Edited by
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Musk, Power, and the EU

Can EU Law Tackle the Challenges of Unchecked Plutocracy?

Verfassungsbooks

ISBN 978-3-819719-35-6
DOI 10.17176/20250527-121302-0
URN urn:nbn:de:0301-20250527-121302-0-3

Verfassungsbooks

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2025.

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Cover design by Till Stadtbäumer.

Funded by the European Union

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ON MATTERS CONSTITUTIONAL

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Content

Alberto Alemanno, Jacquelyn D. Veraldi

Musk, Power, and the EU

What – If Any – Legal Responses to Plutocracy?

Tech billionaire Elon Musk did not only play a pivotal role in US President Trump's return to the White House – he defined the new administration's first 100 days. After pumping money into the presidential campaign and weaponizing X as a megaphone for MAGA hardliners, Musk got his reward: the reins of power – at least for some time. At Trump's side from day one, he was handed control of the newly minted, hotly contested Department of Government Efficiency (DOGE), and closely associated with all major decisions taken and meetings hosted by President Trump.[1] He became a shadow president in all but name.

With this newfound power, Musk turned his sights on Europe. He has used his privileged position as proprietor of one of the world's most influential social media platforms to meddle in the internal affairs of sovereign democratic states outside the US. He endorsed the German far-right party Alternative für Deutschland (AfD),[2] contested the Romanian Constitutional Court's decision to annul the outcome of the first round of the Presidential election[3] – amid a foreign-led disinformation campaign – and raged against the French judgment barring Marine Le Pen from running for office for the next 5 years (currently under appeal).[4] For Musk, the EU is not just a political irritant – it's a threat. As a bastion of liberal democracy and multilateralism, the EU stands directly in the way of both MAGA's authoritarian instincts and Musk's business interests through its demanding regulatory frameworks.

At a time when calls for the EU to respond to Elon Musk's provocations multiply, *whether*, *why* and *how* the EU may react remain largely unanswered. Musk's conduct spans sectors as diverse as social media (X, formerly Twitter), AI (xAI), satellite technology (Starlink), space rockets (SpaceX), and electric vehicles (Tesla). This poses unique challenges to existing legal frameworks, both at home (where he receives billions of dollars from the federal gov-

ernment) and in the EU (where all his companies operate). His multi-industry influence gives rise to profound questions about the limits of individual influence and power accumulation in a complex geopolitical landscape. Amid the hyper-accelerated political news cycle acritically amplifying Musk's public statements, his stance appears further weaponised by an unprecedented merger of Silicon Valley and an increasingly authoritarian US state. This is the focus of this edited volume whose contributions discuss the multifaceted challenge posed by Musk's unprecedented role within the 47th Presidency of the United States in relation to the European Union.

The legal and ethical conundrum

What specifically makes Musk's conduct problematic under EU law? Are we witnessing disregard for issues of disinformation, electoral integrity, or undue foreign influence? Do his industrial ventures represent a troublesome concentration of market power that triggers scrutiny for potentially abusive conduct? Or is it all of the above, or perhaps a combination of these factors – an interlocking web of legal and ethical challenges that defy straightforward categorisation?

The extent to which the EU is dependent on Musk should not be underestimated. Tens of thousands of Europeans – especially in rural and remote areas – are dependent on Starlink internet services as critical infrastructure.[5] Moreover, the technology is gaining ground for in-flight connectivity and is – controversially – being considered by the Italian government to provide secure government communications, too.[6] This is even more dramatically the case in Ukraine where the ongoing conflict's direction for Ukrainians is shaped by Starlink-powered Internet access as much as by armaments provided to their troops. In the space race, too,

with SpaceX rockets being used by the EU to launch satellites and telescopes, the Union has also made itself dependent on Musk's dominance. Likewise, Tesla dominates the electric vehicle market and sets standards in terms of batteries, charging infrastructure, and autonomous driving. Finally, and as we are all too aware by now, his ownership of X provides Musk with a crucial role in shaping public discourse and influencing political communications across the globe, including in the EU. Musk's deliberate *laissez-faire* approach to dealing with disinformation,[7] hate speech,[8] and election interference[9] have all come under scrutiny – but no political European leader seems capable or willing to oppose his frontal attack to the European continent. While all of these ventures are emblematic of typical US technological dominance, they reflect broader vulnerabilities in Europe's strategic autonomy, which has been a core aim of EU policy over the last decade.

Musk and the politicisation of influence

During Trump's first 100 days in office, Musk's influence extended further, transcending industrial boundaries into political spheres. Trump's pledge to appoint Musk as head advisor to the unofficial DOGE has only validated and strengthened Musk's political standing. His influence has already extended into European affairs, as evidenced by his participation in presidential calls with foreign leaders, including Ukraine's President Volodymyr Zelensky, French President Macron and Saudi Crown Prince Mohammed bin Salman.[10]

His influence has also stretched into far-right circles, with his public support for the German far-right AfD noted via an op-ed published in a leading German newspaper[11] and a public interview on X with the AfD leader Alice Weidel.[12] How this endorsement

may convert into electoral support is difficult to determine, but could significantly sway public opinion. Its considerable financial value (that is, the amount AfD would have to pay to attain an equivalent level of public exposure in Germany) is not insignificant and, in any event, it escaped the applicable regulatory framework for political spending in the country. What can be said with greater certainty is this: The interview was most definitely on the radar of the EU,[13] with 150 Commission officials tuning in to scrutinise the extent to which the conversation complied with EU rules. And yet no action. After an initial announcement was made that an ongoing investigation into X could be dropped,[14] the EU is considering fining X under the Digital Services Act at last and making demands for product changes,[15] after weighing the risks of further antagonizing Mr. Musk and President Trump. The EU leadership appears chilled by the mere threat of retaliation – be it via tariffs or other threats to suspend the security umbrella in existence since the end of WWII.

Musk's actions are reflective of similar trends seen among other tech tycoons as of late, such as Meta's Mark Zuckerberg. While Zuckerberg is not, so far, using his platforms to promote a political agenda, or his own or extremist views, his latest business actions indicate a troubling shift. He may, for instance, have been emboldened in his decision to water down content moderation, as seen in his move to prioritise "free speech" over rigorous independent fact-checking on his Facebook and Instagram platforms, which risks enabling the spread of misinformation and divisive rhetoric on Meta's platforms. This approach, preferred by the incoming US president, may be a direct response to threats made by Trump – with Trump having certainly interpreted it that way.[16] He might also be tempted to embrace a Musk-style approach in handling his platforms to the benefit of the US administration and ask

in exchange for special treatment by the US government (e.g. government exemptions, tax breaks, etc). Also like Musk, who tirades against the "woke mind virus",[17] the Meta leader has similarly jumped on board, recently axing his diversity, equity and inclusion initiative[18] and calling for companies to have more "masculine energy".[19]

Although Elon Musk has not publicly supported President Trump's frontal attacks on law firms, Ivy League universities and companies due to their diversity, equity, and inclusion (DEI) programmes, he appears to be ideologically aligned with those moves. The EU has not been affected by those attacks to the same extent as the US, yet US law firms and companies operating in the EU have still seen their *pro bono* and DEI programmes impacted.

The EU's legal arsenal

Does EU law possess the instruments designed to react to any of the above concerns? In the affirmative, how could these be mobilised without bringing the EU at loggerheads with the incoming US administration or compromising the transatlantic alliance? The potential for discord sheds light on the complexity of the EU's position, which must navigate not only legal questions but also the strategic, largely geopolitical implications of responding to a figure whose enterprises wield immense economic and geopolitical influence.

From the Brussels effect to the Brussels defect

Paradoxically, after celebrating the EU's soft power stemming from its "Brussels effect" – dictating its rules to other world regions – we now witness the EU's inability to apply the very same rules on its

own territory (the "Brussels defect") when it comes to other countries' companies, be they US or other EU trade partners. In that regard, we may recall the news of Qatar threatening to stop gas sales unless the EU suspends its rules to its companies operating in its market,[20] such as the Corporate Sustainability Due Diligence Directive, the Corporate Sustainability Reporting Directive, etc.

The above developments suggest that we are now dealing with the threat of a full-blown plutocracy in which economic and financial power merge with political authority. This is government *by* the wealthy, *for* the wealthy, whereby the latter shape policies to serve their interests at the expense of democratic principles and the broader public good. In such a system, democratic processes are eroded by the disproportionate influence of the moneyed elite in the lawmaking realm. In these new circumstances, the EU appears threatened to suspend the application of its own regulations to businesses close to the US administration. Ultimately, no EU leader wants to displease President Trump nor Musk. It seems that the EU shifts from the Brussels effect, which has historically allowed it to dictate its own standards to other countries, to the Brussels defect, a situation in which the EU is not even able to apply its rules on its own territory.

The aim of the book

This book explores these and further questions through a series of brief opinion pieces authored by scholars who are experts in the various fields of law that appear relevant to Musk's conduct. They unpack the broader question of *whether* and *how* (EU) law may effectively tackle the existence and the exercise of unprecedented plutocratic power by one single individual through his unique control of some of the most geopolitically sensitive industries at a

time of regional global competition. From freedom of speech to competition law, technology law, data protection to corporate taxation, a multitude of legal avenues are explored by the authors.

Through this exploration, this volume lays down a research agenda aimed at understanding the role of law in confronting new forms of powers, as embodied by individuals wielding extraordinary influence in a time of unprecedented inequalities, heightened global competition and geopolitical sensitivity.

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Dieter Zinnbauer

Plutocracy 2025

Sunlight as the Best Infectant?

When thinking about this current moment in time when major currents of political and economic power seem to flow into each other in exceptional and perhaps unparalleled ways, it might be useful to tease out in some more detail how exactly Plutocracy 2025 differs from the entanglements of economic and business power that have come before.

Here is one difference that seems particularly striking. Plutocracy in 2025, unlike its typical predecessors,[1] is not really engineered in discrete fashion behind the scenes by deep-rooted dynasties of political and economic life. It is not about dark and grey money flowing into the political systems to purchase stealth power beyond public scrutiny. It is not about the subtle cementing of specific cultural codes or careful planting of economic ideas that furthers specific interests in think tank land and academia without revealing the sponsors that benefit. Nor is it about the patient grooming and placement of political allies in key posts of the government apparatus.

Instead, it is a full-frontal, brash attack executed right on the public stage. The emergent plutocracy is being broadcast (and narrowcast a million times over).[2] Every related action is boldly blared out into the public sphere with thunderous bluster – and at times ample bull-shitting about how much more extreme it will get.

A one-million-dollar lottery a day to boost turnout for a specific presidential candidate?[3] $100 million allegedly on offer for the UK far right?[4] Crypto investors setting up a very public war fund to take down anti-crypto candidates for congress?[5] All deliberate, highly visible attempts to stretch or break the rules, no pretence to respect norms of fairness or equality.

Vice-signalling

There is no public denial and playing down of disproportionate, potentially highly-corrupting influence – instead, it is in open celebration. Working through stealthy meetings and backroom deals has been replaced by bragging about having an actual office in the White House.[6] The behind-the-scenes embedding of allies inside government has been supplanted by viral job ads on social media to hire and dispatch loyalists throughout the administrative state. Massive conflicts of interests are reframed as both signalling competence and a legitimate mandate for taking control.

What are the distinctive attributes and implications for this qualitatively very different exercise of plutocratic power?

Plausible confirmability

For a start, a large portion of the power in this power grab directly derives from the very brash openness and public exaggeration that it is celebrated with. Only this generates the outsized shock and awe effect that has the outside world trembling and boosts the bargaining position of its progenitors.

For example, a behind-the-scenes dressing down of what are considered "hostile" law firms just would not have had the same impact on the legal industry. Instead a string of widely publicised executive orders and official threats to make life difficult for some of the most powerful and high-profile law firms in the country has led many in the industry to tear up long-held company values preemptively and "donate" as of April 2025 close to USD 1 billion in *pro bono* work to causes that the president likes.[7]

And the same public intimidation play repeats to diminish alleged bastions of liberal values such as universities, the media and

cultural institutions, as well as to dismantle what are framed as illicit checks and balances on executive power from inspectors general[8] to independent agencies.[9]

The solemnly announced investigations, cutting of public funding, sacking of staff or withdrawal of government contracts and cooperation has everyone anxiously guessing who will be next. Many in law, academia, media and business not only forgo a legal challenge but proactively and obediently align with an agenda and presidential demands that most legal observers judge as patently illegal. The result is a vast space for personalist rule and control, an unchallenged/unchallengeable transactional intertwining of business and political interests in broad daylight.

Outpaced and out-worded

When openness becomes a sword, the world becomes confusing for good governance and transparency advocates. How to handle this moment in time when publicity is being weaponized rather than imposed on the reluctant as a vehicle for holding power to account? All of a sudden sunlight is no more the proverbial disinfectant but a captured spotlight to engineer the attention and fear that underpins this type of power. And the almost daily public escalation of ever more grave infractions of the norms of political integrity traps good government advocates in a breathless, reactive catch-up mode on how to keep on raising the alarms and which battles to pick. All of this may require some serious introspection on how to best do accountability work in this new context.

Layered opportunism

Finally, a plausible argument can be made that cronyism and shameless interference on the frontstage are more a complement to rather than a substitute for the conventional type of backroom dealing. There is no reason to believe that in a context of a highly transactional political culture and of softening legal interpretations of what constitutes corruption the pulling of strings in the back has just gone.[10] In fact, grey and dark money flows into political campaigns have reached new record highs. And backroom influence might even flourish more since all attention has shifted to what is happening in the limelight, which drowns out more in-depth investigative scrutiny of the backstage. So when following this argument even one slightly positive spin on the situation is misguided: The idea that plutocracy 2025 at least lays bare the political and economic power entanglement and relieves us from a hypocritical simulation of democratic ideas that have maybe long been corroded by what is going on behind the scenes.

Quite plausibly it is a both / and. Backstage plutocracy is alive – comfortably thriving in the shadow of and with even less scrutiny than before – while front-stage plutocracy thrives on its public notoriety. Sunlight as a useful infectant.

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Judit Bayer

What Big Tech Brothers' State Capture Means for the European Union

On 7 January 2025, and in the days following, the founder and CEO of Meta, Mark Zuckerberg, made a series of statements that framed Meta's previous and future content policy with an evidently strategic intention. The change of content moderation policy, as described in three comprehensive points in his personal announcement on his own platforms,[1] may even sound reasonable. However, the real plan of Meta was not just about optimising its curation of content on its platforms. Instead, Meta meant to a) "get rid of fact-checkers" and implement a "Community Notes" model, similar to the one that exists on Elon Musk's X; b) remove restrictions on subjects like immigration and gender to foster discussion; c) change the settings of the automatic filters so that they proactively block only illegal content and grave violations of their terms, and wait for the notice in other cases, and d) bring back political content on its platforms. In addition, Zuckerberg decided e) to relocate the content moderation team from California to Texas, which may raise less concern about ideological bias within the team "at least in the US", and f) to push back on governments that require stronger restrictions, asserting that "now we have the opportunity to restore free expression" with the help of the US government.

The presentation and the framing of these plans included biased and misleading details, raising questions about the strategy's true objectives.

Zuckerberg began his speech by saying that he started to build social media to give people a voice. In reality, the initial idea was to steal the ID photos of undergraduate college women without their permission or even knowledge, and have them ranked by users based on their attractiveness.[2] The subsequent Facebook product was also subject to serious accusations by college mates[3] who claimed the idea to be their own.[4]

Zuckerberg added that Meta would now focus on "reducing mistakes, simplifying our policies and restoring free expression on our platforms", implying that governmental pressure was the primary cause of these mistakes.

How can Zuckerberg's statements be interpreted?

There are three primary interpretations of Zuckerberg's actions and rhetoric:

Interpretation 1: Submission to Trump

Some observers argue that Zuckerberg's actions reflect apprehension about Trump's potential influence.[5] This view gains traction particularly in light of the behaviour of other prominent figures who cosied up to Trump, like Jeff Bezos and Elon Musk.[6] Zuckerberg clashed with Trump in the past, most notably by de-platforming him for over two years following the January 6 insurrection. Still, Zuckerberg's approach to leading Facebook suggests boldness rather than timidity. Facebook's early motto, "Move fast and break things", epitomises a daring, even reckless, approach to growth and innovation, which is now embraced by the MAGA team.[7]

Interpretation 2: Genuine Commitment to Free Speech

Another interpretation is that Zuckerberg sincerely believes in the principles he espouses. This explanation falters under scrutiny as well. Historical evidence suggests that Meta's moderation practices are inconsistent with a genuine commitment to free expression. Among others, his decisions regarding the inciting speech of Trump clearly depended on whether Trump was in or out of office.

These and other instances have been discussed in detail elsewhere.[8]

Zuckerberg's logic shows flaws in other respects, too. First, simplifying the content moderation policies does not necessarily lead to fewer removals, on the contrary. The more complex an algorithm is, the better it can separate the wheat from the chaff. Second, what Meta now proclaims perfectly aligns with European policy values, certainly much better than its "house rules" which allow for significantly more removal, without protection of speakers' rights. Blanket restrictions on subjects like immigration and gender, or the use of simple automatic content-blocking filters, have never been recommended by any European policy.

Considering these facts, Zuckerberg's complaints of European "censorship" may be dismissed as a strategic rhetoric to disguise the real reasons. So let's look at the third option.

Interpretation 3: Strategic Plans Using Trump as a Puppet

A third interpretation is that Zuckerberg is strategically leveraging Trump's influence to challenge European regulatory frameworks which impose stricter obligations on platforms to protect users' rights during moderation and mandate due diligence in providing safe services. This tactic aligns with Meta's broader interests, particularly given ongoing investigations by the European Commission (EC) into major platforms, including Meta.[9] These investigations address issues such as:

- Flagging illegal content (Article 14)
- User redress and internal complaint mechanisms (Article 16, Article 20)
- Deceptive advertising (Article 26)

- The lack of effective third-party tools for monitoring civic discourse and elections, especially ahead of the European Parliament elections (Article 34-35).

The stakes are high, as these investigations could result in substantial fines and stricter enforcement of the EU's Digital Services Act (DSA). The DSA's due diligence obligations for ensuring safe services sharply contrast with the US approach, which prioritises corporate free speech rights over user protections. The US legal framework, shaped by Section 230 of the Communications Decency Act, grants platforms broad immunity for user-generated content while allowing discretionary moderation.

To put this in context, we need to understand how the American First Amendment jurisprudence applies to platform providers. Meta, after all, invokes its own constitutional right to freedom of speech, a right recognised by the US Constitution and mainstream legal interpretation. However, an online platform is neither a press nor a content provider. As an intermediary, it has its own rights and obligations, which are currently being formed. The US regulated this in 1996 through Section 230 of the CDA, establishing that service providers are not liable for third-party content, whether moderated or not, thereby granting broader immunity than the European regulatory framework.[10] However, the CDA was passed in an era before online platforms. It applies to hosting providers, whereas platforms do significantly more: They algorithmically govern and curate the speech that they transmit. Addressing this change, the DSA outlines detailed procedural rules to protect user rights during content moderation and imposes due diligence obligations on platforms to provide safe services. The key difference between the European and the US normative approach lies in whose rights are prioritised: The EU protects the rights of the up-

loader while the US makes no clear distinction between the rights of companies and individuals. This benefits companies – in this case, online platforms – by allowing them to control users' activity, and assert corporate freedom of expression at the expense of user freedom.[11]

Thus, the issue is not about protecting users from censorship. On the contrary: it is about freeing Meta from its obligations to curate a safe environment in an accountable and user-friendly way.

By instrumentalising Trump, Zuckerberg aims to elevate these regulatory disputes into a geopolitical issue, using US diplomatic pressure to shield Meta. This aim is emphasised by his statements: "We're going to work with President Trump to push back on governments around the world that are going after American companies and pushing to censor more."[12] He also stated that the US government has not done enough to protect its technology industry, leaving too much power in the hands of foreign regulators.[13] He complained that the European Union has fined technology companies more than $30 billion over the past 20 years.

An ever increasing corporate influence

The United States has exhibited plutocratic tendencies throughout its history, as the concentration of wealth and power in the hands of a small elite has shaped the political and economic landscape of the nation.[14] The novelty of the Trump upheaval is that he has now elevated one of the most powerful economic actors of the time into the political power structure. The *quid pro quo* agreement with the wider circle of the "Big Tech Brothers" includes a promise of deregulation, its representation across the globe and protectionism, whereas the Tech Bros pledged to make America the global leader of AI. Trump perhaps didn't know that the US had best chances for

this even without him giving away the US state for it. He was desperately seeking domestic allies to carry out his plans which he could not fulfil in his previous term.

This move weakens all states' digital sovereignty across the international order. It weakens the US, the EU, and other states' capacity to impose regulations on AI and digital services, because it increases the relative power of the global Big Tech corporations. They function as lords or barons of the digital age, similar to feudal lords. Feudal lords disposed over land, vassals, and provided military services to the king. Instead of land, data is the main currency of our age, and online users are producing the data, like vassals whose life was bound to the land. Similarly to feudal lords, the Digital Lords provide key infrastructure for the people in their private and public roles, both as citizens and as consumers. The nobles' provision of military is parallel to providing the technology for the state. Quite a few concordats tried to create stability between such powers. One of the first, the Magna Carta Libertatum (1215) imposed obligations on feudal lords: to grant fair treatment and legal protections to their own vassals, the same liberties granted by the king (Clause 60).[15] This can be interpreted as establishing direct horizontal obligations to respect and ensure what we would today call human rights.

Balkin compares platforms to the medieval Catholic Church, and Zuckerberg himself to Pope Innocent III.[16] He was the pope who allied with King John and annulled the Magna Carta in 1216 which led to a civil war and the death of King John. Platforms' power over public opinion makes the comparison well founded. Recognising that the Big Tech Brothers possess both the power to influence opinions as well as the data and technology, as if combining the powers of medieval lords and of the medieval Church, provides considerable discomfort.

Following this metaphor, the current alliance between the US state and the Big Tech Bros means that the Digital Lords have pledged their support to one sovereign and deny compliance with another, while they want to exploit the resources of user data globally. Their services, and their capability to influence the human opinions and decisions with it, reach across the globe as well.

Pitting states against one another, platforms strengthen their quasi-feudal, functional sovereignty of the digital sphere.[17]

For the EU, citizens are not resources, and human rights protect primarily people, not corporations. Beyond investing in military, infrastructural sovereignty and shielding against foreign data extraction are crucial.

Data is the new land[18] – it must not be handed over. However, parts of it could be traded under strict conditions. Europe can offer cleansed, diverse, and high-quality data for AI training – under strict conditions. The US citizens' data, however, currently seems to be harvested through DOGE servers for free.[19] US' pride in non-interfering with individual freedoms becomes a myth when it shares citizens' personal data with Big "Tech" Brothers.

This shift of alliances may also be due to a certain cultural backlash cherished by the incumbent middle generation against progressive cultural values championed by the emerging American young elite.[20] The EU embodies many of these values such as sustainability, social justice, and globalisation.

What should the EU do?

While the political turn may have initially shaken the belief in the Brussels effect, the conditions as defined by Bradford remain intact.[21] By upholding its values, the EU would do a great service to global AI development in the sense that a more human-centred,

trustworthy and standardised AI would ensure broader adoption of AI applications across commercial and public sectors. Experts predict a 25% chance of reaching Artificial General Intelligence (AGI) within years, and even sceptics estimate a few decades at most.[22] Quality of design and development is crucial – if AI destroys human civilisation, the race for global leadership becomes irrelevant anyway.

When old allegiances are being reshaped, new alliances should be established. The EU should also reassess its old feuds and friends, focusing on common interests, and a reasonably similar vision of the future. State alliances can weaken the power of Digital Lords, by creating common regulatory requirements in the major issues. Rather than hoping for the Brussels effect or exporting EU regulation directly, framework conventions and international, multistakeholder oversight bodies could be created to regulate design, development and market deployment of critical AI technology.[23] Publicly governed investment into technology development is similar to investing in the military and can have actual overlaps. Alliances with civil society, such as standard-setting bodies, and scientific research institutions may forward the creation of a multistakeholder governance. The features of current international governance bodies, such as ICANN, CERN, IAEA, etc. should be comparatively analysed and a novel design should be invented that suits the given conditions.[24]

The alliance of the Big Tech and Trump must not be underestimated. The Big "Tech" Brothers benefit from the data they receive from the state through access to governmental servers, and enjoy legal protection both domestically and internationally, while they provide the government with frontier technology. They are also capable of offering advantages in the opinion market. AI is likely to enhance propaganda and surveillance, key instruments of auto-

cratic rule. Internationally, it is crucial that democracies should lead in developing powerful AI. If they do, AI could structurally reinforce democratic governance worldwide. However, alliances as described above could historically provide long-lasting stability, like the Tokugawa Shogunate which lasted for more than 250 years.

This open state capture is drifting ever farther from functioning as a democracy in which normally the interests of the citizens are represented. Democracies are neither too slow, nor too costly: They play the long game.

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Viktoria H. S. E. Robertson

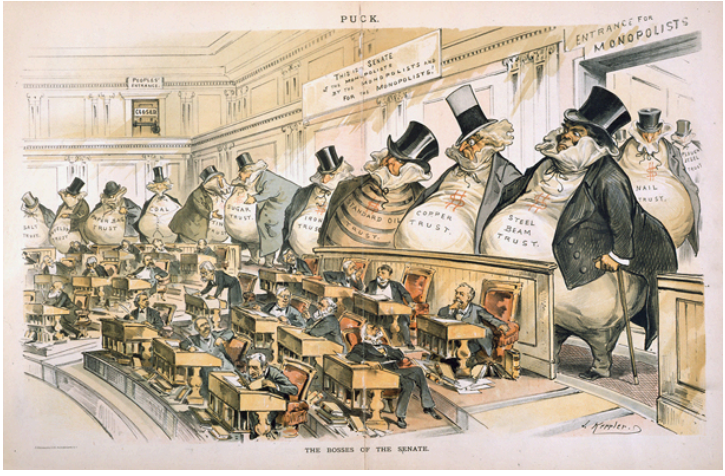
Protecting Democracy in the Digital Era

What Can Competition Law Contribute?

At the dawn of 2025, liberal democracy is faced with a considerable challenge: Big Tech bosses appear to leverage their market power for far-reaching political influence, without any democratic legitimisation to do so. As someone working on issues of market power in the digital economy, one cannot help but wonder: Shouldn't competition law be able to contain (some of) this unseeming wielding of market power? This has been a core question in my research in recent years,[1] and that question has never seemed as relevant as today. Before delving into competition law's possible contribution to tackling the anti-democratic wielding of Big Tech market power, a caveat is in order: Competition law can certainly contribute to protecting democracy in the digital era, but it can only do so in addition to more targeted laws and regulations.

A little background

Let's rewind to the outgoing 19th century for a moment. Back then, lawmakers in the US were faced with a similar question, as the big trusts were using their economic power for political gain. Joseph Keppler famously captured the sentiment of that era in his cartoon "The Bosses of the Senate", published in *Puck* in 1889.



"The Bosses of the Senate" by Joseph Keppler. First published in Puck 1889.[2]

At the same time, Senator John Sherman cautioned: "If we would not submit to an emperor we should not submit to an autocrat of trade with power to prevent competition and to fix the price of any commodity."[3] Ultimately, this led to the adoption of the Sherman Anti-Trust Act of 1890 and marked the beginning of competition law in the US.

Over the years, US competition law has often come to focus on a narrow understanding of consumer welfare, dressed in considerations of efficiency. In the face of the challenges that Big Tech appears to be increasingly posing to liberal democracy, some may find that it is time to reconsider antitrust's original role: that of curbing the undue power of economic players.

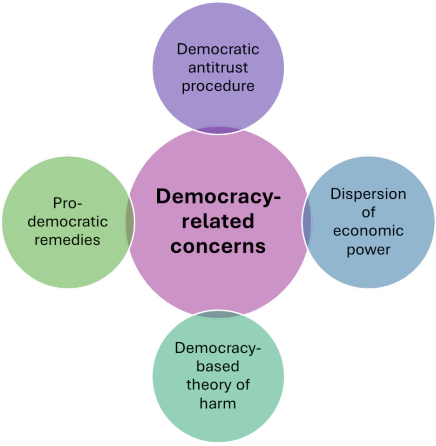
In the European Union, which introduced competition law in the 1950s under quite different circumstances, the goals of competition law have remained more diverse, not least because of the

market integration imperative. The European competition law provisions are contained in one of the Founding Treaties.[4] They stand side-by-side with value assertions pertaining to our European democracy (in particular, Article 2 TEU) and the rights enshrined in the Charter of Fundamental Rights, which can have a bearing on their interpretation and application. Only recently, in *Google Android* (T-604/18), the EU General Court made clear what can be at stake in digital competition cases. It found that Google's abusive conduct was harming users' interests in accessing multiple sources of information online. These interests, the Court reminded us, were "not only consistent with competition on the merits, [but] also necessary in order to ensure plurality in a democratic society".[5]

Addressing democracy-related concerns via competition law

Against this background, the question looms as to how today's competition law could respond to democracy-related concerns that stem from Big Tech companies and their leaders. We can discern a metalevel approach and a more targeted approach.

On a metalevel approach, competition law can ensure that antitrust procedure is strongly rooted in democratic principles. This includes due process, a regard for fundamental rights, and the independence of competition authorities. Importantly, it also includes ensuring that competition authorities, when interacting with stakeholders and experts, are given full disclosures of possible capture – a game that Big Tech has been playing very effectively.[6] By focusing on democratic antitrust procedure, the institutions enforcing competition law are strengthened, which will eventually benefit the cases they are handling.



Competition law's response to democracy-related concerns. Based on Robertson[7].

Still on a metalevel, but perhaps more to the point, competition law can re-focus on one of its core missions: the dispersion of economic power. Much of the current debate on Big Tech circles around issues of overwhelming market power that is concentrated in the hands of a few persons that are in no way democratically accountable. Curtailing economic power can therefore be effective to get to the root of the problem. Merger control has an important role to play here. Multiple digital mergers that were given the green light in the past have contributed to the current concentration of market power, meaning that a more cautious approach may be in order going forward. Rules on unilateral conduct could also be a useful tool, as they police the exercise of market power. Their effectiveness depends on the theories of harm that are applied, which brings us to a more targeted approach.

Theories of harm that specifically take democracy-related concerns into account, be it in merger control or in unilateral conduct, may allow competition authorities to more closely consider instances in which powerful companies enter the political terrain without any democratic legitimisation. Media pluralism as a criterion is already considered by multiple competition authorities when assessing mergers, including in Austria.[8] Another possible avenue was shown in the European Court of Justice's *Meta v Bundeskartellamt* case[9] of July 2023. There, the Court agreed that an external benchmark – in the case at hand: an infringement of the General Data Protection Regulation (Regulation (EU) 2016/679) – could be informative when a competition authority assesses whether a dominant company was acting in line with competition on the merits. Why not use benchmarks that specifically serve to protect (digital) democracy as well? Possible candidates include the Digital Services Act (Regulation (EU) 2022/2065), the Targeted Political Advertising Regulation (Regulation (EU) 2024/900), and the European Media Freedom Act (Regulation (EU) 2024/1083), amongst others. While some might argue that it contradicts competition law's true goals when competition theories of harm are infused with democratic values, others might see this as a return to the historic roots of antitrust law. Either way, this approach requires a more detailed analysis to ensure its workability.

A further possibility for competition law is to ensure that antitrust remedies – be it in mergers or in conduct cases – are pro-democratic. This criterion could be taken into account whenever a digital case involves a remedy and there is a choice to be made between different types of remedies.

Conclusions

As competition authorities are grappling with their possible role in supporting the protection of democracy in the digital era, the four approaches outlined above may show ways in which this is feasible *and* in line with the current legal framework. To conclude, three issues stand out:

First of all, democracy is multi-faceted. In order to consider the type of response competition law should resort to in more practical terms, it is useful to think of particular democratic values, including a free vote, free debate and media pluralism. Then, one should consider how value chains in digital markets and the way in which competition operates in these markets relate to these values, particularly as regards network effects and targeted advertising. In doing so, competition authorities may see how individual aspects of democracy can easily fit into a competition law analysis.

Second, competition authorities must pursue cases in which democracy is at stake. In December 2024, a Roundtable at the OECD discussed the interface between democracy and competition law.[10] One delegation highlighted the importance of case selection and prioritisation in this respect, and I couldn't agree more: Competition authorities need to take on the hard cases in which different aspects of liberal democracy are being hampered by market participants. They should not shy away from these cases. Recent reports in the Financial Times suggested that the European Commission may consider bowing to the political pressure from overseas and rethinking the enforcement of its digital regulation – including competition law, the Digital Markets Act and the Digital Services Act.[11] If this were true, it would not bode well for our European democracy and for the digital regulation that is protecting our European values. It would not bode well at all.

Third, competition law can only act as a complement. More targeted laws and regulations are urgently needed – and where they exist, they need to be vigorously enforced.

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Todd Davies, Spencer Cohen

Democracy or Domination

The Role of Competition Law in the Face of Oligarchy

Competition law, given its history and potential as a tool of anti-domination, is a natural fit to protect and revitalise European democracies from the threats posed by excessive concentrations of private power. Yet, competition law is often seen as a limited tool, capable of playing only a marginal role in Europe's response to the emerging plutocracy.[1] Historically, competition has always been fundamental to liberal democracy. Law, in turn, is central to maintaining competition because it protects against the winners locking-in their gains by subverting the competitive process and saving themselves from having to compete in the future.[2] Just as free speech law protects cultural competition and electoral law protects political competition, competition law protects economic competition.

However, the protection of democracy is habitually said to fall outside the proper scope of competition enforcement, which has been placed on a "thin diet of consumer welfare" since its "economic turn" two decades ago.[3] Since then, competition law has been disempowered and under-enforced. Its narrow implementation has contributed to widespread economic inequality,[4] the rise of ultra-dominant Tech oligarchs, and the decline of economic democracy in Europe.

This version of competition law has proven especially powerless in the face of a new generation of oligarchs who pursue value capture over value creation in the belief that "competition is for losers"[5], seeking to opt-out of competitive constraint wherever possible. Having amassed huge amounts of wealth by placing themselves at strategic chokepoints in the economy, they have shown themselves to be adept at converting economic power into political[6] and cultural[7] power, and then back again.[8]

Today's narrow approach to competition law and its enforcement has helped lay the groundwork for the emergence of pluto-

cracy. Now, however, competition law must also be part of any attempt to reverse the trend, and should look to protect and reinvigorate democracy in Europe going forward. As we argue in a recent paper,[9] the discipline must rediscover a conception of democracy that extends beyond the thinner objectives which currently dominate the competition-democracy landscape. Any attempt to arrest the current vicious circle of private power accumulation will require a holistic, systemic approach to understanding exactly what "democracy" competition law can protect, and how.

The competition-democracy nexus

As Elias Deutscher shows in his recent book,[10] democracy has been a core value underpinning competition law from its very inception, through Ordoliberal thought in Europe and the antimonopoly tradition in the United States. This democratic function, known as the competition-democracy nexus,[11] has waxed and waned over the history of competition law. In recent decades, a broad neoliberal consensus and the supposed end of antitrust history has reduced competition law to a predominantly technocratic instrument, constituting a low water-mark for the nexus.[12]

In this context, courts and scholars have developed a minimalist conception of the competition-democracy nexus. This view gives democracy an *ad hoc* role in competition enforcement, operative in only certain individual and often politically salient cases. But this piecemeal approach overlooks the structural role that competition law can play in enabling either the conditions for economic and political democracy, or as it currently does, the foundations of plutocracy. Although we agree with Viktoria H. S. E. Robertson's contribution on many points, we see aspects of the minimalist approach in her writing.[13]

Our view is that competition law has a deeper, quasi-constitutional role in the EU's liberal democratic order.[14] Competition law structures the political economy of Europe, both in obvious ways, like through its market integration imperative,[15] but also more subtly by defining which forms of economic relations are permissible and which are not.[16] Countering the current threat of oligarchy – rooted first and foremost in drastically unequal economic relations – therefore entails an understanding of competition law's systemic role. Such a view focuses not on the immediate impact of legal rulings, but rather on the higher order effects they have on the structure of the European political economy.[17] While competition law cannot, alone, address excessive accumulations of private power, it must be a core pillar of any effective and integrated approach to tackling the foundations of oligarchic power through law.

This effort should be sustained through the notion of "republican liberty", a conception of liberty where freedom is understood as the state of non-domination; not being subject to the "arbitrary power of someone else".[18] The main way in which competition law can foster republican liberty on markets is by cultivating their contestability; underwriting the freedom of businesses to compete with incumbents, and thereby ensuring that consumer-citizens have a meaningful choice of which market participants to transact with. By doing so, powerful economic entities are prevented from dominating smaller trading partners or coercing them into undesirable business arrangements. Instead, in a competitive market, these smaller partners can freely choose to do business with a competitor. By preventing domination in this way, markets can serve as institutions of antipower.[19]

A systemic approach to economic democracy

In a recent paper,[20] we show how these ideas, which have lain dormant in competition policy, can be operationalised into legal doctrine. We put forward three ways in which competition law and sector-specific competition regulation – which together make up the competition regime – can further democratic values.

First, we argue that the bar for competition intervention should be lowered. Currently, strict legal tests must be met for competition intervention to pass muster under the courts. Yet such tests were crafted using a time of heady optimism about the functioning of markets which has shown itself to be ill-founded. Unfortunately, where markets did not "naturally" function well, and failed to self-correct, competition law has struggled to attend to the consequent abuses of economic power,[21] which should under the logic of republican liberty, not have accumulated in the first place.

Second, we stress the critical importance of fostering choice and contestability in markets. Where economic democracy is concerned, choice is a key source of legitimacy in markets, since consumers are free to switch to a competitor when dissatisfied. It also ensures that markets are directed by the needs of consumers from the bottom-up, rather than by the whims of oligarchs from the top-down. As Cory Doctorow has emphasised, where consumers are denied choice, firms are able to slowly "enshittify" their products to extract more value from consumers.[22]

Third, we emphasise the potential to "shape" markets using competition tools. This perspective is not new. Karel van Miert, Competition Commissioner from 1993 to 1999 eloquently wrote on how under his leadership, the Commission took an "engineering" approach to market competition.[23] This approach should be re-

vived, not least as a way to ensure that markets are in line with the values expressed in the European Treaties. Competition law is conceptually agile enough to do so.[24]

The stakes

The debate over how, and whether, Big Tech firms should be regulated is not merely an academic exercise. The increasing digitisation of society, combined with the market dominance of Big Tech firms – both in terms of their market position, the perception of their technical expertise,[25] and their centrality to many aspects of modern life[26] – has led to some scholars remarking that the contemporary political economy might be characterised as "the Big Techification of Everything"[27]. The gravity of Big Tech's centrality to modern life is compounded by their ability to exercise power not only through "traditional" means, such as by virtue of a dominant market position or through industry lobbies, but also as a result of the rule-making power of software and its ability to function as an infrastructure of control, first embodied in Lessig's assertion that "Code is Law".[28]

At the same time, Big Tech firms themselves are controlled by a tiny elite, in the words of Julie Cohen, "a small group of very powerful and extremely wealthy men" who "wield unprecedented informational, sociotechnical, and political power".[29] A significant minority of this group works to undermine[30] the institutions of liberal democracy,[31] instead seeking to replace it with a form of authoritarian techno-solutionism.[32] Historically, such projects have not fared well.[33]

In this light, the goals of the New Platform Regulations – fairness, contestability, and the freedom to compete – become ever more salient to liberal democracy. These new regulations serve to

limit the ways in which Big Tech firms can use software as an infrastructure of control with which to coordinate whether actors are able to participate in the chain of economic production.[34] In effect, the New Platform Regulations constitute "rules about the rules", which seek to prevent Big Tech firms from using their architectural power to exclude competitors. In doing so, tools like the DMA underwrite the ability of markets, by means of entry and merit-based competition, to check the ability of Big Tech firms to extract wealth from consumers and competitors without meaningful constraints.

Going forward

The urgency of Europe's creep towards plutocracy calls for a similarly urgent response. Competition law, given its history and potential as a tool of anti-domination, is a natural fit to protect and revitalise democracy in Europe from the threats posed by excessive concentrations of private power. For it to be effective for that purpose, competition scholars must clearly articulate which democratic values, like non-domination, competition law should seek to pursue, and clear-mindedly design mechanisms through which to channel them.

Today, the competition regime is undergoing transformational change. It is being augmented by new regulatory tools which are animated by an expanded set of values and objectives. As the extractive dynamics and wide harms of concentrated digital markets become clearer,[35] we think that these new tools present regulators with an opportunity to experiment, and incorporate democratic concerns – from the protection of consumer choice to non-domination – as part of a strategic set of competition interventions. In this manner, competition law can contribute to a whole-of-law approach to addressing the structural foundations of oligarchical

power, and shore up the foundations of European liberal democracy.

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Anna Gerbrandy, Viktorija Morozovaite

Corporate Power Beyond Market Power

Strengthening the Role of Competition Law

Elon Musk's corporate empire spans an impressive array of markets and industries. As highlighted by Alemanno and Veraldi,[1] this empire includes SpaceX (and its subsidiary Starlink), Tesla, Neuralink, The Boring Company, X, xAI, and the Musk Foundation. These corporations are connected and interlinked, creating a cross-corporate power structure. The inclusion of the social media platform X seems to function as a power booster, at the very least for Musk himself. Musk's role (and ownership) in each of these corporations vary: He is sometimes the CEO, the founder, or the president (in this case, of the Foundation). On a hypothetical scale of a CEO's power over multiple companies, Musk's position clearly stands out. However, as European competition law usually starts from the premise of an undertaking's market power on a specific relevant market – the relevant market conceptually tied to the harm that is to be addressed – this kind of power is not really captured by its provisions.

The platformisation of the economy and the rise of big technology corporations have given rise to new concepts of power (including in non-legal literature: Van Dijck, Nieborg and Poell[2]; also: Seipp[3]). Linking this literature to competition law, we propose a concept that is better suited to capture the complexity of the power of these corporations than the narrow concept of market power (Gerbrandy and Phoa[4]). Our notion of Modern Bigness encompasses market power, data power and technological capabilities, a combination of which lead to the exercise of that power in their instrumental, structural and discursive dimensions (see Fuchs[5]). The intention of this concept is to capture better the reality of the multifaceted power of big technology corporations. Focusing on the topic at hand: Musk's grand vision ties his companies together; his whims have direct impacts beyond the individual companies (Tesla workers were shifted to X after Musk bought X),[6] but also seem to

influence strategies of other tech giants (Meta announcing a change to their content moderation policies in favor of X's "community notes" is a notable example).[7] This influence extends beyond the conglomerate structure itself (for example, Musk's statements can instantly impact the value of cryptocurrencies like Dogecoin and crypto markets as such).[8]

The geopolitical implications of Musk's influence further complicate the picture. For example, Starlink has become essential to Ukraine's war efforts,[9] while SpaceX remains critical for access to the International Space Station (ISS).[10]

Competition law, which focuses on market power in narrowly defined relevant markets – say, a market for booster rockets – has very limited reach to guard against the possible detrimental effects of such multifaceted concentrated power in the hands of a few on open democratic societies.[11]

Tech-bro power in politics

The Silicon Valley tech-bros' turn to politics adds another layer to concentrated power.[12] This includes the apparently personal links that cement the connection between market power and political power: Musk's political ties and friendliness with the US President, his (and other tech CEO's) political donations,[13] and Musk's involvement in the DOGE-"department".[14] More importantly, Musk and his team have at the time of writing access to the US Treasury's Payment System.[15] More is probably to follow.

Such connections evoke historical parallels to a troubling period in European history leading up to WW-II. Preventing accumulation of political and market power has had an influential role in shaping post WW-II European competition law (see Deutscher and Makris[16]; Küsters[17]): A strong set of rules protecting the ac-

crual of power in the political realm was seen as inseparable from rules safeguarding competition in the market realm, precisely to avoid a toxic-for-democracy cocktail of both realms.

From a competition law perspective, when using a multifaceted concept of corporate power, political power (we have argued) comes into its regulatory scope when tied to the underlying economics of corporate conglomerates. As we discuss elsewhere, for example, political microtargeting impacts the autonomy of citizens but also limits choice and lowers quality for consumers of social media content.[18] Wielding discursive power by (algorithmically) promoting certain content (as seen with X favoring far-right narratives, also globally[19]) may lead to less pluralism of voices in media markets and a lower quality of the Habermasian digital public sphere (Gerbrandy, Morozovaite, Phoa[20]). Any discussion on these more novel theories of harm that stem from multifaceted power, however, starts from the premise of corporate structures. It does not focus on the personal links between Musk and politics. However, the apparent entanglement of corporate and political power at the CEO-level, coupled with the need to protect the structures of democracy, strengthens the argument for a more proactive role for European competition law.

The future political economy of space

There is also power beyond the Earth. Starlink is important in seeding low earth orbit with its satellites, while SpaceX rockets and launch capacity are essential for deploying these satellites. In any interpretation of EU competition law, this might imply control over what is labeled an "essential facility" – a pivotal infrastructure – which, in this case, is used for launching satellites that compete with other providers. (This, to be clear, is not in itself prohibited,

but it does indicate power; also: Bezos' Blue Origin might become a credible competitor[21]).

Let us now zoom out to outer space. Here, Musk, as CEO/owner/president of his many companies, has a clear vision for space exploration and colonization. He has access to his own social media platform, owns companies that are important players, and more generally has a strong voice in shaping the discourse around "going to space". It is a vision, shared with other voices, of colonizing Mars and protecting humanity in the face of Earth's fragility, and of dreaming big. It has also been labelled a deeply flawed, exploitation-based, self-serving vision,[22] and as Van Eijk argues, goes against the designation of space as "global commons" in 1967.[23] There are of course other imaginaries of space (say: Star Trek[24]), but while space-related endeavors are still strongly linked to the political will of nation-states, it is not only relevant that Musk's companies have strong links to NASA, but also that Musk himself does (currently) have access to political will, including when it comes to shaping political decisions around investments that may be of benefit to these same (space-going) companies. There are uncertainties here, depending on what happens in the space race of the next decade, but at the very least, this combination has the potential to play an important role in shaping the political economy of space.

Limitations

We seem, however, to hit a wall at this point because the relevance of competition law to an individual's power is not a given. The doctrine is clear: Competition law does not apply to individuals but to "undertakings", and that means an entity being engaged in "economic activity". While individuals can constitute an undertaking

(self-employed persons might be an undertaking in the competition law sense), CEO's – even those with powerful voices shaping both current political debates and the future political economy in space – do not. This is because political involvement, in itself, is not easily regarded as an "economic activity".

One might argue that a CEO purchasing access to political power to secure favorable outcomes for their companies does constitute an economic activity. But perhaps other legal and non-legal instruments – as also covered in this edited volume – might be better suited here. Nevertheless, as Cseres argues, strong and independent enforcement of competition law is always relevant to fight corruption.[25]

Beyond the legal limitations on applying European competition law to an individual's power, there are also constraints rooted in geopolitical realities.[26]

Additionally, limitations stem from principles underlying separation of powers and the legitimacy of (independent) regulatory agencies. These are inherent in the political economy and basis of the European Union in constitutional democracy, reflected also in European competition law (see Bernatt[27]). We do advocate for a stronger role for competition law in protecting these underlying democratic structures, including considering (really) "breaking-up" big tech companies as a competition law response (D'Amico and Gerbrandy[28]). However, creating unaccountable or unlimited regulatory power is not the answer. A fiercely independent judiciary plays a crucial role here, though this has perhaps been taken for granted – more so in some EU Member States than in others.[29] As the ordoliberals rightly emphasized, there has to be a balance of power not only between private, public and political actors but also across different public values. The question is then, where in the

current rapidly changing power structures, especially in the US, but equally in the EU, the balance will and should be struck.

To support and strengthen the structure and fabric of constitutional democracies, European competition law can indeed step up. At the same time – and we echo here the sentiment expressed by others in this edited volume[30] – protecting constitutional democracy requires more than the application of a single legal instrument – it demands a sustained, concerted effort.

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Max von Thun

Europe vs. the Tech Plutocrats

An Existential Battle for Democracy and Sovereignty

Europe is being assailed by an unholy alliance between tech plutocrats and the US state, united by their shared interest in undermining European democracy and sovereignty. Elon Musk, the owner of Tesla, SpaceX, X and xAI, and the public face of the deregulatory "agency" DOGE, is the most blatant example of this fusion of state and corporate power and the threat it poses to Europe. Musk has used his control of X to interfere in numerous European elections[1] and political debates[2], and has reportedly threatened to switch off Ukraine's access to his Starlink satellite network.[3]

But Musk's outrageous antics should not distract us from the wider threat he represents: Europe's dangerous dependence on a handful of US tech giants for critical digital infrastructure and communications platforms. The threat is of course not new; Europe's dependence on Big Tech monopolies has already inflicted serious damage to its economic competitiveness and democratic institutions. But Trump's return has dramatically raised the stakes.

Understanding the nature of the threat

These dependencies are manifold, and include Europe's reliance on Amazon, Microsoft and Google for cloud computing infrastructure, on Nvidia for cutting-edge semiconductors, on Google for search and digital advertising services, and on Meta for the social media services WhatsApp, Instagram and Facebook. All these platforms and services are capable of being – if they aren't already – weaponized by their owners either independently or at the behest of the US government. This situation risks becoming even worse if, as appears likely, TikTok is sold to a grateful American buyer with the support and blessing of the Trump administration. The popular social media platform has already been exploited by malicious foreign actors to disrupt recent elections in Romania,[4] and if US-owned

could be a powerful tool for MAGA interference in European politics.

The growing meddling by Musk and Meta owner Mark Zuckerberg in European elections, lawmaking and public debate is blatant and well-documented.[5] But one can easily imagine such interference taking other forms, from Google distorting what Europeans see in their search results (building on the notorious "Gulf of America" example[6]), to the Trump administration leveraging access to cloud computing and chips as a bargaining token in negotiations over trade, taxation, regulation and security. Such restrictions would be far from unprecedented; the US has already used aggressive sanctions to suffocate China's access to semiconductors,[7] while the Biden administration's "diffusion rule" already limits certain European Union (EU) Member States' ability to purchase US-made chips.[8]

Finally, the US tech platforms and their owners are increasingly willing to leverage both their own power,[9] and that of the US state, to undermine Europe's sovereignty ability to pass and implement laws targeting digital gatekeepers. Not only are these corporations flagrantly violating the EU's competition and digital rulebook,[10] but they are also seeking to prevent enforcement itself by withholding their products from the European market[11] and using the Trump administration as a battering ram to clear away inconvenient rules and regulations.[12] While Big Tech's longstanding and systemic non-compliance with EU law is one thing, its efforts to destroy these laws themselves is a direct challenge to the fundamental sovereignty of the EU and its Member States which cannot go unchallenged.

The roots of the present crisis

Before discussing how Europe should respond to this existential threat to its sovereignty, security and democracy, it is worth briefly exploring how we got to where we are, as this will point the way towards the right solutions.

When it comes to the extreme concentration of wealth and power in the hands of a small number of American oligarchs and corporations, the US government itself naturally bears most of the blame. By slashing taxes on high incomes and wealth, weakening labour unions and crippling competition enforcement under President Reagan onwards, the US government denuded itself of some of its most powerful tools for tackling plutocracy and monopoly.[13] Indeed, the two issues are fundamentally interlinked: Monopolistic control of markets generates rents that are siphoned off by a small number of corporate executives and owners, which those individuals and corporations subsequently redeploy to protect and further entrench their monopolies, including by lobbying for tax cuts, regulatory exemptions and other forms of corporate welfare.

While Europe cannot be blamed for the failures of American policymakers, it is still responsible for allowing itself to become so dependent on American tech monopolies, just as it incautiously allowed itself to become dangerously dependent on Russian fossil fuels, Chinese raw materials, and Taiwanese semiconductors.

This complacency has several causes. Most importantly, Europe imported neoliberal thinking from the US which placed market efficiency above all other policy considerations – including democratic and societal resilience – and stigmatised the idea of state intervention in the economy. This intellectual as well as economic dependency on the US had a number of practical consequences for law and policy in Europe, including the adoption of the "consumer welfare"

standard in competition enforcement,[14] the rejection of industrial policy as a tool of statecraft,[15] and an emphasis on efficiency instead of resilience in trade policy.[16] Combined, these conceptual blinkers blinded Europeans to growing consolidation of power and control in key markets and supply chains, particularly in the technology sector, while hampering their ability to do anything about it.

Other factors more specific to the tech sector also contributed to the present crisis. For many years, policymakers in the US, Europe and many other parts of the world were unable to address or even see the dangers of tech monopolies as a result of what Evgeny Morozov has aptly described as the "innovation fetish".[17] Despite the fact that disruptive innovation is far more likely to come from dynamic new entrants than incumbents,[18] Big Tech corporations were largely successful (through extensive lobbying) at depicting themselves as the wellspring of innovation, and in using this as a pretext for blocking or weakening efforts to rein in their dominance. While governments, particularly in Europe, began to see through this façade in the mid-to-late 2010s, the current hype around generative AI – and Big Tech's role in it – has unfortunately reversed some of this progress.

Notwithstanding this unfavourable terrain, there were still many opportunities to prevent or at least slow Big Tech's rise which Europe failed to take. Despite being first out of the blocks to investigate Google's monopolistic abuses starting in 2010, the European Commission failed to take the measures – such as structural separation – needed to fix the problem, instead opting for fines and weak behavioural remedies that did little to dent Google's dominance.[19] Other US tech giants that were also consolidating their power in those years, including Amazon, Facebook and Apple, faced even less scrutiny. Similarly, until very recently the Commis-

sion and Member States refused to block even a single acquisition by a Big Tech corporation, despite the central role of these takeovers in consolidating the giants' power and eliminating potential rivals.

The picture has improved somewhat in recent years. In response to the failures of competition law to protect contestability and fairness in digital markets, the EU has passed and begun implementing the Digital Markets Act (DMA, Regulation (EU) 2022/1925), which imposes a set of *ex ante* rules on digital gatekeepers designed to curb their anti-competitive conduct and create new opportunities for startups and challengers. The Digital Services Act (DSA, Regulation (EU) 2022/2065) is another important step in establishing basic rules and responsibilities with regards to how online platforms moderate content. The GDPR (Regulation (EU) 2016/679), while in force since 2018 and weakly enforced since then, still has the potential to tackle Big Tech's harmful surveillance practices if if enforced more ambitiously.[20] And merger control has finally begun to show some teeth, with several tech mergers including Arm/Nvidia, Amazon/iRobot, Adobe/Figma and Booking/eTraveli being either blocked or abandoned since 2022.

How should Europe respond?

While important progress has been made, none of this is nearly enough to deal with the existential crisis facing Europe today. To survive the frontal assault by the US government and its Big Tech allies, Europe must hold the line in enforcing its existing laws while moving quickly to upgrade its toolkit and the strategic vision underpinning them.

First, when it comes to tech regulation, Europe must understand – if it doesn't already – that it is not dealing with regular

private businesses which aim to comply with the law in good faith, but hostile actors that are able and willing to mobilise the full force of the US government against regulations and other state policies that challenge their interests. This requires the EU and its Member States to assume non-compliance as the default outcome, and to hold firm on robust law enforcement in the face of coercion and interference. Watering down enforcement in response to bullying will only weaken Europe's bargaining position and encourage further attacks on European sovereignty.[21]

Second, Europe must recognise that no one tool will be sufficient in responding to the multiple and overlapping threats posed by the tech plutocrats. Instead of enforcing its various tech laws – from the DMA and the DSA to the GDPR and the AI Act – in silos, the EU must adopt a whole-of-government approach that subsumes these tools under the overarching objectives of countering monopoly power and reducing dependencies. This need not entail changing the laws themselves, but it will require the Commission to change its ways of working and to establish new structures to facilitate this, whether a dedicated taskforce or an entirely new digital regulator.[22] The Commission should also deepen its collaboration with Member States, many of which have led the way when it comes to tackling concentrated tech power.

Third, where the US does take steps to punish the EU for enforcing its laws, the Commission should retaliate not by politicising enforcement of tech regulation, which would only play into Trump's hands, but by using a law designed precisely for this situation – the Anti-Coercion Instrument (ACI).[23] The ACI applies where:

> *"A third country applies or threatens to apply a third-country measure affecting trade or investment in order to prevent or ob-*

> *tain the cessation, modification or adoption of a particular act by the Union or a member state, thereby interfering in the legitimate sovereign choices of the Union or a member state".*[24]

This appears to perfectly describe the Trump administration's threats to apply tariffs and other countermeasures in response to EU regulation of US tech giants. In response to such coercion, the ACI enables the Commission to deploy a broad set of retaliatory measures, including duties and restrictions on goods and services exported into the EU, exclusion from public procurement tenders, restrictions on investments, and the revocation of intellectual property rights.

One can easily see such measures being used to target Big Tech corporations, which would be wholly justified given their active role in shaping President Trump's belligerent posture.[25] Firm retaliation under the ACI would achieve two purposes: It would signal to the US government Europe's refusal to be coerced by threats, and it would impose significant costs on the tech giants for their attacks on EU laws, costs which they might decide are not worth the benefits of weaker regulation.

Conclusion

The discussion above outlines a strategy for responding to the intense pressures currently being exerted on Europe by US corporations and the US state, but it does not explore how Europe can build an alternative to tech plutocracy in the longer-term. While this would require more space than is available here, what is clear is that Europe must find the confidence to set out its own vision for a fair, open and decentralised digital economy, and to actively promote this as an alternative to today's monopolistic status quo.

EU law, including competition policy and tech regulation, has a central role to play in both breaking up concentrated tech power and steering society away from extractive, toxic and environmentally harmful business models towards technology that promotes the public interest.[26] This means resisting influential but misguided narratives which identify "overregulation" as the reason for Europe's lack of tech sovereignty,[27] and which are easily exploited by tech giants which stand to gain from deregulation and underenforcement.

Ultimately, this will require moving away from an atomistic conception of the law which envisions it as a tool for protecting the interests of specific groups, be this consumers or businesses, towards seeing it as society's primary means of ensuring that private power does not threaten – and ultimately serves – the public good.

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Jacob van de Kerkhof

Musk, Techbrocracy and Free Speech

In a previous blogpost I contemplated what it would mean for (then) Twitter (now X) if Elon Musk bought it and turned it into a free speech utopia.[1] A simpler time, in which I feared the creation of a "Two Twitter"-solution where the newly-acquired platform would look significantly different in the US than it would in the EU. Under this scenario, I also argued that Twitter could not simply withdraw from co-regulatory instruments such as the Code of Practice on Disinformation, because "consumers have an interest in a well-moderated platform".[2] Almost three years and a bot-ridden cesspool-platform later, I was proven wrong. In fact, Alphabet and Meta soon followed suit. The final point I raised still stands: Should we reconsider the free speech impacts one billionaire social media platform owner can have in a volatile political landscape?

In this contribution I situate and address Musk's position within the broader EU debate on freedom of expression. The purpose of this edited volume is to elucidate aspects that make Musk, his influence, and his provocations to the EU legal order, problematic under EU law, and, if we consider his influence as unwanted, harmful or illegal, whether EU law can provide answers to it. This chapter centres on three points: (i) Musk's changes to X's content moderation process, empowering other tech-bros to follow the same course; (ii) Musk's usage of X to amplify certain political candidates; and (iii) Musk's ownership of Starlink. It ends with a note on how this fits in a grander theme which has been dubbed by commentators such as Paul Bernal as the "techbrocracy".[3]

Musk's moderation withdrawal

The first aspect of Musk's role in shaping free speech in the European Union is visible through X's moderation policies and practices. X has, under Musk's auspices, made severe cuts in its

moderation teams,[4] disbanded trust and safety initiatives,[5] withdrawn from EU co-regulatory documents,[6] and taken an overall more permissive style to content moderation. This has severe implications for the discourse on X.[7] Empirical studies show that discourse has roughened,[8] hosting more harmful[9] but also illegal content[10], going against Musk's original promise to align X's policies with EU law.[11] X's moderation against illegal content is arguably limited. Analysis of the DSA Transparency Database shows that it performs little moderation compared to other social media platforms.[12] EU law offers tools to combat this: The Digital Services Act (hereinafter DSA) provides clear avenues for authorities to combat illegal content in, for example, Article 9, and it also provides incentives to platforms to combat "lawful but awful" content in Article 7,[13] through systemic risk mitigation in Article 35 that can cover lawful but awful content, and through its use of Codes of Conduct (Articles 45-47). X is currently under investigation by the EU Commission for its content moderation practices and transparency obligations, and preliminary findings indicate that it was in breach of a number of DSA provisions.[14] Allegedly, the EU bloc is preparing a 1 billion dollar fine for its "hands-off approach" to moderating illegal content.[15]

Illegal speech has the potential to limit free speech: For example, in a hate speech ridden environment, it is unlikely that affected minorities will be able to effectively express themselves. They will be more likely to leave the platform, or abstain from sharing their opinion – the marketplace of ideas has its limitations. Disinformation forms a similar risk, affecting people's right to be informed. Combating such illegal content does not scale to the enforcement capacities of responsible authorities, underlining our reliance on social media platforms to "do the right thing". Often scholars,[16] including myself,[17] have theorised that platforms will

likely try to abide by regulators' wishes to avoid further regulation or liability, and that doing so can lead to over-removal of content since platforms will err on the side of caution.[18] In the case of X in the EU, the opposite has occurred. Musk boasts his disregard of the DSA in – admittedly entertaining – X-exchanges with former EU Commissioner Thierry Breton,[19] whilst also shaming other platforms for showing deference to regulators.[20] The DSA provides tools to combat freedom of expression violations by X, both on an individual and a systemic level, but so far these have not led to a change in X's landscape, raising the deeper and more inconvenient question of whether Musk has outgrown the force of the regulator, or simply whether that DSA is not fit for purpose. This question is addressed in the final section.

Musk's amplification of political candidates

Musk has delivered on the promise of free speech absolutism, and has indeed created a virtually lawless public square. In that promise, he downplays his role in amplifying certain voices on that town square. Free speech does not mean free reach, as Musk himself acknowledges.[21] Although X has downscaled content moderation efforts, X amplifies voices that align with Musk's political standpoints. While empirical studies so far (such as Ye/Luceri/Ferrara[22] and Graham/Andrejevic[23]) have their limitations since X is not an accurate representation of the electoral landscape, they hint to the fact that right-wing candidates are favoured by the platform's algorithm. If nothing else, Musk's interviews of then presidential candidate Trump[24] and more recently German chancellor's candidate Alice Weidel,[25] are an indication of the same trend, having both been pushed through the platform's notification structure. The amplification of certain voices is by de-

fault the demotion of others: the attention of social media users is limited. The amplification of politicians reduces the exposure of other politicians who do not align with Musk's vision, meaning that although their speech is not limited, less people will see it. This creates a scenario in which the public town square of free speech is still the public town square, only Elon is creating market stalls for far-right politicians across Europe to operate on that town square. In principle, this does not necessarily depart from existing practices of newspapers interviewing political candidates, for example. However, in an age where people rely on social media networks for information, a variety of viewpoints can be a concern when the owners of platforms flock toward a limited number of political actors.

As anticipated, under EU law, these concerns relating to platform practices can be addressed under the DSA's systemic risk assessment and mitigation obligations in Articles 34 and 35, and can also be targeted through Article 27 on recommender system transparency. Yet the standards set in these provisions are somewhat vague and multi-interpretable.[26] This leaves room for interpreting them as necessary by platforms and enforcement authorities. However, it also means that enforcing them in practice requires significant investigations and data access for enforcement authorities, and actual sanctioning will take time to manifest, especially in today's political context in which an increasingly unifying EU[27] is still vulnerable in challenging the EU administration.[28]

Freedom of speech and (satellite-based) internet access

Another point relating to free speech can be raised in the context of Musk's Starlink enterprise, which is part of SpaceX. Starlink provides internet connection, which is of vital importance in re-

gions where other internet infrastructures are destroyed. This service has made headlines because of its role in providing not only Ukrainian citizens but also the Ukrainian army with internet connection.[29] Musk has been criticised for not extending Starlink coverage to Russian occupied territory,[30] and defends this by claiming the Starlink service was not meant for war and that he was seeking to avoid conflicting with US sanctions on Crimea.[31] Whatever the truth in this is, it raises concerns about the impact Starlink has. This is exacerbated since it is apparent that Ukrainian armed forces also rely on SpaceX for internet access.[32] Starlinks' value to the Ukrainian population was underscored when it was allegedly used as a bargaining chip in negotiations about a mineral deal.[33] It is beyond the scope of this chapter to consider the geopolitical implications of a politically opportunistic owner controlling internet access in combat areas, but one can ponder the free speech implications. Internet access is clearly linked to freedom of expression in European Court of Human Rights case law: Free speech involves the right to express, but also the right to be informed.[34] Depriving people of internet access can interfere with their right to freedom of expression. This means that the implications of SpaceX being used as a political pressure point, e.g. depriving vulnerable regions of the world of their internet connection, can be enormous, not only from a geopolitical standpoint, but also from the perspective of citizens that cannot be informed or show the world what is happening in their country. So far, SpaceX has been a significant contributor to the Ukrainian cause, but this again raises the question of whether the potential pressure exerting from controlling these critical internet connections that vulnerable people rely upon for expression and information should be placed in the hands of one man.

The era of techbrocracy

This leads us to the final point: the techbrocracy. The examples above have indicated how power with tremendous free speech implications centres around Elon Musk. Whilst certainly an enigma, he is not the only person with such power: Jeff Bezos, Mark Zuckerberg, and Sam Altman, to name a few, are all immensely powerful individuals who, albeit to a different extent, hold power that may potentially affect the exercise of freedom of expression in the EU. These stalwarts of the techbrocracy have recently aligned themselves with the current dominant political preference, with Musk even acquiring an unprecedented influence in Trump's government. Following X's example, Meta[35] and Google[36] are revisiting their content moderation policies and practices. They have rescinded cooperation with fact-checkers and revised community guidelines in favour of a more permissive policy on topics such as hate speech. On an individual level you can make a case against the use of fact-checkers in favour of "community notes", and have doubts on the alignment of some community guidelines and codes of conduct with European free speech values. However, the collective departure from these moderation traditions in favour of political alignment leads to the analysis that, in spite of all EU regulation, and all principled opinions on free speech in content moderation, the techbrocracy still favours opportunistic political gain.

The first signs of techbrocratic rulers turning from EU rule are showing.[37] The disdain of the techbrocracy for EU rules is backed up by the White House. Vice President J.D. Vance is criticising the EU digital *acquis* as unduly restricting free speech.[38] He even threatened to pull the US' support for NATO over this matter.[39] Vance's stance is backed up in the White House's "Fact Sheet", stating that the administration will review any policy in the EU that

"undermine[s] free speech or foster[s] censorship", and will raise tariffs accordingly.[40] The anti-DSA sentiment is based on an understanding of the DSA as an extortionist regulation created with the purpose of extracting billions from American tech companies.[41] While the DSA (or almost any other platform regulation, for that matter[42]) certainly has its flaws, the techbrocratic notion that it is anti-free speech dismisses the fundamentally different stances across the Atlantic on freedom of expression and tech regulation, and impedes on EU sovereignty to regulate its own digital realm.[43]

As well-meaning as European intentions are in this debate, the cynical conclusion is that European free speech is hosted primarily on American platforms, creating a dependency on the techbrocracy. Those same tech-bros are now aligning with an administration that is willing to support a (biased)[44] First Amendment absolutism with political pressure, creating an uncomfortable reality for the EU. As a result, even within the EU regulatory efforts are faltering. EU regulators are repealing efforts to regulate the Digital Realm: The AI-liability Directive is withdrawn,[45] and the Draghi-report calls for a significant simplification of EU regulation, including the digital *acquis*.[46] The question is whether this is the correct response to the threats to freedom of expression that the techbrocracy poses. A simplification of the digital *acquis* could address some features in the DSA that are contentious from a freedom of expression perspective, which could lead to greater acceptance of the regulation from the Trump administration. The current lack of that acceptance is perhaps also affected by the EU being too forward about the DSA's implications – Thierry Breton may not have been the best PR person for the DSA.[47]

Simplification for acceptance is a gamble, however, and discounts the deep-rooted libertarian anti-regulation sentiment that can be part of any debate on regulating the internet.[48] Simplifica-

tion runs the risk of reducing the enforcement power the EU is building in the digital sphere. Since DSA enforcement is still effectively in development, it may be especially counterproductive to the original goals of the regulatory package to revisit the digital *acquis*. Current DSA enforcement is predominantly aimed at investigations. Although those investigations suffer from opacity,[49] they are a necessary step to close the current knowledge-gap regulators have regarding the workings of online platforms. Building on that knowledge, DSA enforcement may in the future be targeted specifically at aspects of the techbrocracy that endanger the freedom of expression of European citizens. Of course, this means enforcing an unpopular regulation based on European fundamental rights values, which may be geopolitically contentious. Continuing to build a rights-based enforcement seems, however, the best course to ensure protecting European speech values in the age of the techbroracy, and may prevent the DSA from being politicised in a trade war.[50]

Alternatively, some have argued for the creation of European social media platforms.[51] Although this is a virtuous suggestion, I fear that the barriers of connectivity and platform buy-in may prevent users from switching platforms; as an example – although they were initially presented as viable alternatives to X – Mastodon or Bluesky are yet to hit user counts remotely comparable to Musk's platform.[52] Additionally, consumers are not always motivated by what platform is the most "rights-conscious"; after the US TikTok ban, close to a million US users flocked to RedNote, which allegedly poses greater security risks than TikTok.[53] This could imply that even if the EU developed compliant social media platforms, and suspended access to US platforms, users may still choose based on familiar affordances, not based on what is best for their data or freedom of expression.

Musk has shown that, in the absence of stringent enforcement of EU law, it is possible to run a platform in the EU that does not moderate content. It does not come as a surprise that both Meta and Google are ready to follow in Elon's steps. The question is whether they will sacrifice EU free speech values in the process. The inconvenient reality is that, if the EU does not unite on DSA enforcement, they sure can.

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Efstratios Koulierakis

Empowering Citizens Against Technological Corporations

Two Major Legislative Opportunities

Citizens globally are facing unprecedented asymmetries vis-à-vis technological giants such as Alphabet, Microsoft, Meta, and Apple. In light of the recent political developments in the US, the need to protect fundamental rights against the power of Big Tech corporations is more important than ever. As highlighted by this edited volume, there is a striking yet neglected interplay between immense economic power and high-level politics.[1]

The so-called big-five, Alphabet, Amazon, Apple, Meta, and Microsoft, have a central role in the collection of data from their users and in the development of new digital tools. Legal scholars have for a long time recognised the risks deriving from the technical capability of processing large amounts of data and combining information from multiple sources.[2] This capability renders the prospect of the creation of digital files about virtually almost every individual plausible.[3] More recently, the fast pace in the growth of artificial intelligence (AI) highlights the need for additional safeguards for protecting EU citizens from the risks of digital innovation.[4] Yet, despite the evident need for measures against the risks of technological innovation, we continue witnessing a favourable deregulatory agenda of tech giants.[5]

Indeed, many aspects of the current EU technology regulation framework seek to empower people with regard to the Big Tech industry. In response to the challenges posed by technological innovation, EU law has two major statutory texts that protect fundamental rights against the threats stemming from digital technologies: the General Data Protection Regulation (GDPR) and the AI Act.[6] While both legal instruments have shortcomings, an ongoing legislative process poses the opportunity to address these drawbacks and to thereby empower citizens against Big Tech corporations.

Shortcomings in the current system

The GDPR

The GDPR protects natural persons from the risks deriving from the processing of personal data. The Regulation builds upon the EU's earlier pioneering framework on data protection, which was first established at the EU level in the 1990s.[7] Specifically, the GDPR applies with respect to the processing of information that relates to natural persons, the data subjects (GDPR, Articles 2(1) and 4(1)). Given that personal data are the "oil" of the technological evolution in this day and age,[8] a wide spectrum of the activities of the Big Tech companies is subject to GDPR compliance. Hence, the GDPR is not per se a form of tech regulation nor an instrument of corporate control. However, due to the central role of personal data in today's economic life, the Regulation is a means of protecting EU citizens against the unfettered power of technological corporations.

The introduction of the GDPR was a significant contribution towards empowering the data subjects in relation to the Big Data industry,[9] but also has certain important shortcomings. Specifically, the application of the GDPR relies predominantly upon the work of the Data Protection Authorities (DPAs), which are entrusted with the enforcement of the Regulation and handling of data subject requests (GDPR, Articles 51-59). The GDPR regulates a wide array of operations, which appear in very different contexts, as for example, Big Tech corporations, public administration, healthcare, the banking sector, and in small and medium enterprises (SMEs). Hence, the DPAs deal with a huge number of cases with very different characteristics. As some scholars suggest, the GDPR's broad scope of application raises concerns about the enforceability of the

Regulation due to the insufficiency of resources allocated to DPAs.[10]

Additionally, the GDPR's system relies on self-reporting processes by data controllers, who are the entities in charge of the processing operations (GDPR, Article 4(7)). In practice, powerful data controllers, such as the Big Tech companies have enormous leverage in drawing up best practices of compliance with data protection law.[11] That is to say that, in the current regime, Big Tech companies often fulfil their self-reporting obligations by creating compliance policies themselves. Hence, data subjects cannot participate in developing these policies. In response to this shortcoming in the GDPR, supporting the inclusion of the data subjects in the proceedings before DPAs with respect to the enforcement of their rights would be a major step towards fostering the enforcement of EU data protection law.

Currently, a Draft Regulation proposes a new framework for the enforcement of the GDPR in situations where the DPAs handle cross-border cases.[12] Within the discourse concerning the Draft Regulation, Hoffmann and Mustert support the inclusion of the data subjects as parties in the proceedings before DPAs.[13] The non-governmental organisation NOYB also welcomes this approach and recommends the adoption of clear procedural minimum standards in favour of the data subjects, which would also include the right of access to (a non-confidential version) of all documents of the procedure and the right to appeal the decision.[14]

The legislative framework of AI

Moreover, EU law provides a framework to mitigate the threats to fundamental rights posed by the rapid development of AI. The regulation of AI development is intertwined with the activities of the Big Tech enterprises, given their central role in this field.[15]

The AI Act establishes a market surveillance system for AI, which relies completely upon enforcement by public authorities (AI Act, Articles 3(26), 70). Much like the GDPR, the AI Act relies upon the function of public bodies, but, unlike the GDPR, it does not contain any provisions regulating civil liability claims regarding AI products.[16] Therefore, the current EU regime on AI leaves individual action entirely outside its scope.

In response to this challenge, the proposed AI Liability Directive (AILD) is a Draft Directive designed to complement the AI Act.[17] In brief, the proposed directive harmonises the rules in Member States' legislation regarding:

> *"(a) the disclosure of evidence on high-risk [AI] systems to enable a claimant to substantiate a non-contractual fault-based civil law claim for damages;*
> *(b) the burden of proof in the case of non-contractual fault-based civil law claims brought before national courts for damages caused by an AI system."*
> Art 1 (1) AILD.

The adoption of a common framework on civil liability rules in cases of harm caused by AI will only benefit consumers: According to Article 1(4) of the proposed AILD, national legislation can be more favourable for claimants to substantiate a non-contractual civil law claim for damages caused by an AI system. Therefore, the adoption of the AILD would be a step towards empowering individuals in civil litigation proceedings against technological titans.

Despite this outlook, the legislative process has reached a standstill; the Commission withdrew its proposal due to "no foreseeable agreement".[18] Journalistic reports have suggested that it was rather a political decision to "show goodwill" to the new US

administration's calls for less regulation of the digital industry.[19] Notably, the withdrawal of the Commission's proposal came after JD Vance's criticism of the EU's choice to regulate American technological companies during the AI Action Summit in Paris.[20]

In response to ongoing calls for deregulating the technological industry, the draft AILD could remedy certain asymmetries in the relationship between EU citizens and technological giants. As recent developments show, the adoption of the Directive is a politically sensitive issue. Nevertheless, politicians at the EU level should show the necessary determination to strengthen their citizens.

Conclusion and the road ahead

The EU legislator has a unique opportunity to empower EU citizens in administrative and judicial proceedings in cases concerning Big Tech corporations.

The existing case law in the field indicates that individual actions brought by citizens and the civil society contribute to the understanding and enforcement of EU fundamental rights.[21] Thus, these civil society-led cases set important precedents of individual action bringing major changes affecting governments and large corporations. This practice shows that the empowerment of individuals in cases against technological giants can be a key milestone in the protection of human rights at the EU level.

Yet, amid Trump's return to the White House, a lack of political will for empowering individuals vis-à-vis Big Tech corporations might have emerged. The withdrawal of the draft AILD shows how EU politicians seek to avoid direct confrontation with their US counterparts in order to minimise the impact of Trump's policies on the EU.

In more recent developments, the Commission has adopted an assertive stance against the leading tech companies, fining Apple and Meta for violations of the Digital Markets Act.[22] These decisions are encouraging as they suggest that the Commission is overcoming its earlier political hesitation. In this spirit, the EU legislators have the opportunity to adopt legislative acts in the fields of data protection and AI regulation. To that purpose, it is up to politicians (at both the EU and the national level), academics, and the civil society to create the necessary political momentum for reforms that enhance the protection of EU fundamental values in times of rapid technological progress.

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Dionysios Pelekis

The Art of (Ruining) the Deal

International Taxation & Digital Services Taxes

Among President Trump's first actions of his second term in office was to withdraw from, per the relevant Executive Order, the Organisation for Economic Co-operation and Development (OECD) "Global Tax Deal".[1] While no international agreement carrying that exact name exists, the US President was referring to a decade-long initiative which has (or had) resulted in partial agreement to reform international tax rules, especially for multinational enterprises (MNEs). This initiative, the current iteration of which is referred to as the Inclusive Framework on Base Erosion and Profit Shifting (IF BEPS), aims at tackling or at least minimising tax avoidance and evasion by MNEs.[2]

The IF BEPS has been an extremely influential and important policy and reform initiative. In the same way, so-called Digital Services Taxes (DSTs) - which were *grosso modo* prohibited under the IF BEPS – can also be of great importance, especially for the EU. DSTs have already been discussed in Europe, either at the Union or at the Member State level, but not enforced yet. However, an EU DST which would primarily target US-based MNEs in the tech sector,[3] could significantly impact the interests of US tech plutocrats by ensuring their entities are taxed on profits generated in the EU, and thus limit their economic power by reallocating some of their profits to European coffers. The proceeds from an EU DST could also be used to bolster the Union's own resources, allowing it to pursue its ambitions – part of which is an overall response to US unilateralism and plutocracy. As such, the time is ripe for the European Union, or at the very least its Member States, to add DSTs to their arsenal, or re-activate those already on the books – especially in light of the (likely) collapse of the OECD "global tax deal" caused by President Trump.

On the IF BEPS

The IF BEPS consists of two separate but inherently interlinked Pillars.[4] The part of the IF BEPS President Trump and his inner circle find offensive is Pillar Two, the only one on which a final agreement had been reached. Pillar One is, broadly speaking, focused on reforming profit allocation and nexus rules in international taxation, while Pillar Two contains the "Global Anti-Base Erosion" (GloBE) rules, which effectively create a global minimum tax of 15% for MNEs, by imposing a top-up tax on low-taxed or non-taxed income of in-scope entities. Both Pillars deal (primarily) with MNEs. In other words, Pillar One is focused on where MNEs are to be taxed, while Pillar Two establishes a global minimum tax.[5] Both, however, addressed the problem of MNEs not paying their fair share – at least in the digital economy.[6] The combined effect of the Two Pillars would be that part of the profits of MNE A (provided it is in scope) which accrue to jurisdiction X would be allocated to jurisdictions Y and Z where A is present; and that the overall profits of A would be subject to an effective global tax rate of 15%.

The – admittedly complex – tax construct of Pillar Two allows the jurisdictions in which MNEs operate to levy a minimum level of tax on the income derived in that jurisdiction. Effectively, it ensures that globe-trotting MNEs have to pay a minimum 15% tax on their profits, irrespective of the tax "optimisation" measures they have taken. In short, this part of the IF BEPS would have given (limited) taxing powers over the global income of some US-based MNEs to states other than the US. However, by withdrawing from this deal, the dealmaker-in-chief may be exposing those very MNEs to far less predictable and more aggressive taxes imposed both by foe and (former) friend alike.

This is largely because a key part of the overall (and now likely moribund) OECD initiative under Pillar One was to put a halt to the proliferation of unilateral taxes, including of DSTs, and to replace them with a consensus-based (re)allocation of taxing rights. With the successful completion of the IF BEPS framework now being extremely unlikely, and with the overall proliferation of unilateral trade (and other) measures, I argue that now is the time for the European Union, or at the very least its Member States, to add DSTs to their arsenal, or re-activate those already on the books.

International taxation and digitalisation

The international tax system was never perfect – far from it.[7] However, the emergence of the "digital economy" turned a problematic system into a borderline unworkable one, as some of its maladies, such as the difficulties inherent in transfer pricing,[8] were exacerbated, ultimately prompting the launch of the original BEPS project.[9] The original project did not seem to go anywhere, leading eventually to the launch of the IF BEPS. The revamped project focused on creating wide consensus and was largely successful in this regard. By May 2024, 147 jurisdictions, including the US and China, had signed up to the Two Pillar solution.[10]

A core element of the IF BEPS deal – and a key reason for the wide, global buy-in – has been its focus on addressing some long-standing issues with global taxation, primarily focusing on the reallocation of taxing rights, and with it, on the redistribution of tax income to a wider number of jurisdictions, including to a number of low-and-middle-income countries. The proposed framework – while not perfect – has sought to ensure that (at least some) MNEs pay their fair share of taxes where their profits are actually generated, as opposed to where they are shifted and booked. The

combined Two Pillar Solution would also have the effect of combating tax evasion and avoidance and, as a result, would not only redistribute parts of the global tax take but likely increase it overall. While the fiscal impacts would differ from one jurisdiction to another, most jurisdictions would be net beneficiaries – provided, of course, the Two Pillar solution were applied and implemented properly.

Given its history, the IF BEPS has naturally been focused on the impacts of the digitalisation of the economy. The two pillars – while separate – are complementary. For example, for unilateral levies such as DSTs to be effectively prohibited, both new rules on the allocation of taxing powers (Pillar One) and an ability to tax (MNE) income (Pillar Two) are necessary. Thus, Pillar One would, *inter alia*, create and allocate taxing rights over a portion of MNE profits to market jurisdictions, while Pillar Two introduces a minimum global tax rate and sets out the modalities for its application. Pillar One also calls for the freezing or removal of existing DSTs and removes the benefits of Pillar One from states that introduce or apply DSTs.

DSTs gained traction as the first phase of BEPS seemed to falter, with some EU Member States introducing such charges.[11] In 2018, there was even a proposal for an EU DST.[12] Nonetheless, with the launch of the IF BEPS, those plans were put on ice and commitments were made for their removal, in line with and in anticipation of Pillar One.[13] Now, however, with the future of the IF BEPS in question, DSTs seem to be back on the menu.[14]

The reason for the popularity of DSTs is quite easy to understand, especially in the context of the rise of platforms and the digital economy. While DSTs can take many forms and can be rather complex, they can be simply described as a means of taxing certain sectors and activities within the digital economy where value is

generated through non-traditional (and thus not easily taxable) means. In simple terms, DSTs can help remedy the issues arising from the allocation of taxing rights and the ability of certain MNEs to expertly shift their profits to the optimal jurisdiction for them. There are, of course, potential downsides to DSTs,[15] as is the case with all unilateral levies. Nonetheless, while DSTs cannot – in and of themselves – fix all the issues of international taxation, they can help states mitigate the effects of tax avoidance, and ensure that digital MNEs contribute their fair share to the public finances of the jurisdictions where they operate. DSTs are also rather practical as a solution.[16] From the EU's perspective, the fact that DSTs would, primarily, target MNEs not based in the Union,[17] only increases their appeal. In the context of the tariffs introduced by the current US administration, as well as the uncertainty such tariffs augur, DSTs become an even more attractive proposition. This is because DSTs are, effectively, unilateral charges – akin to tariffs – and can thus provoke retaliatory unilateral measures. And tariffs are, after all, a form of taxation. However, as such measures have already been put in place on the other side of the pond, DSTs in the EU – or, better yet, an EU DST – would constitute (part of) the EU's response to those measures, and a highly targeted one at that, aimed squarely at the US tech sector.

Towards an EU DST?

The EU has been active against "aggressive tax planning" for years, with numerous proposals being tabled. Some of them have been successful.[18] Even State aid law has been deployed – with moderate success – to combat "sweetheart" tax deals.[19] Pillar Two was introduced in the EU with Council Directive 2022/2523,[20] while a proposal for a transfer pricing Directive has also been tabled.[21]

However, introducing new tax rules – let alone new taxes – at the EU level can be tricky. Taxing powers are historically seen as a core vestige of sovereignty, and, thus, almost all (direct) taxing powers remain with the Member States and not with the Union; despite the formers' obligation to apply their tax laws in line with and in light of EU law.[22] This element of the EU's constitutional settlement can potentially cause issues in the design and subsequent implementation of an EU DST. Further complications may potentially arise from the fact that some Member States already have their own DSTs, with different tax bases, taxing events, or rates.

Nonetheless, Article 57 of Directive 2022/2523 contains a "trigger" provision, requiring the Commission to report to the Council on the progress of the implementation of Pillar One,[23] and empowering it to "submit a legislative proposal to address those tax challenges in the absence of the implementation of the Pillar One solution". So, if Pillar One is not implemented (an outcome which seems increasingly likely),[24] a Union DST can indeed be established. Equally, Member States can introduce and implement such taxes themselves.

An argument against DSTs is the possibility of retaliatory tariffs. However, in the current global climate – with extensive tariffs announced by the US – this point loses its salience. Further, despite the fact that Pillar One could be more fiscally "profitable" than a DST for EU Member States,[25] an *EU* DST should be what the Union aims for. For one, there is the obvious element of responding to the US' own unilateral moves, and a DST could be part of a "basket" of responses. Additionally, an EU-level DST could minimise any negative effects to the European single market by creating a unified DST with the same scope of application, tax base, taxable event(s), and rate(s). Such a unified DST would also be far less

likely to create issues between Member States, both politically and legally. This is because certain national DSTs – if they catch EU-based entities – could be *prima facie* illegal, either under internal market law if they create discriminatory outcomes,[26] or under State aid law.[27] A web of different Member State DSTs would also be difficult to administer, and could lead to DST-competition between Member States, in turn causing more fragmentation in the internal market and more tax planning on the part of MNEs.

A further advantage of a Union-level DST relates to who receives the monies raised. The Commission had signalled that part (15%) of the residual profits to be taxed in the EU under Pillar One could be added to the "next generation" of the Union's own resources.[28] With a Pillar One agreement seeming unlikely – at least in the short-to-medium term – Member State DSTs would add the monies raised to their own budget, whereas a Union DST could redirect them to the EU budget. In the context of the prevailing uncertainty and the constant crises Europe, and the world, are facing, it is clear that the current Commission has ambitious and wide-ranging plans.[29] It is, however, equally clear that the Union lacks the resources it needs to pursue its agenda, and to reinvigorate the European economy.[30] An EU DST could help bridge that gap. And an EU DST could be part of a strong response to the US and the second Trump administration – not only by addressing long-standing tax avoidance issues, but also by financing parts of the EU's industrial strategies, thereby strengthening the EU's own (open) strategic autonomy. If the Union were to keep the resources raised, this could also reduce tensions between Member States as to the effective place of taxation, as all the revenues would, in effect, end up in the same "pot".

While the exact design and implementation of an EU DST would require unanimity and thus be subject to (some)

horse-trading, the 2018 proposal can be used as a basis, at least in terms of scope and definitions. Additionally, the 2018 proposal was accompanied by a detailed impact assessment, which – while perhaps outdated in parts – sets out the available options, as well as the necessity of EU action and the objectives of such action convincingly.[31] The 2018 package could also simply be brought forward again.[32] In other words, some of the "groundwork" has already been done, potentially expediting the adoption of an EU DST. Finally, as Pillar One is far from being implemented, the trigger provision in Article 57 of Directive 2022/2523 could be invoked by the Commission.

Conclusion

In brief, this contribution has argued for the introduction of an EU DST, in light of the (likely) collapse of the OECD "global tax deal" caused by the Trump administration. The tax problems stemming from digitalisation and those related to the aggressive tax practices of (mainly) US-based MNEs more broadly, will not be solved without positive action. While DSTs are not a panacea and have drawbacks, they can be a step in the right direction. This is reinforced by the deterioration of the consensus-driven international order, illustrated in our context by the massive difficulties the OECD has faced in relation to the entirety of the BEPS project, including the IF BEPS. After more than a decade, a full agreement seemed unlikely – and with President Trump's Executive Order it seems even less likely now.

Against this backdrop, a DST should – ideally – be adopted at the Union level. The Union has the competence to do so, and has both entertained and worked on such plans in the past. A Union-level DST would also be less legally risky, and could allay

some political concerns. Finally, and – I believe – most importantly, it could be used to (re)allocate resources to the EU's budget, allowing the Union to pursue its broader objectives. An EU DST could thus simultaneously ensure that "digital" MNEs meet their fiscal responsibilities – curbing their economic power – and redirect much needed resources to the Union's budget, buttressing its economy and financing part of its adjustment to a new reality. An EU DST would therefore constitute part of the EU's response to the current US administration's actions, while also addressing the – often unchecked – power of the plutocrats "behind the throne". As Churchill (apocryphally) urged "never let a good crisis go to waste".

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Carolyn Moser, Laurids Hempel

Is the EU Foreign-Interference-Proof?

Interwoven Internal and External Action in the Face of New Threats

In recent times, the democratic foundations of European societies have been seriously tested by foreign interference of different types and scale. One can cite here Elon Musk's forays into (electoral) politics in Europe alongside Kremlin-steered hybrid campaigns. Regardless of their differences in facts and figures, these incidents are a manifestation of the same problem: A foreign actor – be it a technology tycoon turned presidential adviser or a war criminal at the head of an increasingly brutal autocratic regime – is trying to influence European voters using modern communication channels which, partly, escape European control.

Against this backdrop, our analysis focuses on the promise and relative weaknesses of law and policy solutions as well as institutional arrangements the EU has put in place to protect European democracies from foreign interference in a tense geopolitical climate. The key issues in this context is how the Union can ensure the effective implementation of its laws and policies while simultaneously safeguarding a high standard of fundamental rights protection.

New geopolitical realities threatening democratic foundations

As a matter of fact, the EU's democratic foundations are being put to the test by different players in various contexts. The list of incidents is long and, for the sake of brevity, we will only refer to a few major ones to illustrate our point. There were the controversial Musk moves on social media in respect of the 2025 federal elections in Germany – including offensive messages on the social media platform X on Germany's chancellor and federal president, or the infamous Musk-Weidel interview on X backing the AfD, Germany's far-right party. There's also the Romanian case, where the previously little-known far-right candidate Călin Georgescu

made it to the second round of the presidential election and even came first in the vote.[1] Declassified information shows that his 2024 election campaign had apparently benefitted from Russian interference.[2] The alleged interference, which came in the form of a state-sponsored covert action, included the creation of a large network of bots on TikTok, coordinated cyber-attacks, and covert campaign financing (Georgescu himself had declared zero campaign expenses[3]). And let's not forget Russia's disinformation and (war) propaganda campaigns via state-controlled media outlets which led to the banning of several Kremlin-controlled media in the EU such as "Russia Today" channels (Council Decision (CFSP) 2022/351).[4]

The peril of foreign interference has already been recognised in case law handed down by the EU judicature related to precisely these broadcasting bans imposed by EU sanctions. In its 2022 judgment in *RT France v Council*, the General Court had to ponder individual rights limitations – among others the freedom of expression – with the collective good of European democracy.[5] And so, when asked to judge whether the limitation imposed on the freedom of expression (of RT) was legal, the Court answered in the affirmative. It reasoned *inter alia* that hybrid campaigns were henceforth part of modern warfare and that spreading misinformation and (war) propaganda posed a serious threat to the very foundations of European democratic societies (para. 162). For decision-makers, the challenge is hence twofold: to devise a response that does not unfairly or disproportionately restrict fundamental rights but that is effective in safeguarding democratic processes and structures.

The end of the Brussels effect?

Effectiveness is indeed a key issue. The ban on broadcasting RT and other Russian media outlets spreading misinformation and war propaganda under the EU sanctions regime is said to lack effectiveness and to be too easy to circumvent.[6] Similarly, the Romanian case shows that the current legislation regulating major platforms – notably the Digital Services Act (DSA) – has shortcomings, one of which is that it privileges *a posteriori* measures against online platforms having acted in violation of the DSA and might be unable to effectively *prevent* foreign election interference. Also, many European standards in the area of social media assume that relevant companies act in good faith and cooperate willingly, including on the basis of voluntary code of conducts.[7] Yet, many US-based technology companies seem to have less appetite for abiding by EU policies on content moderation in the new Trump era, which could seriously put at risk the EU's digital governance framework[8] and therefore warrants a serious EU law and policy response.[9]

Indeed, not least since the inauguration of Donald Trump in January 2025, the international (legal) order has been changing at a radical pace, leaving the EU in an increasingly difficult situation. As many analysts and practitioners have been warning for years, the Union risks being weakened by a new multipolar power constellation in which it mainly has observer status. The experts' warning covers a range of issues, from industrial policies to trade models and defence agreements, and comes in various forms: Some advocate supply chain security,[10] others write about the necessity of (strategic) autonomy,[11] still others urge for greater competitiveness,[12] and finally, there are those who call for digital sovereignty.[13]

So the EU's relatively successful regulatory model – described in the literature as the Brussels effect[14] – appears weakened under current geopolitical conditions and in the face of new actors.[15] It remains to be seen whether this weakening is particularly pronounced in the digital domain, where the EU had been lauded for its normative clout in the past.[16] Yet, if the EU and its Member States do not want to be norm-takers rather than norm-shapers on major international dossiers,[17] they ought to adapt their legal and legislative toolkit quickly to get to grips with the new geopolitical realities.

In the wake of the Russian aggression against Ukraine, the EU has been remarkably reactive on security and defence[18] as well as justice issues[19] – similarly to its dynamism during the COVID-19 pandemic when the EU-wide borrowing through the one-time NextGenerationEU scheme was triggered. However, at a time when the rules and cards of the international game are being reshuffled, the bloc is somewhat at a loss as to the effective long-term strategy it should pursue to protect not only prosperity but also the system of rights and values that the Union has created over the past decades. Indeed, Member States lack a shared vision on how to proceed – be it in political, legal, industrial, or financial terms.

At this junction, it is interesting to note that the European Commission seemed reluctant to trigger procedures under the DSA following Musk's overt AfD support via X.[20] The results of the investigation are still pending.[21] The Commission's prudent response says a lot about the EU's current geopolitical situation: It finds itself between a rock – risking open conflict with one of the world's most influential tech actors and chief adviser of the US president – and a hard place – remaining silent when European democratic processes are potentially undermined by foreign (private) actors.

The interweaving of the internal and external dimension

Be that as it may, there is a trend at the EU level to interweave different strands of internal and external law and policy to get to grips with the complex phenomenon of foreign interference. This intertwining can be seen in policy strategies and institutional arrangements.

When it comes to policy strategies, two documents are particularly noteworthy. First, the 2022 Strategic Compass called for the creation of an EU Hybrid Toolbox as a framework for a coordinated response to hybrid campaigns.[22] As discussed in scholarly literature,[23] the main objective of these hybrid campaigns is to exploit the weaknesses of the intended target via coercive and subversive means, while creating ambiguity. Within this framework, the EU laid last year the groundwork for the establishment of EU Hybrid Rapid Response Teams.[24]

Second, in 2024, the Commission proposed the European Democracy Shield (EDS).[25] Inspired by the French Viginum and the Swedish Psychological Defence Agency, the EDS is designed to defend European democracy in conjunction with a raft of EU legislative acts and proposals – namely the DSA, the AI Act, the Democracy Action Plan, and the Defence of Democracy Package. While its thematic contours are still unclear,[26] the EDS' intended core function is to serve as a comprehensive EU framework to combat foreign information manipulation and interference.

Regarding institutional (re-)arrangements, several EU institutions have reshuffled their internal structures, mirroring the complex phenomenon of hybrid threats. On 18 December 2024, the European Parliament set up a special committee on the EDS, building on the work of the Special Committee on foreign interference in all democratic processes in the European Union, including

disinformation (INGE 1 and 2), which had focused on combatting foreign interference respectively.[27] The decision setting up the new committee emphasises that the potential effects very large online platforms can have on democratic processes in the Union shall be evaluated and also repeatedly stresses the external dimension of the issue.[28] Remarkably, and in contrast to the mandate of its predecessor committees, the competence of the new special committee explicitly comprises cyberattacks on *military* targets,[29] underpinning our interlacement argument that the EU is interweaving different strands of internal and external law and policy to respond to interference.

Similarly, the European Commission established a Commissioners' Project Group on Democracy on 7 January 2025 to counter both the internal and external dimensions of foreign interference.[30]

Who calls the shots?

While it is probably a wise strategy to tackle the complex matter of foreign interference from different though complementary angles, it also presents intricacies. In EU governance, internal and external action do not necessarily follow the same logic or patterns in terms of actors, instruments, procedures, and competences. This is not an insurmountable obstacle, but rather a challenge as it (potentially) raises competence issues, both horizontally and vertically.

The *RT France* case, in which the EU banned a state-controlled Russian media outlet from broadcasting in EU territory, exemplified the competence issue. While the Council based the ban on RT France (and other media outlets) on Article 29 TEU, a legal basis of the Common Foreign and Security Policy (CFSP), the applicants argued that it was merely a matter of media regulation and hence

beyond the Council's competence. In its decision, the Court showed sensitivity to the external facet of foreign interference and disinformation, stating that the CFSP dimension of the ban on the media outlet prevailed. The Court pointed to the Council's broad discretion and emphasised the complementary Union competences in that area (para. 61). Possibly, a similar line of reasoning could be applied in the future to measures adopted to counter hybrid threats.

Legal challenges (ahead)

This brings us to the legal challenges of countering foreign interference, which the Romanian case encapsulates. Essentially, dealing with hybrid threats is a cross-cutting legal issue in which constitutional law, EU law, and international law interact. For instance, the Romanian Constitutional Court annulled the election results after the declassified information notes became known.[31] Importantly, the Court did not solely base its decision on Romanian constitutional and national election law but made reference to EU secondary law (the Political Advertising Regulation) and soft law documents of the Venice Commission to bolster its annulment decision on the grounds of the non-transparent use of digital technologies and artificial intelligence in the electoral campaign and the financing of the electoral campaign from undeclared sources.[32] As a further consequence, Georgescu's registration for the repetition of the election was refused, which the Constitutional Court declared to be constitutional on 11 March 2025.[33] After the annulment decision, Georgescu had also lodged a complaint to the European Court of Human Rights (ECtHR), trying to introduce another legal layer to the matter, namely international human rights law. However, the ECtHR rejected the request for interim

measures[34] and declared the application inadmissible, as the powers of the President of Romania are not part of the "legislature" within the meaning of Art. 3 of Protocol No. 1 to the ECHR.[35] This notwithstanding, the question of (States') positive obligations to combat election irregularities will likely be discussed by the ECtHR in future cases.[36] Also, at the EU level, the European Commission took measures in line with the DSA in relation to TikTok, including the opening of formal proceedings, which is likely to result in further legal developments.[37]

Finally, the Romanian case exemplifies the crucial fundamental rights questions that arise in countering foreign interference. The core question is to what extent the EU's response to foreign interference needs to be – and is allowed to be – more assertive. The restriction of fundamental rights of some individuals or entities (e.g., online platforms or actors deemed anti-democratic) may be necessary to protect the democratic process and uphold the fundamental rights of others, such as the right to vote. Hence, there is an inherent tension between systemic and individual interests and rights, which was also addressed in the *RT France* decision: said decision emphasised the importance of upholding democratic debate, peace, and international security in order to justify restrictions on fundamental rights of certain entities (para. 193). The exact limits for the restriction of fundamental rights in specific cases to counter hybrid threats will likely become a hotly debated topic in the future as relevant legislation and case law develops.

For scholars, this – admittedly worrying – development of increasingly intricate foreign interference promises to provide much more food for thought and analysis. Once again, the key question will be how the EU can guarantee the effectiveness of its laws and policies while maintaining a high level of protection for fundamental rights in the fight against foreign interference.

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Jacquelyn D. Veraldi, Alberto Alemanno

Does the EU Have What it Takes to Counter American Plutocratic Power?

A Research Agenda on Power and the EU

Since the 2024 inauguration of Donald Trump, the new administration has been marked by numerous and unprecedented attacks on the European Union. Amid a flurry of announcements challenging the status quo – often with brutal disregard, even against traditional allies – the European Union, what it is, what it represents along with the way it exercises power, suddenly appears as the antithesis of the new America.[1]

These attacks are not merely rhetorical or diplomatic posturing. They are embedded in a broader reconfiguration of US global strategy, where economic, technological, and cultural tools are increasingly leveraged to reshape alliances, markets, and norms in line with the interests of a consolidated elite. In this context, the EU finds itself not only publicly and privately humiliated, but actively undermined – institutionally, economically, and ideologically – by a plutocratic and mercantilist worldview.

Yet does the EU and its 27 member states have what it takes to resist such an expansionist and plutocratic projection of power, which now threatens Europe's security, lifestyle and overall existence?

This is the question examined by the contributions to this volume, for which there is no single answer.

If one has to find a common message across the various responses provided in the book, this seems to tilt toward scepticism.

At present, the EU does not seem well-positioned to deal with this unprecedented and multifaceted form of state power weaponised by corporate power and epitomised by the "Muskification" of government. This refers to the entrenchment of ultra-wealthy tech magnates not just as economic actors but as political architects, whose platforms and investments are increasingly indistinguishable from the foreign policy objectives of the US state. Addressing this challenge would require progressive, sometimes creative, in-

terpretations and bold enforcement of existing legal frameworks, ranging from digital rights to competition law, and public integrity frameworks that were not designed to address what Anna Gerbrandy and Pauline Phoa describe as "Modern Bigness" – a combination of market power, data power, and technological capabilities.[2]

More critically, this new form of power necessitates the repurposing of mechanisms – from sanctions to foreign interference measures – or adopting complementary instruments, such as anti-coercion tools specifically designed to tackle these threats. For instance, neither the DSA nor the EU Transparency Register have been designed to address and tame the unprecedented plutocratic force stemming from the promiscuous merger between the US administration and its economic champions and political donors, as symbolised by the current Muskified White House. In effect, traditional regulatory tools are being outpaced by the speed and scale of private-public convergence in the US.

This concluding contribution to the edited volume aims to identify further avenues for EU action and lay down a preliminary research agenda for those interested in how the Union can address novel forms of expansionist and plutocratic power across the Atlantic and beyond.

Blind spots and further areas for research

Corruption and lobbying: Wading into broader democratic issues

If the relationship between corruption and lobbying has always been complex, there is general agreement that while lobbying is a legitimate part of the democratic process, it can lead to corruption if not properly regulated and monitored. Yet today, when facing the exercise of influence over EU authorities by business entities such as Musk's suite of companies, it appears impossible to delineate

where legitimate business representation ends and corrupt practices may begin, due to the unqualified position he covers within the US administration. Zinnbauer characterised this as a "full-frontal brash attack right on the public stage", highlighting how Plutocracy 2025 is different from any of its previous manifestations.[3] This has given rise to questions and considerations about whether not only EU competition law and in particular the new platform regulations adopted in that context – the DSA and DMA – but also existing EU public integrity law (as embodied by the EU Transparency Registry) are sufficient to address democratic issues that arise in relation to actions by the exercise of plutocratic power.

The role of civil society in holding tech giants accountable

While contributions to this edited volume largely focused on the role of lawmakers and regulators in this uphill battle, we should not underestimate the role that civil society organisations, business competitors, and other stakeholders may have to play in holding these new forms of plutocratic power to account. Indeed, independent watchdogs, advocacy groups, journalists, and whistleblowers have historically played an important role in exposing harmful practices of digital platforms and their owners, as well as major public integrity breaches, such as the Uber Files.[4]

When it comes to digital platforms, for example, a former Facebook employee leaked files to the media revealing that Meta was aware of the harmful effects of its platforms,[5] prompting congressional hearings and increasing demands for regulation. In the EU, the *Schrems* cases forced companies to reassess their data transfer practices and highlighted the need for stronger safeguards in the protection of EU citizens' data. Likewise, as alluded to in some contributions to this edited volume, private enforcement of rules –

particularly competition law – may have an important role to play in protecting EU democracy.[6]

However, for civil society to play a fully-fledged role in countering plutocratic forces, it requires an attentive and responsive public opinion. Yet, as recently noted by Anne Applebaum, "The court of public opinion, which over the past decade has seen and heard everything, no longer cares. US elections are now a political Las Vegas: Anything goes".[7] Unfortunately, this observation appears to hold true in the EU as well. Despite the initial public reaction to the *Qatargate* scandal, the overall response has remained limited and did not lead to major structural reforms aimed at ensuring the protection of public integrity in the long term,[8] hence the emergence of the latest Huawei scandal.[9]

Can EU sanctions target digital oligarchs?

Another possibility not explored in this edited volume relates to EU sanctions. Under the Common Foreign and Security Policy (CFSP), sanctions can be introduced via Article 29 TEU and Article 215 TFEU, including measures "against natural or legal persons and groups or non-State entities" (Article 215 (2) TFEU). In fact, "most sanctions adopted by the EU are targeted at individuals and entities, and consist of asset freezes, travel bans, and the prohibition to make funds and economic resources available to listed entities or individuals"[10], as seen in the case of the Russia-related sanctions. Hence, under the Council decision concerning restrictive measures in view of Russia's destabilising activities,[11] Member States must take measures necessary to prevent entry or transit by listed natural persons "responsible for, implementing, supporting, or benefitting from actions or policies by the Government of the Russian Federation which undermine or threaten democracy, the rule of law, stability or security in the Union" (Article 1). Persons engaged

in such undermining or threats shall also have their funds frozen (Article 2).

Of particular relevance might be the recently adopted Anti-Coercion Instrument (ACI, Regulation (EU) 2023/2675) which could serve as a tool to "Trump- and China-proof" the EU's trade policy framework.

While this mechanism has not yet been used (and what qualifies as "coercion" remains to be defined), a Parliament study presented it as "a tool to counter trade conflicts rather than foreign and security policy conflicts".[12] What renders this instrument particularly promising in the current geopolitical scenario – characterised by an expansionist and antagonist US administration – is the provision in Article 7 of the ACI Regulation allowing the EU to cooperate with third countries similarly affected by economic coercion, including through coordinated responses. Unlike restrictive measures under the CFSP, which require Council unanimity, the Commission plays a major role, as pointed out by Verellen.[13] In any event, reliance on such an instrument requires a qualified majority vote, a rather high threshold to attain among EU Member States given their diverging stance vis-à-vis the new US administration. Moreover, there is mounting agreement that the ACI cannot be deployed if the aim of Trump's tariffs is not punitive or if their adoption is made conditional on policy changes by the EU and its Member States.

One of the most interesting questions is therefore to identify which type of measure – conventional sanctions or the ACI – may be more appropriate to counter democratic threats posed by natural persons and their businesses from third countries. While under the traditional CFSP sanctions regime, third-country actions that threaten democracy and the rule of law (Art 21 TEU) may give rise to sanctions, democracy is not mentioned in the ACI Regulation.

Nevertheless, actions with democratic implications – such as Meta's lobbying of the US government to pressure EU lawmakers to revise their newly adopted rules on digital platforms[14] – may fall under the ACI, not to mention the repeated threat to retaliate against EU interests should the EU apply its laws, such as the DSA, to US companies close to the current US administration.

Hence, the EU announced potential plans to target US industries,[15] including digital platforms, through the ACI. The ACI Regulation includes restrictions on the right to participate in public procurement tender procedure, restrictions on licences, as well as restrictions on trade in services and trade-related aspects of intellectual property rights.

A combination of sanctions could therefore be adopted under both the conventional sanction rules and the ACI when trade issues come into play, thus bypassing the many unintended consequences prompted by a rise in tariffs. Yet this begs the question of how the EU would respond to non-coercive trade measures such as an unconditional, across-the-board tariff on all or a significant share of EU imports into the US, as threatened by President Trump.[16]

The illusion of free speech in the digital age

As digital platforms and their principals position themselves as champions of freedom of speech – while simultaneously advancing American interests – this volume emphasised the substantial risks they pose to the exercise of that very freedom.

Modern tech oligarchs control the primary channels of political engagement in the digital age by determining which voices are amplified and which are silenced via opaque, commercially-driven and largely unaccountable algorithms. This set them apart from older forms of plutocratic power such as that of Rockefeller or even

the more recent Murdoch's News Corporation, and can be seen in Elon Musk's reinstatement of banned accounts and the de-prioritisation of critical voices, raising alarms about the role of personal bias in shaping global political narratives. The dominance of billionaires over digital communication platforms is already becoming a destabilising force, including in the EU and individual Member States such as Germany ahead of its national elections, unless – as argued by van de Kerkhof[17] – the former finds the political courage to apply its existing arsenal after over five years spent building it.

Conclusion: A call for vigilance and innovation

While the digital age has given rise to opportunities for unprecedented levels of bottom-up communication and political engagement, it has also introduced significant threats to democratic values. This appears particularly true within the EU. As shown by this volume, the concentration of power and wealth in the hands of a few digital platform owners poses a profound threat to democratic integrity. These actors are not only economic behemoths but also wield disproportionate influence over the information ecosystem, civic discourse, and now the shaping of policy agendas, blurring the lines between private interest and public authority.

Generations before us have long been concerned by the political meddling of the wealthy. In a translation and adaptation of Aristotle's Politics, late XIVth-century philosopher Nicole Oresme wrote:

> *"The super-rich are so unequal and exceed and overcome the others regarding their political power so much that it is reasonable to think that they are among the others as God is among men... The*

cities which are governed democratically, should relegate these people, i.e. they should send them into exile or banish them…"[18]

While such measures may sound extreme today, Oresme's insight reflects a longstanding awareness that unchecked concentrations of wealth inevitably distort political life, especially when economic elites become indistinguishable from political decision-makers.

Despite the EU taking progressive steps to tame the undue influence exercised by digital platforms and foreign influence, the measures outlined in this volume alone may not be sufficient. The chilling effect exerted by the Trump administration – threatening retaliation against EU authorities should their laws be enforced against its closest corporate allies, whose platforms continue to support and advance US interests in the world – remains a very serious, largely unprecedented, challenge.

For the EU legal framework to make a difference, not only progressive interpretation and bold enforcement but also a degree of political courage is required. Yet this is precisely what EU leaders seem to lack these days, all the more so when it comes to the enactment of power-shifting reforms. Once again, as during the first Trump administration, the EU – as well as other former US allies – has been caught off guard by the flurry of announcements and threats coming from the White House.

Ultimately, one of the most neglected levers of resistance to the new plutocratic power lies in civil society. The role of non-public actors in protecting democracy – including EU democracy and that of its Member States – cannot be overstated, as they have proven essential in holding tech giants accountable, exposing harmful practices, and upholding the rule of law. They also play a crucial role in the private enforcement of competition laws and other regulatory measures and will remain critical in safeguarding demo-

cratic principles. By monitoring abuses, initiating legal action, and sustaining public pressure, civil society actors embody a form of distributed resilience that compensates for institutional inertia or political compromise.

And yet, despite being increasingly entrusted by several EU legislative frameworks to monitor and enforce regulations – from digital rights to environmental legislation – civil society organisations face unprecedented pushback.[19] Their funding is being curtailed and their role compressed, not only in the US but also within the EU, where a major anti-NGOs campaign continues to unfold. This is a paradoxical situation insofar as the EU entrusts civil society with a watchdog role essential for the proper functioning of its regulatory regimes while weakening and delegitimizing it on a daily basis, which must be exposed and confronted.

Last but not least, the use of EU sanctions and the anti-coercion instrument appears as one of the most promising avenues for addressing the actions of problematic private actors. These tools, traditionally aimed at states, must evolve to address hybrid threats where corporations act as proxies of foreign influence. Developing a doctrine for sanctioning private entities whose actions threaten EU sovereignty and democratic order is an urgent task. With the EU's democratic foundations "being put to the test",[20] ultimately, the fight to preserve EU democracy in the digital age demands a multifaceted approach, as called for by Viktoria Robertson.[21] Ultimately, this requires both strong public enforcement and complementary action by non-public actors, as well as further targeted measures.

Will the EU "accept being stuck between oligarchies and autocracies?" asked Italian President Sergio Mattarella (translated)[22] – or will it act?

A Muskified US administration is likely to accelerate the ongoing debate within the EU about whether and how to turn the Union from a community of values to a geostrategic player – without abandoning what the Union stands for and is built upon: the rule of law. Compromising on the rule of law in pursuit of geostrategic goals would be not only lethal but also self-defeating to the European Union.

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At a time when calls for the EU to respond to Musk's actions are multiplying, the question of whether, why, and how the EU may react remains largely unanswered. What makes Musk's conduct problematic under EU law? Is it a matter of disinformation, electoral integrity, foreign influence, unprecedented market concentration, a possible abuse of power, or a combination of these factors?

This edited volume unpacks whether and how (EU) law may tackle the existence and exercise of unprecedented plutocratic power. The authors explore a multitude of legal avenues, from freedom of speech to competition law, technology law, data protection to corporate taxation.

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