

## Podcast transcript - Tech Trends and Turning Points: priorities and themes for the new EU Mandate

In our latest podcast episode from Bird & Bird, our Regulatory and Public Affairs Director, Francine Cunningham, is joined by Javier Espinoza, the Financial Times EU correspondent covering competition and digital policy in Brussels, to take stock of the outcome of the recent European Parliament elections and the potential implications for the tech sector.

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### **Francine Cunningham:**

Hello and welcome to this bird and bird podcast. My name is Francine Cunningham and I'm regulatory and Public Affairs Director at Bird and Bird's office in Brussels.

Today, I'm very happy to say we're joined by Javier Espinoza, Javier is a Financial Times EU correspondent, and he's known for covering competition and digital policy from Brussels. We'll be discussing today the outcome of the recent European elections, and what that might mean for tech policymaking during the next mandate.

So first of all Javier, when we look at the outcome of the recent European elections, the strong performance of the populist right wing and far right parties grabbed a lot of attention of course, but in fact, when you look more closely, the mainstream center parties largely held their ground. If you look for example at the European People's Party, so the centre right EPP grip they remain that by far the largest party in the parliament with 188 seats, followed by the Socialists and Democrats with 136 seats. At the same time, the Liberal Renew group suffered losses they lost like 27 seats, and that grip has been surpassed by the right leaning European

Conservatives and Reformists group, which is now the third largest group in the parliament. The Greens also lost out and lost some 17 seats. So I was wondering, do you think the more right leaning tilt of the new parliament will mean that the future Parliament pursues a more defensive policy when it comes to large international tech companies?

### **Javier Espinoza:**

First of all, Francine, thank you so much for having me on the podcast, it's an honour and a pleasure to be here. And as you quite rightly said, Before, I get right into the digital policy implications of this, we need to take the rise of the right-wing parties in the right context, just as we're speaking, today, we have the first results of the French elections, and it's looking like we're heading to a hung parliament.

So that does not mean that the far right is going to be ruling Europe. But it does mean a diminishing power to what it was the establishment what it means. In terms of digital policy, I think it's something that has been going on and that I've been experiencing as a writer for The Financial Times, which is a sort of lowering or dropping the list of priorities for the commission, I interact with EU officials who have been on top, drafting all

these major landmark pieces of legislations, including the Digital Markets Act, the Digital Services Act, the AI act, and many others. And they have told me behind closed doors, that they have been relieved that since COVID, when we really saw the power and the importance of digital communication, because we relied on it heavily, increasingly, the priorities have been delegating tech policy to a second place from the war, then the energy crisis, and now rise of the far right, these are things that eclipse digital policy. And I think that that's one part of the equation, but to your question specifically about policy becoming more defensive, I think it is right, that you might expect the EU to see boosting or talking more about this debate of EU having a technological sovereignty, economic competitiveness, having champions that grow from the ground up from Europe.

And I think that what is likely to happen is that we're going to see a weaker convention, for instance, very likely if things remain the same, we will see a change at the top of the person, Margaret Vestager who has been handling or dealing with both digital and competition, no matter who gets in, they will be new in the job, they will need to get a grip on the major issues that are taking place and they are likely to be influenced or pushed to this idea that Europe needs to have these European champions.

I do think also we are likely to see political movements and powers that are a bit more pro-business. So I should expect in the implementation of all this legislation, a strong push to water down burden on companies from all different corners of the political landscape.

**Francine Cunningham:**

That's really interesting, and of course, these European champions, as we've seen with the French AI company, Estrel, they often need to make these international partnerships in order to scale up. So there's that aspect also of these European champions to look at, I think.

**Javier Espinoza:**

Yes, and I think, you know, I have been attending an ever increasing growing number of conferences organised by DigComp in recent weeks, where their motto is basically very obvious, to make competition policy great again, and why is that? It's not an accident, because the officials that sit at the top of this organisation, I know, are very fearful about this new push to allow for these European champions to emerge. The backdrop to this, just as a reminder to our listeners, is that in the past, we had Austin Siemens trying to merge as a big sort of

landmark example of what a European champion would look like. That did not happen.

There's some things that should have happened. Some are pushing for mergers, for instance, we have this in recent days, we know that Lufthansa's acquisition in Italy is going to be cleared. So there's clearly a lot of political pressure in the background to allow for this, which is very defensive. Some would say protectionist stands in the EU. Of course, officials on the record on the podium will say pressure, what pressure, but it is it is real.

**Francine Cunningham:**

I liked that expression, make competition great again, I'm sure my competition colleagues would like that as well. As we've seen, during the last mandate, there was this huge tide of digital policymaking. So maybe digital regulation has, to some extent replaced competition law. And we've had the Artificial Intelligence Act, the Digital Services Act, otherwise known as the DSA, the Digital Markets act called the DMA, the Data Act, I could go on. It's therefore not surprising that some industry bodies and companies have been calling for a regulatory pause, to allow them time to adapt and to comply with all of this new and incoming regulation.

At the same time, you have some prominent MEPs like the German Christian Democrat, Axel Voss, who've put implementation of all of this new regulation, very high on their agenda for the new mandate, Mr. Voss, for example, has pointed in particular to implementation of the AI Act, where of course, we know there's a long list of secondary legislation and guidance still to come. So do you think there's going to be a new strong focus on implementation for the next five years?

**Javier Espinoza:**

I think there will be clearly a fight between those who push for implementation. And that's obviously very business friendly, because it means that, you know, you're allowed time to think to discuss to see how things should be implemented on this sort of huge set of attack.

Some might say that businesses with all these new regulations, and then there will be those regulators coming in fresh with new ideas, who will want to move fast and even create new rules. So for example, Thierry Breton, who is the EU's internal market chief already floated this idea of Digital Networks Act, which stems from this old debate as to whether how the telco sector is going to grow, and whether big tech companies like Netflix and YouTube, who use this, these tubes, these

networks provided by the telcos should be paying more in what the telco industry calls, you know, having a fair share of this market. And so I think, of course, for lawyers who I speak to on a regular basis, as you know, they will be very keen to push this idea of take a pause, let's think about this, let's think it through and see how we can implement things. And please can we have a pause, and there will be, on the other hand, this big push, just in the last week, I've been writing about the EU going after Apple, and Meta in a big way as Brussels uses its new shiny powers granted by the Digital Markets Act.

So you know, regulators in the EU, but also in the UK and in the US, have been under immense pressure from critics who said that they move very slowly that they don't understand digital market. They wave through deals such as Facebook, buying WhatsApp, and Instagram.

They argued these critics, that the regulators should have been tougher and potentially prohibit some of these digital mergers that happened in recent years. And now, we are seeing the pendulum swing the other way. And I think regulators are going to go out of their way to show what is it? What are the tools and the legal power that they have? I think, just as a footnote to this, that investors are hugely underestimating the power that regulators have, I think that they will suddenly wake up to what Brussels and others are doing these sleepy giant regulators with processes and DigiComp and DigiConnect. And all these bureaucratic layers move very, very slowly. But I think that when they when they move, and when they hit, they hit you hard.

**Francine Cunningham:**

Yes, I couldn't agree more. And the good thing about our jobs is that it keeps us extremely busy at the same time.

**Javier Espinoza:**

It's good for journalists, and good for lawyers.

**Francine Cunningham:**

Exactly. But not necessarily good for companies who want to invest in innovation instead of investing in enforcement. Which brings me to the question of enforcement, of course, enforcement is a question of resources, not only for the companies who have to tackle and deal with all of this new regulation, but also for the regulators themselves. And there's been discussion of even a new EU digital enforcement agency, and some MEPs have

been talking out loud about making companies pay more for oversight.

So companies will not only have to comply with all this regulation, they may be charged by the regulator for oversight at the same time. Do you think that's an idea that could possibly take off during the next mandate?

**Javier Espinoza:**

I think that it will largely depend on the efficiency of the lobby against it, and you can expect it to be hard. You know, it's funny, because I've heard over the years, how big tech companies are quite outspoken and they say, please, regulators. The problem is, when they get regulated, they say, but not in this way, but in another way. And here, the question is about making them pay. And you can expect that you know, you as a person or any business if the government knocks on your door, and they say that they want to levy more taxes on you or more financial penalties and requirements, you could expect that you will put up a fight. And this is what we have seen consistently.

Google has three open antitrust crazy investigations that span over a decade, Google has paid zero cent to the Commission yet on all these multibillion fines because they are still being fought in the courts in Luxembourg. So I think that you should expect two things. First, very strong lobbying, and secondly, the due process, which works brilliantly in the case of digital markets, because digital markets and digital players, they move fast, they break stuff, they quickly benefit from network effects that allows them to charge and grow revenues fast day by day, this is how they have become one of some of the largest companies in the planet generating revenues that no other company has generated in the history of humankind.

And if you are trying to poke at their model of making money, we have the DMA where we could see potentially eye watering fines against these big tech giants, so no longer just a parking ticket. But maybe you know the cost of half your mortgage where you actually need to pay attention to how much this penalty is going to cost you, that you should expect on that level and then the digital enforcement agency, which if the idea is to make them pay, that they will put up a fight and they will throw sand in the wheels of regulation to try and stop or delay, which has been a tactic that some argue big tech companies have used in the last few years.

**Francine Cunningham:**

Interesting, we've been talking, of course about implementation, and enforcement. But we all know that legislators love to legislate. And there are already reports that the proposed e-privacy regulation, which was meant to replace the cookie directive, and has been deadlocked for years, that that e-privacy regulation will be withdrawn and could be replaced by several new bills, perhaps even additional Fairness Act, covering web cookies, influencer marketing, dark patterns, contract cancellation. So after the DSA and the DMA, we could now get a possibly a DNA additional networks Act, as you mentioned, and an additional Fairness Act, DFA to add to our spaghetti soup, do you believe that the incoming college of commissioners and the new European Parliament will be able to resist pushing out new initiatives like this.

**Javier Espinoza:**

Actually completely not, because as even as you're talking about it, I'm getting excited to think that I might be able to write about a different sort of act tackling some different sort of problem. And actually these two ideas, and others potentially, stem from reality, that the job is only half done. I think that if you have asset of new legislators and new commissioners coming in they will want to set their mark and let people know that they are new that they are fresh and that they are coming with new ideas.

It is very difficult to sell an implementation story, of course this will continue and the train has left the station. This is out of the hands of regulators because its the process that I think the new commission will want to pull out of the bag new shiny toys to show that they are relevant. And I've observed in the last few years that there is a huge need for Brussels to the world why it is relevant, why it matter. You may recall the huge pressure, fragmentation pressure, not fears, not outlandish beliefs that the union might be broken apart, or falling apart. We already saw it with the UK leaving the flock. Just during these parliamentary elections, I was amused to read pamphlets writing out the flexit and what about the mexit so these are real pressures and I believe the EU will do everything they can to keep reminding the world, the citizens, why they should exist and why they are relevant.

**Francine Cunningham:**

Yeah, it's a conversation I've also had with former American colleagues when I worked at the US mission to the European Union. And I had to explain to American diplomats that at EU level, you make your career by producing new regulation. Whereas in the US, you tend to make your career

by really strictly enforcing regulation. So there's almost a different DNA at work there. But I believe listening to the tech industry, that the EU has adopted over 50 laws, 55 Zero laws in the past years, applying to the digital and tech sectors and I mean, that's absolutely huge. And with all of this talk about new initiatives, there's also talk about an initiative around copyright in the context of artificial intelligence, about online gambling, and perhaps more initiatives around targeted ads online. Do you think that on top of all the competition rules that you also cover, the regulatory burden on Tech has become too high?

**Javier Espinoza:**

Well, it depends who you ask. I think that if you ask the regulators, they will say not high enough. And they will point to all these different things that you're highlighting, you know, online gambling, targeted online ads, just on, in the meta case, for instance, with the DMA. The question is, are consumers being ripped off? Is it fair that I'm being given the choice of you get at service for free, but you give me your data, or you pay, and we don't take your data? Is that a fair offer? Or should it be, we give you the service for free and we don't take your data or, we give you the service for free, and we take your data, you choose is that a better sort of equivalent offer to consumers?

So I think that regulators will tell you not enough, we need to do more. I see because I have the privilege to be in between conversations and to have access to also the companies that are being regulated, I can see from their perspective that we have one regulation, one to many, I was in San Francisco a couple of years ago talking to entrepreneurs, and it was quite refreshing, because to them, Brussels is this little pebble inside your shoe that's really annoying, that is not letting you walk faster, and from that perspective, yes, we have way too many regulations. So I'm sorry that this is not a cop out. I'm just trying to give you the two perspectives on you know, do we have too many rules, yes or no.

To me, as a selfish, sorry journalist, the more initiatives and the more that regulators try to go after, you know, these big tech players, the more interesting it becomes, because then I get to write about these big battles, that ultimately let's not forget, will be fought out finally, in Luxembourg, when the court will rule either way, as to whether what Brussels is doing in the digital market, is the right thing to do.

**Francine Cunningham:**

Some tech companies have been calling more for the use of Regulatory Sandboxes, you might say that's a way of trying to slow down regulation as well. And for anyone not familiar with Regulatory Sandboxes, they allow for the live testing of innovations by private companies in a controlled environment under the supervision of a regulator. So in short, it's way for companies to stress test new tools and to check if they're ready for compliance. So of course, that's interesting for companies and industries who want to kind of slow down this incredible, regulatory juggernaut that we're seeing from Brussels at the moment, do you share this interest or enthusiasm for Regulatory Sandboxes?

**Javier Espinoza:**

It's very interesting, I have the weird experience to sit in a windowless room one afternoon in London, listening to the subject about sandboxes, as you do with the glamorous lives that journalists have. And there was a very interesting sort of research, showing that it's really in the interest of incumbents and large tech companies who can afford to do all these tests to have them, as you said at the beginning, because, you know, it stretches the process and the you know, the longer the process goes on, large tech giant, you know, 24 hours, you make him billions, literally every day.

So it is in the incentive for sure to stretch the process. It also, as I understand it, sandboxes can create this false sense of, you know, adhering to the rules, because it's all a very sterilized clinical sort of environment, when you're not really showing what the live system does. And it might, you know, give regulators sort of a false sense of security, that companies are really obeying the rules. So that's on the negative side, it can also skew the regulator's perspective and perception thinking that tests are showing that everything is safe. On the other hand, I think that, you know, testing, the user experience, testing systems, before they become live could also give regulators a perspective, even ideas on how they could in the future, mitigate the wrong use of technology.

**Francine Cunningham:**

Interesting. You and I both have a lot of meetings with commissioning officials, and MEPs. And I think if we're honest, sometimes the level of knowledge of technology is very different.

Some people are very expert, others less so. I remember not too long ago, having a conversation with an MEP. And while we were speaking, he called his assistant from two floors away, because he had to send a text message and he didn't know

how to do it. So sometimes you have MEPs, who you're regulating for technologies that they may not completely understand. But I see this time round when I look at the election results. There are a new breed of tech savvy MEPs. Also coming through, I see even two former employees of meta have been elected to the European Parliament. Do you expect this new breed of techie MEPs to shake things up?

**Javier Espinoza:**

I mean, it's too soon to tell because these techie MPs might not be interested in digital policy. I think the sweet spot is both officials and I too have witnessed extremely senior officials during my time here, who were not able to even operate zoom or a video call. And that's a bit worrying.

But you need both the techie expertise, but also, how do you know this sausage factory operates and works and that I am not sure about these young MEPs. But I would imagine that they don't have a deep knowledge of how the institutions and the process work. So I think you need to be strong on these two muscles at the same time. And I think that to get to somebody who has both the technological expertise, and also the way of how the machine works, I think that's going to be rare.

**Francine Cunningham:**

Just maybe one glance, towards the next few weeks, when the top jobs at EU level are going to be shared out, is looking at the moment, like the current commission president, Ursula von der Leyen, it seems to be the favourite to return to the top of the European Commission. And the European Parliament, as we know, is due to elect a new president and vice presidents in mid July, and the MEPs will come and sit in committee for the first time during the week of 22<sup>nd</sup> to the 25<sup>th</sup> of July. Now it's probably an unfair question. But any predictions about the top jobs?

**Javier Espinoza:**

Yes, I think, you know, it's super difficult to make predictions, because everything is very volatile, I just think and closer to our world of competition in digital, if the situation develops as it is, which is that it's very likely that the person who has been at the top for the last decade leaves her position, it's going to be a very different scenario with you know, we're likely to see, obviously, if the French get this portfolio of competition, it will be incredible, I think that they will face a lot of opposition. So we're likely to see a candidate from a small member state, who potentially has no clue about competition policy in all the cases.

So we might see a period of perhaps weaker, no news, which will be welcomed by people like myself for a few months before they get their head around. But I do see that beyond the top jobs in this area, that the train, as I said, has left the station. And what we will see is hyper activity from Brussels, regulating big tech in levying record fines that we've never seen before going after business practices they should have gone after years ago. So it will be a very interesting future. And I cannot wait.

**Francine Cunningham:**

Well, it just remains for me to say thank you so much Javier for all of the insights. I know there's some breaking tech news today and you need to run off. So thank you again for your time, and I'm really excited to see what's going to happen over the next weeks and months.

**Javier Espinoza:**

Thank you so much for having me.

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