



The European Union, Silicon Valley and global markets:

a battle between privacy and ethics or protectionism in disguise?

Discussion with Marietje Schaake, MEP, moderated by Mark Seifert and Julia Reinhardt
March 2019

BRUNSWICK



Europe and the United States share fundamental common values – open societies and open markets – but is their cooperation strong enough to address technology-powered threats to these values? With technology impacting all parts of life, why is policy around it siloed, and what can lawmakers do to make technology regulation more agile and comprehensive?

Marietje Schaake, “Europe’s most wired politician” as media have called her, is a progressive liberal Member of the European Parliament and a technology optimist. Still, to many of the attendees gathered at Brunswick Group’s San Francisco office on March 5 – which included **Silicon Valley-based privacy and ethics professionals, technology lawyers and senior communicators** – she had mostly skeptical answers to many of these questions.

Ms. Schaake called for the EU, the US and other liberal democracies to extend their rule-based system to the internet and to digital platforms. Applying existing rules to technology and modernizing them where necessary would not “stifle innovation”, as many in Silicon Valley want to make us believe, but would create a level playing field. The discussion moderated by **Mark Seifert**, Partner at Brunswick and Co-Chair of their Cybersecurity and Privacy Practice, and **Julia Reinhardt**, privacy consultant and former German diplomat, helped foster a common understanding around these issues.

The evening's takeaways at a glance

Marietje Schaake shared insights from the recent Transatlantic Legislators' Dialogue, a gathering of representatives from the European Parliament and the US House of Representatives in Washington D.C. During this gathering, Ms. Schaake witnessed **a deep rift in the partnership between the European Union and the United States**, driven by recent actions and an increasingly adversarial tone coming from the White House. This is all the more worrisome as the model of liberal democracy that is so fundamental to both blocs is at risk. Trade and geopolitical tensions between the US and the EU are impacting cooperation on tech and data issues, undermining trust between them.

At the same time, Ms. Schaake sees a recent growing awareness in the United States of the need for **technology companies to abide by rules**. Over the last few decades, US lawmakers and corporations dismissed Europeans for attempting to undermine US competitors through regulation. Revelations around foreign meddling in elections and the Facebook Cambridge Analytica scandal have started to shift American sentiment on tech regulation. Ms. Schaake was hopeful that this growing awareness would lead to increased cooperation between the EU and the US to address common problems.

The focus should now be on **strengthening EU-US cooperation in concrete ways to preserve democracy**, especially vis à vis the stronger manifestation of China on the global stage and threats to democracies emanating from social media. Ms. Schaake observes that a specific area of growing alignment between the two blocs is on reforming "intermediary liability exemption", as it's called in Europe, or Section 230 in the US, to impose forms of liability for content on social media. These rules could be enforced for larger tech companies that have a bigger impact, and some kind of mechanism could help small and medium sized companies deal with these requirements.

Indeed, according to Ms. Schaake, **social media companies like Facebook, Twitter, YouTube or Instagram are not sufficiently engaged in the fight to preserve democracy**. Their platforms are being used by oppressive regimes and malicious operators and they remain complacent in the face of the responsibility they bear. Over the past years, they have benefited both from a lack of specific regulation and from explicit exemptions regarding liability under both European and American law.

Ms. Schaake discussed the impact of **Europe's own struggles with political fragmentation and populism** on tech regulation. Asked about the impact of Brexit on the implementation of European privacy law in the United Kingdom, Ms. Schaake expressed her belief that the majority of the British population would stand up against lowering standards that have been achieved with the European General Data Protection Regulation.

Ms. Schaake criticized the **inability of governments to hold the digital industry to the same set of rules as other industries**. In Europe, protecting own champions cannot mean leaving entire industries untaxed. Despite discussion on taxing digital companies by European governments, she argued that this isn't happening.

Asked about **ways to regulate Artificial Intelligence in an intelligent way**, Ms. Schaake reiterated that regulation is not a crime against technology. It is usually put in place with good intentions for the public, and most companies worldwide are regulated. If done well, regulation works as a safeguard of rights and freedoms. And if it is bad, **"checks and balances" enable the system to change it**. This is equally true whether regulation concerns a digital or a more traditional company. She argues that we should double down on principles that we consider essential for all industries, and understand the impact of other regulations, from copyright to healthcare, on the development of AI.

Ms. Schaake argued for a **'precautionary principle' approach to AI, similar to how its applied in Europe to medical or biotech research**. Uncertainty and open outcomes are inherent to machine learning, making AI susceptible to abuse. With AI research and applications still in the early stages, there is a high risk for unintended consequences and malevolent uses of the technology. She argued in favor of more tests of AI and more collaboration between academics, governments and companies before a certain algorithm or product is released to the public. The **"move fast and break things" attitude in Silicon Valley** has had its merits, but often clashes with our rules-based system on trade, human rights, war and peace, and on the rule of law itself.

Ms. Schaake also took issue with discussions around an "ethical use of technology." Ultimately, **ethical norms are highly individual** and cannot be set by tech companies, lawmakers or regulators. Instead, the question of the **standards companies can be held to has to be answered by society and its elected representatives**. These questions are also often perceived differently in the US and Europe. Americans, as Ms. Schaake concluded, in general trust private companies more than they trust the government, with the opposite being true in Europe. Intuitively, most people in Europe would prefer safeguards coming from law than trusting the market to regulate itself, which many argue is the most fundamental difference between Europe and the US.

In response to a question over whether lawmakers understand the technologies and products they aim to regulate, Ms. Schaake argued that **new technologies are not too complicated to be regulated by lawmakers**. In fact, it is common practice in parliamentary democracy that lawmakers deal with complex issues on the basis of condensed background material provided to them. This should serve as an encouragement to tech industry to share insight with governments, and to lawmakers to understand new technologies and perspectives of those who work on developing them. Right now, the most influential US tech companies, in particular Facebook, Google and Amazon, **have lost considerable trust with European lawmakers and regulators**. Let's hope this trust can be rebuilt by concrete action for the sake of preserving the fundamental values Europeans and Americans share.



Brunswick Group

Brunswick is an advisory firm specializing in business critical issues.

We help clients navigate the interconnected financial, political and social worlds to build trusted relationships with all their stakeholders.

From financial situations through to capital markets, crisis, cyber, employee engagement and litigation, clients rely on Brunswick for insight, advice, preparedness, and campaigns.

Our purpose is to help the great value creating organizations of the world play a more successful role in society.



Claire Thomas-Daoulas

Director, Brunswick Group, San Francisco
cthomasdaoulas@brunswickgroup.com

Claire is a Director in Brunswick's San Francisco office with a background in policy and communications in Europe, as well as cross-border cooperation with China. Since joining Brunswick, Claire's focus has been on advising technology, healthcare and consumer industries clients on competition, reputation and regulatory issues, and in particular around M&A deals. Before moving to San Francisco, she spent 7 years working in Brussels, including 2.5 at Brunswick.



Julia Reinhardt

Consultant, San Francisco
juliareinhardtsf@gmail.com

Julia is a privacy professional and public affairs consultant currently specializing in EU data protection and ethics in tech advice for US companies. She is a bridge builder between Europe and Silicon Valley. Julia builds on a 15-year career in the German diplomatic service, including a posting as head of communication at the Consulate General of Germany in San Francisco.