
TACD Recommendations for the EU-U.S. cooperation agenda**Working group 5: Data Governance and Technology Platforms**

Introduction

After years of tensions, a new cooperation agenda between the EU and the U.S. is welcomed by the Transatlantic Consumer Dialogue (TACD), a coalition of over 75 leading European and U.S.-based organisations representing the consumer interest.

During the TTIP negotiations, [TACD called for voluntary regulatory cooperation](#) between the EU and the U.S., rather than mandatory ‘regulatory convergence’, ‘harmonization’, or ‘mutual recognition’ through a “trade” agreement. Such voluntary cooperation can be beneficial for consumers, as long as it raises consumer protections, protects consumer rights, and does not cap or exert downwards pressure on consumer protection, current or future.

The EU and the U.S. need to get this new cooperation agenda right to help their people face the new challenges of this critical time. The agenda should help consumers address the impact of climate change and address their concerns related to public health, technology, and market-place fairness.

RECOMMENDATION #4: Strive towards a fair, safe, and just digital society**1. Foster healthy competition in the digital sector**

Digital Markets play an ever more significant role in people’s lives. The rise of the platform economy has exacerbated the power imbalances between key actors in the digital marketplace. Consumers confront a powerful and growing online system which is able to take advantage of them using a combination of online surveillance and often manipulative marketing techniques, increasingly driven by the latest applications in AI and machine learning. Monopolization of digital services, including social networks and search tools, as well as the collective operations of multiple online partners, can lead to locked-in consumers being deprived of meaningful choice.

How the joint competition dialogue could address problems consumers face:

- We recommend creating a transatlantic working group for mergers in the digital sector, mirroring the transatlantic working group for mergers in the pharmaceutical sector that was set up in March 2021.
- The joint dialogue should enable authorities to coordinate more closely their respective antitrust policy development and enforcement cases, including remedies with the aim of ensuring consistent outcomes for consumers, where digital players operate on a transatlantic basis.

2. Trade & Tech council

The TTC intends to create a platform for cooperation between the EU and the U.S. to discuss tech issues having repercussions on trade flows. Several working groups of the TTC will address issues that

are relevant for consumers, such as platforms, data governance, artificial intelligence, and global challenges.

The TTC should not be used as a tool to deter the EU and U.S. ambition to regulate to better protect consumers. For example, the U.S. administration should not use it as a vehicle to threaten the EU with tariffs retaliation linked with the adoption of much-needed laws such as the EU Digital Services Act or the Digital Markets Act.

The TTC and other dialogues of the cooperation agenda should address key obstacles consumers in the EU and the U.S. are facing in the digital market:

2.1 Tackle the rise of unsafe and illegal products online

In the EU, many industry, [consumer](#), and other civil society groups have conducted tests to check the scale of [illegal activities online](#). For example, in a pan-European test conducted in 2020, consumer groups ordered 250 electrical goods, toys, cosmetics, and other products bought from online marketplaces such as Amazon, AliExpress, eBay, and Wish. They selected the products based on possible risks and found that 66% of them fail EU safety laws with possible consequences such as [electric shock, fire, or suffocation](#). Most of these products were imported from outside of the EU.

In the United States, customs officials are overwhelmed by a tsunami of small packages, making it nearly impossible to effectively screen even for contraband in the form of illegal drugs or counterfeit products, much less to ensure imported products meet U.S. safety standards. A 2019 intensified spot check operation by Customs and Border Patrol (CBP) found “discrepancies” — including spoiled food, opioids, street drugs, fake passports, gun parts, and counterfeits — in 14% of parcels from China and Hong Kong. The counterfeits are not just fake Gucci handbags. They include automotive parts that do not meet consumer safety standards, such as air bags, brake pads, and seatbelts. Packages have been found with fake prescription drugs lacking the active ingredients, children’s toys laced with lead, and cosmetic products containing arsenic and human waste. CBP reports that, of the contraband products seized in 2016, 16% posed “direct and obvious threats to health and safety.”

The TTC could explore solutions to this transatlantic problem and exchange best practices. Working group 10 on global challenges or working group 5 on technology platforms could address this issue through a specific workstream on **product safety**. EU-DG Justice, DG GROW, and the U.S.-Consumer Products Safety Commission (CPSC) should be involved in this process. It should result in a formal cooperation between EU and U.S. market surveillance authorities that would allow authorities to:

- Exchange data about non-compliant and dangerous products.
- Conduct coordinated investigations, for example through mystery shopping activities.
- Jointly recall unsafe products from the market.

This type of cooperation exists between the EU and Canada.¹ The joint activities of these authorities will help prevent consumers from being harmed.

Working group 5 should also exchange information about the **security of connected products** to ensure that faulty and risky products can be taken off the EU and U.S. markets. Indeed, this is a common problem with the transatlantic market. In a collective move, EU and U.S. consumer organisations in 2016 took action against [flawed internet-connected toys](#). This action was based on

¹ EU-Canada administrative arrangement enabling authorities to cooperate on product safety: https://ec.europa.eu/info/sites/default/files/sgned_agreement_en_0.pdf

the findings of [Forbrukerrådet](#), the Norwegian member of the TACD network, which revealed that connected toys such as ‘My Friend Cayla’ had multiple security risks which compromised the children’s physical safety. For example, the doll could be used by a stranger to talk to children from a distance. In August 2021, TACD Belgian member, Test Achats/Test Aankoop, installed several popular smart devices (including a baby phone, an alarm system, a smart TV, a Kitchen Robot, a door lock, a speaker, and a vacuum cleaner robot) in a house and challenged cybersecurity researchers to find security vulnerabilities. 10 of the 16 devices were found to have a "critical" or "highly severe" [vulnerability](#).

As working group 5 will address technology platforms, there should be a **specific workstream on online marketplaces** to address illegal activities online. For instance, it only takes a few minutes to list an [unsafe child car seat on Amazon Marketplace](#), despite the fact that Which?, the UK consumer organisation, flagged this type of product in [2014](#), in [2017](#), and in [2019](#), and it was uncovered again by a BBC investigation in [2020](#).

A workstream on online marketplaces within working group 5 should:

- Provide a platform for experts of the working groups to hear from stakeholders, including consumer and digital rights organizations, about their findings about [illegal online activities](#).
- Exchange details about their respective legal frameworks and case law in relation to online marketplaces and product liability and report back to policy makers.
- Exchange best practices on how to better protect consumers from scams.
- Explore how the EU and the U.S. could cooperate to ensure that their citizens’ rights will be respected and enforced. Such cooperation should result in an agreement between the EU Consumer Protection Cooperation (CPC) network and the Federal Trade Commission (FTC) in the U.S. and enable them to exchange information and even investigate on each other’s behalf, especially in cases where the company is based in the U.S. but harming the interests of the EU consumers and vice versa.

2.2 Address the harms of the surveillance economy

Today, consumers are put under constant commercial surveillance online and experience opaque content curation aimed at keeping consumers hooked on platforms (“engagement”), all in the name of serving targeted data-driven advertising and marketing. This leads to and reinforces a host of problematic issues, including discrimination, manipulation, mental health problems, privacy violations, chilling effects, the proliferation of misinformation, and more. Recent research confirms that profiling and targeted advertising has negative effects on the mental health of consumers, notably, but not exclusively, of teenagers and children. Revelations that companies have known about these adverse effects compound the concerns about these practices. Consumers are in a permanent state of vulnerability in the digital environment due to existing asymmetries of power and information and the complexity, pervasiveness, and unfairness of surveillance-based business models.

What the TTC can do to address the harmful effects of the surveillance economy:

- Create a dedicated workstream on the surveillance economy and invite stakeholders to present their views, insights, and research findings.²
- Exchange policy initiatives and best practices to protect consumers from surveillance-based digital advertising and recommender systems, including ways to prohibit these practices.³

² See for instance <https://www.forbrukerradet.no/side/new-report-details-threats-to-consumers-from-surveillance-based-advertising/>

³ See TACD resolution on the Digital Services Act (2021), recommendation 4., p.2: https://tacd.org/wp-content/uploads/2021/06/2021_TACD-Regulatng-online-services_Resolution-Final.pdf

- Create a task force on appropriate design for digital marketing and ecommerce applications that specifically addresses the ways consumers are being marketed to on social media and ecommerce, such as the integration of “shoppable layers” with popular online content; this taskforce should identify best consumer focused practices.

2.3 Prevent the unfair use of AI systems

Artificial intelligence (AI) products and services, such as virtual assistants and facial recognition tools, are already changing consumer markets and our societies. It is a technology which carries huge expectations for improving and making consumers’ lives more convenient. But the use of AI also comes with great risks and has major implications for consumers’ autonomy and self-determination, their privacy, their safety, their capacity to interact with products and services, and, ultimately, in the ability to hold businesses responsible if something goes wrong.

In a market run by algorithms, transparency and comparability may disappear. There is a risk of algorithmic bias and unfair discrimination against different groups of people, for instance on the basis of economic criteria, gender, race, or a person’s health. More broadly, the use of AI can negatively affect consumers’ autonomy and freedom of choice. Our lives become more and more shaped and influenced by decisions made within a “black box”, beyond our understanding and control.

Consumers are concerned with the rollout of this technology. EU consumer organisations conducted a survey to see [what consumers think about AI](#). While respondents perceive AI to be somewhat or even very useful to them in different areas (e.g., predicting traffic accidents or improving their health), most respondents agreed or strongly agreed that companies are using AI to manipulate consumer decisions.

What the TTC can do to address unfair use of AI systems:

- Exchange best practices on risk assessment and auditing of AI systems.
- Exchange best practices on how to ensure transparency, accountability, and fairness of algorithmic practices. Working group 10 on global challenges should explore how to ensure that regulators, consumer advocates, and researchers can have access to algorithms and source code to detect discriminatory, unfair, biased, and other illegal conduct. Indeed, discussions about how to prevent forced technology transfers should not lead to a situation where authorities and researchers would not be able to assess whether AI systems comply with domestic laws.⁴
- Exchange information on technology trends, case studies of real-life AI applications, and their impact on consumer rights.
- Working group 1 on technology standards must recognize that legal principles and obligations should be well set out in regulation and the role of standards should be limited to technical implementation aspects. Standardisation should not replace a democratic legislative process or be used to define or apply legal principles and fundamental rights. Better exchange of information on standardisation is desirable between the EU and the U.S. However, it should not be underestimated that cooperation on standards linked to different legal frameworks can be complex. The active participation of consumer organisations in standardisation processes should be facilitated and supported.

⁴ See the study commissioned by the Federation of German Consumer Organisations, vzbv, about trade & AI: https://www.vzbv.de/sites/default/files/downloads/2021/01/21/21-01-26_study_ai_and_trade.pdf

2.4 Creating competitive and consumer-friendly telecoms markets for all

People rely on electronic communication services in their daily lives, whether to stay in contact with their family and friends or to work. But the reality is that today many consumers still do not enjoy a high-quality fixed or mobile connection. For many consumers, communication services remain expensive. Prices are particularly prohibitive when people travel from one side of the Atlantic to the other and want to use their phone or check their e-mails.

Working group 4 on Information Communication Technology and Services Security and Competitiveness should:

- Exchange ideas on ensuring affordable, high-quality broadband access to all, all the time.
- Exchange information on the benefits of ensuring net neutrality and prohibiting zero-rating.⁵
- Address consumer aspects related to the deployment of new network generations such as 5G. For instance, both sides should exchange information about current misleading 5G offers to consumers, which is expensive, and, in many instances, only marginally better than the quality of service provided by 4G.⁶
- Explore ways to make the communications markets more competitive. More competition has a positive effect on consumers, notably by increasing innovation, quality of the services, consumer choice, and price reductions.

Discuss the possibility of entering into an international agreement to reduce roaming surcharges, building from the successful Roam-Like-At-Home model in the EU.

Our full position for the EU-U.S. cooperation agenda: https://tacd.org/wp-content/uploads/2021/12/20211206-FINAL_TACD-recommendations-on-EUUS-cooperation-agenda-2021.pdf

TACD has developed four recommendations to make sure that this new cooperation agenda will deliver to consumers:

1. The overall process should be transparent and involve public interest groups in a meaningful way.
2. The cooperation on health should seek to ensure access to safe and affordable medicines for all.
3. The cooperation on sustainability should explore how the green transition will include consumer protections and incentives, notably by cooperating on sustainable finance.
4. The joint technology competition dialogue and various Trade and Technology Council (TTC) working groups should pave the way towards a rights-respecting digital environment and fairer and safer markets for consumers.

Most importantly, the cooperation agenda must remain a platform to inform and exchange good practices, not a tool to influence each other's legislative processes or deter each other from improving protections.

⁵ <https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-09/cp210145en.pdf>

⁶ See https://www.beuc.eu/publications/beuc-x-2020-108_berec_2021_work_programme_consultation_beucs_response.pdf (pp. 2-4) and https://www.beuc.eu/publications/beuc-x-2019-045_beuc_response_on_impact_of_5g.pdf