

French Digital Council

Meeting at the Permanent Representation
of France to the European Union

2014, June, 4th

Digital matters in the TTIP

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Yann Bonnet, General Rapporteur
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CNN/Num
Conseil National du Numérique

Strengthening EU's negotiation strategy
to make TTIP a sustainable blueprint
for the digital economy and society

Opinion of the French Digital Council





Summary

- I. **The French Digital Council** : missions, composition, « doctrine » and challenges
- II. **Opinion on the TTIP**: strengthening EU's negotiation strategy to make TTIP a sustainable blueprint for the digital economy and society in Europe
 - I. **Diagnosis**: mobilisation and clarifications are necessary to deploy comprehensive and efficient negotiation objectives in digital matters
 - II. **General recommendations**: a call to action in order to reverse asymmetries and build a sustainable digital strategy in Europe
- III. **Focus on specific issues**: net neutrality & platform neutrality, public procurement, Internet governance (standards, Internet names and numbers, cybersecurity), data strategy



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I. THE FRENCH DIGITAL COUNCIL

missions, composition, doctrine and challenges

The French Digital Council aims at consulting the French ecosystem and advising the Government on any digital issues



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- **The French Digital Council is an independent consultation commission, composed of 30 members named by the President**
- **Created in 2011 and renewed in 2013 in order to broaden and diversify its composition**
 - **1/3 entrepreneurs , 1/3 researchers:** philosophers, prospectivists, professors, **1/3 managers and directors** from large French companies
 - **Enlarged board:** 9 members from the National Assembly, Senate, and local authorities
 - **Sectors :** telecoms, music, media and entertainment, insurance, banking, design, IT and applications, robotics, education, defense, e-commerce, tourism, editing, venture capitalism, etc.
- **Missions:**
 - **Consult the French ecosystem** in order to identify their needs and create a propitious environment to develop innovation and competitiveness in the digital sector
 - **Be consulted by the government on any issues** (legislative, regulatory, French/UE/international levels) regarding the impacts of the digital in the economy and society.



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Benoît Thieulin, President
Co-founder, La Netscouade



Tariq Krim, Vice-President
Founder of Netvibes, Jolicloud



Valérie Peugeot, Vice President
Prospectivist, Orange Labs



Christine Balagué, Vice President
Researcher, Mines Télécom



Godefroy Beauvallet, Vice President
AXA Research Fund



Jean-Baptiste Rudelle
CEO and co-founder, Criteo



Marie Ekeland
Partner at Elaia Partners, VP of France Digitale



Pascal Daloz
Deputy director of Dassault Systems



Bernard Stiegler
Philosopher, Director at the Innovation and Research Institute of the Centre Pompidou

Decisions issued by the French Digital Council address European matters in several ways...



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Net neutrality



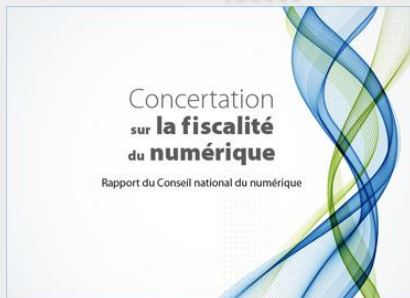
Platform neutrality



TTIP



Taxation at the digital era



Digital Inclusion



Others :

- ✓ Internet freedoms, cybersurveillance, content regulation (hate speech)
- ✓ Education
- ✓ Healthcare

...revealing the necessity to constitute a European network on digital issues



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- **Regulatory and policy matters:**
 - **Net neutrality, platform neutrality:** necessity to come to a consensual position to adopt common rules and accompany European digital market strategy
 - **Digital taxation:** enhance negotiation tools in international entities (OECD) and coordinate member States, develop academic research to identify new taxation models adapted to digitalized business models
 - **Data regulation, electronic standards, anti-trust processes, education action plans, employment, etc.**
- **Institutional needs:**
 - Better coordination between the European Commission and member States: European Digital Council? Interlocutors equivalent to the French Digital Council ?
 - Impregnation of digital issues in every policy or project



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II. Opinion on the TTIP

Strengthening EU's negotiation strategy to make TTIP a sustainable blueprint for the digital economy and society

The TTIP : what's at stake for the digital economy ?

- **Former Minister for Foreign Trade Nicole Bricq invited the French Digital Council to identify digital issues and submit its recommendations on the digital parts of the TTIP**

What's at stake?

- **In Europe: SMEs represent more than 99% of all businesses and employ over 90 million people**, their survival depend on their capacity to adapt to the digital transformation
- **Digital transformation of the economy and development of data-intensive services in multiple industries:** by 2020, commercial use of personal data will be worth 1,000 billion euros = 8% of GDP in the G20 countries
- **Digital adaptation of our rules and regulations:**
 - Google case against the European Commission
 - Regulations on personal data
 - Investments, mergers, acquisitions that follow the digital transition



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LA MINISTRE

N° Réf. : CE/201354337C

Paris, le 2 5 JUIL. 2013

Monsieur le Président,

A l'heure où l'Union Européenne et les Etats-Unis s'engagent dans la négociation d'un partenariat transatlantique qui marquera durablement le commerce international, il est important que le Gouvernement puisse disposer de votre avis sur l'impact de ce partenariat dans le domaine du numérique où la France dispose de nombreux atouts.

Si la protection des données personnelles est exclue du mandat, une partie importante de ce partenariat portera sur la convergence réglementaire (harmonisation ou rapprochement des législations, reconnaissance mutuelle des normes...) qui concerne directement le secteur du numérique. Si elle est conduite de manière ambitieuse, elle peut permettre à nos entreprises – et notamment aux PME- d'accroître leurs parts de marché aux Etats-Unis. En revanche, un alignement des normes sur les standards américains pourrait remettre en cause la neutralité des plateformes et la compétitivité de nos entreprises.

C'est pourquoi, conformément aux dispositions du décret du 13 décembre 2012, je souhaite que vous me fassiez part, en tant que de besoin, de vos recommandations tout au long de la négociation qui débute. Le prochain round de négociation se tiendra en octobre et portera sur la feuille de route proposée par la Commission dont vous trouverez le volet numérique en annexe.

Par ailleurs, je vous invite à participer au comité de suivi du partenariat transatlantique que je mets en place.

Je vous prie de croire, Monsieur le Président, à l'assurance de ma meilleure considération.


Nicole BRICQ

Monsieur Benoit THEULIN
Président du Conseil national du numérique
Bercy international – 14 place des Vins-de-France
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MINISTÈRE DU COMMERCE
ET ÉTRANGER

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On the other hand, our European digital ecosystems lack information and coordination to adopt common positions



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- **The French Digital Council consulted more than 50 organizations (SMEs, large companies, civil society *La Quadrature du Net*, professional organizations, administrations) and draw general conclusions:**
 - The digital ecosystem is not familiar with commercial negotiations
 - The TTIP is raising concerns over European/national regulatory reforms being carried on digital issues : personal data, Safe Harbor, net neutrality, intellectual property, public procurement
 - International debates on Internet governance and surveillance are also catalyzing concerns:
 - ICANN reform and Internet names and numbers
 - Snowden affair
 - **European digital ecosystems don't have the same scale as American actors, deeply implemented in the European market**
- **consensus and common positions are difficult to adopt**

In this asymmetric context, the construction of common objectives and positions is crucial in the TTIP



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U.S. Objectives, U.S. Benefits In the Transatlantic Trade and Investment Partnership: A Detailed View

In June 2013, President Obama, European Council President Van Rompuy and European Commission President Barroso announced that the United States and the European Union (EU) would launch negotiations on the Transatlantic Trade and Investment Partnership (T-TIP) agreement. The T-TIP is intended to be an ambitious and comprehensive trade agreement that significantly expands trade and investment between the United States and the EU, increases economic growth, jobs, and international competitiveness, and addresses global issues of common concern. For the full text of the President's T-TIP launch remarks, click [here](#).

The launch followed a vigorous domestic consultation process with relevant stakeholders on the Obama Administration's goals and objectives for a negotiation with the EU, which were publicly described in a March 20, 2013 [letter](#) to the U.S. Congress.

This factsheet describes in more detail the Administration's specific goals and objectives, and outlines how this agreement, if successfully concluded, will benefit American workers, businesses of all sizes, and consumers. We have heard from the American public their request for an elaboration of the information we have provided about what we are working to achieve through trade negotiations, so we will continue to share information through the press, social media, and www.USTR.gov as we move forward in the negotiations.

We also invite members of the public to submit comments on the negotiations in an email to comment@ustr.eop.gov.

TRADE IN GOODS

- We seek to eliminate all tariffs and other duties and charges on trade in agricultural, industrial and consumer products between the United States and the EU, with substantial duty elimination on entry

- The United States is more ambitious than Europe in digital issues

- The TTIP should be taken as an opportunity to deal with current debates within the EU on:

- Net Neutrality
- Competition issues
- Data protection

... and build a digital/industrial strategy for the European market



Opinion of the French Digital Council: general recommendations

- **The mobilization of the French digital ecosystem reponds to three clear objectives that must drive the TTIP negotiation on digital matters:**
 - Economic issue: the European market is an « eldorado » for the digital economy
 - Sovereignty issue: the EU should be able to regulate in the future and adapt to the digital revolution
 - Protection of individual freedoms: free-market actions must preserve the protection of civil and economic liberties as the EU built them
- **The EU must accompany this mobilization following a new approach based on 4 axes:**
 1. **EU values are vital levers for building a negotiating strategy on digital matters:** transparency, reciprocity, non discrimination, operability, interoperability, technological neutrality, net neutrality
 2. **Europe's digital market must be based on sustainable safeguards:** ability to regulate in the future, sovereignty, ability to guarantee independent and public law courts (cf. ISDS)
 3. **The EU can build digital partnerships with other regions**
 4. **The mobilization of stakeholders (public, private, civil) is crucial to make the TTIP an opportunity to develop an industrial strategy to consolidate the single market**

Mobilizing the ecosystems implies reinforcing the EU negotiating tools for digital issues



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- **Identify transparency and coordination on digital issues:**
 1. Officially identify a negotiator in charge of digital issues in order to inform, consult, and coordinate ecosystems
 2. Strengthen cooperation between EU member states to adopt common positions at the EC
 3. Publish a position paper on digital matters
 4. Systematically organise consultation of the ecosystem (including civil society) to have coherent and efficient positions
 5. Create an operational entity in charge of a) evaluating the impacts of TTIP measures on standardization and convergence and b) identifying the best solutions (composed of experts, legal councils, industries, etc)
- **Build a Europe-wide digital network and unify member States in the long term**



III. FOCUS ON SPECIFIC ISSUES

A greater integration of digital actors and transparency on the negotiation process/stakes will benefit to the EC negotiating strategy on specific matters

Examples of the 22 recommendations issued by the CNNum on specific matters



Intellectual Property

- **ACTA precedents and European principles on Intellectual Property should be taken into account when discussing convergence measures:**
 1. **Preserve EU regulations on software protection through copyright (vs. patent):** copyright already provides effective protection for software elements (source code lines, object code, components, interfaces, program architecture, preparatory design work) → avoid the outburst of patent trolls and prefer international bodies
 2. **Preserve scientific discovery from patentability:** in order to safeguard public domain principles, necessary for scientific and technological development
 3. **Strengthen protection of geographical indications:** and prefer international bodies to adapt rules to digital transformations
- **The protection of public domain is critical for the development of innovation, creativity and public interest.**



Public Procurement and SMEs international development

- **A level of reciprocity and creativity can be expected with the TTIP, and be profitable to European SMEs, especially in the digital sector:**
 1. Institute reciprocity of access to American and European public procurement markets
 2. Ensure that provisions are adopted to allow European companies to supply foreign goods when bidding for procurement contracts put out to tender by the American Federal government
 3. Extend the American mechanism that promotes public procurement markets for American small businesses to European SMEs : a « European Small Business Act »
- **Visas: increase their numbers from both parties to accelerate international development of European digital SMEs**



Regulatory convergence: focus on competition rules

- **Regulatory convergence should level the playing field for all actors of the digital value chain: telecommunications operators, platforms, and USERS:**
 - **NET NEUTRALITY & PLATFORM NEUTRALITY** should be the objectives of such convergence in competition rules.
 - **ADOPT NEUTRALITY** requirements, such as:
 - FAIR AND NON DISCRIMINATORY ACCESS TO NETWORK**
 - DATA PORTABILITY:** obligations to provide data for free (free of charge), in open standards and machine-readable formats, accessibility via a Web interface AND API
 - INTEROPERABILITY**
- **It is also possible to examine existing antitrust rules to adapt obligations for dominant platforms:**
 - Adapting the concept** of essential facilities to take into account platforms that have become competitive bottlenecks
 - Upholding the principle of equal access** for partners that have become direct competitors of these platforms



Internet neutrality (1/2)

- **Opinion of the French Digital Council, March 2013:** « the neutrality of communication networks, infrastructures and access and communication services open to the public by means of electronic channels shall guarantee access to information and means of expression on a **non-discriminatory, equitable and transparent basis** »

- **European Parliament legislative resolution on the reform of the European single market for electronic communications, April 2014:**

- **NON DISCRIMINATORY and TRANSPARENT ACCESS**

- *« end users shall have the right to access and distribute information and content, run and provide applications and services and use terminals of their choice, irrespective of the end-user's or provider's location or the location, origin or destination of the service, information or content via their internet access service »*

- **LIMITATION OF SPECIALISED SERVICES:**

- *“The provision of specialised services shall not impair in a recurring or continuous manner the general quality of internet access services”*
- *“Providers of internet access, of electronic communications to the public and providers of content, applications and services shall be free to offer specialised services to end-users. Such services shall only be offered if the network capacity is sufficient to provide them in addition to internet access services and they are not to the detriment of the availability or quality of internet access services. Providers of internet access to end-users shall not discriminate between functionally equivalent services and applications”.*



Internet neutrality (2/2)

- **In Europe, a few countries have consecrated Internet neutrality in their legislative framework:**
 - The Netherlands in 2012 & Slovenia in 2013
 - →France is an active supporter of such principles: conclusions of the European Council in October 2013
- **The principle of net neutrality, before supported by Internet platforms, is being challenged by the US Federal Communications Commission:**
 - In May 2014, the FCC suggested a new definition and the authorization of a « fast lane » : big companies should be allowed to pay Internet service providers for special faster lanes, discriminating Internet access to smaller actors
 - This comes against the principle of an open Internet, supposed to foster innovation, but may advantage other actors – such as Google – that have the intention of becoming Internet providers
 - Consequences for European actors: American platforms have the capacity to finance faster lanes (ie Netflix, Google, etc.), but start-ups are limited



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Platform neutrality is the extension of net neutrality (1/2)

A « level playing field » between OTT and Internet service providers can only be reached through equitable rules between actors:

- Net neutrality for telecommunications operators
- Platform neutrality or neutrality criteria for dominating Internet platforms - case studies:
 - Sudden change in referencing policy: platform-dependent businesses are jeopardised and can disappear
 - Platforms developing vertical search tools competing their own clients' business model
 - OTAs applying tariff conditions impeding hotels to conduct their own tariffications policy and reducing their revenues with excessive commissions

EUROPEAN BUSINESS NEWS

Google's Settlement with European Union Faces Increased Pressure

Politicians from France, Germany Ramp Up Rhetoric against Settlement with Web Giant

By SAM SCHECHNER And VANESSA MOCK [CONNECT](#)

May 23, 2014 11:23 a.m. ET



Montebourg attaque en justice le site de réservations d'hôtel Booking

Le Monde.fr avec AFP | 27.05.2014 à 22h27 • Mis à jour le 28.05.2014 à 08h09

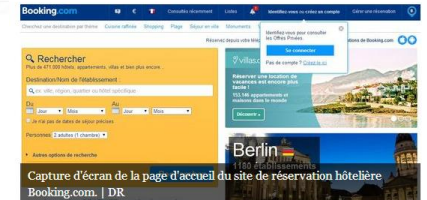
ARTII Réagir ★ Classer Partager

10.05.14 Open Internet Project

Verlage beschwerten sich in Brüssel über Google

Der Gegenwind für Google wird schärfer. Nach dem Urteil des EuGH zur Löschung von Suchergebnissen haben 400 Internet-Akteure in Brüssel eine Beschwerde wegen Missbrauchs seiner Marktmacht eingereicht.

Von Gesche Wüpper, Paris





Platform neutrality (2/2): the French Digital Council's conclusions cnumerique.fr/ttip

Neutralité des plateformes

Réunir les conditions
d'un environnement numérique
ouvert et soutenable

**Report to be publish on the
13th of June**

www.cnumerique.fr/plateformes

- **It is possible to transpose some rules applied to telecommunications services to Internet platforms** in order to ensure greater competition, and better protection of innovation:
 - Interoperability (of OS for example)
 - Data portability
 - Access equity between actors that became competitors to platforms
- **Other tools can be developed to enhance platform neutrality such as:**
 - Creating « notation agencies »: that measure neutrality levels (ie: frequency of changes in algorithms, platform openness, data loyalty, etc.)
 - Adapting commercial law: sanctioning « competition restrictive practices » (French commercial laws)

Regulatory convergence: other concerns on cybersecurity and electronic commerce chapters



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- **CYBERSECURITY:** a « joint approach » to cybersecurity is not satisfying regarding current affairs and the development of industries (ie smart grids, Internet of things, etc.)
 - Free competition on cybersecurity does not ensure requirements in this domain (access to the technology to observe it and confidence in the partner supplying it)
 - Cybersecurity should be excluded from the TTIP
- **ELECTRONIC COMMERCE:** increase vigilance on new concepts that could reconsider stated principles
- **DIGITAL PRODUCTS:** reject any introduction in order to avoid the reconsidering of the exclusion of audiovisual services → **technological neutrality**
- **SOFTWARE SECURITY CODE**



- **Free data flow:** data flows raise concerns that extend beyond the digital sphere and requires to be extremely coherent in the negotiating process
 - **Preserve GATS article XIV exceptions,** especially for sensitive data relating to private life, health, security, public safety, etc.
 - **Maintain EU capacity to enact data regulation legislation**
- **Examine new approaches on data classification:** in order to broaden debates and overtake current discussions on personal data, it is possible to adopt alternative approaches
 - **Industrial data:** EU's regulatory framework can be clarified, as it is a crucial economic potential for the future
 - **Business to government data:** ie in healthcare sectors, could be an innovative way to consider data regulation (insert exceptions on health data in order to allow governments to dispose of them and adapt policies)



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What's next?

Reminder of the Council's recommendations and suggested actions



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• **Transparency and coordination:**

1. OFFICIALLY IDENTIFY A NEGOTIATOR IN CHARGE OF DIGITAL ISSUES

- show the EU ambitions
- strengthen cooperation

2. PRODUCE A POSITION PAPER ON DIGITAL MATTERS (on the model of the EC position papers already published), in consultation with the European ecosystem

3. ORGANISE A PUBLIC EVENT IN BRUSSELS ON DIGITAL ISSUES (with all stakeholders)

• **EU's negotiating strategy in terms of digital matters:**

1. MEASURE IMPACTS OF TTIP MEASURES FOR THE DIGITAL (standards, convergence) and

2. INCREASE VIGILANCE ON MEASURES THAT COULD UNDERMINE THE EU'S ABILITY TO REGULATE IN THE FUTURE (ISDS, free data flow, etc.)

3. ELABORATE OFFENSIVE POSITIONS ON WHAT COULD BE BENEFICIAL TO EUROPEAN SMEs AND THE DIGITAL TRANSITION OF THE ECONOMY (public procurement, IP, competition)



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Q&A



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THANK YOU

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APPENDICES



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French Digital Council's TTIP working group

A 6 month work, opinion unanimously voted by the French Digital Council's members on the 20 of march 2014

1. Opinion with 4 strategic general recommendation to improve the negotiation on digital issues

2. 8 fact sheets with 22 recommendations on specific matters

Intellectual Property, Investment Protection, Public Procurement, Competition, Data, Regulatory convergence, Electronic Commerce, Cybersecurity

3. Appendices

Explanatory note on the negotiating processes in the US and in the EU, Minister's referral, list of interviewees, Members of the French Digital Council working group, Sources and litterature



Working group on the TTIP

- **Members of the French Digital Council**
 - Lead: Benoît Thieulin, President
 - Godefroy Beauvallet & Tariq Krim, Vice-Presidents
 - Marie Ekeland, Nathalie Pujo, Audrey Harris, Stéphane Distinguin & Marc Tessier
- **Permanent team of the French Digital Council**
 - Samira Anfi, Deputy Rapporteur (trainee)
 - Yann Bonnet, General Rapporteur
 - Mathilde Bras, Deputy Rapporteur
 - Jean-Baptiste Soufron, General Secretary
- **Expertise from the French Treasury**
 - Jérôme Brouillet, Deputy of Trade Policy, WTO and trade agreements of the EU



Lists of organizations consulted by the French Digital Council

50 people were auditioned :

- **French companies:** Criteo, Withings, SNCF, ErDF, BNP, Voyages-sncf.com, Free, Orange, Alcatel-Lucent
- **Civil society and association:** La Quadrature du Net, Creative Commons, SavoirsCom1
- **Standards organizations:** AFNOR
- **Professional organizations:** FEVAD, Syntec numérique, FFT (French Telecoms Organizations).
- **Institutions and administrations:**
 - SGAE (European affairs general secretary),
 - DGT (Department of Treasury),
 - MAEDI (Minister for Foreign Affairs and International Development),
 - ANSSI (Information Security Systems Agency),
 - DGCIS (Direction for Competitiveness, Industry and Services),
 - Ubifrance (Exports organisations),
 - CNIL (Data Protection Authority)
- **American companies:** Facebook FR, Google FR, General Electric