



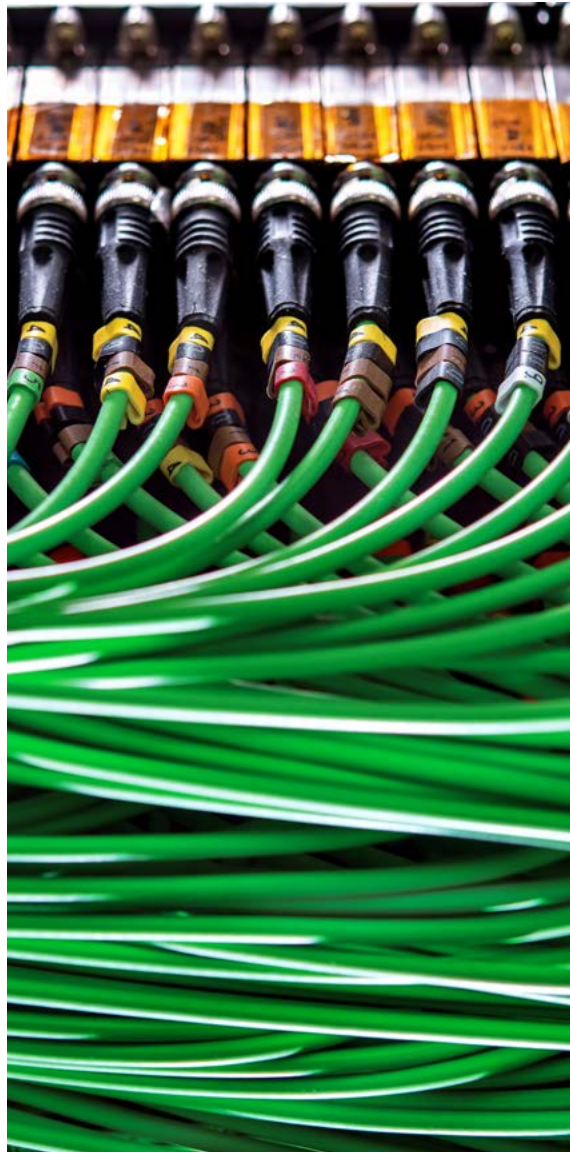
**Hogan  
Lovells**

## A Turning Point for Tech

Global survey  
on digital regulation

Mastering Digital





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## Editorial

Technological developments and tech-based business models have become a focus for global regulation across borders and industries in recent years. Successful tech companies can no longer rely only on the supremacy of their product or platform, the innovation of their R&D teams, or the marketing abilities of their sales people. Successful tech businesses need to understand how to navigate through the complex, and not always coherent, regulation that global law-makers are rolling out.

To understand more about the changing regulatory landscape, Hogan Lovells has undertaken its first global survey on proposed digital regulation.

Spanning the first six months of 2019 and covering 16 jurisdictions, the survey provides a comprehensive overview of publicly reported legislative activities and political discussions concerning tech companies. The survey looks into the future by monitoring announced initiatives, rather than focusing on existing regulation. This means the conclusions are particularly relevant for businesses considering strategic decision making and their positioning in the market.

In addition to the detailed results from the survey, our report includes commentary from Hogan Lovells subject-matter experts from across the globe to provide context to the political discussions.

A number of overarching conclusions can be drawn from the report that we encourage all companies active in the tech field to reflect on:

### 1. Tech companies have not only disrupted pre-existing business models, but societies generally.

In the first years of digitalization, the public focus was on how tech players, often small start-ups offering exciting new choices for consumers, were successfully replacing incumbent business giants at lightning speed. Public perception of these developments was generally positive for tech companies. However, this change of power, which is also reflected in the market capitalization of the largest blue chips, was not limited to the business world. The public – consumers as well as politicians – has since realized the impact of digitalization and tech on the offline world: privacy, housing, traffic, labor conditions etc. Constituents ask their political representatives to respond to the challenges that new technology brings to all of us. Legislative action is the consequence, and tech companies need to consider how to engage with political processes in order to avoid an unfavorable regulatory environment.

## 2. The U.S. leads the tech sector. Europe leads the regulation of tech.

Not only are many of the largest digital players located in the U.S., but the start-up scene in Silicon Valley and elsewhere in the U.S. regularly produces new companies that successfully position themselves globally. While Europe, Asia and other regions of the world also see many innovative and successful digital companies, only a few of them have gained comparable global reach. That does not prevent European politicians and other stakeholders from being the most active in coming up with regulatory proposals in the tech field. Almost half of the activity tracked in our survey stems from Europe compared to 28% from the U.S. and an even smaller 8% from Asia. The mere number of proposals is not directly equivalent to the impact, but often the first mover setting up regulatory standards serves as an example for other national or international regulatory activities. The EU's General Data Protection Regulation (GDPR) has been an example of how Europe can shape the global playing field. Looking at regulation coming from Brussels and EU Member States therefore allows us to predict how global regulation may look in the coming years.

## 3. Not internationally concerted, not targeted, often unclear – but real.

Our report indicates a very fragmented approach to regulation across jurisdictions. Despite the digitalization of almost the entire world, a global consensus has yet to emerge – which is not surprising considering the varied geographic origins of tech companies. Most proposals have a national scope only (85%). The survey also finds that political responses to the challenges brought by tech companies vary widely: from calls to break-up the largest tech players, over proposals to regulate their content or access to their data to the allocation of profits and taxation. Many political subject-matter experts have put forward ideas in their particular niche, but no holistic concept has yet emerged. As a result, the political response to the technology sector stays vague and unpredictable. However, a wait-and-see approach until a more comprehensive approach becomes real does not seem to be a viable alternative. Despite its perceived lack of clarity, the regulation of the tech sector is a reality. Our survey finds that the vast majority of regulatory proposals tracked (70%) originate from incumbent governments, making it more likely than not that such plans will see the legislative light of day.

#### 4. Tech companies compete. With regulation?

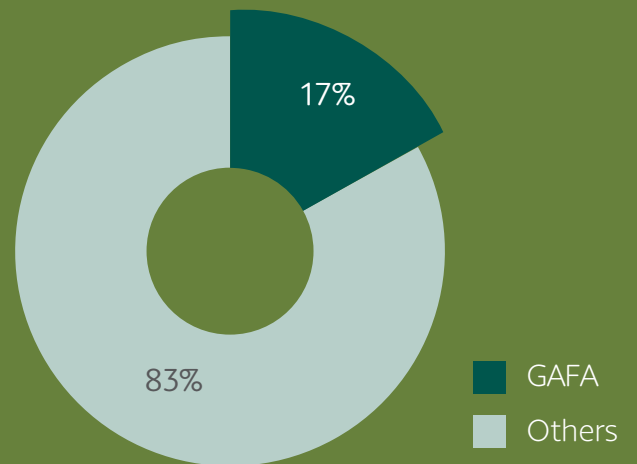
Regulation is meant to create a level-playing field that sets the rules of the game for companies in a given sector. However, regulation itself competes with another legal instrument: competition and antitrust law. 26% of the proposals tracked by our survey call for greater antitrust enforcement in the tech sector. This is despite – or probably because of – a number of high-profile European enforcement cases concerning Big Tech players in recent years. So as well as Europe’s leading role in regulation noted above, Europe’s antitrust enforcement policy appears to have set an example. Recently several U.S. Federal and State agencies started opening cases in the same field. Notably, Europe sees both a rigorous antitrust enforcement, and growing calls for regulation. The re-appointed EU Commissioner for Competition commented in September 2019 that competition cannot offer an answer to all of society’s problems, and that only regulation can determine what the final deal between consumers and businesses should be. We expect competition law and regulation to continue playing a dual role – and tech companies need to find a coherent strategy to deal with both.

#### 5. Not only for the big boys.

Public opinion and press coverage sometimes seems to suggest that regulating tech companies is a matter relevant to, at best, a handful of companies for which acronyms such as GAFA or FAANG have been invented. Our survey suggests that this is a too narrow view. Only 17% of the regulatory proposals we tracked name one or more of the leading U.S. tech companies, whereas the vast majority (83%) are company-agnostic and propose sector regulation. The consequences are clear: all businesses with a tech business model – which today are almost all – need to pay attention to the regulatory debate as they are likely to be affected. This is particularly challenging for smaller companies without public affairs experience or capabilities. They might need to rely on trade associations or other coalitions to make their voice heard and let decision-makers know about the potential impact of regulation on the business models of companies not well known to them.

## Submissions concerning GAFA/Others

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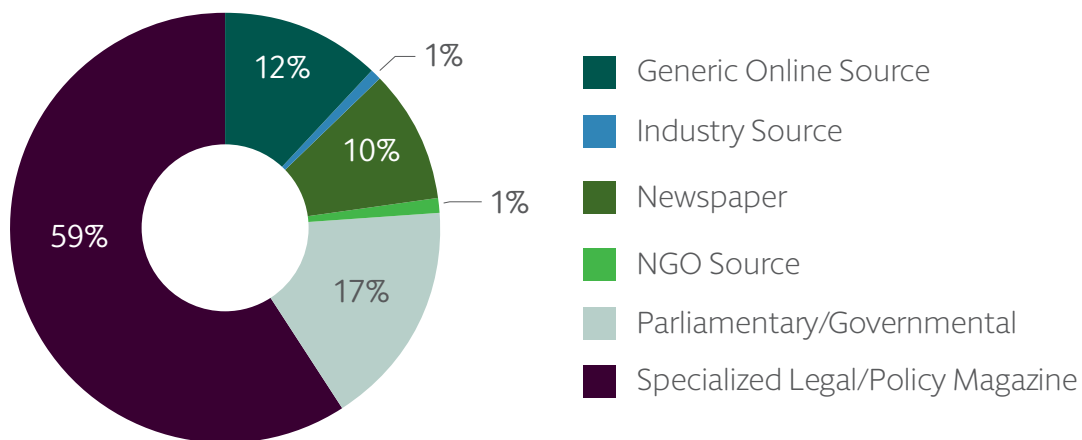
The survey covered 16 jurisdictions (China, the EU, France, Germany, Hungary, Italy, Japan, Mexico, the Netherlands, Poland, Russia, South Africa, Spain, the UAE, the UK, and the U.S.) and ran during Q1 and Q2 2019.

We reviewed political plans, legislative proposals and proposals of governments, NGOs or other stakeholders to regulate tech companies. Lawyers from around the Hogan Lovells network were charged with regularly monitoring sources such as parliamentary websites, industry associations, NGOs and, most importantly, the press and industry journals in the relevant jurisdictions.

The topics used for the categorization were: (i) structural and unbundling proposals such as calls to break-up tech firms; (ii) access claims to tech companies' data, customers or assets; (iii) proposals dealing with the taxation of tech companies or their profit allocation; (iv) content-related regulation proposals, in particular issues of copyright, combatting hate speech on digital platforms, or manipulation of elections; (v) antitrust law-related proposals and (vi) proposed regulation to foster interoperability and technical standards. Multiple choice options were enabled as the above proposals are not mutually exclusive.

Based on the qualitative criteria as set out above, we included 452 submissions in our final survey. These were classified according to the source, allowing us to interpret the results according to the likelihood of the proposed regulation being implemented. We also tracked the proposed level of regulation, i.e. whether rules are proposed at national or international (or in case of the EU, so-called supra-national) level. The categories also include self-regulation as often proposed by industry.

## Source of proposals



## Jurisdictions covered





Mexico  
17



Poland  
16



Italy  
13



China  
14



UAE  
12



Japan  
10



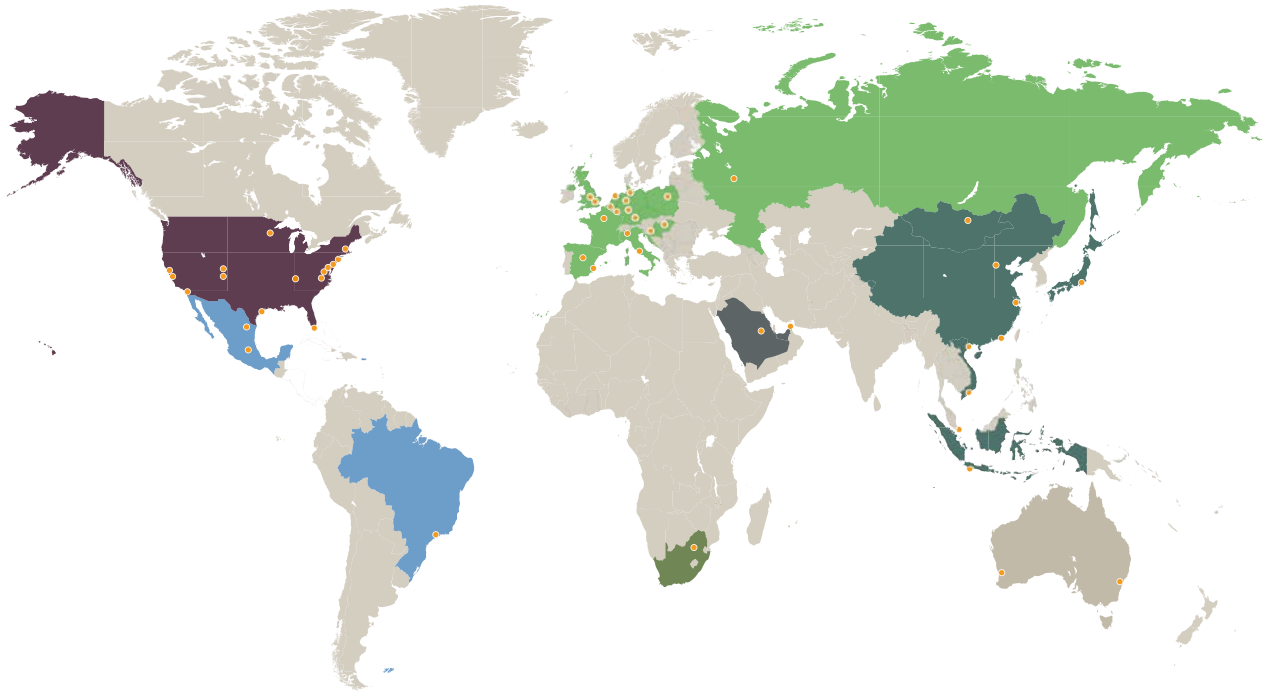
Netherlands  
9



Hungary  
2

Total 452

# Our contributors



## Topics



Balancing human rights when publishing content online



5G related issues - interoperability



Tech and antitrust



Tech and data protection



Tech, hate speech, and fake news



Tech and copyright



Tech, taxation, and profit allocation



Tech and platform issues



Tech and structural/ unbundling aspects



Regional comments

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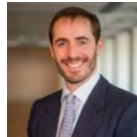
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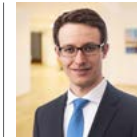
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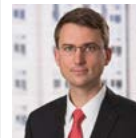


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**Logan Breed**  
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**Mark Brennan**  
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Partner



**Bret Cohen**  
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Partner



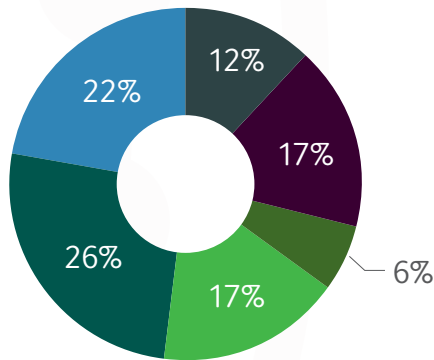
**Ari Fitzgerald**  
Washington, D.C.  
Partner



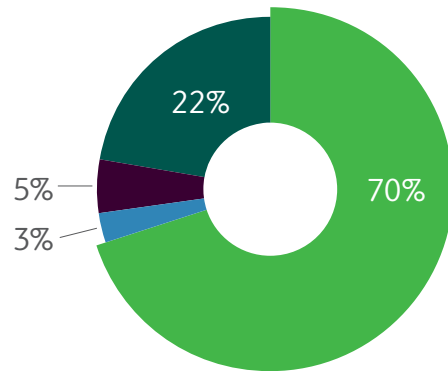
## Regulation of tech players is already a reality.

Our survey demonstrates that it is likely that there is more to come: the vast majority of regulatory proposals tracked (70%) originate from incumbent governments. This makes it more likely that many of the regulatory plans put forward will find a political majority and will be enacted. In contrast, the industry appears to be rather reactive and not vocal in the discussion about regulatory proposals. Less than a quarter of the documents tracked by the survey originate from trade associations or companies.

### Categories



### Originator



On the following pages we discuss the most relevant aspects by category, in particular how they affect tech companies.



**Christian Ritz**  
Counsel, Munich

## *Competition law as an instrument to regulate the activity for digital platforms*

We tracked over 100 competition-related regulatory proposals globally in our survey – clearly demonstrating the growing attention of law makers and antitrust authorities towards competition law enforcement in digital markets. This political agenda has recently been strengthened by the G7 Competition Authorities’ Common Understanding on “Competition and the Digital Economy.” Following EU Commission investigations into U.S. tech giants in recent years, major governments, including in the U.S. and Australia, have highlighted their desire to regulate Big Tech. This increased call for regulation is mainly driven by competition law concerns for bricks and mortar businesses as well as by consumer protection concerns. And it again shows the power of antitrust enforcers, due mainly to their strong enforcement tools, such as dawn raids and requests for information, as well as their experience in dealing with market assessments, and their power to issue significant fines.

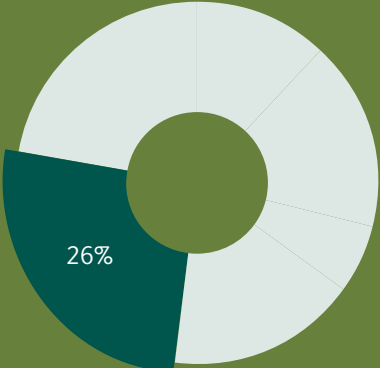
Given the growing interest of major global regulators, it is likely that such regulation will be enforced sooner rather than later. In particular, we expect increasing antitrust enforcement and regulatory activity regarding digital platforms, algorithms and big data which is obviously not limited to Big Tech, but may affect any company active in the digital markets. While competition law is generally perceived as being more flexible compared to classic regulation, its downside is that it is often less predictable.

This said, tech companies should pre-emptively monitor the global developments and assess whether their business models and digital competition law compliance need to be adapted to regulatory changes. After all, future enforcement activity will show if antitrust authorities operate independently from other policy goals and stick strictly to enforcing competition law only, or if antitrust law becomes a powerful tool in the hands of regulators that want to respond to the impact of tech business models on societies.





### Competition-related proposals





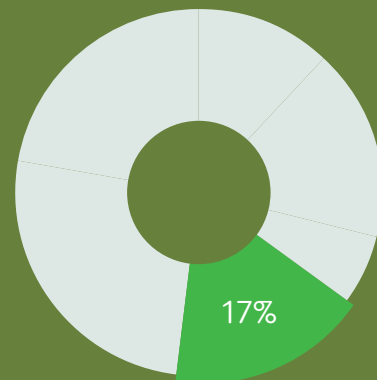
**Christelle Coslin**  
Partner, Paris

## *Accountability of tech companies for fake news*

Regulation of tech companies is not only about technical standards. 17% of the calls for action monitored by the survey relate to content-specific political proposals. A growing number of jurisdictions have passed, or are in the process of passing, laws aimed at fighting fake news and/or hate speech on the Internet. Several EU projects are on-going to assess how self-regulation is conducted by operators (in particular through the implementation by major players of Codes of conduct). Globally, legislators increasingly want online platform operators to contribute more to the fight against the spread of fake and unlawful content.

There is an increased wish to hold operators accountable (but also liable under certain circumstances) for the content they host online. This could mean new transparency obligations are imposed on tech companies, as well as general duty of cooperation/duty of care in order to fight against the dissemination of false information or unlawful content. The difficulty for operators obviously relates to the vast amount of data and information they host and the fact that national regulations will not necessarily set the same requirements. Anti-fake news and hate speech laws have recently seen the light of the day, for instance in France, Germany, and Singapore. Other legislative initiatives are likely to emerge in the coming years. In particular businesses that make third party content available, such as social networks, should closely monitor any future legislative development in their jurisdiction.

### Content-related proposals





**Alberto Bellan**  
Senior Associate, Milan

## *Liability of tech players for content from a copyright perspective*

The survey tracked a significant number of content – and in particular – copyright-related political proposals. The recent discussion around the EU Copyright Directive demonstrates how deeply this issue affects users and tech players alike. Unlike the U.S., the EU legal approach for internet service providers transmitting or storing user-generated content is horizontal. The safe harbor, i.e. the exemption from liability provided in the U.S. DMCA for copyright-related issues only is extended, in the EU, to all kinds of illegal content. So internet service providers in the EU are shielded from liability related to any user-generated content, no matter the reason why they infringe law (copyright, trademark, defamation, data protection, hate speech, etc.).

Within the bundle of tech reforms happening under the umbrella name of “Digital Single Market,” the EU institutions have shown their intention to deeply rethink such a horizontal approach and move towards a system of differentiated regimes where liability and takedown obligations vary on the basis of the legal reasons making the content unlawful. In this perspective, the EU has adopted a number of soft and hard laws to introduce special liability and takedown regimes for terrorist content, copyright, content harmful to minors, hate speech, and disinformation. Going even further, the new EU Commission President von der Leyen has included the reform of the very Directive providing the horizontal approach in her Commission’s top priorities. Thus, the growing importance of content online for each and every single aspect of modern society, along with a formidable lobbying activity by the EU content providers, are bringing the EU to strengthen the user-generated content-related obligations over online platforms - which are mostly U.S.-based. In the new EU legislature, this could result in a development of the safe harbor as we currently know it, with the final overcome of the one-size-fits-all, technology neutral approach that has guided the EU tech policy as of today.



**Ruud van der Velden**  
Partner, Amsterdam



**Joke Bodewits**  
Partner, Amsterdam

## *Content: a balance between privacy and freedom of expression*

The Internet enhances the public's access to information. A challenge occurs where published content creates a conflict between the right to privacy of article 8 of the European Convention on Human Rights (Convention) and the freedom of expression of article 10 Convention. In balancing both rights, the European Court of Human Rights considers as relevant criteria (i) the contribution to a debate of public interest, (ii) the degree of notoriety of the person affected, (iii) the subject of the news report, (iv) the content, form and consequences of the publication, (v) the prior conduct of the person concerned, and (vi) the method of obtaining information and its veracity.

Online publishers have to take this balancing test into account when publishing content, bearing in mind that the harm posed by online content to the exercise of human rights and freedoms might be higher than the harm posed by the traditional press because of the reach of the Internet. GDPR contains an equivalent balancing exercise. The right to be forgotten of article 17 GDPR enables data subjects to obtain the erasure of personal data concerning him or her. However, this does not apply to the extent that processing is necessary for exercising the right of freedom of expression and information.

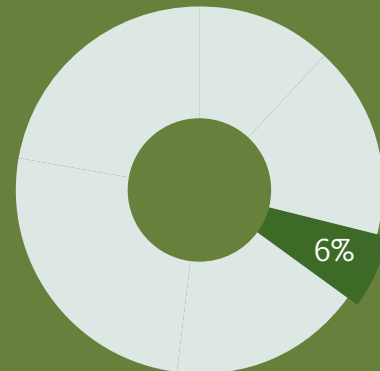


**Rupert Shiers**  
Partner, London

## *Taxation and profit allocation of tech companies: increasing uncertainty due to proposals for national taxes on digital services*

The tax landscape is in a state of considerable flux, with France, the UK, and several other countries introducing or proposing to introduce digital services taxes unilaterally. Significant work is also underway at the Organisation for Economic Co-operation and Development (OECD) which could potentially re-shape the international tax system in a way that affects tech companies and digital businesses in particular. In July 2019, the G7 finance ministers reaffirmed the urgency of this work, motivated by a perceived need to make sure tech companies are paying their fair share. Developments in this area will lead to a very significant increase in the compliance burden for affected taxpayers, and the scope for dispute with tax authorities. The new tax in France will have effect retroactively from 1 January 2019, and the UK version from 1 April 2020. Both will remain in force until an international solution is implemented, and the OECD aims to deliver international consensus on this by the end of 2020. Given how fast the ground is shifting, there is a real need for tech – and possibly for a much wider group of multinationals – to start assessing, planning, and possibly even taking action.

### Tax/profit allocation proposals



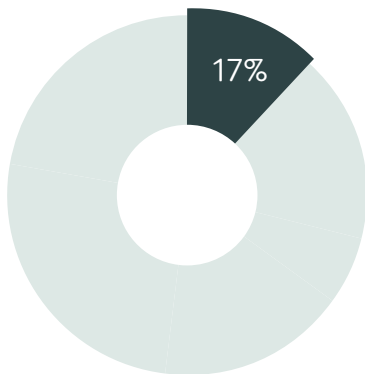


**Logan Breed**  
Partner, Washington, D.C.

## *Calls for breaking up tech giants*

Much of the conversation about competition issues involving the technology sector has focused on what is the appropriate remedy for the growing competitive significance of large technology companies. For example, some U.S. politicians have taken strong positions in favor of unbundling the large platforms and undoing some of the acquisitions they have made of start-up companies that could have become significant competitors in the future. However, many others are skeptical that using the antitrust laws to break up “Big Tech” would actually solve the problems that these lawmakers have identified. In fact, it could have the unintended consequence of making consumers worse off by undermining the synergies that come from a coherent conglomeration of related offerings without creating any new material competition.

While the calls for breaking up tech giants have been growing louder in the U.S., in the European Union most stakeholders so far have considered this idea only as a measure of last resort. Instead, the European Commission has been levying multi-billion euro fines in an effort to curb anti-competitive practices of big tech companies by focusing on abuse of dominance cases, on access to data and dealing with tying of products and self-promotion of big tech’s own offerings.



*Market power of digital players:  
breaking up or imposing access  
to data*

Structural/unbundling proposals



**Oliver Wilson**  
Counsel, London

## *Platforms pose challenges for existing legislative frameworks*

Data and technology platforms are constantly challenging the legislative frameworks within which they operate. This is especially the case when innovation disrupts an existing industry model. It is therefore not surprising that we are now starting to see a wave of reforms as the cycle of regulatory ‘catch-up’ gains traction. Whilst the potential risks involved with this data-proliferation model must be effectively controlled, legislators must be careful not to overly inhibit innovative tech to the extent that companies in this space are unable to compete internationally – particularly smaller businesses which don’t have the resources to undertake big compliance functions.

Where technology is replacing long-established business models, there is pressure on governments, from both the public and those individual companies displaced, that safety will not be compromised as a result of the new technology. For some platforms, essential-facility type arguments are brought forward and access to such platforms is demanded not only by customers (data portability), but also by competitors. Increased regulation means that tech players must work harder and pro-actively to ensure compliance.

With large fines and sanctions threatening to damage both turnover and reputation, companies have no option but to expend more time, energy and resource to keep within the lines of the law. Companies should follow legislative and regulatory developments closely in order to be mindful of how they are likely to be affected. An agile and proactive approach to regulatory compliance is likely to save companies significant amounts of hassle and money in the long run.



**Christine Gateau**  
Partner, Paris



**Bret Cohen**  
Partner, Washington, D.C.



**Patrice Navarro**  
Counsel, Paris



**François Zannotti**  
Associate, Paris

## *GDPR goes global: Protection of personal data at the spotlight*

The results of our survey demonstrate that data protection has emerged as a high-profile, mainstream concern that can significantly impact almost any business's risk profile. Poor data stewards not only risk reputational harm that translates to lost revenue in the marketplace but also costly and operationally burdensome enforcement actions from increasingly active data protection regulators in jurisdictions around the world. Increased social awareness of threats to individual privacy and data security is being matched with new or proposed legislation in various global jurisdictions that impose higher transparency standards, mandated risk-assessment analysis, and accountability obligations.

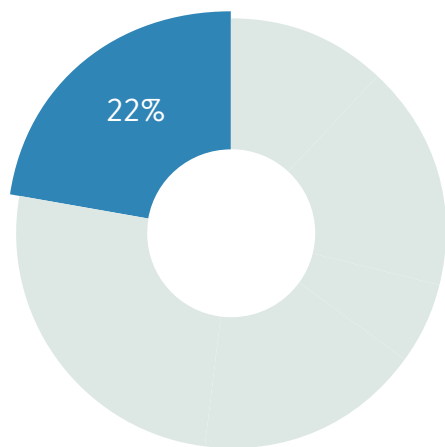
GDPR, which came into force on May 25, 2018, has forced companies to refine how they collect and use the personal information of European individuals. Meanwhile, legislatures on every continent have continued to establish new data protection laws or update their existing data protection regimes.

In the U.S., the California Consumer Privacy Act (CCPA), which will enter into force on January 1, 2020, will offer European-style baseline privacy protections to consumers and restrict how businesses use and share consumer information, even forcing certain sectors to alter their business models. At least 15 other U.S. states have sought to establish similar "comprehensive" privacy laws and it is likely that these efforts will continue in 2020 in parallel with significant legislative efforts to establish federal privacy rules. The global surge of data privacy laws shows



that the first jurisdiction setting up regulatory standards (in this case the EU) can influence other national or international regulatory activities.

Businesses across the globe must review how they collect, use, and share data about individuals and ensure not only that they understand and protect the data they have but also implement processes for resolving transgressions. A one-size-fits-all approach to data protection compliance could be difficult to implement and companies could need to tailor their operations to local regulatory requirements in order to demonstrate compliance.



*Interoperability and standards: a call for a global level playing field*

Interoperability/Standards proposals



**Ari Fitzgerald**  
Partner, Washington, D.C.

## *Getting ready for the 5G roll out*

The arrival of 5G will significantly transform the way we live. Its potential impact goes well beyond merely increasing Internet download speeds. Its transformative power stems from its ability to support a greater number and variety of end-user devices, from traditional smartphones to smart transportation, and energy infrastructure to smart appliances and smart personal healthcare devices. Because 5G is expected to spur economic growth wherever it is deployed, regulators around the world are looking for creative ways to accelerate and reduce the cost of 5G deployment.

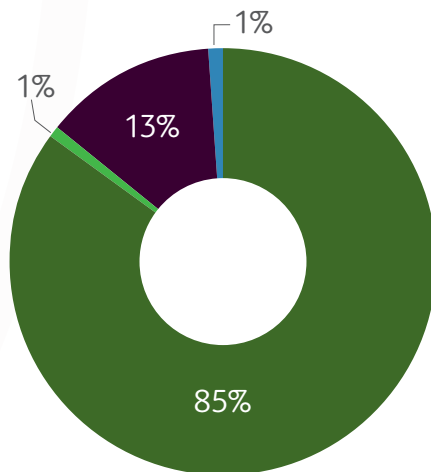
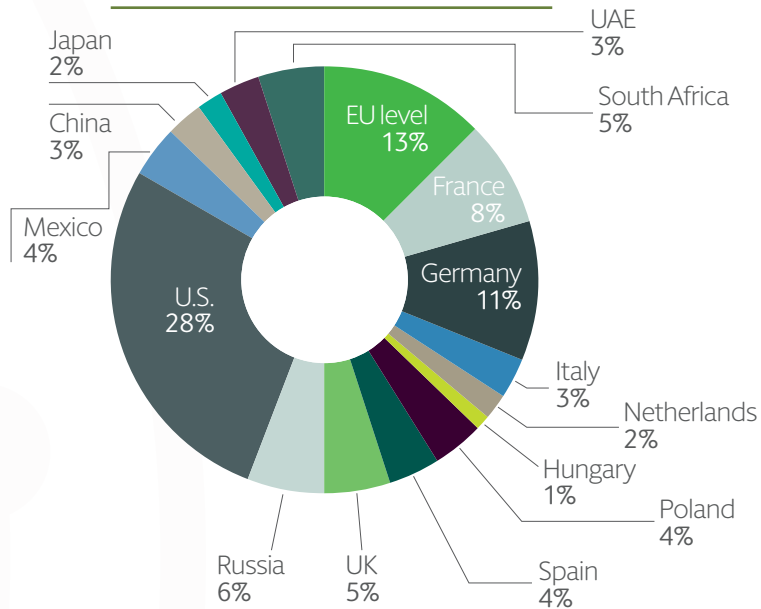
Communications regulators realize the importance of getting spectrum into the hands of mobile operators (via spectrum auctions, so-called beauty contests or rules for unlicensed use) to support 5G. Many have started to tackle the issues raised by a host of spectrum bands (e.g., mid-band spectrum in the 3-6 GHz range) that mobile operators and others hope to use to support 5G.

In order to achieve broad and meaningful 5G coverage, mobile operators may need to deploy a very large number of “small cell” facilities, depending on the spectrum bands used. For the first time in the history of mobile network deployments, millimeter wave (24 to 39 GHz) spectrum, whose signals trail off after only 300-800 feet rather than after several miles, is being used in the deployment of 5G. As a result, the number of cell sites needed to achieve wide-spread geographic 5G coverage will be much greater than the number needed for 4G. Mobile operators’ ability to deploy these facilities quickly will drive the value of 5G to consumers. In order to reduce barriers to 5G deployment, one national communications regulator, the U.S. FCC, recently adopted new rules that limit the fees state and local governments can charge for managing cell site deployments in local rights of way and establish deadlines for the completion of local reviews of applications to deploy small wireless facilities.





## Submissions per jurisdiction



## Types

- National
- International
- EU level
- Self-Regulation



**Falk Schöning**  
Partner, Brussels

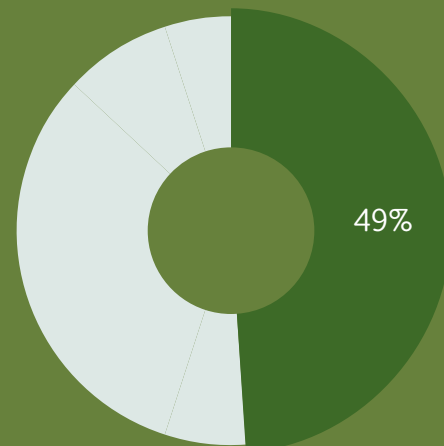


**Myrto Tagara**  
Associate, Brussels

## *EU – regulatory avant-garde*

Almost half of the proposals we tracked are from Europe, at EU level or coming from EU Member States. That proportion of proposed regulation significantly outnumbers the valuation, revenue or any other business metric of European digital companies. So while the U.S. tech players successfully expand their businesses globally including in Europe, Europe emerges as the trendsetter and pacemaker for regulation. This is important as the first mover in tech regulation has the potential to influence other jurisdictions and international organizations such as the G7 or the OECD. The impact of the EU's GDPR rules on California's data privacy laws serve as an example. Tech companies globally should therefore keep a close eye on the digital agenda of the new European Commission and seek the contact with stakeholders in Brussels and the EU Member States.

### Submissions per region | Europe



Total  
**452**

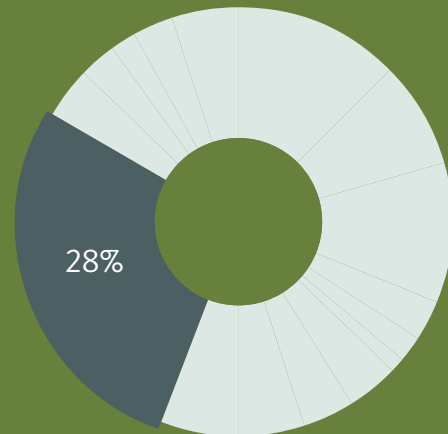


**Mark Brennan**  
Partner, Washington, D.C.

## *U.S. - Seeing more concrete steps toward regulating tech*

Notwithstanding decades of a relatively light-touch U.S. legal and regulatory environment for tech, there were more U.S. proposals to regulate tech in the first half of 2019 than for any other nation in the world. Lawmakers at both the federal and state level – and across political parties – are seizing opportunities to press for a variety of competition, consumer protection, and other requirements on the tech sector. And they are doing so more frequently and vocally than ever before, especially in light of several high-profile tech headlines from the last few years. The current Republican Presidential Administration has also expressed interest in regulating further the tech industry, a sharp contrast to recent administrations and traditional Republican deregulatory biases.

### Submissions per jurisdiction | U.S.



Total  
**452**



**Piotr Skurzynski**  
Counsel, Warsaw

## *Poland – an EU Member State’s view on 5G and cybersecurity*

When it comes to the tech and digital markets, the current focus at Member State level in Poland is to create a fertile ground for the development of the 5G network and IoT, as well as to ensure the highest level of cybersecurity. On the other hand, Poland aims to find its own balance between dealing with traditional models for providing services and digital disruptors, as well as addressing the problems of hate speech and fake news on Internet platforms without allowing platform operators to compromise the freedom of speech. The factor which might potentially slow down the pace of this development is the proposed digital services tax on the global operators of internet platforms. Although initiatives for change come from various sources (including businesses and NGOs), it is usually still the Polish government that puts these ideas into concrete legislative measures.







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## *Russia – new Initiatives for tech players*

The main creators of digital initiatives in Russia are federal authorities, mainly the Russian parliament and federal ministries. These Russian Government-based initiatives pursue a wide range of aims. Russia is now focusing on creating an autonomous and self-sustainable Russian internet for which operability cannot be affected from the outside. Russia has recently adopted a new federal law providing additional powers and technical means to the Russian Data Protection Agency related to the management of the Russian internet. Furthermore, Russia is tightening sanctions regarding violations by data operators related to IT and TMT.

Russia is also considering several initiatives to foster the tech sector. A new federal law establishing the fundamentals of digital rights has been adopted. The Russian Ministry of Economic Development has suggested creating virtual economic special zones for IT companies where they could enjoy significant preferences, including tax privileges. In addition, the Russian Ministry of Communications is planning to launch a pilot project for testing high-tech innovations (blockchain, AI, VR and AR, etc.) in four Russian regions bolstering the creation of IT clusters.

Therefore, Russia is, on the one hand, preparing initiatives aimed at establishing more control over the tech industry and, on the other, developing proposals to help businesses in the sector thrive.



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## *China – boosting cybersecurity surveillance and data protection*

China marches on with its unprecedented, strengthened cybersecurity surveillance and data privacy protection. Almost all the political proposals we tracked in China revolve around the country's legislative process on implementing and supporting regulations of the PRC Cyber Security Law which took effect on June 1, 2017. Policy makers in China have issued several draft regulations and national standards in terms of personal information processing activities, its outbound flows as well as numerous technical guidelines to be taken into account when building digital platforms.

Tech companies doing business in China should keep a close eye on the potential developments on the drafts, and other critical developments in the field of cyberspace. There is also the long-standing issue regarding the scope of “critical information infrastructure operator” which will potentially impact the compliance burden on tech companies.





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## *Japan – following the EU and U.S. example on data protection*

In Japan, reflecting the commencement of the 5G era and the enhanced volume of domestic and international data flow, telecommunications regulatory and data protection become more and more focused. The wind-down of old services and the introduction of numerous new services could create unregulated margins at the periphery of the currently effective regulations. Therefore, legislators may want to set new regulatory rules applicable to such margins to prevent damages resulting from absence of appropriate regulations.

On the other hand, enterprises wanting to keep their business field as free from restriction as possible may wish to assert influence on government and/or industrial associations to maintain a less regulated market. In line with other global regulatory frameworks such as the EU or California, the Personal Information Protection Commission of Japan is currently discussing whether and how to amend the data protection law to deal with, for example, high-profile data breach cases.

Tech companies with business in Japan should keep their eyes on the potential introduction of, or amendment to, relevant legislations and administrative regulations.



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## *Africa – Regulatory focus on compliance*

Compared to other regions, the regulation of tech businesses in Africa is still at an early stage. Only 5% of the political proposals tracked come from Africa. However, recently, regulators in Africa have been in talks with one another and stakeholders to bolster harmonization of ICT regulation, and they are considering the possible creation of regional regulatory infrastructure. These discussions come at a time when the continent is seeing much development in this sector, including South Africa's and Kenya's focus on digital markets and Nigeria's initiatives to assist tech start-ups. African regulators and stakeholders are conscious of the rapidly evolving business environment and the need to develop digital trade and implement strategies to engage and compete with other digital economies, failing which they will be left behind.

Tech companies may fear that regulations will stifle growth, but regulators have emphasized that they will focus on compliance, in particular with more stringent data privacy laws, in an already regulated market globally. The likelihood of regulation being introduced across the African continent as a whole within the next two years is unlikely, particularly given infrastructure challenges, however countries such as South Africa, Kenya and Nigeria are making good headway in this regard. In forums such as the 4IR Commission in South Africa and the Africa Technology Summit in Rwanda, regulators and stakeholders across the continent have focused on the development of digital markets and small tech start-up companies, seeing regulation as a necessity to achieve this.

Therefore, it appears that development of regulation will become an ever increasing priority on the continent – and tech companies across Africa, but also those from abroad with African activities, will need to adapt their policies and procedures accordingly. They should prepare themselves by staying up-to-date with developments in the law and engaging with local lawyers.



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## *A view from the Middle East: UAE – a tech friendly tech players' environment*

Compared to other regions, there are very few regulatory proposals regarding the tech industry in the UAE and the Middle East generally. The UAE is heavily focused on fostering a strong and fruitful environment for tech companies, encouraging both start-ups and sector giants alike to establish their regional base in the Emirates. This eagerness to foster a friendly and relatively uninhibited environment for tech companies may explain the lack of a general federal data law in the UAE, as well as the absence of a national data protection regulator.

This stands in opposition to current global views on tech and data regulation, although there has been a slow movement towards increased regulation in certain sectors in the UAE, such as healthcare. UAE Federal Law No.2, released earlier in 2019, relates to the use, collection, and storage of patient data ahead of the roll out of a centralized healthcare system in the Emirates. Under this Law, any patient data collected by UAE healthcare providers would have to be stored within the UAE itself, which presents an issue for cloud-based service providers as well as those utilizing foreign servers. Following this, the Telecommunications Regulatory Authority announced the implementation of a UAE National Cybersecurity Strategy. While this Strategy is still in its infancy, the authority is looking to foreign regulations such as the EU's GDPR for guidance in the implementation of a data protection law in the UAE.



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## *Latin America – Contemplating introducing new tax schemes*

The main topic discussed across Latin American countries regarding regulation of tech companies is related to tax/profit allocation. During the time of the survey, the possibility of taxing tech companies or its activities was a constant. In contrast, content, competition and interoperability, for example, were less mentioned, at least in Mexico. Governments consider that taxing big tech companies will easily increase its income. The fact that France has already approved a specific digital tax increases the odds for other countries to follow the same example which would imply relevant changes in their tax obligations.

This is another example how in the field of tech regulations politicians monitor and learn from experiences internationally. In Mexico, legislators are aiming to submit a proposal and, if approved, 2020 could be the year in which tech companies will be facing a new tax scheme.



We hope that this report provides interesting insights and topics for a lively debate. Should you have any specific questions or wish to discuss the potential impact on your company please do not hesitate to get in touch with the authors of the report.

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