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Expansive EU Industrial Policy under Treaty Constraints on Industrial Competence

Rozwój unijnej polityki przemysłowej w świetle traktatowych ograniczeń kompetencji UE w dziedzinie przemysłu

Abstract

The article examines the mismatch between the limited competence conferred on the Union under the TFEU with respect to industry and the broader legal architecture through which the EU pursues industrial policy objectives. It aims to identify the legal bases underpinning contemporary EU industrial policy and to explain why article 173 TFEU cannot alone account for its current form. The analysis is based on a doctrinal examination of TFEU provisions and a dataset of EU policy documents and legal instruments implementing objectives such as structural transformation, competitiveness, decarbonisation, digitalisation, resilience, and support for strategic sectors. The article analyses the relationship between *industry* as a TFEU -based competence category and *industrial policy* as a functional category spanning several fields of Union action. It argues that contemporary EU industrial policy is constructed through a plurality of legal bases rather than a single industrial competence. The conclusion is that the limited scope of article 173 TFEU does not preclude the emergence of an EU industrial policy, but explains its fragmented and cross-sectoral legal form.

Keywords: Industrial Policy, European Union, EU Competences, Article 173 TFEU, Competitiveness.

JEL: K10, K23, K20, L52, O25

Streszczenie

Punktem wyjścia jest rozbieżność między ograniczoną kompetencją traktatową UE w dziedzinie przemysłu a szerszą architekturą prawną, za pomocą której UE realizuje cele swojej polityki przemysłowej. Celem artykułu jest identyfikacja podstaw prawnych współczesnej polityki przemysłowej UE oraz wyjaśnienie, dlaczego art. 173 TFUE nie pozwala samodzielnie uchwycić jej obecnego kształtu. Analiza opiera się na dogmatycznym badaniu postanowień traktatowych oraz podstaw prawnych zbioru dokumentów politycznych i aktów prawnych UE służących realizacji takich celów jak transformacja strukturalna, konkurencyjność, dekarbonizacja, cyfryzacja, odporność oraz wsparcie sektorów strategicznych. Artykuł analizuje relację między „przemysłem" jako traktatową kategorią kompetencyjną a „polityką przemysłową" jako kategorią funkcjonalną, obejmującą kilka dziedzin działania Unii. W artykule wskazano, że współczesna polityka przemysłowa UE jest konstruowana za pomocą wielu podstaw prawnych, a nie jednej kompetencji przemysłowej. Wniosek jest taki, że ograniczony zakres art. 173 TFUE nie wyklucza powstania polityki przemysłowej UE, lecz wyjaśnia jej fragmentaryczną i międzysektorową formę prawną.

Słowa kluczowe: polityka przemysłowa, Unia Europejska, kompetencje UE, Artykuł 173 TFUE, konkurencyjność.

JEL: D02K10, K23, K20, L52, O25

1. Introduction

The European Union placed competition at the core of its project from the 1980s onwards, establishing the Single Market, restricting national subsidies, pursuing vigorous antitrust enforcement, and developing policies aimed at enhancing Europe's competitiveness in global markets (McNamara, 2023). The context has since changed. As trade wars and geopolitical tensions have re-emerged in the global economy, industrial policy has returned to the centre of economic governance. Strategic competitiveness has become its dominant rationale, alongside objectives such as climate change mitigation, resilience and security (Evenett et al., 2024). The European Union has followed this shift, placing increasing emphasis on investment in clean and digital technologies, economic sovereignty and resilience, competitiveness and prosperity, and the scaling-up of firms in sectors such as services, energy, defence, finance, electronic communications, and digital markets (von der Leyen, 2024a, 2022).

Contemporary EU industrial policy is therefore articulated as a comprehensive agenda of economic transformation. Yet, within the TFEU framework, industry remains an area of supporting, coordinating or supplementing competence, which may not entail harmonisation of member states' laws or regulations. This gives rise to the central constitutional puzzle addressed in this article: how can the Union pursue an expansive industrial policy agenda with limited, supporting and non-harmonising TFEU competence?

2. Methodology

The research gap lies in the absence of a systematic legal account of how contemporary EU industrial policy objectives are articulated and implemented across the TFEU framework, despite the limited, supporting and non-harmonising competence conferred by articles 6 and 173 TFEU. The research question is therefore how those objectives are legally articulated and implemented within that framework.

To answer this question, the analysis examines three issues: first, the legal and policy instruments through which the contemporary EU industrial policy agenda is articulated; second, the role that article 173 TFEU plays within the legal architecture of that agenda; and third, the bases within the TFEU through which industrial policy objectives are implemented across other fields of Union action. For this purpose, the article relies on a dataset, presented in appendix I, comprising sixty instruments and policy documents relevant to the contemporary EU industrial policy agenda.

The dataset was assembled in three steps: identifying the principal Commission and Joint Communications articulating EU industrial policy objectives; extracting the legal instruments expressly referred to in them; and adding further instruments implementing the same objectives in other fields of Union action. No claim of exhaustiveness is made; the dataset is intended to capture the principal instruments and policy documents necessary for the present legal analysis. The dataset is organised into three groups on a functional and source-based basis.

3. Defining Industrial Policy and its Intellectual Origins

Industrial policy is a contested concept, not least because its meaning has shifted across distinct historical, institutional, and ideological contexts. One survey of the literature identifies almost twenty variations of the term (Warwick, 2013). When interpreted narrowly, *industrial policy* denotes selective state intervention directed specifically at industry, especially at particular sectors or technologies. At the other end, broader approaches extend the concept to virtually any form of state intervention affecting production, competitiveness, or structural change. Between these poles lies a wide range of intermediate conceptions.

In its narrower, analytically more useful sense, *industrial policy* refers to deliberate state intervention in the market aimed at supporting selected firms, sectors, or industries (Warwick, 2013). More precisely, Pack & Saggi (2006) define it as selective state intervention intended to restructure production in favour of sectors expected to generate stronger growth than would emerge under market equilibrium. Noland & Pack (2003) describe it as an effort to redirect sectoral structure towards activities believed to offer better long-term prospects than those generated by industrial evolution under static comparative advantage. According to that understanding, industrial policy typically operates through trade measures as well as targeted subsidies, preferential credit, subsidised energy prices, and public support for research and development (Noland & Pack, 2003; Labrunie et al., 2020; Hufbauer & Jung, 2021).

Although practices resembling industrial policy can be traced back to earlier mercantilist and protectionist strategies (Goldthwaite, 2009), the foundational debate on industrial policy emerged in the late eighteenth and nineteenth centuries. At its centre stood the *infant industry* argument, according to which promising domestic industries may require temporary and selective protection until they attain sufficient maturity to withstand foreign competition (Lopes-Valença, 2022). Within that debate, Alexander Hamilton and Friedrich List articulated the case for state support as a means of fostering national productive powers and enabling late-industrialising states to narrow the gap with Britain's industrial supremacy. The *infant industry* argument was contested from the outset by classical liberals. Adam Smith and David Ricardo defended free trade and comparative advantage, maintaining that selective intervention distorted the natural allocation of capital and thereby reduced aggregate welfare. According to this view, states should accept the pattern of specialisation implied by Ricardian comparative advantage, since investments determined by market forces would naturally find their most productive uses. List, by contrast, argued that industrialisation was indispensable to national prosperity and that strict adherence to comparative advantage would disperse the capital needed to develop domestic industry.

Although industrial policy has intellectual roots in neomercantilist thought, classical industrial policy is more accurately situated within developmentalism, while modern mission-oriented industrial policy should not be equated with neomercantilism.

3.1. Classical Industrial Policy and the Developmental State

In practice, however, classical industrial policy is most commonly associated with the post-Second World War trajectories of Japan, South Korea, and Taiwan, which are typically described in the literature as developmentalist or neo-Listian. In those cases, industrial policy was treated as a central instrument of industrial transformation, technological upgrading, and international competitiveness (Johnson, 1982; Amsden, 1989; Wade, 1990; Weiss, 1995; Chang, 1996; Thurbon, 2016; Andreoni & Chang, 2019). This logic became closely associated with late industrialisation, namely how later-industrialising economies could catch up with already advanced industrial powers through selective and provisional intervention in strategic sectors (Andreoni & Chang, 2019; Thurbon, 2016). Its central logic remained selective, sectoral, and temporary: the state intervened not to replace markets as such, but to accelerate industrial upgrading, redirect investment toward strategically significant sectors, and alter the structure of production beyond what would have emerged under static comparative advantage alone (Thurbon, 2016). Developmentalism, therefore, recasts industrial policy not merely as a justification for selective intervention, but as a question of institutional design: how to equip the state with sufficient informational embeddedness and bureaucratic autonomy to pursue structural transformation without succumbing to rent-seeking or policy failure.

Neoliberal critiques of developmentalism are commonly structured around two objections: ignorance and capture. Milton and Rose Friedman argued that protected sectors tend already to possess political representation and that protection therefore becomes durable, serving organised beneficiaries rather than long-term structural transformation. Friedrich Hayek, by contrast, stressed the epistemic problem: the state lacks the knowledge required to direct industrial development, since only competition can reveal which sectors and technologies are genuinely productive. The developmentalist response did not deny these problems, but sought to mitigate them institutionally. Peter Evans' (1989; 1995) notion of *embedded autonomy* and Linda Weiss' (1995) concept of *governed interdependence* explain how developmental states could combine close information exchange with the private sector and sufficient insulation from particularistic pressure.

Post-war Western European reconstruction, the Marshall Plan, and early supranational industrial coordination within the ECSC and later the EEC also involved important elements of industrial policy, including sectorally differentiated support, investment coordination, and state-led industrial modernisation. However, unlike the East Asian cases, these experiences are more cautiously described as forms of post-war industrial policy rather than as developmentalism in the strict sense, since the latter is more closely associated with late industrialisation and the institutional logic of the developmental state.

3.2. Modern Industrial Policy

The 2008 financial crisis, the 2015 eurozone crisis, the 2020 pandemic, Russia's invasion of Ukraine in 2022, and the ongoing US-China trade conflict have intensified concerns about resilience, reindustrialisation, economic security, and strategic autonomy. Accordingly, the current debate on industrial policy has increasingly been driven by attempts to respond to contemporary economic, technological, and geopolitical pressures. It has re-emerged not merely as a corrective to market failures or as a tool of catch-up industrialisation, but as an instrument for steering structural transformation under conditions of heightened systemic vulnerability. Politically, the debate now focuses less on whether industrial policy should be used at all and more on how it should be designed and implemented effectively (Mazzucato, 2018; Labrunie et al., 2020). Modern industrial policy is therefore best understood not as a break with developmentalism, but as its reorientation. Whereas classical industrial policy centred on late industrialisation, structural catch-up, and the selective promotion of strategic sectors, modern industrial policy increasingly focuses on the direction of technological change itself and on the pursuit of broader societal missions through coordinated state action.

By far the most influential formulation of this newer turn is Mariana Mazzucato's account of the entrepreneurial state and mission economy, articulated in the idea of mission-oriented policy (Mazzucato, 2018). Her contribution lies in reframing industrial policy around public missions linked to societal challenges. Within this framework, the state should not identify in advance which firms will succeed commercially, but should define broader public missions and steer innovation towards socially desirable ends, such as decarbonisation, resilience, or strategic autonomy (Mazzucato, 2018; Mazzucato et al., 2020). Therefore, industrial policy is not limited to correcting market failures or accelerating industrial upgrading. It also serves to determine which transformations ought to occur and to organise public and private investment accordingly. In mission-oriented policies, picking directions is not the same as *picking winners* in the traditional sense of selecting individual firms or sectors (Mazzucato, 2018).

Aiginger and Rodrik (2020) define *industrial policy* as proactive government policies to diversify and upgrade economies beyond simply freeing up markets. According to this definition, what distinguishes modern industrial policy from earlier developmentalist approaches is not only support for structural change, but also a normative stance on the direction of technological development. Modern industrial policy should thus pursue societal and environmental objectives alongside manufacturing. According to Aiginger and Rodrik (2020), it should address a broader set of coordinated measures extending beyond sectoral intervention, including horizontal and vertical policies, public–private collaboration, alignment with competition and regional policy, and the active steering of technological change towards socially desirable outcomes. Unlike earlier developmentalist approaches, the newer approach reframes the problem of ignorance by embedding industrial policy in a prior normative vision of socially desirable transformation. In this sense, modern industrial policy is less about selecting from a pre-existing menu of sectors and more about formulating the direction of future technological and industrial development itself (Andreoni & Chang, 2019).

According to Juhász et al. (2022), *industrial policy* is goal-oriented state action intended to shape the composition of economic activity by changing relative prices across sectors or directing resources toward selectively targeted activities, to shift the long-term structure of the economy; importantly, such policies may operate at national or extranational level and may be financed by national governments, supranational bodies, or combinations thereof. Modern industrial policy is therefore often articulated across multiple levels of governance and tied to cross-sectoral transformation rather than to the promotion of discrete industries alone. McNamara (2023) argues that EU industrial policy focuses on actively shaping complex global supply chains across key strategic areas in manufacturing, raw materials, and innovative technologies.

Alongside long-standing concerns regarding productivity and competitiveness, modern industrial policies increasingly address climate change, decarbonisation, job quality, population ageing, urban mobility, strategic autonomy, the resilience of key supply chains, and the need to steer technological change. Initiatives such as the EU's Green Deal, New Industrial Strategy, European Economic Security Strategy, Horizon 2020, and IPCEI framework, the US Inflation Reduction Act, the Infrastructure Investment and Jobs Act, the CHIPS and Science Act, the German High-Tech Strategy, the French Production Pact, the British Industrial Strategy, and China's Made in China 2025 and Belt and Road Initiative all seek, in different ways, to integrate these objectives (Aiginger & Rodrik, 2020; Labrunie et al., 2020; McNamara, 2023; Shih, 2023; Criscuolo & Lalanne, 2024).

3.3. Critical Assessment

Certain criticisms cut across both classical and modern variants of industrial policy, most notably concerns about selective allocation, rent-seeking, inefficiency, and anticompetitive effects. Pack and Saggi (2006) note that proponents of efficient markets dismiss industrial policy as fiction or rent-seeking, while those highlighting market failures see it as essential for development. They find that in the early stages of globalisation, amid growing global competition and increasingly complex supply chains, sectoral specialisation largely followed comparative advantage. Facilitating foreign firm entry proved a more efficient way to reduce domestic costs than selective government intervention targeting specific firms or industries with high learning potential and spillovers. That critique, however, is best understood as part of the broader economic debate on industrial policy in developmental contexts, rather than as a complete account of developmentalism itself.

Critics of modern industrial policy argue that its move from *picking winners* to *picking directions* does not remove selectivity, but merely reframes it. Yet the distinction is not absolute, since directing technological change towards publicly defined missions still entails selective allocation, prioritisation, and exclusion. As Aiginger & Rodrik (2020), and likewise Andreoni & Chang (2019), suggest, modern industrial policy increasingly relies on a prior normative vision of desirable technological change rather than on the empirical discovery of promising sectors. This raises the risk of political arbitrariness. Pradella (2017) argues that Mazzucato's mission-oriented approach may presuppose an overly idealised image of the state as a coherent representative of the public interest. Similarly, Vogel (2018) and Copley

& Moraitis (2021) warn against moving from the claim that states shape markets to the stronger and less secure claim that they can deliberately remake them in normatively preferred directions. Modern industrial policy, therefore, risks not only capture, but also idealism and voluntarism in its theory of the state. Moreover, while targeted policies are increasingly seen as tools for steering technological change towards sustainable and inclusive growth, they also raise concerns about the global level playing field and protectionism, while posing risks of anticompetitive effects, rent-seeking, and inefficient use of public funds (Criscuolo & Lalanne, 2024).

4. Treaty Framework for the Union's Industrial Policy: Article 173 TFEU

Unlike a state, the Union acts within a system of conferred competences established by the *Treaties* (the TFEU and the Treaty on European Union, see: article 2 TFEU). This system distinguishes between exclusive, shared, and supporting, coordinating or supplementing competences, and allocates them between the Union and the member states across specific fields of action. In areas of exclusive competence, only the Union may legislate and adopt legally binding acts, while the member states may act only if empowered by the Union or for the implementation of Union acts (Article 2(1) TFEU). In areas of shared competence, both the Union and the member states may legislate, but the exercise of Union competence limits the exercise of national competence to the extent that the Union has acted (article 2(2) TFEU). By contrast, in areas of supporting, coordinating or supplementing competence, Union action remains auxiliary and cannot supersede member state competence or entail harmonisation of national laws or regulations (Article 2(5) TFEU).

Under article 6(b) TFEU, the area of industry is categorised as a supporting, coordinating or supplementing competence. Accordingly, Union action in this regard remains structurally more limited than action taken under shared competences such as the internal market or environmental policy. Article 173 TFEU further specifies this competence by providing that *the Union and the Member States shall ensure that the conditions necessary for the competitiveness of the Union's industry exist*. The objectives listed in article 173(1) TFEU are limited to *speeding up the adjustment of industry to structural changes; encouraging an environment favourable to initiative and to the development of undertakings throughout the Union, particularly small and medium-sized undertakings; encouraging an environment favourable to cooperation between undertakings*; and *fostering better exploitation of the industrial potential of policies of innovation, research and technological development*. These objectives remain limited and primarily linked to internal competitiveness.

Article 173(2) TFEU reinforces the limited character of the Union's competence with respect to industry, limiting Union action to necessary coordinating measures. Measures such as guidelines, indicators, exchanges of best practice, and monitoring mechanisms are designed to facilitate coordination. Article 173 TFEU, therefore, does not authorise the Union to impose a uniform industrial policy on the member states, but confines Union action to a coordinating and supportive role complementary to national industrial policies. Union action under article 173 TFEU is thus contingent on the need for coordination and remains auxiliary to the competences of the member states. Under the first subparagraph, second sentence of article 173(3) TFEU, the Union *may decide on specific measures in support of action taken in the Member States to achieve industrial objectives, excluding any harmonisation of the laws and regulations of the Member States*. Under the second subparagraph of article 173(3) TFEU further provides that measures adopted based on that provision may not entail a distortion of competition, reflecting the subordinate position of EU-level industrial policy within the TFEU, structured around internal market and competition-law constraints (Dermine & Patrin, 2024; Deffains et al., 2020).

In light of the above, article 173 TFEU does not confer on the Union a general competence to conduct industrial policy. However, the first sentence of the first subparagraph of article 173(3) TFEU is of significant importance for this study. Under that provision, the Union *shall contribute to the achievement of the objectives set out in Article 173(1) TFEU through the policies and activities it pursues under other provisions of the Treaties*. It does not create a general competence, but provides a legal pathway for pursuing industrial policy objectives through other Treaty competences. This constitutes the central puzzle of this study: how are industrial policy objectives pursued by the Union in the absence of a general industrial policy competence?

5. Main Findings from the Dataset

This section uses the dataset introduced in section 2 to identify the Treaty bases and legal pathways through which industrial policy objectives are pursued across Union action. Dataset (see: *Table A1: EU Industrial Policy legal acts and regulations*) provides the empirical foundation for assessing the Treaty legal bases of contemporary EU industrial policy beyond article 173 TFEU.

The dataset reveals a broader feature of the contemporary EU industrial policy architecture: a marked heterogeneity of legal forms, ranging from regulations, directives, and decisions to Commission Communications, Joint Communications, and State aid frameworks. Other soft-law instruments, including guidelines, may also form part of that landscape, but they are not necessary for the purposes of the present inquiry. Five main patterns emerge from dataset.

5.1. Commission Communications as EU Industrial Policy Articulation

As the study shows, the articulation of the Union's industrial policy has largely taken the form of Commission Communications, including Joint Communications. While such instruments do not constitute binding legal acts under article 288 TFEU, any binding force they may produce remains confined to the Union's institutional framework. In particular, they may bind their authors as self-imposed rules governing the future exercise of their discretion. By contrast, the Union institutions to which they are addressed are political, rather than legal, addressees. Their significance is therefore primarily structural and programmatic: they articulate policy positions and strategic direction, specify existing Union objectives, identify new ones, and structure the legislative agenda through which those objectives may subsequently be given legal effect. Accordingly, industrial policy objectives can only be implemented through binding acts, within the meaning of article 288 TFEU, adopted across different fields of EU law. This is constitutionally significant, since the Commission, as the Union institution vested with legislative initiative, uses communications to articulate industrial policy and prefigure the legislative measures through which it may be implemented.

5.2. Supporting Role of Article 173 TFEU

A second pattern concerns article 173 TFEU as the first Treaty basis examined in the dataset and the limited autonomous role it performs within the legal architecture mapped in appendix I. Across appendix I, only a limited number of instruments rely on article 173 TFEU as a stand-alone legal basis. Its function is predominantly supportive. The provision is most often invoked in combination with other Treaty bases, especially article 114 TFEU, the cohesion and funding competences under title XVIII TFEU, and the research, technological development, and space competences under title XIX TFEU, in instruments concerned with technological development, industrial support, coordination, investment, capacity-building, and internal-market integration. Within the dataset, article 173 TFEU is also combined with articles 212(2) and 322(1) TFEU. In that capacity, it contributes to the institutional framework of EU industrial policy and supports transparency and information exchange between the member states and the Commission, intergovernmental cooperation, and Union coordination and financing. Therefore, the legal implementation of industrial policy objectives depends primarily on other Treaty competences. That pattern follows from the Treaty framework, under which industry falls within the category of supporting competences, and from the design of article 173(3) TFEU itself, which excludes harmonisation and channels Union action to attain industrial policy objectives through measures pursued under other Treaty provisions.

5.3. Centrality of Proxy Treaty Legal Bases

A third pattern concerns the centrality of Treaty bases located outside the industry title. Appendix I shows that the binding legal implementation of industrial policy objectives occurs primarily through competences other than article 173 TFEU. Particularly prominent are articles 114 TFEU (internal market harmonisation) and 192(1) TFEU (environmental policy), while the same structural logic extends to articles 175–177, 182–188, 194, and 207 TFEU, which govern economic, social and territorial cohesion, research and technological development, space, energy, and the common commercial policy. The dataset thus shows a functional spillover of industrial policy objectives across internal market, environmental, cohesion, research, energy, trade, and related policy instruments, confirming that the grouping adopted in appendix I tracks the legal pathways through which those objectives are implemented. Those provisions may be used alongside article 173 TFEU, as noted in pattern 2, but their broader scope and greater flexibility also allow them to function as autonomous legal bases for the implementation of industrial policy objectives articulated in Commission Communications, as shown in pattern 1, even where such objectives are not expressly framed under article 173(1) TFEU, and article 173 TFEU is not relied upon as the legal basis of the act concerned. In that capacity, they also contribute to the institutional framework of EU industrial policy. Proxy legal bases thus allow the Union to implement industrial policy without relying on Treaty competences formally associated with industry.

This pattern reflects the gap between the limited competence conferred with respect to industry and the broader set of objectives pursued in practice as part of contemporary EU industrial policy. That development is not wholly external to the Treaty framework, since article 173(3) TFEU itself envisages the pursuit of industrial policy objectives through measures adopted under other Treaty provisions. At the same time, the scale, intensity, and transformative reach of the measures now used for that purpose go well beyond the narrow and supporting role conventionally associated with the Union's competence with respect to industry. In practice, this renders article 173 TFEU non-essential to the legal implementation of many industrial policy objectives and enables the Union to pursue an articulated industrial policy through proxy legal bases, without relying directly on Treaty competences formally associated with industry.

5.4. Articles 114 and 192(1) TFEU as the Pivotal Proxy Legal Bases

Among the proxy legal bases identified in appendix I, articles 114 TFEU (internal market harmonisation) and 192(1) TFEU (environmental policy) occupy a particularly important position. Their significance lies in the fact that, unlike article 173 TFEU, they are capable of sustaining binding measures of a harmonising and market-shaping character and thus have become the principal legal pathways through which the Union is able to implement articulated industrial policy objectives by means of harmonising legislation. This is especially important, because those areas fall within shared competence under article 4 TFEU, where, under article 2(2) TFEU, the Union may adopt binding legislation and, to the extent that such competence is exercised by the Union, the exercise of national competence is correspondingly limited. Once exercised, such competences may therefore produce effects functionally analogous to exclusive Union action. The practical consequence is that industrial policy objectives, for which the Union is equipped only with a supporting competence under article 173 TFEU, may in practice be implemented through legal bases capable of sustaining far more intensive, harmonising and highly centralised Union legislation. Article 192(1) TFEU enables the adoption of broad horizontal environmental measures aimed at the green transition. As regards the legal and economic effect, however, such measures extend far beyond the narrow interpretation of environmental protection. This is particularly visible in the broad cluster of Green Deal-related instruments identified in appendix I, including the ETS reform, CBAM, the European Climate Law, and the Industrial Emissions Directive, all of which extend well beyond environmental protection in the narrow sense and shape the regulatory conditions of production, competition, and decarbonisation across the economy. They shape industrial transformation across multiple sectors of the economy by influencing production requirements, industrial processes, investment choices, mobility, and patterns of energy production and use by both businesses and consumers. In that sense, article 192(1) TFEU appears to serve as a pivotal proxy legal basis through which articulated industrial policy objectives may be implemented by means of broad horizontal environmental legislation. Given the ambition, breadth, and transformative effects of measures adopted on that legal basis, such legislation appears, from a functional perspective, to operate as a vehicle for the implementation of industrial policy objectives.

Article 114 TFEU is similarly broad in its practical capacity to implement industrial policy objectives. Since it permits harmonisation for the establishment and functioning of the internal market, it provides the Union with a legal basis capable of structuring production conditions, market access, product standards, and competitive conditions across sectors. In that sense, article 114 TFEU functions not only as an internal market provision in the narrow sense, but also as a central legal pathway through which industrial policy objectives may be implemented by means of harmonising legislation. The *Tobacco Advertising* judgments mapped the boundaries of the application of article 114 TFEU and confirmed the breadth, though not the unlimited reach, of that provision (see: Case C-376/98 Germany v. Parliament and Council, ECLI:EU:C:2000:544; and Case C-380/03 Germany v. Parliament and Council, ECLI:EU:C:2006:772, para. 80). Its core limitation is that recourse to article 114 TFEU requires a measure genuinely aimed at improving the conditions for the establishment and functioning of the internal market. Objectives external to article 26 TFEU, such as health protection, environmental protection, and industrial or competitiveness objectives of the kind reflected in article 173 TFEU, may be pursued only insofar as they remain ancillary to the internal market aim. Nor may article 114 TFEU be relied upon where another legal basis is more appropriate, as illustrated by the *Waste Directive* and *Waste Shipments* judgments, in which the internal market effects were treated as secondary and the measures were instead located under the environmental title (see: Case C-155/91 Commission v Council, ECLI:EU:C:1993:98; and Case C-411/06 Commission v Parliament and Council, ECLI:EU:C:2009:518).

5.5. External-economic Dimension

A fifth pattern concerns the external-economic and security dimension of contemporary EU industrial policy. Appendix I reveals a distinct cluster of instruments whose function is protective, screening, anti-coercive, or geo-economic in character. This is particularly visible in instruments such as the Foreign Subsidies Regulation, FDI screening, the Anti-Coercion Instrument, and the International Procurement Instrument. Such measures do not support industry in the classic sense of direct financial assistance, coordination, or innovation policy. They protect the internal market against external distortions, manage strategic dependencies, and shape the competitive conditions under which firms established in the Union operate. Although market protection is a characteristic element of classic industrial policy, in the EU context these instruments are not protectionist or isolationist in any strict sense. Their function is instead reactive and corrective: they respond to external economic policies and seek to neutralise their distortive effects on the Union market. In that respect, their primary aim is to preserve a level playing field on the internal market and to equip the Union with countermeasures operating in accordance with the principle of reciprocity under international law. This is moreover consistent with the Union's broader commitment to open markets and competition, within which protective effects are pursued primarily through regulatory frameworks imposing high product standards and stringent production requirements instead of relying mainly on classical exclusionary trade protectionism. For instance, the Foreign Subsidies Regulation addresses mergers and public procurement procedures involving undertakings subsidised by non-EU governments; FDI screening is aimed at scrutinising foreign takeovers in strategic sectors; and the Anti-Coercion Instrument equips the Union with a trade tool for responding to economic coercion by third countries, thereby helping to preserve a level playing field in the internal market. From a functional perspective, those instruments form part of the legal architecture through which the Union pursues industrial policy objectives by means of trade- and security-adjacent regulation. The dataset, therefore, shows that the external dimension of EU industrial policy forms a structurally embedded part of the broader plurality of Treaty bases and legal pathways through which that policy is implemented.

6. Discussion

As this study shows, Union industrial policy includes a plurality of objectives, including the green and digital transitions, competitiveness, Single Market resilience and the mitigation of dependencies and geopolitical vulnerabilities. As McNamara (2023) notes, EU industrial policy actions are sprawling, diverse, interconnected and difficult to fit into a simple classification. Much of this agenda does not fall within *industry* as a Treaty-based competence category. For instance, that competence does not cover the external-economic dimension of Union industrial policy, comprising instruments on foreign subsidies, FDI screening, anti-coercion, procurement reciprocity and economic security, as illustrated in pattern 5. The same point is increasingly visible in defence, where the development of a strong and resilient European defence industry is treated not only as a security objective, but also as a means of supporting European competitiveness, regional development and economic growth (European Commission, 2025). This illustrates a broader point: contemporary industrial policy objectives incorporate social, environmental, security and strategic aims, and are therefore necessarily distributed across several areas of Union competence.

This follows from the concept of *industrial policy* itself, which is a broad term describing a set of actions rather than a concrete institutional tool or a single legal agenda. Taken together, the five patterns show that Union industrial policy operates as an umbrella term for government policies or interventions aimed at improving the business environment or altering the structure of economic activity, as described by Vander Vennet & De Cock (2025). Mission-oriented policy helps explain why formally distinct instruments may be integrated into a single industrial policy agenda organised around common objectives. It does not create new competences, but structures the use of existing ones around shared objectives. Accordingly, insofar as industrial policy is understood as a functional category defined by objectives, it is difficult, under the principle of conferral, to reduce it to a single competence to conduct industrial policy.

The study shows that, in the context of an expanding industrial policy agenda, EU law does not operate through a single *industry* competence under article 173 TFEU, but through a plurality of Treaty legal bases, as shown in patterns 2-4. This finding makes it necessary to distinguish between *industry* as a Treaty-based competence category and *industrial policy* as a functional category. The term *industry*, as used in the Treaty classification of competences, does not exhaust the legal analysis of the Union's capacity to pursue industrial policy objectives. Therefore, the semantic overlap between *industry* and *industrial policy* is not decisive for the analysis of Union competence. In light of the above, the dataset's plurality of legal bases is neither surprising nor accidental. It appears to be a constitutional necessity.

This distinction also has consequences for the legality of Union action. While under article 173(3) TFEU, industrial policy objectives may be pursued through other provisions of the Treaties, the relevant legal question is whether the pursuit of those objectives can be lawfully accommodated within the scope of application of the specific proxy legal basis on which a given legal act is adopted. For instance, according to case law, measures pursuing industrial policy objectives may be adopted on the basis of article 114 TFEU only where they are genuinely intended to improve the conditions for the establishment and functioning of the internal market. Article 114 TFEU is therefore less well suited to instruments primarily directed at the Union's external competitiveness.

The Draghi and Letta reports identify fragmentation as a significant factor weakening Union industrial policy, pointing to uncoordinated decision-making, issue-by-issue bargaining within separate sub-committees, and divergent national responses that undermine collective effectiveness (Draghi, 2024a; Letta, 2024). Both call for stronger governance and a more coherent coordination framework. This fragmentation is attributed to the weakness of the Union's legal competence to pursue industrial policy and more broadly to the tension between industrial policy ambition, internal-market discipline and competition law constraints (Draghi, 2024a; Letta, 2024; Hornkohl & Pelekis, 2025).

According to this view, the classification of industry as an area of supporting competence, the lack of dedicated legal bases and instruments, and the resulting reliance on proxy legal bases systematically prevent the emergence of a coherent supranational industrial policy. This is consistent with Landesmann & Stöllinger's (2020) observation that such strategies remain vulnerable to incoherence, overlapping initiatives and insufficient critical mass.

In this context, the European Parliament's earlier 2023 proposal to amend the Treaties by moving industry to the category of shared competences in article 4 TFEU requires caution (European Parliament, 2023). If *industrial policy* is understood as a functional category rather than as a synonym for the Treaty competence of *industry*, the mere recategorisation of industry as a shared competence would not necessarily resolve the problem identified above. Since, in areas of shared competence, member states exercise their competence only to the extent that the Union has not exercised its own, the amendment could limit the ability of member states to pursue their own, more ambitious industrial policy, even where those measures remain consistent with Union industrial policy. The proposal, therefore, appears potentially counterproductive. Any such amendment would require a clarification analogous to article 4(3) TFEU in relation to research, technological development and space, ensuring that the Union's exercise of competence does not preclude the member states from exercising theirs. No such clarification has been proposed.

The absence of a realistic prospect of sufficient political will among the member states to amend the Treaties in the foreseeable future explains why the Draghi and Letta reports frame their responses to the problem of fragmentation less as a question of competence recategorisation and more as a broader issue of governance, coordination and institutional capacity. Moreover, the Draghi Report adds an economic dimension to this diagnosis, linking the Union's low competitiveness to structural shortcomings, including weak productivity growth, insufficient innovation capacity, high energy costs, fragmented capital markets, underinvestment and strategic dependencies. This shows that a stronger industrial competence would not, by itself, resolve the shortcomings of Union industrial policy. These structural shortcomings also explain why the Union's industrial policy response relies on a combination of instruments across different policy areas. Against that background, Draghi argues that without necessarily requiring an immediate redistribution of Treaty competences, a new industrial strategy for Europe depends on changes to the Union's mode of functioning, including its institutional setup, decision-making processes, and mechanisms for coordinating action across policy fields (Draghi, 2024a; Draghi, 2024b). To do so, for instance, Draghi proposes the introduction of the Competitiveness Coordination Framework, EU Competitiveness Priorities, Competitiveness Action Plans, Competitiveness IPCEIs and a Competitiveness Joint Undertaking. These proposals further illustrate the reliance on a plurality of legal bases, since the report indicates that articles 121, 122, 151, 160, 170 and 329 TFEU may provide legal bases for the implementation of its recommendations. The report further suggests that where political agreement cannot be reached, recourse may be had to enhanced cooperation under article 20 TEU. Letta (2024) stresses the need for a shift in governance capable of supporting a dynamic and effective European industrial policy by prioritising directly applicable regulations over directives, favouring maximum harmonisation and mutual recognition, limiting gold-plating in national implementation, and strengthening the consistent enforcement of Single Market rules. Moreover, Letta has called for even greater involvement of the social partners, employers and workers, and a strengthening of social dialogue at the EU level.

In light of the findings of this study, these proposals confirm that the central problem is not merely the absence of a stronger industry competence, but the need to coordinate the exercise of multiple existing competences through which industrial policy objectives are already pursued. They should therefore be understood as attempts to render the Treaty's plural framework operationally coherent. In that sense, they seek to operationalise Union industrial policy through stronger coordination, more disciplined implementation, and more coherent governance.

Taken together, the findings of this study show that contemporary EU industrial policy objectives are legally articulated through strategic and programmatic instruments, above all Commission Communications and related policy documents, but are implemented through a plurality of Treaty bases situated outside article 173 TFEU. Article 173 TFEU therefore performs a dual role: it identifies the Treaty's express competence with respect to industry and defines its limits, while Article 173(3) TFEU confirms that industrial objectives may be pursued through other Treaty provisions. The result is not general Union competence to conduct industrial policy, but a composite legal architecture in which industrial policy objectives are mediated through the conditions, procedures and limits of other fields of Union action. The current Union agenda seeks to operationalise this plural framework more intensively.

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Appendix

The dataset accompanying this article is available in the online supplementary appendix at the journal's website.