

The Brussels Effect— The EU’s Digital Strategy Goes Global

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Public Policy

On February 19, the European Commission laid out its ambitious plans for regulating data, AI, and the digital sphere. These set the stage for the next five years’ work for President von der Leyen’s Commission in this critically important, and ever expanding, domain. Crucially, in its plans the Commission is making a concerted attempt to call on the “Brussels effect”.

This term, coined by Anu Bradford of Columbia Law School, describes how the EU effectively sets global norms. Businesses adopt strict EU rules to legally operate on the European market, then adhere to them globally to minimize the cost of compliance. As EU rules come to be seen as the gold standard, other governments and international organizations replicate them, further strengthening this effect.

President von der Leyen has actively combined her goal for a “Geopolitical Commission” with a focus on two regulatory domains—the digital and the environmental (through its [European Green Deal](#)). It is on these two fields of the EU’s newly energized social and industrial policy that many of the Commission’s geopolitical contests are likely to take place. For both, the strength of the Brussels effect will simultaneously be an important part of the EU’s strategy, and a gauge of its geopolitical weight.

As the EU seeks to define and export its digital strategy, political and business actors in Europe are working overtime to shape the approach chosen in Brussels. But the EU must also heed voices from outside Europe. It needs to resist the urge to enact regulations that uniquely benefit European business, at a cost to others. It likewise needs to avoid rules that force businesses to adopt Europe-only solutions—this is not only inefficient, it risks that European consumers would miss out on the most innovative digital services. If Brussels gives in to these urges, then the European approach will not serve as the global standard in the digital sphere.

A Strategy in Four Parts

The Commission's approach was outlined in four parts: two strategies, on digital and data, and two documents on AI and related issues of liability. Taken together, these represent a concerted strategy to position the EU as a leader in AI research and regulation, and in the wider data economy. (For a more detailed overview, see [this Covington Blog](#).)

Digital Strategy

The Commission's Communication on "[shaping Europe's digital future](#)" presents the EU's overall vision for "European technological sovereignty"—a European society powered by digital solutions rooted in common European values.

The paper lays out the EU's plans to make Europe less reliant on imported digital solutions by boosting investment in EU-based innovation. It also outlines plans to regulate for greater "fairness" and user choice, and against concentration of market power in the digital sphere. This chimes with current thinking in some European circles on "prevailing digital platforms." (On this point, see further [this Covington Blog](#).)

Data Strategy

The [European Data Strategy](#) lays out how the Commission hopes to crack open and bring together the wealth of industrial data held by the private sector. The idea is to enable European businesses in particular to draw on this data to create value—as Internal Market Commissioner Thierry Breton put it, so "that European data will be used for European companies in priority, [...] to create value in Europe."

The data strategy is also aimed at addressing the Commission's concern that vast troves of privately held data create barriers to entry for newcomers, and give insurmountable advantages to incumbents that can test new business ideas on their internal data.

Risk-Based Regulation of AI

The [AI White Paper](#) presents a framework for fostering EU research on AI—and to regulate its applications. The Commission proposes that deploying AI in a high-risk sector and in a high-risk manner—what this means will be much debated—would be subject to greater scrutiny, and likely require a mandatory pre-marketing conformity assessment.

In keeping with the Brussels effect's global scope, this would apply to all AI application providers active on the European market, regardless of their origin.

Liability for AI, IoT, and Robotics

Finally, the Commission's [Report on the safety and liability implications of AI, IoT, and robotics](#) looks to update EU product safety rules to ensure that harm caused by defective digital solutions can always be compensated. To this end, it also considers reversing the burdens of proof on plaintiffs under national liability rules for damage caused by the operation of AI applications.

Pivot to Berlin, and Paris

Various aspects of this strategy have been leaked in the past weeks, and the subject of fevered lobbying by EU industry and Member States. Over the next two years, Germany and France are likely to bookend much of the legislation contained in the EU's digital strategy—and in both countries, current structural factors give power to industry.

Launchpad: Berlin's EU Council Presidency

Germany is ramping up preparations for its July to December 2020 Presidency of the Council of the EU. That semester will see the launch of many of the concrete proposals set out in the Commission's digital strategy. As the Presidency, Germany's representatives will chair (and set the agenda for) discussions by Member States in the Council, from the technical level to the ministerial. This gives Berlin outsized influence in how the Commission's proposals will land.

Yet Berlin's time in the European limelight comes as national politics looks ever more uncertain, with the governing coalition at risk, the leading CDU party facing a leadership crisis, and—if the coalition can hold until then—elections in the Fall of 2021. Such instability gives a yet stronger voice to the regulatory specialists and bureaucrats who have been working directly on these issues, and in particular to their counterparts in industry.

In Brussels, German industry representatives have made clear their views of the importance of promoting European digital and AI research and development. This is no surprise: Germany's globally strong automotive, high-end manufacturing, robotics, material sciences, and biomedical industries are ever more data-driven. German business has realized—and convinced Germany's politicians—that its position can only be safeguarded if it shapes actively the conditions for continued global success. They also realize that the EU's norm-setting power can be a potent tool to this end.

Landing Zone: Paris's EU Council Presidency

European legislation typically takes around 18 months to be adopted. And, 18 months after the German Presidency follows Paris' turn at the helm, with the French Presidency running from January to June 2022. Paris and Berlin are well seized of the significance of this timing and, in October 2019, signed a joint [Declaration](#) and a roadmap for their cooperation to boost Europe's capacity to develop advanced technologies and AI.

Yet in Paris as in Berlin, the domestic vulnerability of the Macron government gifts influence to French industry—which until late last year counted Thierry Breton (now EU Commissioner for Internal Market and Services) as one of its leaders. Indeed, President Macron will face reelection in April 2022, halfway through the French EU Council Presidency.

All Systems Go: The Broader EU Lobbying Effort

It is of course not just Berlin and Paris that are keenly interested in European data, digital, and industrial policy. For example, their Economy Ministers were joined in a [February 4 letter to Vice-President Vestager on EU Competition policy](#) by their counterparts in Italy and Poland. Of their five asks of EU Competition law under this new Commission, four related to data and digital platforms. The fifth called for greater flexibility in assessing EU mergers—a reference to the debate on promoting “European champions.”

Meanwhile, the European industry lobby more broadly has been hard at work ensuring its voice is heard in Brussels. This effort has been led by familiar representatives of European industry—indeed, the European Round Table of Industrialists (“ERT”) and BUSINESSEUROPE, for example, figure prominently the meetings declared by [Commission President Von der Leyen and her team](#), and by [Internal Market Commissioner Breton and his team](#).

Brussels Effect or Brussels Firewall?

At the heart of the Commission’s proposals is a tension between regulation that adds a measure of certainty (such as in questions of AI liability) and protectionism.

Fostering Research and Innovation

It is of course important to foster research and entrepreneurship in Europe—which is responsible for only 11% of the “unicorns” created since 2011, lagging rather behind the U.S.’s 51% and China’s 25%. Indeed, it is much harder to achieve a Brussels effect if you are not home to the most innovative industry: you may not know what to regulate for, miss the real regulatory concerns on the horizon, and be unable to boost your industry in foreign markets.

The Commission is also to be applauded for aiming to create some certainty for businesses on complex questions such as liability. If done properly, this can help industry mitigate risk.

Risks of Protectionism

On the other hand, the EU must resist the urge to resort to protectionism.

If EU rules are so onerous, or so limiting, that they make it uneconomical to offer the “EU standard” data service or platform worldwide, then providers will fragment their offering. They will provide alternative, perhaps less innovative, services exclusively for the European market. Likewise, if it becomes most efficient to develop an EU-specific offering in Europe, this may promote European business in their “home” market in the short term—but those EU solutions are unlikely to be globally competitive, limiting their commercial promise and their contribution to the EU’s geopolitical agenda.

In either case, overly onerous or protectionist regulations risk fragmenting the global digital market further, and the emergence of a “great Brussels firewall”. Not only would this be a regrettable extension of existing trends in the fragmentation of the digital sphere, it would fatally undermine the very Brussels effect that the Commission wants to produce.

Global Actors Must Promote Balance

Yet the global nature of most European industries means that it is hard for the Commission to disregard the voices of industry abroad. This works both ways. Foreign companies' presence in Europe is also crucial to developing the right talent for Europe's digital transformation, and global industry is a major investor in the very R&D that the Commission wants to promote.

Non-EU, global industrial players—which, like their European counterparts, are ever more clearly data-driven businesses—need to speak up in the Brussels policy debates that are now in full swing.

Von der Leyen's "Geopolitical Commission" hopes to set not only European but global rules for the digital sphere. But if the non-European voices are not heard, Brussels' own voice will carry less weight, and this may signal the end of the Brussels effect.

If you have any questions concerning the material discussed, or would like guidance on how to engage in the Brussels policy debates, please contact Covington's Chair, Global Public Policy:

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