks for the trusted, safe, and responsible development and use of AI technologies. In view of the cross-border nature of the digital economy, the Parties further acknowledge the benefits of developing mutual understanding and ultimately ensuring that such frameworks are internationally aligned, and enforced consistently and in a nondiscriminatory manner, in order to facilitate, as far as possible, the development, adoption, and use of AI technologies across the Parties' respective jurisdictions.
3. To this end, the Parties shall adopt governance frameworks across their respective governments to support the trusted, safe, and responsible use of AI technologies (AI Governance Frameworks).
4. The Parties' AI Governance Frameworks shall be based on assessments of the risks associated with particular uses of AI technologies.
5. The Parties' AI Governance Frameworks shall incorporate internationally recognized principles or guidelines for promoting the rule of law, human rights, democratic values, accountability, transparency, privacy, security, and fairness.

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<sup>5</sup> Text in this section drawn from New Zealand-Chile-Singapore Digital Economy Partnership Agreement (DEPA)

**III. *Norms for Responsible Industry Conduct.***

1. The Parties commit to working with their respective private sectors and civil society to foster their adoption of the AI frameworks described in (I) and to further encourage private sector adoption of codes of business conduct regarding cloud computing and other digital technologies that promote the rule of law, human rights, democratic values, accountability, transparency, privacy, security, and fairness.

**IV. *Open Data.***

1. The Parties recognize that facilitating public access to and use of government information fosters economic and social development, competitiveness, and innovation.
2. To the extent that a Party chooses to make government information, including data, available to the public, it shall endeavor to ensure that the information is in a machine-readable and open format and can be searched, retrieved, used, reused, and redistributed.
3. The Parties shall endeavor to cooperate to identify ways in which each Party can expand access to and use of government information, including data, that the Party has made public, with a view to enhancing and generating business opportunities, especially for small and medium-sized enterprises.
4. The Parties shall not impose restrictions on the use of open government data greater than are necessary to achieve a legitimate public policy objective.

**V. *Fairness in Standards Setting.***

1. The Parties recognize the role of standards in reducing barriers to trade and fostering a well-functioning digital economy, including their potential to decrease compliance costs and increase consistency, interoperability, reliability and efficiency.<sup>6</sup>
2. No Party shall accord any preference to the consideration or use of standards relating to trade in digital products and services that are developed through processes that: (a) are inconsistent with the TBT Committee Decision on International Standards; or (b) treat persons of any of the Parties less favorably than persons whose domicile is the same as the standardization body.
3. Each Party shall, where appropriate, actively participate in the work of relevant regional and international bodies relating to the development and adoption of standards that support digital trade.
4. To the extent possible, and where agreed, the Parties shall endeavor to:

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<sup>6</sup> Paragraphs 1 and 3-7 are drawn from the Australia-Singapore Digital Economy Agreement. Paragraph 2 is drawn from Chapter 11, Article 4.5 of the United States-Mexico-Canada Agreement.

- (a) share experiences of developing or adopting standards that support digital trade, including technology standards;
  - (b) exchange views on potential future areas to develop or adopt standards that support digital trade, including technology standards; and
  - (c) identify, develop and test, with industry participants as appropriate, cross-border projects that demonstrate standards that support digital trade, including technology standards.
- 5. Where agreed, the Parties shall cooperate on initiatives, including research projects, to develop a greater understanding, between the Parties and industry, of standards that support digital trade and their benefits and applications.<sup>7</sup>
- 6. The Parties recognize that mechanisms which facilitate the cross-border recognition of conformity assessment results can support digital trade. Such mechanisms include:
  - (a) voluntary arrangements between relevant conformity assessment bodies; and
  - (b) the use of regional or international recognition agreements or arrangements that the Parties are party to, or are represented at.
- 7. To this end, the Parties shall endeavor to exchange information to facilitate the acceptance of conformity assessment results with a view to supporting digital trade.

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<sup>7</sup> For greater certainty, the financial arrangements that may be required for initiatives under this Article will be decided upon by the Parties on a case-by-case basis.