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# PETER-CHRISTIAN MÜLLER-GRAFF

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## EU AND USA: POLITICAL-LEGAL APPROACH IN A NEW CONTEXT

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**The Union should be guided in its approach to the new US-administration by its constitutional mission and follow Roberta Metsola's recommendations by emphasizing what is common rather than what is different and by seeking to strengthen cooperation in bilateral trade, defence and global affairs without abandoning its own convictions.**

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**Autor:** Peter-Christian Müller-Graff

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# EU and USA: Political-Legal Approach in a New Context\*

Peter-Christian Müller-Graff\*\*

The results of the US elections of November 2024 raise the question how the European Union should approach potential new political orientations of the USA. The slogan “America first” is not a completely new message<sup>1</sup> and one may ask as to whether such a message only reflects an elementary pattern of politics. One may also ask as to whether a slogan “Europe first” would be a new message or would only reflect an elementary pattern of politics. *Gerhard Leibholz*, a former judge of the German Federal Constitutional Court, taught us as students in his lecture on Law and Politics at Göttingen University that politics is the endeavour to ensure the good survival of one’s own community. Politicians are therefore expected to serve the common good of their own community first. As long as no planetary polity exists, the common good of the single political communities is the point of orientation to be served by those with political responsibility in their respective communities. However, its inherent risk is a turn into an exaggerated old-fashioned selfish nationalism and egoistic “power play” with all its gloomy consequences that can be observed in the history of Europe<sup>2</sup> as well as into open claims and practices of self-entitlement and “exceptionalism”.<sup>3</sup>

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\* The text is based on the author’s contribution “EU approach to the US results” at the Public online Event “Swiss Day” on the topic “Widening Gap between Europe and the USA?” on 4 December 2024. Since then, several scenarios have already taken shape, some in even more strident forms than expected. The rapid ongoing developments underscore the rationale for the approach recommended in December 2024.

\*\* Peter-Christian Müller-Graff is Senior Professor for Civil Law, Commercial Law, Company Law and Economic Law, European Law and Comparative Law at the Heidelberg University Faculty of Law.

<sup>1</sup> Rubino Rich, Trump Was Not First To Use The “America First” Slogan, in: [https://www.huffpost.com/entry/the-etymology-of-america-first\\_b\\_5889767de4b0628ad613de3f](https://www.huffpost.com/entry/the-etymology-of-america-first_b_5889767de4b0628ad613de3f).

<sup>2</sup> E.g., Link Werner, *Auf dem Weg zu einem neuen Europa*, Baden-Baden 2006, S. 12 ff. For the experiences of war as a trigger for the idea of European unity see Böttcher Winfried (Hrsg.), *Klassiker des europäischen Denkens. Friedens- und Europavorstellungen aus 700 Jahre europäischer Kulturgeschichte*, Baden-Baden 2014; Müller-Graff Peter-Christian, *Europa-Idee in der Krise?*, in: *EuR Beiheft 2/2015*, S. 149, 151 ff.

<sup>3</sup> For a critical view on the idea of “exceptionalism” see Malik Nesrine, *Trump 2.0 is exposing American exceptionalism for what it is – and has always been*: <https://www.theguardian.com/commentisfree/2025/feb/03/donald-trump-american-exceptionalism>.

This leads to the two questions to be explored in this paper: first the question of the political-legal starting positions in the new context of the relations between the European Union and the United States in 2025 (I.); and second the question of the recommendable European approach in line with its genetic legal structure to potentially new challenges in this relationship (II.).

## I. The Political-Legal Starting Positions

### i. The US Political Starting Position

The 47<sup>th</sup> US-President's successful slogan highlights the mentioned basic political orientation in a concise phrase: serving the well-being of his country. But the sound and the actions make the music. In this case, one thinks to hear a rather autistic or egotistical accompanying tone of disrespect or even arrogant disregard of the considerations of other peoples on their well-being on our planet in general and a confrontational or even hostile attitude towards allies and the European Union in particular ("konfrontative Grundhaltung"<sup>4</sup>) accompanied by strange statements about the Union's founding purpose.<sup>5</sup> At the same time this melody, mixed with sounds of hubris, is at odds with the claim to international leadership (outlined, e.g., by the former temporary Security Adviser<sup>6</sup>). Which Kantian mind would feel comfortable with such a claim to leadership or voluntarily agree to follow it? The shocking event of February 28, 2025 in the Oval Office of the White House<sup>7</sup> could prove to be the public tipping point for historians analysing the acceptance of US leadership claims. That approach encounters the reality of the globe's 21<sup>st</sup> century, full of mutual dependencies.

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<sup>4</sup> von Daniels Laura/Mair Stefan (Hrsg.), Trumps Rückkehr und Europas außenpolitische Herausforderungen, Stiftung Wissenschaft und Politik SWP-Studie 2025/03, Februar 2025, Berlin, S. 2.

<sup>5</sup> "Trump claims bloc was "formed to screw the United States"; see Rushe Dominic in: <https://www.guardian.com/us-news/2025/feb/26/trump-european-union-tariffs>.

<sup>6</sup> Busse Nikolas, Kellogg Doktrin „America first“ auch im Ukrainekrieg, in <https://www.faz.net/aktuell/politik/ausland/usa-und-die-ukraine-was-bedeutet-america-first-fuer-den-krieg-110148897.html>.

<sup>7</sup> See: Trumps explosive clash with Zelenskyy, <https://www.theguardian.com/us-news/2025/feb/28/trump-zelenskyy-meeting-transcript>.

## 2. The EU Constitutional Starting Position

In sharp contrast to such rhetoric the European Union is constitutionally bound by Article 3 and 21 TEU “in its relations with the wider world” not only to “uphold and promote its values and interests and contribute to the protection of its citizens”, but also to “contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights ... as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter” and even to “promote an international system based on stronger multilateral cooperation and good global governance”. The Union’s constitutional approach is planetary, although its factual capacities are not. If the new US-administration should weaken its former sense of planetary responsibility and the appreciation of international law, it would be the more a demanding challenge to the European Union’s constitutional mission “in its relations with the wider world”.

## II. The European Union’s Approach to Certain Potential Main Challenges in the Potentially New Relation Context

Looking for the Union’s recommendable approach to certain potential main challenges in the potentially new relation context (on the very probable assumption that the Union will not only experience erratic television or social media thunder), the Union is bound by the mentioned constitutional guidelines agreed upon and ratified by the Member States. They are very ambitious indeed. However, there is no reason to deviate from them in the perpetual stream of new challenges. They are made for them.

The question arises as to which potential key challenges can and should be identified with regard to the new US-administration and what concrete measures the Union should take to overcome them. The following considerations are going to address, among many,<sup>8</sup> five main challenges: those facing the Union’s economy, the Union’s security, the Union’s climate policy, the Union’s way of life and the Union’s cohesion.

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<sup>8</sup> There are others: e.g. the challenge for the international health policy against the globalisation of diseases, if the US withdraws from the World Health Organisation.

## i. Challenges Facing the Union's Economy

The new old US-President's openly declared "love" for customs duties as an instrument of power for multiple various purposes is well known: for economic purposes (e.g. against Canada, Mexico or China),<sup>9</sup> for anti-migration purposes and for combating drug trafficking (in particular against Mexico<sup>10</sup>) or for avoiding Dollar-decoupling (against the BRICS-States<sup>11</sup>). In regard of the European Union potentially new US customs duties are supposed to serve as an economically protectionist objective. While US protectionism is not fundamentally new (as recently experienced with the "Inflation Reduction Act"<sup>12</sup>), nevertheless any relevant attack on free trade, in particular on the system and rules of the World Trade Organisation (WTO), must be taken as a serious threat to the economic welfare basis of the European Union.

The question arises as to which approach the Union should choose. First of all, the Union's strategy should be geared towards avoiding a self-weakening of the transatlantic relations for the benefit of mighty autocracies. Hence it should focus on maintaining the WTO rules (which are seen as more important than single US customs for the comparatively more export-dependent European Union<sup>13</sup> [allegedly a 65% share of the overall economic performance as compared to 12% for the US<sup>14</sup>]). The Union's strategy should also consider

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<sup>9</sup> Von Petersdorff Winand/Welter Patrick, Trump entfesselt Handelskonflikt, in: Frankfurter Allgemeine Zeitung, 27 November 2014, p. 15.

<sup>10</sup> See: Trump beschliesst Zölle. China, Mexiko und Kanada kündigen Gegenwehr an, in: <https://www.faz.net/aktuell/wirtschaft/mehr-wirtschaft/mexiko-kanada-und-china-trumps-zoelle-sind-realtaet-110270599.html>.

<sup>11</sup> See: Streit um Währung. Trump droht Brics-Staaten in Höhe von 100 Prozent an, in: <https://www.deutschlandfunk.de/trump-droht-brics-staaten-zoelle-in-hoehe-von-100-prozent-an-100.html>.

<sup>12</sup> Mayr Jakob, EU-USA-Gipfel. Sorge vor dem nächsten Handelsstreit, in: <https://www.tagesschau.de/wirtschaft/weltwirtschaft/eu-usa-gipfel-106.html>.

<sup>13</sup> Hinz Julian/Rauck Mathias, Trumps Ankündigung von Zöllen bedeutet eine Herausforderung für die EU, in: <https://www.ifw-kiel.de/de/publikationen/aktuelles/hinz-state-ment-usa-grenze/>; Hinz Julian/Radike Melanie, US-Wahlen: Zusammenbruch der WTO könnte EU-Wirtschaft 4-mal härter treffen als US-Zölle, in: <https://www.ifw-kiel.de/de/publikationen/aktuelles/us-wahlen-zusammenbruch-der-wto-koennte-eu-wirtschaft-4-mal-haerter-treffen-als-us-zoelle/>.

<sup>14</sup> Fischer Peter A., Wenn Europa die Überlegenheit der Demokratie vorleben will, braucht es ein Freihandelsabkommen mit den USA, in: <https://www.nzz.ch/pro/handelsabkommen-zwischen-usa-und-eu-die-staerking-der-demokratie-ld.1859141>.

reaching a Mini-TTIP<sup>15</sup>-like, sectorally designed<sup>16</sup> agreement and also diversifying its free trade relations in the world.<sup>17</sup> As far as the question is concerned how a potential increase of US-customs duties in relation to the European Union should be handled by the Union, various opinions of different institutional representatives of the Union have already been voiced. All have their merits, but should be categorised for a tactical step-by-step application.

a) *The Announcement of Countermeasures*

The announcement of countermeasures has already been recommended by former High Representative of the Union for Foreign Affairs and Security Policy *Josep Borrell*<sup>18</sup> and by the European Commission.<sup>19</sup> The necessity of such measures is economically criticised, e.g., by *Peter Fischer* in the “*Neue Zürcher Zeitung*”.<sup>20</sup> He pleads for market self-regulation. As a causal process he expects that tariffs will increase prices in the US which will lead to an increase in internal interest rates which will strengthen the dollar and which will eventually improve the price competitiveness of European enterprises. At first glance, this consideration does not seem implausible, since economic principles cannot be politically overridden in the medium or long term. But *Fischer’s* considerations are based on a simple macro-economic model (*ceteris paribus*) that, in addition, masks out different sectoral effects (as shown by a recent Kiel Institute study<sup>21</sup>) and is uncertain in the timeline.

Therefore, the announcement of countermeasures (in line with the WTO rules) has its merits. It corresponds to the wisdom: “*Si vis pacem, para bellum.*” Here, the Union has a handle, as long as business in Europe’s internal market is attractive enough for US-American companies. They can be expected to try to persuade their government to soften its approach.

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<sup>15</sup> As an evaluation of the then planned but failed Transatlantic Trade and Investment Partnership see Felbermayr Gabriel/Heid Benedikt/Larch Mario, TTIP: Geringe Chancen, hohe Risiken?, in: Müller-Graff, Peter-Christian (Hrsg.), Europäische Union und USA –Europas nordatlantische Aufgaben, Baden-Baden, 2016, 69.

<sup>16</sup> Hinz/Rauck; due to the sectoral differences as shown by Hinz/Radike.

<sup>17</sup> Hinz/Rauck.

<sup>18</sup> Josep Borrell schlägt Alarm: Neue US-Zölle können globalen Handelskrieg auslösen, in: [https://www.focus.de/finanzen/boerse/scheidender-eu-aussenbeauftragter-josep-borrell-schlaegt-alarm-neue-us-zoelle-koennten-globalen-handelskrieg-ausloesen\\_id\\_260512675.html](https://www.focus.de/finanzen/boerse/scheidender-eu-aussenbeauftragter-josep-borrell-schlaegt-alarm-neue-us-zoelle-koennten-globalen-handelskrieg-ausloesen_id_260512675.html).

<sup>19</sup> Bereit zum Gegenschlag: Wie die EU für Trumps Zölle plant, in: <https://logistik-heute.de/news/bereit-zum-gegenschlag-wie-die-eu-fuer-trumps-zoelle-plant-197081.html>.

<sup>20</sup> Fischer.

<sup>21</sup> Hinz/Radike, Sektorspezifische Auswirkungen.

b) *The Factual Application of Targeted Countermeasures*

The factual application of targeted countermeasures appears to be already prepared by the European Commission.<sup>22</sup> It can have its merits, if words and persuasion about the mutual welfare harmfulness of customs duties do not work in advance. Then it could be unavoidable to demonstrate the disadvantages of a customs' war in reality in order to revitalise old wisdoms of *Adam Smith*<sup>23</sup> and also to overcome the narrow focus on goods (as expressed by the new old US President's remark about too many German cars on Fifth Avenue<sup>24</sup>) that is a one-sided perception which excludes the considerable volume of services (finance and digital) of US corporations in the European Union (nearly compensating the US deficit in the trade of goods<sup>25</sup>). It is therefore logical that the European Commission prepares itself for taking countermeasures in line with WTO rules such as precisely calibrated customs on products from enterprises in Republican swing constituencies (such as motor-cycles of Harley Davidson from Wisconsin<sup>26</sup>).

c) *Negotiating a Deal*

Negotiating a deal is, e.g., the proposal of the European Central Bank's President. *Christine Lagarde* argues against imposing countermeasures, but for negotiating a deal under which the import of certain US goods into the EU could be fostered in exchange of waiving tariff increases.<sup>27</sup> This is an option as far as its implementation is compatible with the most favoured nation clause of the WTO.<sup>28</sup> Promoting free trade and expanding the internal market is in the European Union's economic interest. However, one precondition of this strategy is the Union's own economic well-being and performance. Under this aspect European enterprises face enormous tasks in the context of the

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<sup>22</sup> See recently: Drohender Handelskrieg. Bereit zum Gegenschlag: Wie die EU für Trumps Zölle plant, in: <https://www.sueddeutsche.de/wirtschaft/drohender-handelskrieg-bereit-zum-gegenschlag-wie-die-eu-fuer-trumps-zoelle-plant-dpa.urn-newsml-dpa-com-2009-0101-250204-930-364684>.

<sup>23</sup> Smith Adam, *An Inquiry into the Nature and Causes of the Wealth of Nations*, London 1776.

<sup>24</sup> Wattles Jackie/Riley Charles, Why President Trump's obsession with German cars is misplaced, in: <https://money.cnn.com/2018/05/31/news/companies/trump-german-cars-mercedes/>.

<sup>25</sup> Fischer, Vielschichtige Abhängigkeiten.

<sup>26</sup> See for this target in the past: Mayr.

<sup>27</sup> Geldpolitik. EZB-Präsidentin Lagarde rät von Vergeltung gegen US-Zölle ab, in: <https://www.handelsblatt.com/finanzen/geldpolitik/geldpolitik-ezb-praesidentin-lagarde-raet-von-vergeltung-gegen-us-zoelle-ab/100091323.html>.

<sup>28</sup> For the Most-Favoured-Nation Treatment and its exceptions in the trade of goods see GATT.

availability of energy, rare earths and qualified minds as well as in establishing technological (in particular digital) independence<sup>29</sup> and in catching up on the (ambitiously funded) KI development in the US and China. Against this background *Christian Lagarde's* plausible demand for increasing productivity by establishing a capital market union<sup>30</sup> is only one element of the Union's task to strengthen the competitiveness of European enterprises.

## 2. Challenges Facing the Union's Security

Concerning the Union's security the new old US President's demand is well known. Europeans should either adequately pay for US protection and nuclear deterrence or organize their security themselves without the US.<sup>31</sup> This demand, at first sight, is basically not a challenge for the EU, but for the European NATO members. However, due to the Union's weak inter- or transgovernmental structure of its common security policy,<sup>32</sup> the Union's security and deterrence capacity depends on its Member States' capacities.

Insofar, the new old US President just recalls a political matter of course. In principle, every state should be able to defend itself by its own means. In the case of asymmetric military capacities either the own defence capacities have to be stepped up or the protection has to be purchased through alliances. Both options have their price.

Since the current "transatlantic gap" in military capabilities is generally documented,<sup>33</sup> the European Union is well advised to develop a far-sighted strategy that is orientated towards establishing its "defence sovereignty".<sup>34</sup>

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<sup>29</sup> Knop Carsten, Europas digitale Existenzfrage, F.A.Z. v. 15.3.2025, S. 1; Smuha Nathalie A., Digital Sovereignty in the European Union: Five Challenges from a Normative Perspective, in Barret Gavin/Müller-Graff Peter-Christian/Rageade Jean-Philippe/Vaasz Victor (eds.), *European Sovereignty – The Legal Dimension*, Cham 2024, p. 127.

<sup>30</sup> Lagarde Christine, Die Ersparnisse in Europa für Investitionen und Innovationen nutzbar machen; see <https://www.ecb.europa.eu/press/key/date/2024/html/ecb.sp241122-fb84170883.de.html>.

<sup>31</sup> See, e.g., Präsident Trump. Worauf sich Deutschland und Europa einstellen müssen, in: <https://www.deutschlandfunk.de/trump-auswirkungen-deutschland-europa-100.html#erhoehte-verteidigungsausgaben>.

<sup>32</sup> Müller-Graff Peter-Christian, Strategic Sovereignty – Aspects of Its Legal Dimension, in: Barrett Gavin/Müller-Graff Peter-Christian/Rageade Jean-Philippe/Vadász Viktor (eds.), *European Sovereignty – The Legal Dimension*, Cham 2024, p. 111, 123 et seq.

<sup>33</sup> See, e.g., Marchetti Andreas, Transatlantische Annäherungen? Divergenz und Konvergenz im militärischen Bereich, in: Müller-Graff Peter-Christian (Hrsg.), *Europäische Union und USA – Europas nordatlantische Aufgaben*, Baden-Baden 2016, 107, 124.

<sup>34</sup> Müller-Graff, 123 et seq.

This includes the independent production of weapons (standardized or compatible within Europe) and the development of its own armament technology.<sup>35</sup> The Union is currently empowered to act within the narrow framework of the provisions on the common security and defence policy (Article 42 et seq. TEU)<sup>36</sup> that include the promotion of the improvement of the military capabilities of the Member States (Article 42 para. 3 TEU) in conjunction with the European Defence Agency (Article 45 TEU) as well as the empowerment of the Council to establish by qualified majority a “permanent structured cooperation” on notification by Member States “whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions” (Article 46 para. 2 TEU in conjunction with Article 42 para. 6 TEU); but decisions relating to initiating such a mission shall be adopted by the Council unanimously (Article 42 para. 4 TEU), however without prejudice to the possibilities of abstentions by Member States present in person or represented (with the consequence that the adoption by the Council of acts which require unanimity is not prevented – Article 238 para. 4 TFEU)<sup>37</sup> or of “constructive abstention” in the sense of Article 31 para. 1 TEU<sup>38</sup> (with the consequences outlined in this Article). Only if politically insurmountable difficulties were to arise for the Union’s external action in this respect could the willing members of the Union feel compelled to consider the establishment of a separate European Defence Community (perhaps involving non-members of the Union).

Another question concerns the deterrence capability of the European Union and its Member States. The fact that already the Russian rhetorically playing around with nuclear threats<sup>39</sup> is enough to frighten a considerable part of the Union’s citizens<sup>40</sup> and can be used as an instrument of political intimidation or blackmail in Europe demonstrates the necessity of a reliable deterrence capacity. Insofar the European Union and all of its Member States (perhaps

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<sup>35</sup> See Enders Tom in an interview with the F.A.Z.: <https://www.faz.net/aktuell/wirtschaft/unternehmen/frueherer-airbus-chef-tom-enders-niemand-braucht-eine-f-35-110357292.html>.

<sup>36</sup> Müller-Graff 124 et seq.

<sup>37</sup> Heintschel von Heinegg Wolff, in: Pechstein Matthias/Nowak Carsten/Häde Ulrich (Hrsg.), Frankfurter Kommentar EUV-GRC-AEUV, 2. Aufl., Tübingen 2023, EUV Art. 42 Rn. 39.

<sup>38</sup> Heintschel von Heinegg, Rn. 39.

<sup>39</sup> Sauer Pjotr, Vladimir Putin warns west he will consider usig nuclear weapons, in: <https://www.theguardian.com/world/2024/sep/25/vladimir-putin-warns-west-nuclear-weapons>.

<sup>40</sup> See: Mehrheit hat Angst vor Atomwaffen-Einsatz, in: <http://www.tagesschau.de/inland/gesellschaft/angst-vor-atomwaffen-100.html>.

except France) are currently essentially dependent on the US.<sup>41</sup> If the US sows doubts in the future of its commitment, then the confidence in the reliability of the American nuclear shield for Europe could erode. Whether France's "force de frappe" can serve as a substitute for that protection is unclear.<sup>42</sup> Thus, sooner or later, the Union might be forced to ponder on the difficult big issue as to whether it should repeal its current strategy concerning the nuclear situation (such as the European Council's Conclusions of 12 December 2003<sup>43</sup>) and as to whether it should take the way to becoming a deterrent nuclear power in its own right.<sup>44</sup> A supranational organisation of the EU member states for the peaceful use of atomic energy has existed since 1958 (European Atomic Energy Community; EAEC or EURATOM).

### 3. Challenges Facing the Union's Climate Policy

Already on November 8<sup>th</sup>, 2024, "The New York Times" reported that the "President elect transition team" had prepared executive orders and proclamations on withdrawing (again) from the Paris climate agreement, on allowing more drilling and mining and on cancelling the authorisation of some states to have tighter pollution standards.<sup>45</sup> If the new administration endangers the reduction of CO<sub>2</sub>-emissions in its territory, the Union's climate policy must not wobble. But it should be orientated towards developing a model of reduction policy without prejudice to its economic performance.

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<sup>41</sup> Röttgen Norbert, Nie wieder hilflos! Ein Manifest in Zeiten des Krieges, München 2022, 37, 111.

<sup>42</sup> Wachs Lydia/Horowitz Liviu, Frankreichs Atomwaffen und Europa – Optionen für eine besser abgestimmte Abschreckungspolitik, SWP-Aktuell 2023/A 07, 30.01.2023 = <https://www.swp-berlin.org/10.18449/2023A07/>.

<sup>43</sup> Brussels European Council 12 December 2013 Presidency Conclusions, Security Strategy, in: [https://ec.europa.eu/commission/presscorner/detail/en/doc\\_03\\_5](https://ec.europa.eu/commission/presscorner/detail/en/doc_03_5).

<sup>44</sup> Geinitz Christian, Debatte um Kernenergie. Veronika Grimm plädiert für atomare Nachrüstung in Europa, in: <https://www.faz.net/aktuell/wirtschaft/mehr-wirtschaft/veronika-grimm-plaediert-fuer-atomare-nachruetzung-in-europa-110217897.html>.

<sup>45</sup> Trump prepares to withdraw from Paris climate agreement, NYT reports, <https://www.reuters.com/business/environment/trump-prepares-withdrawing-paris-climate-agreement-nyt-reports-2024-11-08/>. The Executive Order followed on January 20th, 2025: "Putting America First in International Environmental Agreements" = <https://www.whitehouse.gov/presidential-actions/2025/01/putting-america-first-in-international-environmental-agreements/>.

#### 4. Challenges Facing the Union's Desired Enlightened Way of Life

Article 2 TEU states that the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect of human rights. Tolerance in society is also mentioned.

Concerns have been voiced in the media that the new administration might weaken the rule of law by shattering the authority of law through dubious role models (such as the previous nominee for Attorney General<sup>46</sup> or through a potential occurrence of party-political bias of federal judges<sup>47</sup> that would – in contradiction to the idea of independence and impartiality of a court – not “dispel any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it”<sup>48</sup>); or that it might weaken the freedom of press (First amendment) by intimidating the expression of opposing opinions (keyword: the sudden abstention of the “Washington Post” from the endorsement of a candidate for president in October 2024<sup>49</sup>); or that it might weaken the functioning of democracy by exaggerating the freedom of the speech (also first amendment) through giving uninhibited leeway to the dissemination of obvious lies, absurdities, hate and personal demeaning in social media.<sup>50</sup> The ancient Greek philosophers and historians knew that democracy was in latent danger of tipping into ochlocracy or other forms of government.<sup>51</sup>

If such developments were to occur on a serious scale, the European way of life desired by Article 2 TEU could be jeopardised by the enormous transatlantic media impact of American role models and social conduct. Crossing the Atlantic is easy by the osmotic potential and effects of the internet (which is

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<sup>46</sup> Levine Sam, Matt Gaetz resigns from Congress after Trump attorney general nomination, in: <https://www.theguardian.com/us-news/2024/nov/13/trump-matt-gaetz-attorney-general>.

<sup>47</sup> As a critical view e.g. Alliance for Justice, Trump SCOTUS Watch, in: <https://afj.org/why-courts-matter/trump-scotus-watch/>.

<sup>48</sup> Formula of the CJEU, judgment of 24 June 2014 in case C-619/18, ECLI:EU:C:2019:531 – European Commission/Republic of Poland, note 74.

<sup>49</sup> “The Washington Post says it will not endorse a candidate for president”, in: <https://www.washingtonpost.com/style/media/2024/10/25/washington-post-endorsement-president/>.

<sup>50</sup> As a critical view see Williams Zoe, Racism, misogyny, lies: How did X become so full of hatred? And is it ethical to keep using it?, in: <https://www.theguardian.com/technology/article/2024/sep/05/racism-misogyny-lies-how-did-x-become-so-full-of-hatred-and-is-it-ethical-to-keep-using-it>.

<sup>51</sup> See, in particular Polybios, *Geschichte*. Gesamtausgabe in zwei Bänden (hrsg. von Hans Drexler), Zürich 1961, 6, 4, 6; 6, 4, 10; 6, 57, 9.

dominated by American companies anyway<sup>52</sup>), in particular by a too lawless internet. The Union must be vigilant here and actively emphasize and promote – in the words of the European Parliament's President *Roberta Metsola* – “the shared values”<sup>53</sup> – but of course in its own understanding.

## 5. Challenges Facing the Union's Cohesion

Among the five most important dimensions of the Union's cohesion (economic, political-legal, civil-social, value-anchored, international),<sup>54</sup> in particular its cohesion in international self-assertion could come under pressure of the new US-administration – in addition to the already existing, potentially splitting policies of the permanently hostile and obstructive Russian power elite<sup>55</sup> (in its obvious fear of the attractiveness of the Union's way of life) and in addition to China's imperial “divide-et-impera” “One road, one belt” policy in Europe.<sup>56</sup>

Concerning the US, its 45<sup>th</sup> President's sympathy for Brexit<sup>57</sup> should not be forgotten (although Brexit seems to have paradoxically also strengthened the sense for the positive effects of European togetherness<sup>58</sup>). Hence risks and chances for the EU's cohesion are inherent under such pressure of the expected<sup>59</sup> confrontational attitude of the new US administration towards the European Union with the aim of weakening it. Ambitious national politicians and parties may be tempted to build a “special privileged relationship” and a prime loyalty to the US rather of strenghtening Europe's common cause, thus falling back in very old-fashioned nationalistic illusions of small-minded national power.

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<sup>52</sup> Knop, Europas digitale Exiszenzfrage.

<sup>53</sup> Michalopoulos Sarantis, Präsidentin des EU-Parlaments: Die USA verstehen die Sprache der Macht, in: <https://www.euractiv.de/section/innenpolitik/news/presidentin-des-eu-parlaments-die-usa-verstehen-die-sprache-der-macht/>.

<sup>54</sup> Müller-Graff Peter-Christian, Die Zukunft der europäischen Integration im Licht multipler Krisen, Zürich, 2023, E 6 et seq.

<sup>55</sup> Id., 18

<sup>56</sup> Moritz Rudolf, Chancen und Risiken der Seidenstrasseninitiative, in: Müller-Graff Peter-Christian (Hrsg.), Die Beziehungen zwischen der Europäischen Union und China, Baden-Baden 2017, 69 et seq.; Münster Katharina, Chinas 16+1-Kooperation mit Osteuropa: Trojanisches Pferd ohne volle Besatzung, Arbeitspapier Sicherheitspolitik Nr. 6/2019 der Bundesakademie für Sicherheitspolitik, Berlin 2019.

<sup>57</sup> See, e.g., „Austritt Grossbritanniens. Warum Donald Trump den Brexit will“, in: <https://www.wiwo.de/politik/ausland/austritt-grossbritanniens-warum-donald-trump-den-brexite-will/24382844.html>.

<sup>58</sup> Von Ondarza Nicolai, Europäische Wirtschaftspolitik. Brexit: Für Großbritannien härter als für die EU, in: <https://www.bpb.de/themen/wirtschaft/europa-wirtschaft/512992/brexit-fuer-grossbritannien-haerter-als-fuer-die-eu/>.

<sup>59</sup> See above note 3.

The Union's best institutional approach should be obvious. The European Parliament's President has already emphasized that the EU's strength is "one voice" – instead of 27 voices or voices of self-nominated or US-preferred spokespersons. As *Roberta Metsola* pointed out, they are neither legitimised nor strongly enough nor sufficiently supported in the Union.<sup>60</sup> This does not rule out the option for the Union mandating certain European politicians who are valued by the new US administration for certain negotiating tasks in its interest<sup>61</sup>

### III. Summary

The Union should be guided in its approach to the new US-administration by its constitutional mission (in particular Article 3 and 21 TEU) and follow *Roberta Metsola's* recommendations by emphasizing what is common rather than what is different<sup>62</sup> and by seeking to strengthen cooperation in bilateral trade, defence and global affairs<sup>63</sup> without, however, abandoning its own convictions. Previous statements by the Delegation of the European Union to the USA were in favour of working together as a transatlantic block of free nations representing nearly 800 million people to promote global prosperity, stability and peace on a rules-based international order.<sup>64</sup> This includes efforts to reach common positions in international affairs (e.g. concerning a good future of the Ukraine – a task that is certainly not only in the Union's interest, but also in the American interest). In general, the European Union can develop reasonable impulses for common north-transatlantic interests and may apply the wise Socratic maieutic success method, so that the dialog partner develops such ("hermeneutic") impulses into his own ideas.

One may ask as to whether there could be a suggestion for a mantra of the European Union in the new situation. Perhaps the old self-encouraging saying is memorable: "When the going gets tough, the tough get going." The European Union is finding itself in a potentially new international context (even with the

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<sup>60</sup> Metsola.

<sup>61</sup> See the proposal of *Gabriel Felbermayr* in: Mihm Andreas, Ökonom Felbermayr „EU sollte Orbán zu Trump schicken“, in: <https://www.faz.net/aktuell/wirtschaft/eu-sollte-orban-zu-verhandlungen-mit-trump-schicken-1102055166.html>.

<sup>62</sup> Metsola.

<sup>63</sup> Metsola. Hinz/Rauck and Hinz/Radike plead for preserving the global trade order as the top priority for the European Union.

<sup>64</sup> See also European Union External Action, European Union – United States Relations, 13.03.2024, <https://www.ceas.europa.eu/ceas/european-union-united-states-relations-en>.

revival of old-fashioned territorial politics;<sup>65</sup> keyword: Greenland<sup>66</sup>) in which it will be tested of whether a politically effective critical mass of its citizens (parts of them after decades of having smoothly and happily lived like Hobbits in a Thurgau-like Shireland of Middle-earth) is willing and sufficiently tough enough to successfully cope with these new challenges. Or to put it more simply: Europe's community spirit and common political will as well as its autonomous capabilities must be strengthened. The European Union faces the task of meeting the requirements of an autonomous mature political player with corresponding power capabilities and self-confidence on its constitutional basis.

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<sup>65</sup> Brachmann Jan, Zukunft der Staatsgrenzen, in: Frankfurter Allgemeine Zeitung, 14. Januar 2025, 9.

<sup>66</sup> Gattolin André, Greenland: a geostrategic challenge for the European Union in the age of Trump 2.0, Schuman Paper no 778, 4<sup>th</sup> February 2025 = [www.robert-schuman.eu/en](http://www.robert-schuman.eu/en). For the legal relations between Greenland and the European Union see Neergaard Ulla, Die rechtlichen Beziehungen zwischen der Europäischen Union, Grönland und Dänemark, in: Hatje Armin/Müller-Graff Peter-Christian (Hrsg.), Europäisches Organisations- und Verfassungsrecht (Enzyklopädie Europarecht Band 1), 2. Aufl., Baden-Baden, 2022, 1313 et seq.