

Advancing U.S. Goals in the U.S.-EU Trade and Technology Council

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As the Biden administration works with its EU counterparts through the new U.S.-EU Trade and Technology Council (TTC), it should hold firm in defending the superior U.S. innovation system. To that end, U.S. negotiators must first clarify their positions on at least four strategic questions.

KEY TAKEAWAYS

- The EU's precautionary approach to digital technologies is antithetical to U.S. economic and national security interests because it limits innovation and growth, which the United States urgently needs.
- It is critical for U.S. negotiators to vigorously defend U.S. economic interests in the TTC. They should not gloss over real differences in privacy rules, AI regulation, antitrust regulation, digital taxation, content moderation, and others.
- It would not be in the U.S. interest to harmonize regulations with the EU, nor is it necessary. There is no reason why there should not be different U.S. and EU regimes for most digital issues, as long as they are broadly aligned.
- When it comes to areas of regulation that affect cross-border trade, the United States and EU should work together more closely to ensure their respective approaches are interoperable.
- It would be ideal if the EU were to unequivocally join the United States to limit Chinese innovation mercantilism and digital authoritarianism, but if the EU takes even limited measures toward that goal, it would be a success.
- Both sides need to commit to a successful relationship. But U.S. negotiators should not define success as emulating the EU or increasing cooperation for its own sake; they should increase cooperation while advancing key U.S. national interests.

INTRODUCTION

In June of this year the United States and the EU announced the formation of the U.S.-EU Trade and Technology Council (TTC) to foster high-level cooperation on trade and technology.

Such an initiative is sorely needed both bilaterally and globally. If the EU and United States can't address digital issues between them, then the chances of working together to address China issues will be difficult. But for the TTC to produce tangible benefits for the United States, the U.S. government will need to clarify four key questions before it engages in negotiations.

- 1) **Should the principal focus be on shaping technology to address social concerns or on advancing technology to drive progress and growth?** The EU appears to favor the former. The United States should clearly stress the latter, not only because there is great risk digital transformation will be too slow, which would have significant negative effects on economic growth, but also because most of the social concerns are best addressed at the national (or EU) level, not at the international level.
- 2) **To what extent should reaching agreement and restoring more harmonious relations trump advancing key U.S. interests?** After the weakening of transatlantic relations in the Trump administration, many U.S. foreign policy experts desperately want to restore good relations with our transatlantic allies. While certainly a useful goal, the desire for comity should not come at the expense of protecting key U.S. economic interests. While there are certain areas where the U.S. government can compromise, it should first and foremost defend U.S. economic and technology interests against problematic EU policies.
- 3) **To what degree should the TTC work to craft common regulatory approaches versus allowing each region to develop its own?** While harmonized regulations are generally better than disparate ones, if the only path to harmonization is to conform to EU regulations, which demonstrably harm digital innovation and competitiveness, then the United States should defend differential regulatory systems while insisting on full cross-border trade, with U.S. imports and operations in the EU complying with EU rules.
- 4) **How much should the U.S. delegation press the EU to join it in its fight against Chinese innovation mercantilism and digital authoritarianism?** It is in the interests of not only the United States but also the EU to press China to roll back its innovation mercantilist practices that demonstrably harm global innovation and digital freedom. To date, EU rhetoric has only occasionally been supportive of pressing China. Many EU policymakers do not want to rock the boat with China and risk Chinese economic and diplomatic aggression. The U.S. delegation should press the EU side to commit to concrete joint actions.

Given the increasing digital technology threat from China and the importance of resolving digital policy disputes between the United States and the EU, the potential of the TTC is significant. Hopefully, both parties will find a way to success that advances digital innovation in both nations/regions and the world.

KEY QUESTIONS FOR THE U.S. DELEGATION TO AGREE ON BEFORE NEGOTATING

One of the advantages China has long had in negotiations with the United States is that with its authoritarian system it can more easily develop and enforce a unified position. With its pluralist system and structure of government with competing agencies, interests, and world views, the U.S. government often enters negotiations not fully unified. This clearly weakens U.S. negotiating positions. The EU will try to take advantage of that in the upcoming TTC negotiations. Therefore, the Biden administration will need to lead an effort to develop a strong, whole-of-government position before starting negotiations. This will be difficult because of different views and positions, particularly between the EU-style social democrats in the administration who would support simply adopting EU digital policy approaches in the US and singing “Kumbaya” with their Brussels counterparts and the national and industrial security-minded members of the administration who seek to ensure continued U.S. digital leadership and innovation, and rightly see the overarching EU precautionary approach to digital regulation as antithetical to that goal. The Information Technology and Innovation Foundation (ITIF) sides with the latter camp and hopes that U.S. negotiators do likewise.

To that end, there are at least four key questions U.S. negotiators must first clarify and reach consensus on—hopefully agreeing with the pro-growth and pro-innovation answers.

What Is the Principal Goal of Tech Policy: Addressing Social Goals or Economic Goals?

While officials in the European Commission and Parliament, and many EU nations, reference the importance of the digital economy to growth and competitiveness, their actions suggest something else. The EU’s main animating motivation with regard to the digital economy is how to regulate and restrict it, not promote it. They appear to assume that the digital engine of growth is on autopilot with the key role of government being not to tune the engine and provide fuel (as well as sensible guardrails), but rather to worry that the car might go too fast or be misused and spin out of control.

Margrethe Vestager, the European Commission’s executive vice president and competition commissioner, stated when the TTC was announced, “We have common democratic values and we want to translate them into tangible action on both sides of the Atlantic. To work for a human centered digitisation and open and competitive markets.”¹ To be clear, “human centered digitisation” is another way of saying a restrictive regulatory system (which is not the same as smart or effective regulation). Likewise, “open and competitive markets” is a code phrase for strong antitrust and other regulatory actions against large U.S. technology companies, particularly Internet platforms.

Moreover, while we do share common values around democracy, human rights, freedom, and the rule of law—values that are even more critical in today’s world—we have different values when it comes to issues such as attitudes toward technology-driven “creative destruction,” the role and value of large companies, trust in heavy-handed regulatory interventions to promote the public interest, and the overarching importance of growth and innovation versus fairness and social protection.

While many acknowledge this divergence in digital policy interests, an accurate description of the source of the differences is often lacking, as EU officials like to cloak their regulatory precaution and economic protection in higher values. Marietje Schaake, a former MEP, called

the EU digital policy system “values based” as opposed to the U.S. system, which she and many in the EU see as based on crass commercial interests and “radical individualism.”² But it is not that the EU system is based on noble values while the U.S. system is based on craven greed. The U.S. system is deeply based on values—the values of innovation, progress, and growth. In contrast, the EU system is based on the values of stability and protection of incumbent interests.

The U.S. should not cede the moral high ground in these technology debates. EU policymakers often claim that they are focused on protecting European values, with the implication that anyone who challenges their regulatory agenda is therefore opposed to these values. What they often refuse to acknowledge is that there are multiple ways to uphold different values, almost taking it as a badge of honor that they are willing to bear extraordinarily high regulatory costs, even if the same goals could be achieved more efficiently through different policies. For example, both policymakers in the EU and United States agree that companies should not use artificial intelligence (AI) with significant biases that harm consumers, but there are many different policies to achieve that goal, each of which entails significantly different impacts on innovation and compliance.

The EU’s precautionary approach to digital innovation is antithetical to U.S. economic and national security interests because it limits digital innovation and growth, something the United States critically needs. Europe has failed to generate world-leading information technology (IT) and digital firms and has lost global market share, especially to China, in no small part due to its adherence to the precautionary approach to digital policy.³

Europe’s adherence to the precautionary principle results in regulations that make it harder for companies of all sizes in the EU to innovate. Its General Data Protection Regulation (GDPR) saddles its companies with strict privacy rules, making them less competitive.⁴ For example, the right to explanation could reduce AI accuracy, the right to data erasure would harm AI systems, and the prohibition on repurposing data will limit AI innovation. Its proposed regulatory framework on AI will cost the EU \$36 billion over the next five years and reduce AI investments by almost 20 percent, while saddling a typical small or medium-sized enterprise (SME) that deploys a high-risk AI system with compliance costs of up to \$470,000.⁵ The EU also wishes to impose its precautionary regulatory framework, not only in Europe but in virtually every nation in the world (outside of nations such as China and North Korea).⁶

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Moreover, the EU has deployed a wide array of mercantilist tools to protect itself in the hope of hobbling, Gulliver-like, the American giants so that that the EU “Lilliputians” can grow. This takes the form of aggressive antitrust enforcement; limitations on the export of data; taxes on U.S. digital companies’ sales (digital services taxes); geo-blocking prohibitions; regulating video platforms as traditional audiovisual providers; government-funded industrial policy and import substitution (e.g., the Quaero search engine, the GAIA-X cloud project); establishing EU-approved “data intermediaries” as an alternative to U.S. tech firms; mandates for paying newspapers to list their articles in search results; limits on price discounts by e-commerce

retailers; requirements to take down information from the web (“right to be forgotten”); charging foreign firms more for access to EU government data; massive fines for privacy, content, and other digital violations; onerous regulatory restrictions on the use of data; and many others.⁷ EU calls for “digital sovereignty” are nothing more than a protectionist slogan, and U.S. officials should make it clear that the EU is in no position to complain about a competitiveness deficit with the United States, given that it runs a massive annual trade surplus with the United States.⁸ If the EU were using tariffs on physical products and not regulations on intangible services, the protectionism would be clear and far more forcibly denounced.

None of this is to say that the United States should not move somewhat closer to the EU position on some issues. But this should be step by step—a careful weighing of the pros and cons of each potential policy proposal (considering *all* rights and interests, not just privacy), not a headlong rush to copy and paste whatever the EU does. For example, Congress should pass a national privacy bill, but not one based on the GDPR.⁹ The administration should continue to ensure that antitrust authorities monitor and prosecute anticompetitive behavior (as opposed to focusing on industry structure) while maintaining a commitment to the consumer welfare standard. And it should continue to press for international tax reform to limit tax havens (but not have differential taxes on digital companies or services).¹⁰

As such, as the Biden administration works with its EU counterparts on the TTC, it should remain firm in its commitment to the superior and successful U.S. innovation system.

How Bad Does the United States Want Harmonious Relations?

There is considerable pressure from pundits and foreign policy experts for the United States to do almost anything, including emulating European digital regulations, to get the EU on our side in the conflict with China. *The Economist* has called for the United States to “recognize European privacy and other regulatory concerns as well as demands that the tech titans be property taxed.”¹¹ In exchange, the EU would then supposedly help the United States with China. *Financial Times* columnist Rana Foroohar argued that a stronger EU-U.S. alliance is critical, and that the Biden administration should adopt EU tax, regulatory, and antitrust approaches to the tech sector so that the EU will cooperate with America vis-à-vis China.¹² Indeed, there will be considerable pressure on the Biden administration to “give away the store” to Europe under the motto of “America is back.” But, as noted, adopting the EU model lock, stock, and barrel would significantly weaken the U.S. tech economy. Moreover, there is no evidence that the EU would then live up to its side of the bargain and stand up to the inevitable Chinese economic retaliation.

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To be sure, having strong allies is better than not having them, especially as the United States faces an increasingly hegemonic China ruled by an increasingly Leninist Communist Party. But U.S. policymakers need to decide how much they are willing to concede to the EU’s desires just to enhance harmony. It is also important to realize that it is not likely, at least until the EU suffers significantly more economic pain from China, that the EU and major member states will not decisively choose sides with the United States to push back on Chinese innovation

mercantilism, “wolf warrior diplomacy,” and efforts to spread its authoritarian system. Europe sees the value of its economic relations with China as paramount, and despite its narrative that the EU is the globally responsible actor willing to sacrifice its own interests for the good of the world, as it portrays itself with climate change, it is unwilling to suffer very much—if at all—to join with the United States to constrain the worst Chinese practices that harm the world. It reveals Europe’s selective application of its values.

Another reason why the EU may be less willing to compromise is it knows it can impose regulations and taxes in the digital economy in ways that harm U.S. interests and companies—such as limiting data transfers to the United States and designing discriminatory tax systems targeting U.S. firms—with little retaliatory action from the United States. It knows that the U.S. government is unlikely to limit the ability of EU firms with business operations in the United States to transfer data to EU nations. It knows that Congress is not likely to impose discriminatory taxes on large EU companies, such as automakers. So, in many ways, the EU has a significant advantage in these negotiations. The U.S. does have some leverage, as it is still the principal participant in NATO, especially as so many EU nations refuse to fund their fair share.

Nor should U.S. officials forget that EU officials are unabashed in their commitment to establish nationalist digital tech policies to challenge U.S. market share. Indeed, the EU is convinced that it needs to, in the words of EU President Ursula von der Leyen, “achieve technological sovereignty in some critical technology areas.”¹³ Thierry Breton, the EU commissioner for the internal market, argued that “European data should be stored and processed in Europe because they belong in Europe.”¹⁴

As such, it is critical for U.S. negotiators to vigorously defend U.S. economic interests in the TTC. They should not gloss over real differences in privacy rules, the right to be forgotten, AI regulation, antitrust and platform regulation, digital taxation, content moderation, and others. Of course, the EU hopes that the Biden administration will embrace social democracy and support and copy the EU in these areas. The risk is that the United States will give up too much in order to achieve harmony, as it did this summer in abandoning \$7.5 billion in tariffs it had levied on European products in response to unfair subsidies the EU has been giving the aircraft manufacturer Airbus.¹⁵

It is critical for U.S. negotiators to vigorously defend U.S. economic interests in the TTC. They should not gloss over real differences in privacy rules, the right to be forgotten, AI regulation, antitrust and platform regulation, digital taxation, content moderation, and others.

If the EU is not willing to make reasonable concessions and focus on new areas of pragmatic cooperation, the United States will need to play hardball. If the EU will not allow data flows to the United States because they don’t trust our law enforcement and intelligence services, then the United States should make it clear that it will limit intelligence sharing, as well as prohibit EU firms in America from moving data on American persons to Europe. If it insists on imposing digital-services taxes on U.S. firms, then the United States should make it clear that it will retaliate, by either imposing similar taxes on EU firms doing business in the United States or levying tariffs on imports from the EU. It should also make it clear to the EU that it’s America’s defense spending that lets EU nations spend relatively little on defense themselves, and that this

support comes with the price of reasonable cooperation: not attacking U.S. tech firms and cooperating to push back against unfair Chinese technology practices.

Finally, if American policymakers expect the EU to compromise, it is only reasonable that the United States does as well. This could start with Congress passing a comprehensive privacy bill. Such a bill would give consumers reasonable privacy rights, preempt state and local privacy laws, ban private rights of action, and streamline regulations.¹⁶ On digital tax issues, the administration should continue to work with the Organization for Economic Cooperation and Development (OECD) to ensure all companies pay reasonable taxes and cannot unreasonably shelter income in tax havens. But that does not mean that just because a company sells services in a nation—even digital services,—that country should be able to receive taxes from the company. There is no logical basis for having digital profits go to where customers live any more than there is to say that an automobile company’s profits should go to the jurisdictions wherein car customers live.

How Much Should the United States Support Regulatory Harmonization?

One of the goals of the TTC is to work to minimize the differences in digital regulation to better enable cross-border trade and investment. The EU statement on the TTC notes, “We plan to ... encourage compatible standards and regulation.” Margrethe Vestager has gone even further, stating, “The point, of course, is to push for real global standards, standards that build on privacy, on the integrity of digital and the dignity of the individual as the starting point.”¹⁷ Another EU official claimed that “Democracies have to work together to preserve those shared values when it comes to regulating the future digital world.”¹⁸

It will be a mistake if U.S. policymakers claim that the only way to maximize EU-U.S. digital trade is to have EU rules imposed on the United States, much less the rest of the world.

That is a noble goal, one that U.S. policymakers should fully support if Vestager and other EU officials would agree that the global standards to be established are U.S. ones (with the proviso that Congress should pass a reasonable national privacy bill.) But of course, they do not agree. Their goal is to get other nations to impose the same digital regulatory system as that of the United States, in part to minimize the competitive disadvantage that comes with such precautionary rules. The reality is that when discussing regulatory harmonization, everyone is for it, as long as the regulations that prevail are the ones from the country advocating them. Regardless, it will be a mistake if U.S. policymakers claim that the only way to maximize EU-U.S. digital trade is to have EU rules imposed on the United States, much less the rest of the world.

Not only would EU-based regulatory harmonization not be in the United States’ interests, it is not necessary. Yet, many pundits propose such harmonization. For example, Ian Bremmer wrote that the United States should support the creation of a “World Data Organization” akin to a World Trade Organization (WTO):

A secretariat would be established to help member states create a universal set of digital norms that can be adopted by the group (with a particular focus on artificial intelligence, privacy, intellectual property, citizens’ rights, and data) alongside an enforcement mechanism to help mediate any potential disagreements between parties.¹⁹

Others support international agreements on the use of particular technologies. For example, Cohen and Fontaine wrote, “The leading democracies have yet to agree on rules for using facial recognition technology, including its proper role in the criminal justice system, or the protocols that should govern data collection.”²⁰

There are multiple problems with these proposed governance frameworks. A key one is that many IT and digital policy issues reflect deeply held views and values of particular nations. The EU, for instance, does not have the same commitment to freedom of speech as the United States does, so Holocaust denial is illegal in Germany but not in the United States. If there are global rules, which rules would apply to such speech?²¹

Moreover, there is no reason why nations should not have different regulatory regimes for digital issues, as long as they are not de facto trade barriers and are broadly aligned to address key, common issues. Regulations don’t need to be carbon copies to have a broadly similar effect. After all, Europe and the United States are unlikely to agree on a privacy framework or how to regulate AI. And if nations are worried that digital imports won’t reflect their domestic regulatory framework, they can block them at the border, as the WTO allows (as long as the restrictions are not a form of hidden protectionism). In other words, the idea that without an EU-U.S. agreement that AI systems that don’t follow EU rules would be imported to Europe is nonsense. U.S. cars that are imported to Europe must follow EU auto regulations. The same is true for digital technologies.

In other words, countries already regulate technologies differently. There is no reason why digital technologies should be any different. For example, there is nothing special about facial recognition technologies that suggests governance should be elevated beyond the national level (or EU level). Some places may ban it or impose heavy restrictions. Others may encourage its use, but with appropriate guidelines and protections. Those decisions should be up to the nations wherein the facial recognition is deployed.

There are issues the two sides can work on productively together, such as developing mutually beneficial and accessible data-sharing frameworks and interoperable e-identity systems, and building pre-standardization cooperation for new and emerging technologies, among other ideas.

When it comes to areas of regulation that involve cross-border impacts, the United States and the EU should work more closely together to ensure their respective approaches are interoperable. One venue is the proposed U.S.-EU Joint Technology Competition Policy Dialogue, which would focus on approaches to competition policy and enforcement, and increase cooperation in the tech sectors.²² As ITIF has written, U.S. policymakers should encourage EU officials to put more emphasis on both the consumer welfare principle and a more innovation-based approach to competition policy.²³

This is not to say that the two sides should not work toward common regulations, but they should not expect to achieve complete convergence. There are issues the two sides can work on productively together, such as developing mutually beneficial and accessible data-sharing frameworks and interoperable e-identity systems, and building pre-standardization cooperation for new and emerging technologies, among other ideas.²⁴ If anything, U.S. regulators should press the EU for changes to many of their proposed digital regulations (e.g., the AI rules and the

Digital Markets Act) because, as currently structured, they hurt innovation and U.S. firms. For example, the EU's AI Act proposes requiring pre-market conformity assessments for certain AI systems or require testing using certain data that may exclude or disadvantage non-EU businesses.²⁵

Finally, this caution applies to regulatory harmonization, but when it comes to technical standards, both sides should embrace the current and successful industry-led, voluntary standards process to ensure common technical standards to facilitate global trade and needed economies of scale.

How Much Should the United States Press the EU to Fight Against Chinese Innovation Mercantilism and Digital Authoritarianism?

Perhaps with the exception of consulting, China seeks global leadership, if not dominance, in every IT sector. Moreover, China is not just another Asian Tiger; it is a Leninist dictatorship that rejects Western values of free speech, an open press, democratic elections, and the rule of law. Indeed, the famous Document 9, an internal communique from the party in 2013, warned all cadres to stop universities and media from discussing seven topics: “Western constitutional democracy, universal values, civil society, neoliberalism, the Western concept of press freedom, historical nihilism, and questioning whether China’s system is truly socialist.”²⁶ As an aspiring global hegemon, China uses a combination of carrots and sticks, including its “digital silk road,” to bribe and bully other nations into submission.²⁷ Moreover, it has worked tirelessly to increase its influence on important international bodies related to IT and digital technologies, such as the International Telecommunication Union (ITU), in order to shield it from global scrutiny and help ensure its approach to IT and digital policy is widely adopted.²⁸

As such, a key task of the TTC should be to cooperate both defensively and offensively with regard to China. If the EU and United States are willing to compromise on key IT and digital policy issues, then ideally the United States and EU would be able to cooperate against Chinese economic predation, with the goal of limiting damage to their interests while at the same time slowing Chinese technological advances. Policymakers should be wary of the alternative: If the United States and Europe cannot work together on digital issues, the probability of them working together on global digital issues of mutual interest shrinks dramatically.

U.S. officials should press the EU to work more closely on measures to constrain China. This can include 5G equipment and systems, Chinese investment screening, joint WTO cases against China, cooperation on cyberhacking and other intellectual property (IP) theft, supply-chain cooperation, reciprocal advanced technology strategy and program cooperation, joint blocking of Chinese imports when massive subsidies or IP theft or coercion are involved, cooperative export controls, and cooperation in international forums related to the digital economy.

The two governments should also work to collaborate on joint efforts to boost digital innovation and joint competitiveness. These can include joint participation in government research and development (R&D) programs, easier migration for technically skilled workers, and data sharing for AI, particularly in key public interest areas such as smart cities and health care. In addition, both should continue work to present a united front at international bodies defending not only the multistakeholder Internet governance system.

In short, while it would be ideal if the EU were to clearly join the United States to limit Chinese innovation mercantilism and digital authoritarianism, the EU moving even in limited ways in this direction should be considered a success.

THE PATH TO PROGRESS

Whether the United States and Europe use the TTC to rebuild their transatlantic relationship holds broad implications. Severed (or strained) transatlantic digital engagement would accelerate the fragmenting of the global digital economy, as it would reflect a fundamental fracture between two key players, which would only help China. Forward-looking policymakers on both sides of the Atlantic need to recognize this and redouble efforts to build a better, stronger, and broader transatlantic digital relationship.

There are two main risks with the Council. The first is that little will come from it because the EU wants to persist in its digital protectionism and overregulation, while also wanting “its cake and [to] eat it too” when it comes to China (e.g., preferring the United States engage in the hard and painful work of pushing back against Chinese mercantilism while the EU enjoys even better access to Chinese markets). The second is that too much will come from it, in the sense that progressive forces in the administration use this to push for U.S. technology and digital policy to be grounded on the EU-based precautionary principle and embrace many of the more restrictive EU digital policies.

Regardless, the TTC should also work to develop compromises on the issues that require it, for example, competition policy, cross-border data policy, and digital business tax do require compromise; (or at least for the EU to modify their positions); privacy and AI regulation do not. The TTC should also work on “low-hanging fruit” areas of cooperation such as joint cyber-security actions, public purpose data sharing, joint R&D in key technologies, and supply chain cooperation, including in semiconductors.

Forward-looking policymakers on both sides of the Atlantic need to recognize this and redouble efforts to build a better, stronger, and broader transatlantic digital relationship.

The TTC will not be a success if the EU does not take seriously U.S. concerns about a number of EU policies, such as the proposed Digital Markets Act, and either scrap proposed actions or make substantive changes that take American considerations seriously. And likewise, there are actions the United States should take to demonstrate its commitment to working together, such as passing comprehensive privacy legislation.

Given the importance of shared digital innovation and governance to both societies—and to the world—both sides need to commit to success. But U.S. negotiators need to define success not as becoming more like the EU or increasing cooperation for cooperation’s sake, but rather in increasing cooperation while also advancing key U.S. national interests and maintaining core elements of the U.S. technology policy ecosystem.

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About ITIF

The Information Technology and Innovation Foundation (ITIF) is a nonprofit, nonpartisan research and educational institute focusing on the intersection of technological innovation and public policy. Recognized as the world's leading science and technology think tank, ITIF's mission is to formulate and promote policy solutions that accelerate innovation and boost productivity to spur growth, opportunity, and progress.

For more information, visit itif.org.

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