Negotiating Agreements within the EU-US Trade and Technology Council

Council of the European Union Simulation

Introduction to the simulation

The EU-US Trade and Technology Council (TTC) was established in 2021 by President of the European Commission Ursula von der Leyen and US President Joe Biden, as a forum that would enhance cooperation between the European Union and the United States regarding emerging trade and technology topics.

The TTC has three main objectives:

- To ensure that US and EU societies and economies are served by trade and technology, while upholding common values
- To strengthen the two blocs' technological and industrial leadership
- Expand bilateral trade and investment

The EU-US Trade and Technology Council (TTC) has met periodically to discuss issues of contention between the EU and the US in a non-binding setting.

The TTC is currently composed of ten working groups. These include the following:

- Technology standards cooperation
- Climate and clean tech
- Secure supply chains
- ICTs security and competitiveness
- Data governance and technology platforms
- Misuse of technology threatening security and human rights
- Export controls cooperation
- Investment screening cooperation
- Promoting SME access to, and use of, digital technologies
- Global trade challenges

In March 2022, the European Commission and the United States reached an "agreement in principle" that would in the future translate into a Trans-Atlantic Data Privacy Framework (the "Framework"). In short, the Framework articulates five key principles:

i) free and secure flow of data between the EU and participating U.S. companies,

ii) necessary and proportionate access to data by US intelligence,

iii) a system to investigate complaints with regard to access of data by US intelligence authorities,

iv) obligations for companies that process data from the EU, and

v) specific monitoring and review mechanisms.

Although the TTC is an important initiative that actively strengthens transatlantic coordination on several important issues, some observers suggest that failure to include key issues in the TTC's meeting agendas thus far – such as transatlantic data flows is a strong indicator of the TTC's limitations.

The current simulation addresses these issues, casting participants as members of the Council of the European Union deliberating the mandate to be given to the European Commission to negotiate (through its representatives in the TTC) the Framework with their US counterparts, and particularly its missing component: the flow of personal data across the Atlantic.

Target Group for the simulation and topics covered

This simulation is appropriate for senior undergraduates and graduate students studying topics relating to:

- International Negotiations
- Data Protection Policy
- International Economics
- International Relations
- EU-US Relations
- International Trade

Scenario for the simulation

Differences in data protection legal frameworks and policies have been a long-standing obstacle to strengthening trade relations and technology cooperation between the European Union and the United States.

Several initiatives to resolve these issues in the past have yielded no significant breakthrough. Meanwhile, some notable rulings (Schrems I and II) by the Court of Justice of the European Union have created yet further obstacles and legal uncertainties as EU citizens have appealed the transfer of their data to the U.S.

The establishment of the EU-US Trade and Technology Council (TTC) in 2021 was seen by many as the perfect opportunity to address the issue of transatlantic data flows and resolve an issue that not only inconveniences many enterprises but detracts from the protection of EU and US citizens alike. Unfortunately, the issue of data flows was not addressed as detailed as it could have been so far, even though the discussion covered related issues, such as the protection and empowerment of minors in the digital environment which was discussed by the Data Governance and Technology Platforms Working Group.

It is now up to the Council of the EU, convening in the Competitiveness (Internal Market, Industry, Research and Space) configuration, to provide a mandate to the Commission to negotiate the issue of transatlantic data flows during the next TTC, which will take place in a few months. The Commission's proposal for the wording of the mandate is based on the agreement in principle reached between President von der Leyen and President Biden on a new EU-US Data Privacy Framework.

Commission Proposal:

Article 1: Flow of Data

Data will be able to flow freely and safely between the EU and participating U.S. companies

Article 2: Safeguards

A new set of rules and binding safeguards to limit access to data by U.S. intelligence authorities to what is necessary and proportionate to protect national security

Although the proposal is straightforward, significant disagreements are expected among Member States as to what the final text of the mandate should include. It is expected that each of the articles above will be developed into multiple articles, depending on the various potential caveats for types of data, industries, etc., that the delegates may want to include.

Several Ministers have stated before the meeting that the proposal does not do enough to address the issue, and further restrictions (e.g. on companies) or monitoring mechanisms should be added in additional articles. Others have pointed out that the proposal could create chaos given that it includes no mechanism for investigating complaints or disincentivizing unlawful irregular practices.

On the other hand, there are several Ministers who have received the proposal positively and seem to be happy with it, at least for the time being. They suggest that making the mandate stricter would run into the risk of the Framework in its entirety being completely rejected by the US, which in turn could have a negative impact on the TTC and EU-US trade in general. These are mostly Ministers of Member States who are leading trading partners of the US, and who would like to see this trade relationship continue smoothly and without obstacles.

Overall, the Council has to decide on:

a) The final wording of the mandate given to the European Commission

b) The inclusion, or not, of articles that would make the Framework stricter

c) The inclusion, or not, of monitoring mechanisms that would oversee the implementation of the Framework

Tips for the simulation

- This topic is somewhat technical in nature, so the facilitator must ensure that participants prepare properly and understand the key concepts involved
- As the TTC involves an ongoing process, with meetings taking place approximately every six months, facilitators should keep up to date with the latest developments before running the simulation. The links provided below can provide most or all of the information a facilitator would need.

- Although the TTC is a transatlantic forum, the simulation concerns negotiations taking place within the European Union; *the United States is* ***not*** *an active player* in the simulation game.
- The Commission Proposal above is based on the Trans-Atlantic Data Privacy Framework
- The final wording of the document must be approved by the Council by a qualified majority (55% of Member States which represent at least 65% of the EU population). You may use the voting calculator provided in the links below.

Selected sources for the simulation

The EU-US Trade and Technology Council

EU-US TTC4 (May 2023) – Outcomes Factsheet

EU-US Trade Relations Overview

Trans-Atlantic Data Privacy Framework

TTC Stakeholders Discussion (video)

EU-U.S. Data Privacy Framework (Q&A)

Voting Calculator