



DIALOGUE AND DEBATE: SYMPOSIUM

EU industrial policy as back-to-front industrial policy

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Abstract

Industrial policy is a substantial enterprise that goes to refashioning the structures of economic activity to realise public goals. To that end, it historically relies on a State-industry resettlement that recasts State-industry relations. This resettlement also generates the economic knowledge that is a prerequisite for achieving these goals and sets out new forms of collective action to stymie change. However, until the 2024 reforms incorporating it within the European Semester, EU Industrial Policy was not associated with any such resettlement. This weak institutionalisation meant, *inter alia*, its goals proliferated in an undisciplined way, industrial knowledge was weakly embedded, and the Commission was more concerned with vetting than cultivating new forms of collective action. If this policy thus centralised considerable power within the Commission, there is good reason to be sceptical about what will be achieved. To that end, this article argues for an Inter-Institutional Agreement that would both temper these problems and ensure this policy is not simply about collective goals but is a more pluralistic and responsive endeavour. This Agreement would commit the EU to realise three principles. Constraint would require institutional power to be justified and exercised with moderation. Integrity would require EU institutions to reflect continually on whether individual measures or processes should be sustained. Responsibility would hold them not only accountable for their actions and omissions but also responsible for discharging the wider public interest that falls within their aegis.

Keywords: EU industrial policy; EU market society; inter-institutional agreement; EU economic law

1. Introduction

From being a backwater, EU industrial policy has moved to the forefront of what the EU is about.¹ Its financial commitments extend to over one trillion euros. It has generated a wide-ranging legal agenda,² and the European Semester has been refashioned to place it at the centre of EU economic governance.³ The policy is, moreover, no flash in the pan as it can be traced back to 2014.⁴ The question addressed by this paper is the nature of this industrial policy and the implications of this for EU law. For its distinctive features are challenging to identify. Extensive intervention in

¹<<https://www.consilium.europa.eu/en/policies/eu-industrial-policy/>>.

²The central EU laws instituting this policy are set out in n 41–43.

³Regulation 2024/1263/EU of on the effective coordination of economic policies and on multilateral budgetary surveillance and repealing Regulation 1466/97, OJ L 2024/1263, Article 11–26.

⁴On its development, T Seidl & L Schmitz, ‘Moving on to Not Fall Behind? Technological Sovereignty and the ‘Geo-dirigiste’ Turn in EU Industrial Policy’ 31 (2024) Journal of European Public Policy 2147; D Di Carlo and L Schmitz, ‘Europe first? The rise of EU industrial policy promoting and protecting the single market’ 30 (2023) Journal of European Public Policy 2063; K McNamara, ‘Transforming Europe? The EU’s Industrial Policy and Geopolitical Turn’ 31 (2023) Journal of European Public Policy 2371.

industry has been around since the ECSC Treaty, and the EU has had an explicit Industry Policy since Maastricht.⁵ Formal EU documents also offer limited help. The starting point, a Commission Communication on Industrial Policy Strategy, sets out scattered goals: competitiveness, climate neutrality, digital sovereignty, a global level playing field, industrial and strategic autonomy, industrial innovation.⁶ However, the mission bringing these together is unclear,⁷ and this has meant the Communication does not anchor policy. In 2021, it was thus amended to include new goals.⁸ In 2022, the Heads of State and Government adopted a Declaration on a new growth and investment model that seems to restate it.⁹ Subsequently, further industrial policy initiatives were added that do not seem to be part of that Strategy.¹⁰

This essay therefore takes a different approach. It compares EU industrial policy against the central features of industrial policies, as these are generally understood. For this allows us to know what type of industrial policy it is, and the challenges this poses for EU law.

In that regard, industrial policy is understood as typically involving a State-industry resettlement that seeks to transform economic activity to realise particular public goals. Such a transformation relies, *inter alia*, on acquiring knowledge about that activity and new forms of collective action. In that context, EU industrial policy is a back-to-front industrial policy. For years, it acquired many goals, but these were not generated by any State-industry resettlement. De-anchored, these goals not only proliferated but were vulnerable to selective recrafting. This shifted Industrial Policy far away from its initial goals to the point where the policy risks cultivating an industrial-military complex. When an institutional arrangement did eventually arrive in the form of the subsumption of industrial policy within the European Semester, it led to no resettlement of EU processes with the consequence that the policy is not designed for its distinctive demands. At the micro-level, the weak institutionalisation resulted both in the knowledge developed being weakly fed into decision-making and in significant power being concentrated in the Commission. The latter is, indeed, so consequently over-extended that it will be difficult for it to manage and cultivate the heterogeneity of new forms collective action established by the policy.

If weak EU legal checks on EU Industrial Policy have contributed to this, traditional EU legal disciplines are poorly suited to governing this policy as they were developed to regulate very different economic processes. EU law is, nevertheless, axiomatic. Only it can tie the policy to a robust institutional settlement that both provides proper reflection, deliberation, and contestation for the policy and sets appropriate limits to it. Furthermore, only it can ensure these processes are value-oriented rather than technocratic or interest-based ones. In the light of the distinctive features of the policy and extensive reform being improbable, the essay concludes that the best way to realise this would be an Interinstitutional Agreement on Better Industrial Policy. Three values would be central to this Agreement. *Constraint* would require institutional power to be justified and exercised with moderation. *Integrity* would require it to be true to its vocation by continually reflecting on whether it should be sustained. *Responsibility* requires EU Institutions not only to be accountable for their actions and omissions and, more widely, fields over which they have authority but also be responsible for discharging the wider public interest set out in the legislation.

⁵Art 130 EC. The current incarnation is Art 173 TFEU.

⁶European Commission, *A New Industrial Strategy for Europe*, COM (2020) 102.

⁷Some were thus in a much less detailed earlier Communication, European Commission, *Investing in a smart, innovative and sustainable Industry: A renewed EU Industrial Policy Strategy*, COM (2017) 479.

⁸These were a stronger single market and greater policy attentiveness to global dependencies. European Commission, *Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery*, COM (2021) 350.

⁹*Versailles Declaration*, 10 and 11 March 2022 <<https://www.consilium.europa.eu/media/54773/20220311-versailles-declaration-en.pdf>>.

¹⁰European Commission, *REPowerEU Plan*, COM (2022) 230; European Commission, *A Green Deal Industrial Plan for the Net-Zero Age*, COM (2023) 62; European Commission and High Representative, *A new European Defence Industrial Strategy: Achieving EU readiness through a responsive and resilient European Defence Industry*, JOIN (2024) 10.

2. Locating EU Industrial Policy

A recent authoritative piece describes Industrial Policy as:

government policies that explicitly target the transformation of the structure of economic activity in pursuit of some public goal.¹¹

This definition suggests three dimensions to industrial policy.

First, industrial policy involves a State-industry resettlement which combines the ends and means of this resettlement. Insofar as it subjects market activities to some wider purpose, industrial policy is a rejection of the market society in which a market operates autonomously with its own logics (those of the price mechanism as a reflection of supply and demand) and norms (ie, consumer welfare and allocative efficiency). It consequently seeks a State-Society resettlement, which Evans has described as ‘*embedded autonomy*’ in which there is:

[a] concrete set of social ties which binds the State to society and provides institutionalized channels for the continually negotiation and renegotiation of goals and policies ... [and] concrete set of connections that link the State intimately and aggressively to certain social groups with whom the state shares a joint project of transformation.¹²

A dichotomy between State and society is maintained to give the administration autonomy to plan and organise. However, the State is also characterised as tied to the society, with the policy part of a wider mission over which there is more general ownership.¹³ Industry policies are, thus identified with a series of monikers – the developmental State, entrepreneurial State, investor State, substitutive State, and developmental network State – in which the State simultaneously describes a state of affairs, an arrangement of institutional relations and a prescription for what the State should do.¹⁴ The institutional channels therefore do several things. They provide the knowledge of the economy, this state of affairs, necessary to develop the policy. They set out the institutional relationship. They are finally, the vehicles for the development, realisation and revisiting of both the policy’s goals and the ends to realise them.

Secondly, industrial policy involves knowing both the market and its determinants As industrial policy is purposive, it must identify all those phenomena (‘economic structures’ in the economic literature) that are the determinants of the generation, organisation and performance of market activity.¹⁵ This knowledge extends beyond that required for market regulation, which typically requires merely identification of the harm or risk and the relationship between these and the industrial processes generating them. By contrast, industrial policy requires knowledge of the state of the market, *in toto*, and all the factors that contribute to that; the organisation and performance of all the industries on or about to enter the market; and the relationship of this market to its surrounding political, social, and economic environments. The significant demands in acquiring this knowledge mean administrators invariably rely heavily on market actors for it.

¹¹R Juhász, N Lane and D Rodrik, ‘The New Economics of Industrial Policy’ 16 (2024) Annual Review of Economics 213, 216.

¹²P Evans, *Embedded Autonomy: States and Industrial Transformation* (Princeton University Press 1995) 59.

¹³State-industry relations are therefore traditionally characterised by collaboration. On this tradition, C Johnson, *MITI and the Japanese Miracle: The Growth of Industrial Policy, 1925–1975* (Stanford University Press 1982); K Aiginger and D Rodrik, ‘Rebirth of Industrial Policy and an Agenda for the Twenty-First Century’ 20 (2020) Journal of Industry, Competition and Trade 189.

¹⁴For reviews of the literature, U Lepont and M Thiemann, ‘The European Investor State: Its Characteristics, Genesis, and Effects’ 28 (2024) Competition & Change 381; D Breznitz and J Gingrich, ‘Industrial Policy Revisited’ 28 (2025) Annual Review of Political Science 329.

¹⁵A sense of these can be obtained from looking at the *Journal of Economic Structures*.

Thirdly, industrial policy requires new forms of collective action. A refrain of industrial policy is addressing market failure, the ‘failure of an idealised price-market institution to sustain “desirable” or to estop “undesirable” activities’.¹⁶ This price-market institution, or price mechanism, is, however, a form of collective action. It allows parties to contract. It also enables collective mobilisation. Parties organise themselves as market actors on the basis that things will be sold and bound for a price. Addressing market failure means, therefore, developing alternate forms of collective action to displace or rival those generated by the price mechanism.

3. The EU Industrial Settlement and its Missions: Drifting towards an Industrial-Military Complex?

With EU Industrial Policy, a State-industry resettlement did not come together to generate new ends and means for the economy. The causal relationship was the opposite. Goals were identified. These proliferated and led, after several years, to a purported resettlement.

To elaborate on this point, if the term emerged in 1990,¹⁷ recent EU Industrial Policy begins in earnest with the Juncker Plan, the *Investment Plan for Europe*, in 2014. This set out clear central goals for the policy: improving the competitiveness of EU industry, rectifying under-investment, making capital more available to SMEs, and incentivizing investment in infrastructure of a European significance.¹⁸ The plan got significant political buy-in,¹⁹ and generated a significant footprint in the form of the European Fund for Strategic Investment (EFSI) which provided guarantees from the EU Budget to leverage €315 billion for activities that went to these aims.²⁰ The second significant moment occurred at the end of 2019 and the first few months of 2020. The *Green Deal* and *Shaping Europe’s Digital Future* added the green and digital transitions to these goals.²¹ The *New Industrial Policy Strategy* consolidated the central goals of industrial policy and added securing an international level playing field and industrial and strategic autonomy as further ones.²² The third moment happened with the onset of the pandemic. In 2021 *Next Generation EU* added social and territorial cohesion, resilience and policies for the next generation as further central goals.²³ *InvestEU* replaced *EFSI* as the vehicle for providing EU guarantees to secure wider investment.²⁴ It extended the range of activities for which guarantees could be offered to respond to the wider objectives of EU industrial policy, and quintupled the amount of guarantees available. Alongside the € 672.5 billion of financial support offered by the Recovery and Resilience Facility,²⁵ it made government by money not merely a central feature of EU industrial policy but of EU government generally. The fourth moment occurred in response to the conflict in Ukraine. Energy security was added as a goal in 2022 and promotion of the EU defence industry foregrounded in 2025 by the *Rearm* initiative.²⁶

¹⁶F Bator, ‘The Anatomy of Market Failure’ 72 (1958) *Quarterly Journal of Economics* 351, 351.

¹⁷European Commission, *Industrial Policy in an Open and Competitive Environment*, COM (1990) 556, 8.

¹⁸European Commission, *An Investment Plan for Europe*, COM (2014) 903.

¹⁹*Conclusions of the Presidency of European Council of 18 December 2014*, EUCO 237/14, para 1.

²⁰Regulation 2015/1017 on the European Fund for Strategic Investments, OJ 2015, L 169/1.

²¹European Commission, *The European Green Deal*, COM (2019) 640, Section 2.1.3; European Commission, *Shaping Europe’s digital future*, COM (2020) 67, Section B. If the Green Deal aligned EU industrial policy with the goals of climate neutrality, the Green Deal Industrial Plan, in turn, aligned it with the other goals of EU industrial policy. European Commission, *A Green Deal Industrial Plan for the Net-Zero Age*, COM (2023) 62.

²²European Commission (n 6) at Sections 3.2 and 4.

²³Regulation 2021/241 establishing the Recovery and Resilience Facility, OJ 2021, L 57/17, Art 3.

²⁴Regulation 2021/523 establishing the InvestEU Programme and amending Regulation 2015/1017, OJ 2021, L 107/30.

²⁵Regulation 2021/241 (n 23) Art 6(1).

²⁶European Commission, *REPowerEU Plan*, COM(2022) 230 final European Commission, *White Paper for European Defence – Readiness 2030*, 28 March 2025 <https://commission.europa.eu/topics/defence/future-european-defence_en>. One can point to earlier invocations of nearly all these objectives, but the ones set out above all involved significant measures for the first time. Defence is a case in point. It can be traced back to 2016, European Commission, *European Defence Action Plan*,

This ad hoc expansion of goals prior to any significant resettlement has generated EU Industrial Policy's central characteristics and challenges. Most obviously, the goals are too expansive and ambitious to enable the type of focused and intensive resettlement – detailed institutional procedures, extensive private–public collaborations, and regular feedback – that industrial policy has habitually required. If EU Industrial Policy may achieve significant things, it is consequently unlikely that it will achieve all the goals it has proclaimed.

For the purposes of this essay, there are, however, three particular things of note.

First, *the policy favours government by money over government by law*. The expanding diversity of goals means EU industrial policy is marked by legal specialization. Its EU laws have little in common, with each adopted for a particular problem at a particular time. The opposite is true of government by money. Financial support has been offered to realise all the EU Industrial goals outlined above. In some instances, it finances specific goals.²⁷ However, often, it can be transferred between the different goals. Some support is generalisable. *InvestEU* support, thus, is available to finance all Industrial Policy goals other than energy and defence.²⁸ In other cases, the EU may allow unspent support from one fund to be used elsewhere. As the period for disbursements under the Recovery and Resilience Facility came to an end, the Commission, therefore indicated that unspent commitments could, *inter alia*, be used to guarantee *InvestEU* investments or finance defence spending.²⁹ This grants government by money a flexibility not available to government by law. Financial support unable to stimulate change in one field can be moved to a field where it can do this. This carries risks, however. It can lead to the undue curtailment of government by law. Money may be provided where legal safeguards might be more appropriate. In addition, government by money attracts particular dangers, notably patronage, capture and corruption.³⁰

Second, *an EU resettlement of policy without any institutional resettlement of the European Union*. The institutional settlement was late to mature and was only formalised in 2024 by legal reforms putting industrial policy at the heart of the European Semester. Notwithstanding this, the Semester provides for extensive EU government of all industrial policy within EU territory. States must now present fiscal-structural plans for assessment and endorsement that will also contain Country-Specific Recommendations (CSR) addressed to that State.³¹ Amongst other things, these plans must set out levels of public investment for the next five years; the State's investment needs; and the impact of implemented reforms and investments.³² They must address how the State's investments and reforms will realise central goals of EU Industrial Policy: the green and digital transitions, social and economic resilience, energy security, and increasing defence capabilities.³³ There is significant Commission oversight over this State planning and implementation of industrial policy. The draft must be discussed with the Commission prior to submission. States must make annual progress reports and implementation of the plan is monitored by the Commission. States, furthermore, risk sanction if they do not comply with the CSRs. Most notably, the Commission has stated that it will only permit changes to the activities financed under the Recovery and Resilience Facility if the Member State is complying with its

COM (2016) 950. However, limited action was taken prior to 2025, which provides for significant EU intervention in scaling up EU defence.

²⁷Eg, Commission Delegated Regulation 2019/856 supplementing Directive 2003/87/EC regard to the operation of the Innovation Fund, OJ 2019, L 140/6; Regulation 2025/1106 establishing the Security Action for Europe (SAFE) through the Reinforcement of the European Defence Industry Instrument, OJ L 2025/1106.

²⁸Regulation 2021/523 (n 24) Art 3.

²⁹European Commission, *NextGenerationEU – The road to 2026*, COM (2025) 310 final/2, 10 and 11.

³⁰The number of criminal investigations instigated by the European Union Public Prosecutors Office in relation to the Recovery and Resilience Facility increased from 15 in 2022 to 233 in 2023, EUPPO, *Annual Report 2023* (EUPPO 2024) 13. On the dangers identified in Greece and Italy, D Skiadas, 'Trade-offs in Auditing the EU Recovery and Resilience Facility – Flexibility vs Compliance' (2024) *Eucrim* 349; Autorità Nazionale Anticorruzione, *Relazione Annuale 2024* (2025, Rome) 7–8.

³¹Regulation 2024/1263 (n 3) Arts 16 and 17.

³²Regulation 2024/1263, Art 13(g).

³³Regulation 2024/1263, Art 13(c).

Country-Specific Recommendations (CSRs) – a condition that may become increasingly important as priorities and circumstances evolve over time.³⁴

The late arrival of these institutional reforms meant, however, no EU resettlement in the sense of a significant break from previous EU *modi operandi*. Instead, Industrial Policy was slotted into prevailing procedures.

- As part of the Semester, it is not considered in isolation. Fiscal-structural plans also address more established concerns of the Semester, namely budgetary prudence, debt and avoidance of economic imbalances. It is unclear how Industrial Policy demands will be weighed against these or how the EU Institutions manage either the avalanche of information presented or the complexity of the normative demands.
- The conventional EU regulatory model of decision-making is also applied to Industrial Policy, namely a recurrent cycle of standard setting, information-gathering and behaviour-modification that involves a regulatory body or process disciplining regulated parties in a sustained way.³⁵ This is not, however, the model of decision-making traditionally associated with Industrial Policy where links between the parties are cast as tighter, the interests as more reinforcing and the style of interaction as more collaborative. The risks of the regulatory model's more oppositional style of decision-making involve challenges about compliance, insufficient sensitivity to industrial circumstances, insufficient circulation of information between the parties. The EU model, furthermore, is not public officials regulating private actors, but public actors regulating other public actors. There is a further danger here that focus turns inwards with officials concerned to meet the demands of other officials rather than to heed wider industrial and societal voices.

This has all augmented the power of the Commission. Within the context of the Semester, it contributes to the preparation of national policies, assesses them and monitors them. As the main EU agenda-setter, it is also central to the formulation of EU policy. Its presence is pervasive. The quality of EU industrial policy is determined therefore by the presence of regulatory adventurism, slack, capture or selectiveness within that institution.

Third, the identity of EU Industrial Policy is increasingly recrafted around collective empowerment of the EU at the expense of other goals. The sheer diversity of goals begged questions about what EU Industrial Policy is about, how to prioritise these goals, coordinate them, and deal with conflicts between them. This issue could not be resolved by EU law as this diversity was accompanied by legal specialization. There was, furthermore, no authoritative institutional forum to adjudicate on this. Instead, in 2022, a restatement of EU Industrial Policy occurred, the Versailles Declaration, that was both an interpretation of what it is and a pronouncement on what it should do.³⁶

The form of the Declaration is significant. It is adopted not by an EU Institution but by the Heads of the EU States in their capacity as Heads of State. The Declaration, consequently, restates not simply EU industrial policy but industrial policy, more generally, in the EU. In this, it brings both national and EU industrial policy within a single framework. Equally noteworthy is the symbolism. It was adopted in Versailles, that most historically resonant of settings, by those holding the highest political office in the Union.

³⁴Commission Notice – Guidance on Recovery and Resilience Plans, OJ 2024, C 4618, 9.

³⁵C Koop and M Lodge, 'What is Regulation? An Interdisciplinary Concept Analysis' 11 (2017) *Regulation and Governance* 95.

³⁶Informal meeting of the Heads of State or Government, *Versailles Declaration*, 10 and 11 March 2022 <<https://www.consilium.europa.eu/media/54773/20220311-versailles-declaration-en.pdf>>.

The restatement in the Declaration takes the form of a rationale for Industrial Policy, a series of missions underpinning it, and a list of its activities. The rationale is that:

Confronted with growing instability, strategic competition and security threats, we decided to take more responsibility for our security and take further decisive steps towards building our European sovereignty, reducing our dependencies and designing a new growth and investment model for 2030.³⁷

In furtherance of this, the Declaration provides four central missions: bolstering defence capabilities, reducing energy dependencies, building a more robust economic base, and fostering investment.³⁸ An extensive list, indeed the most comprehensive list, of EU industrial policy activities then follows. These activities include more collaboration and investment in defence; energy security and reduced fossil fuel dependence; increased interconnection of energy and gas markets; making the ‘economic base more resilient, competitive and fit for the green and digital transitions, while leaving no one behind’; reducing strategic dependencies in critical raw materials, semi-conductors; digital technologies, health, and food; an increased focus on reciprocity and resisting coercion from non-EU States; and fostering industrial initiatives through ‘Important Projects of Common European Interest’ and industrial alliances.³⁹

Subsequent developments underlined the significance of the Declaration.

A welter of EU laws were adopted so that most EU law associated with Industrial Policy has, in fact, been adopted following Declaration.⁴⁰ They include a large number of EU legal Acts: Interoperable Europe Act; Data Act; Data Governance Act; Net Zero Industry Act; Internal Market Emergency and Resilience Act; Critical Raw Materials Act; and Chips Act.⁴¹ These sit alongside other notable EU laws: the Anti-Coercion instrument combatting economic coercion by non-EU States, STEP Regulation on strategic technologies, and REMIT Regulation safeguarding the stability and transparency of the EU energy market.⁴² All these laws fall within the material scope of the Declaration (ie, the declared activities). More significantly, they are all influenced, albeit to variable degrees, by its central philosophy, which is that EU Industrial Policy should be about ensuring the securing and autonomy of the EU economy.

In addition, other Industrial Policy instruments were crafted in the light of the Declaration. Most notably, the central thrust of the European Semester, following the 2024 reforms, goes to the missions set out in the Declaration. The priorities for fiscal-structural plans therefore include the green and digital transitions but also go to the Declaration missions of social and economic resilience, energy security and build-up of defence capabilities.⁴³ In 2023, the Green Deal was recrafted to incorporate

³⁷*Ibid.*, para 7.

³⁸*Ibid.*

³⁹*Ibid.*, paras 8–26.

⁴⁰Notable EU laws adopted prior to the Declaration include Regulation 2019/452 establishing a framework for the screening of foreign direct investments into the Union, OJ 2019, L 79/1; Regulation 2021/241 establishing the Recovery and Resilience Facility, OJ 2019, L 57/17.

⁴¹Regulation 2024/903 laying down measures for a high level of public sector interoperability across the Union, OJ 2024 L 903; Regulation 2023/84 on harmonised rules on fair access to and use of data, OJ 2024 L 84; Regulation 2022/868 on European data governance, OJ 2022, L 152/1; Regulation 2024/1375 on establishing a framework of measures for strengthening Europe’s net-zero technology manufacturing ecosystem, OJ L 2024 L1375; Regulation 2024/2747 establishing a framework of measures related to an internal market emergency and to the resilience of the internal market, OJ 2024 L 2787; Regulation 2024/1252 establishing a framework for ensuring a supply of critical raw materials, OJ 2024 L 1252; Regulation 2023/1781 establishing a framework of measures for strengthening Europe’s semiconductor ecosystem, OJ 2023, L 229/1.

⁴²Regulation 2023/2675 on the protection of the Union and its Member States from economic coercion by third countries, OJ L, 2023/2675; Regulation 2024/795 establishing the Strategic Technologies for Europe, OJ L 2024/795; Regulation 2024/1106 as regards improving the Union’s protection against market manipulation on the wholesale energy market, OJ L 2024/1106.

⁴³Regulation 2024/1263 (n 3) Art 13(c).

these principles, notably emphasising the need to protect supply chains and proposing a Critical Raw Materials club that would secure a sufficient supply of these materials for the EU.⁴⁴

The Declaration is also about recrafting EU Industrial policy. As the quote above makes clear, the policy is to be refounded around the idea of collective EU empowerment. The Declaration intimates such empowerment involves an array of things: security, less dependence on others; freedom from external vagaries and coercion of others; and a collective capacity for the Union to decide for itself.⁴⁵ This is a significant shift from the early goals of EU Industrial Policy. Furthermore, the TFEU provision on Industry Policy makes no mention of such goals.⁴⁶ A completely new mission beyond that in the Treaties is now instituted.

Beyond this legal adventurism, this shift generates more substantive anxieties.

EU Industrial Policy is enveloped into the European Economic Security Strategy. This Strategy folds Industrial Policy into a wider process of protecting economic security. In its own words, this Strategy takes ‘a critical look at the Union resilience and vulnerabilities in order to make the European economy and industry more competitive and resilient and strengthen our open strategic autonomy’.⁴⁷ Existing EU Industrial Policy measures enhancing the resilience of the Single Market, securing supply chains, and steps towards protecting energy security, are thus trailed as part of a gamut of measures to counter a series of wider threats to economic security: weaponisation of economic dependencies and economic coercion, technology leakage, inward investments affecting security and public order, dangers to infrastructure, and security threats from outward investments.⁴⁸

All these measures make EU Industrial policy as much about security as anything else, whilst also transforming the former into an integral part of the EU security policy. The Strategy was thus extended in Commission’s Competitiveness Compass, its flagship proposal to ‘reignite dynamism in Europe’.⁴⁹ The Compass states:

[the] EU must integrate more tightly security and open strategic autonomy considerations in its economic policies. The security environment is a precondition for EU firms’ economic success and competitiveness At the same time, security and resilience can become a driver for competitiveness and innovation.⁵⁰

A significant part of its agenda is therefore given over to putting forward security measures: an internal security strategy, defence, developing purchasing power for critical raw materials, cultivating Union preparedness, measures to ensure protection of water and critical medicines, cutting out non-EU companies from tendering in sensitive areas.⁵¹

This empowers those who most contribute to this agenda. In this regard, EU Industrial Policy has thus shifted towards significantly bolstering EU defence capabilities. The sums provided for the defence industry are greater than for any other industry. The REARM Europe/Readiness 2030 provides for up to €800 billion in financial support for the European defence industry,⁵² with €150

⁴⁴European Commission, *A Green Deal Industrial Plan*, n 10 at 17–19.

⁴⁵On the equation of European sovereignty with an EU capacity to ‘decide for ourselves’, Garance Pineau, ‘European sovereignty: What it means and what it takes’ Hertie School of Governance, 20 October 2023 <<https://www.hertie-school.org/en/events/event-detail/event/spotlight-event-european-sovereignty>> accessed 1 November 2025. Miss Pineau is President Macron’s adviser on European affairs, and she instigated and advanced the notion since a speech at the Sorbonne in 2017.

⁴⁶Art 173(1) TFEU.

⁴⁷Joint European Commission and High Representative Communication, *European Economic Security Strategy*, JOIN (2023) 20, 3.

⁴⁸*Ibid.*, at 6–11.

⁴⁹European Commission, *A Competitiveness Compass for the EU*, COM (2025) 30, 2.

⁵⁰*Ibid.*, at 12.

⁵¹*Ibid.*, at 16.

⁵²European Commission, *White Paper for European Defence – Readiness 2030*, 28 March 2025 <https://commission.europa.eu/topics/defence/future-european-defence_en>.

billion provided by the SAFE instrument.⁵³ However, as the Competitiveness Compass indicates, the spectrum of support extends to a much wider array of industries seen as strategically important to the EU: key technologies, critical raw materials, quantum chips, digital technologies, cyberinfrastructure, dual use goods, public procurement, external trade, and crisis relevant goods and services. The danger is thus, less one of a militarisation of EU activity. Industry, rather than defence, continues to constitute the centre of gravity of EU policymaking. The danger is rather the permissive context for EU policymakers engendered by notions such as collective empowerment, strategic autonomy, and security. These press for action to be taken but are nebulous about its permissible limits. In that regard, a pertinent point was made by William Adams in relation to an almost identically framed US programme, established over 50 years ago:

... government not only permits and facilitates the entrenchment of private power but serves as its fountain-head. It creates and institutionalizes power concentrations which tend to breed on themselves and to defy public control.⁵⁴

There is already evidence of such an expansionist vision of government with limited legal constraint.⁵⁵ The Chips Act, for example, establishes a new legal entity, the European Chips Infrastructure Consortium, to develop quantum chips.⁵⁶ Yet there is nothing in the legal bases for the Act, Articles 114 and 173(3) TFEU, the Internal Market and Industrial Policy competences, that gives the EU the power to establish such entities. The latter competence does not allow general binding legislation harmonising national law to be adopted under it. The Internal Market competence can only be used for measures that facilitate trade between States.⁵⁷ The Consortium goes to neither of these aims. In similar vein, the transfer of unused Recovery and Resilience Funds for use under other instruments shows an equally casual regard for the law. As already mentioned, provision is made for resources to be transferred to the *InvestEU* Member State compartment and the European Defence Industry Programme. The *InvestEU* Regulation sets up a number of funds for which that compartment can be used. The Facility is not one.⁵⁸ The transfers for defence are even more problematic as the Commission admits the current legal framework does not provide for that.⁵⁹

4. Knowing the Market: *If we want things to stay as they are, things will have to change*⁶⁰

The importance of knowledge about the EU economy was set out in the *New Industrial Strategy for Europe*, with the Commission placing industrial eco-systems at the centre of this strategy.⁶¹ These encompass:

⁵³Regulation 2025/1106 establishing the Security Action for Europe (SAFE) through the Reinforcement of the European Defence Industry Instrument, OL L 2025/1106.

⁵⁴W. Adams, 'The Military-Industrial Complex and the New Industrial State' 58 (1968) *American Economic Review* 652, 654.

⁵⁵Arguably, this is a more long-standing issue with EU Industrial Policy. On the weak legal foundations for the Recovery and Resilience Facility, P. Leino-Sandberg and M. Ruffert, 'Next Generation EU and its constitutional ramifications: A critical assessment' 59 (2022) *Common Market Law Review* 433.

⁵⁶Regulation 2023/1781 (n 41) Art 7.

⁵⁷*Czech Republic v Parliament and Council*, EU:C:2019:1035, C-482/17, para 37. New entities can therefore be established under this competence but only if they apply and implement EU laws that facilitate such trade, *United Kingdom v Parliament and Council*, C-217/04, EU:C:2006:279, paras 44 and 45.

⁵⁸Regulation 2021/253 establishing the InvestEU Programme, OJ 2021, L 2017/30 as amended by Regulation 2024/795 establishing the Strategic Technologies for Europe Platform, OJ L 2024/795, Arts 2(11) and 9(1)(b).

⁵⁹European Commission, *NextGenerationEU – The road to 2026* (n 29) 10–11.

⁶⁰With apologies to Tancredi's famous line in Tomasi di Lampedusa's *The Leopard*.

⁶¹European Commission, *A New Industrial Strategy for Europe* (n 6) 15.

... all players operating in a value chain: from the smallest start-ups to the largest companies, from academia to research, service providers to suppliers. And each have their own features.⁶²

These eco-systems perform three roles. They are, first, the central object of analysis of EU Industrial Policy. Understanding these eco-systems is central to understanding what the policy should do. Second, these eco-systems are seen as sustaining distinct industrial lifeworlds, with each having a value and meaning of its own. Thirdly, these eco-systems have an instrumental value insofar as they are seen as the vehicles through which transformation can take place and wider goals be realised.⁶³ Their operation is, thus, seen as central to, *inter alia*, the green and digital transitions; development of the defence industry; semi-conductors; security of medicine supply; transformation of the EU energy intensive industries; strategic dependencies,⁶⁴ and the EU's development of advanced manufacturing.⁶⁵

These eco-systems are difficult to know and challenging to harness.⁶⁶ To that end, the Commission stated it would 'systematically analyse the different [industrial] ecosystems and assess the different risks and needs of industry as it embarks on the [green and digital] transitions in a more competitive world' working closely with an 'inclusive and open' Industry Forum.⁶⁷ The centrality of gathering knowledge about the EU economy is such that the Commission's website indicates the Forum is not merely to do this but also 'co-design solutions'.⁶⁸ The Forum's terms of reference state it is, therefore, to advise on the implementation of the industrial strategy, contribute to the analysis of ecosystems, and advise on a 'dedicated toolbox' to bring about change in line with the Industrial Strategy.⁶⁹ To that end, five Forum Task Forces have wide-ranging tasks that include making recommendations on implementation of the industrial strategy; feedback on how to realise the green and digital transitions; review of the EU's strategic dependencies; identifying transnational investment needs, and helping the uptake of advanced manufacturing processes.⁷⁰ Alongside this, the Commission has been true to its word about the inclusiveness of the Forum. The latter's membership includes industrial associations, NGOs, trade unions, research organisations, representatives of the financial/investment sector, regional development agencies, as well as national and regional authorities.⁷¹ There are also a significant number of public consultations.⁷²

However, the lack of a wider State-industry settlement within which to embed the Forum has significantly hampered it. Introduced only after EU Industrial Policy was well-established, it did not inform important earlier developments. The Recovery and Resilience Facility action plans, which set out the financial instruments for the most lavish financing of EU Industrial Policy, were

⁶²*Ibid.*, 15.

⁶³*Ibid.*, 1–2.

⁶⁴As of July 2025, the Commission has set out seventeen eco-systems in this regard, <https://single-market-economy.ec.europa.eu/industry/transition-pathways_en>. On their influence, Industrial Forum Task Force 2, *Blueprint for the Development of Transition Pathways for individual ecosystems*, 29 March 2022, <<https://ec.europa.eu/docsroom/documents/49407>>.

⁶⁵This is set out separately in Industrial Forum Task Force 5, *Report on Advanced Manufacturing at the heart of a resilient, sustainable and competitive Europe*, 12 June 2023, 13–25 <https://single-market-economy.ec.europa.eu/industry/advanced-manufacturing_en>.

⁶⁶On this, T Burström, T Lahti, V Parida and J Wincent, 'Industrial Ecosystems: A systematic Review, Framework and Research Agenda' 208 (2024) *Technological Forecasting and Social Change* 123656.

⁶⁷European Commission, *A New Industrial Strategy for Europe*, COM (2020) 102, 15.

⁶⁸<https://single-market-economy.ec.europa.eu/industry/strategy/industrial-policy-dialogue-and-expert-advice_en>.

⁶⁹European Commission, *Informal Commission Expert Group, Terms of Reference* Ref. Ares(2024)6437701, para 3.

⁷⁰There are five task forces, <https://single-market-economy.ec.europa.eu/industry/strategy/industrial-policy-dialogue-and-expert-advice_en>.

⁷¹*Ibid.*, para 4(2).

⁷²Details <https://single-market-economy.ec.europa.eu/industry/transition-pathways_en>.

developed at a time when the Forum was barely up and running.⁷³ The number of eco-systems receiving support is therefore limited, and it is unclear what analysis went into approval for support for this.⁷⁴ Instead, the evidence suggests prior national and EU path-dependencies were more central to development of these commitments, with many investments pre-existing national pipeline projects and many reforms following European Semester recommendations.⁷⁵

Even in fields where it comes into play, the Industry Forum is a mid-stream process. It thus plays no part in the upstream process of determining the goals of the EU Industrial Policy. As its terms of reference set out above indicate, it must act in line with an Industrial Strategy that has already been determined. Alongside this, it has no role in the down-stream processes of implementation of the policy. These are dominated by the Commission and national administrative actors, and these are not required to have regard to Forum insights.

Recent EU laws furthering EU industrial policy thus institute Boards, comprised of Member State and Commission representatives, to assist the Commission govern the relevant sector. The tasks of these Boards vary from agenda-setting,⁷⁶ advising and providing guidelines,⁷⁷ monitoring,⁷⁸ to assisting with implementation.⁷⁹ If the membership of these Boards is exclusively administrative, the Parliament is only associated with their work⁸⁰ and industrial and civil society participates only when the Board believes it beneficial.⁸¹ The process is not only a very closed one. It also places limited checks on the Commission as they are chaired by the Commission and have no staff of their own.⁸² That being so, these Boards are primarily about legitimating the expansion of Commission power in this field by providing some form of collective endorsement and therefore collective responsibility for measures taken by it.

This begs the question, what the Industry Forum's production of knowledge does. It creates a repository of knowledge that enables the Commission to know the sector or field better. However, that knowledge dates quickly and the Commission has complete freedom as to how to use it. To be sure, the Commission should retain considerable discretion. It may, for example, look at the state of the field and think that no action is warranted, either because none is necessary, or because the consequences may be too unpredictable. However, this complete freedom is another matter. It allows the Commission to be opportunistic, acting on information when it fits its preferred narrative but not when it does not. It also allows this knowledge not to be fully contested as the Commission will only give formal reasons for its action and not fully set out the knowledge informing these reasons. This lack of contestation may result in the robustness of the knowledge not being scrutinised. It also leads to other problems. If used, this knowledge will direct action. In fields concerned with strategic dependencies, it is thus likely to go to what is required to secure the viability and security of the activity. In fields such as the digital and green transitions, it will go to what is necessary to secure effective change. In both cases, there will be other relations, interests, and values at stake. However, these will often not be known as the knowledge gathering was not

⁷³24 out of 27 States submitted their Plans by the end of June 2021.

⁷⁴The central eco-systems receiving support have been construction, tourism, energy intensive industries and proximity and the social economy, 15 July 2025, <https://single-market-economy.ec.europa.eu/industry/strategy/ecosystems_en>.

⁷⁵On this, D Bokhorst and F Corti, 'Governing Europe's Recovery and Resilience Facility: Between Discipline and Discretion' 59 (2024) Government and Opposition 718.

⁷⁶Regulation 2024/903 (n 41) Arts 6, 8(2), and 15.

⁷⁷Regulation 2023/1781, Art 28(1); Regulation 2022/868, Art 30 Regulation 2024/2747, Art 5(1) and (2); Regulation 2024/1252, Art 35(7)(d). All n 41.

⁷⁸Regulation 2024/1735 (n 41) Art 38(4). The equivalent of a Board in the Net Zero Act is confusingly called a Platform. It shares the other features identified here with Boards.

⁷⁹Regulation 2024/1252 (n 41) Art 35(7)(a) and (c).

⁸⁰Eg, Regulation 2024/1252 (n 41) Art 36(2).

⁸¹Eg, Regulation 2023/1781, Art 28(3); Regulation 2024/903, Art 16; Regulation 2024/1252, Art 36(3). All above n 41.

⁸²Eg, Regulation 2022/868, Art 29(1); Regulation 2023/1791, Arts 29 and 30; Regulation 2024/903, Art 15(2) and (4); Regulation 2024/1252, Art 36(1)(2) and (7). All above n 41.

centred on ascertaining these. They will only come to light late in the day as defensive reactions to positions that the Commission has already taken and around which it has (within the Forum) mobilised support.

5. The Centralised Performance Management of Collective Action

Initially, the Commission induced new form of collective action through two routes. The first was directly instituting networks to stimulate research and competitiveness. Prior to the launch of the *Industrial Policy Strategy*, these were limited to batteries, plastics, and microelectronics.⁸³ Since then, the Commission has brokered eleven industrial alliances, including a number of strategic industries.⁸⁴ It exercises ongoing voice over these by setting the criteria for membership, ensuring undertakings meet these on joining and continue to meet them.⁸⁵ The second was relaxing the State aids rules to allow *Important Projects of Common European Interest (IPCEI)*.⁸⁶ These were projects that transcended a single State, contribute in a ‘concrete, clear and identifiable manner to one or more Union objectives and [had] a significant impact on the competitiveness of the Union, sustainable growth, addressing societal challenges or value creation across the Union’.⁸⁷ In 2021, it revamped the rules to tie IPCEIs more tightly to Industrial Policy objectives, overcoming the limitations of the price mechanism, and ensuring a stronger pan Union element.⁸⁸ The pace of take-up has picked up, with over 200 companies involved and over €90 billion of capital leveraged for IPCEIs approved between 2021 and 2024.⁸⁹ The Commission secures oversight over these by insisting on regular reporting on their performance, and, in some cases, an *ex post* evaluation.⁹⁰

Recent EU law has focussed less on this and concentrated on stimulating new entities and projects: data altruism organisations to process data that subjects have made available for objectives of general interest;⁹¹ European Chips Infrastructure Consortiums (ECICS) to develop the research and production of quantum chips;⁹² Integrated Production Facilities to manufacture semiconductors; Open EU foundries to offer production capacity for semi-conductors to other undertakings;⁹³ Strategic Projects to ‘meaningfully’ contribute to security of supply of strategic raw materials,⁹⁴ net zero-technology manufacturing projects that contribute to Union climate or energy targets,⁹⁵ and, most generally, STEP projects to reduce dependencies in strategic sectors.⁹⁶ These entities and projects are incentivised and sustained by an extensive number of administrative, commercial and financial benefits: administrative and judicial fast-tracking;⁹⁷

⁸³On this, di Carlo and Schmitz (n 4) 2080–4.

⁸⁴Eg, raw materials, semiconductors, and processors, cloud technology, solar PV, small modular reactors <https://single-market-economy.ec.europa.eu/industry/industrial-alliances_en>.

⁸⁵Eg, European Commission, *Alliance for Zero-Emission Aviation: Terms of Reference*, 24 June 2022 <https://defence-industry-space.ec.europa.eu/terms-reference-alliance-zero-emission-aviation_en>.

⁸⁶European Commission, *Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest*, OJ 2014, C 188/4.

⁸⁷*Ibid.*, para 14.

⁸⁸European Commission, *Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest*, OJ 2021, C 528/2. The project must show it is designed to overcome important market or systemic failures and ordinarily involve industries from four EU States, *Ibid.*, paras 15 and 16.

⁸⁹<https://competition-policy.ec.europa.eu/state-aid/ipcei/approved-ipceis_en> 10 July 2025, accessed 1 November 2025.

⁹⁰*Ibid.*, para 5.2.

⁹¹Regulation 2022/886, Preamble, alinea 16, and Art 18.

⁹²Regulation 2023/1781, Art 7.

⁹³*Ibid.*, Arts 13 and 14.

⁹⁴Regulation 2024/1252 (n 41) Art 6.

⁹⁵Regulation 2024/1735 (n 41) Arts 13 and 14.

⁹⁶Regulation 2024/795 (n 41) Art 4.

⁹⁷Regulation 2023/1781, article 18; Regulation 2024/1252, Art 10(3)–(5). Both above n 41.

sandboxes to allow innovation free from regulatory constraints;⁹⁸ purchasing commitments;⁹⁹ and extensive funding.¹⁰⁰

To enjoy all this, these entities and projects invariably require prior approval. Unlike most EU market regulation, this is rarely granted by national authorities.¹⁰¹ Instead, approval is granted by the Commission, and this can be withdrawn by it if these entities and projects cease to meet the criteria that had to be met for the initial authorisation.¹⁰² These criteria are often extensive and vaguely defined. A good example is the Strategic Projects that are to secure Union supply of critical raw materials. These are assessed against 21 benchmarks.¹⁰³ None is a single quantifiable criterion. In some instances, they include international sets of principles (ie, OECD Guidelines for Multinational Enterprises on Responsible Business Conduct).¹⁰⁴ In others, they are open-ended norms (ie, whether the project contributes to maintaining the resilience of the Union's supply of strategic raw materials or is in line with the Union's development cooperation and foreign policy objectives).¹⁰⁵

The oversight is thus ongoing and extensive, and the context for this scrutiny is that much EU Industrial Policy rests on the performance of these entities and projects, which are the vessels for its realisation. Alongside this, oversight is highly centralised with the Commission overseeing not merely these projects' and entities' activities, but also those of the IPCEI and the pan Union industrial alliances. There is a danger, and indeed this is how it is set up, that oversight is seen as one of performance management. The success of collective action is judged against whether it ticks a number of boxes, with the only issues being how the Commission interprets these demands and how rigorously it assesses performance against these.

Such an approach neglects the range of technological, economic, political, and regulatory demands at play in each of these fields, and how their complex interplay feeds into the operation of any Industrial Policy.

They can be seen in the case of the electronic batteries for cars, the most longstanding of all the sectors subject to this Industrial Policy.¹⁰⁶ Concerns about a competitive EU industry led to the establishment of an industrial alliance, the European Battery Alliance, in 2017; a Strategic Action Plan in 2018, two IPCEIs in 2019 and 2021 involving industries from 13 EU States;¹⁰⁷ and new EU legislation in 2023.¹⁰⁸ The legislation moves towards a circular economy for batteries that encourages their reuse. To that end, it imposes a series of ecological requirements: minimum recycled content levels; a record of the battery's life cycle and carbon footprint; labelling and producer responsibility requirements; and performance requirements.¹⁰⁹

This begs the question why the legislation did not require all batteries on the EU market to be reusable second life ones. It would have been in line with the green transition. Indeed, the ecological insufficiency of this legislation was tacitly admitted by its amendment a year later to provide for stronger eco-design requirements for all batteries.¹¹⁰ This requirement would also have created a competitive niche for EU industry as it would have induced them to provide a product (ie, reusable second life batteries) that was not widely sold elsewhere.

⁹⁸Regulation 2024/903, Art 12; Regulation 2024/1375, Art 33. Both above n 41.

⁹⁹Regulation 2023/1781, Art 27(1); Regulation 2024/1252, Art 17; Regulation 2024/1735, Arts 27 and 28. All above n 41.

¹⁰⁰Regulation 2023/1781, Art 16(2); Regulation 2024/75, Art 3. Both above n 41.

¹⁰¹The main exception is Net Zero manufacturing Projects which depend on national approval.

¹⁰²This is the case for Strategic Projects, Open EU foundries and integrated production facilities, STEP projects, and ECICS.

¹⁰³Regulation 2024/1252, Art 6(2) and Annex III.

¹⁰⁴*Ibid.*, Annex III(5)(e).

¹⁰⁵*Ibid.*, Annex III 2(a) and (d).

¹⁰⁶On this R Barkhausen et al 'Analysing Policy Change Towards the Circular Economy at The Example of EU Battery Legislation' 186 (2023) *Renewable and Sustainable Energy Reviews* 113665.

¹⁰⁷<https://competition-policy.ec.europa.eu/state-aid/ipcei/approved-ipceis_en>.

¹⁰⁸Regulation 2023/1542 concerning batteries and waste batteries, OJ 2023, L 191, Arts 6–10, 13, 14, and 56.

¹⁰⁹*Ibid.*, Art 6.

¹¹⁰Regulation 2024/1781 establishing a framework for the setting of ecodesign requirements for sustainable product, OJ L, 2024/1781.

There were several reasons why this did not happen. Cost and supply chain issues led to difficulties developing these batteries. The fast changing nature of field also resulted in a lack of standardisation, which made installation difficult and the handling of the batteries often hazardous because of poor industry knowledge about them.¹¹¹ This led to a significant politics, with industry split and environmental groups entering the fray. The legislation reflected these debates and illustrated the challenges of an EU industrial policy. It made batteries more costly,¹¹² but there will be sole-use and secondary use batteries on the market with the competitive relationship between these unclear.¹¹³ It is also uncertain how more ecological information will inform consumer demand or supply chains will respond to these requirements.¹¹⁴ Finally, it has been argued that the central constraint on EU competitiveness is a lack of skilled labour in the EU, something unaddressed in the law.¹¹⁵

None of this suggests a straightforward route forward. However, these complex dynamics would be left unaddressed by a performance management approach that focussed on industrial groupings meeting certain criteria (ie, in this instance developing a product). Industry and stakeholder interests were divided. The challenges bringing the product to market went beyond technical issues to how purchasers would use and respond to it; the competitive relationship between it and other batteries, and the expertise available.

6. EU Legality and Industrial Policy

Current EU law struggles with EU Industrial Policy. It has not countered the drift, and it is unclear how it can regulate many of that policy's decision-making procedures. The European Semester has, thus, never been subject to judicial review by either the Court of Justice or General Court. At the other end of the policy, the entities and projects granted many privileges by EU laws in this field because they pursue policy goals cannot be reviewed before the General Court. More generally, there is the question of the fit of traditional EU law for this field. The structures of traditional EU economic constitutionalism – the economic freedoms; constraints on private economic power, restrictions and distortions on competition; proportionate treatment of market actors and equal treatment of like market actors – elevate the market society. Yet that society is the antithesis of industrial policy. For the latter intervenes when there is market failure. It is thus difficult to apply these principles in a manner that is both sensitive to its policy demands and robust. Industrial policy, most notably, envisages both extensive and selective public involvement in the market. If the proportionality or equality principles are applied too vigorously, they will curtail the policy. There is thus a temptation to relax them, and this has, indeed happened in other fields of extensive EU intervention.¹¹⁶ However, the consequence is the policy gets a legal pass.

The way forward may, it is suggested, be an Interinstitutional Agreement, analogous to that on the mandatory transparency register, on Better Industrial Policy, albeit one that includes the

¹¹¹On these issues, V Rezos and P Urba, 'Barriers and Policy Challenges in Developing Circularity Approaches in the EU Battery Sector: An Assessment' 209 (2024) Resources, Conservation & Recycling 107800.

¹¹²This leads to competitive advantages for some industries that can avoid these, C Johnson and J Khosravani, 'Greening the Global Battery Chain? Critical Reflections on the EU's 2023 Battery Regulations' 18 (2024) The Extractive Industries and Society 101467.

¹¹³J Seika and M Kubli, 'Repurpose or Recycle? Simulating End-of-Life Scenarios for Electric Vehicle Batteries Under the EU Battery Regulation' 51 (2024) Sustainable Production and Consumption 644.

¹¹⁴H Melin et al 'Global Implications of the EU Battery Regulation' 373 (2024) Science 653.

¹¹⁵C McCaffrey and N Poitiers, *Making Industrial Policy Work: A Case Study on the European Battery Alliance Academy* (2024, Bruegel Working Paper 01/2024, Bruegel, Brussels).

¹¹⁶Eg, recently, in the fields of sanctions and greenhouse gas emissions trading, the Court has therefore stated that an EU measure will only breach the proportionality principle if it is *manifestly* inappropriate in relation to its objectives, *Shuvalov v Council*, EU:C:2025:180 C-271/24P, para 76; *Luossavaara-Kiirunavaara v Commission and Sweden*, EU:C:2025:368, C-621/23P, para 58.

European Council.¹¹⁷ One should be clear about the limits of such an agreement. It cannot undo the present causal relationship between the goals proclaimed and the resettlement that followed. Nor can it undo the institutional design of the resettlement: the prominence of the European Semester, the Commission, and the regulatory style of decision-making. Whatever the weaknesses of these, any exercise in reimagining an EU Industrial Policy from scratch would be an exercise in hubris, insensitive to the challenges involved and the traditions established.

Nevertheless, such an Interinstitutional Agreement can do two significant things. First, it can tie the development of the policy more tightly to an institutional settlement that allows more grip over that policy, adequate reflection about it, and proper representation of different interests and values. Secondly, it can ensure a commitment to a wider notion of legality that institutes something akin to the public conscience of the EU.¹¹⁸ Such an agreement has a number of advantages here. It can introduce values that may not be fully present or adequately articulated elsewhere in EU law. It can, as a consequence, be responsive to both the benefits and dangers of Industrial Policy's distinctiveness. In addition, such an agreement can be more easily framed not as an external constraint on the EU Institutions, but as something developed by them to work as part of the *modi operandi* of EU Industrial Policy. This internal quality is particularly important if the purpose, as is suggested, is to change the culture of that policy.

Three principles would be central to such a mission.

One is *constraint*. This requires institutional power to be justified and be exercised with moderation.¹¹⁹ To be sure, the principle of conferred powers is subsumed within that. Institutional power should only be exercised if there is a clear legal base for that. However, constraint goes not merely to the existence of a power to act but also regulates the exercise of that power. Constraint would insist, therefore, that power not be abused or accumulated. It would raise issues about the concentration of power within the Commission here. It would also discipline the exercise of power, most notably through requiring more active processes of debate and contestation. It would require the Semester to be opened up more extensively than it is and limit the power of any institution simply to pronounce on a significant and extensive new direction for EU Industrial Policy, as happened with the Versailles Declaration, without wider public engagement. Constraint also requires transparency about who exercises power. There would need to be clarity about where public and private power respectively start and stop. The extent of Commission influence, for example, over Recovery and Resilience Facility plans or over many of the entities and projects established in this field raises questions about who really decides. Power is masked.

The second principle is *integrity*. This requires that, to be true to its vocation, the exercise of institutional power not only be justified but only be sustained for as long as it continues to provide a value that exceeds any harm generated. This requires a much tighter and more extensive relationship than is currently the case between the knowledge acquired and the action subsequently taken. For, without this knowledge, the value of the action cannot be assessed. The principle of integrity would also require this relationship be ongoing. This is partly to ensure the continued robustness of the knowledge in the light of change in the industry and its surroundings. It is also because views of value and harm are both contestable and subject to falsification. In this context, there is a strong case not merely for regular review but for both sunset clauses and restrictions on the transfer of financial support from one vehicle to another. For a feature of EU Industrial Policy is that many causes do not die but just wither. Activities initially supported by EFSI are still supported by Invest EU, and this seems largely by default. Equally, if extra financial support is to be provided for Invest EU or EU defence, there should be new instrument and debate

¹¹⁷Interinstitutional Agreement between the European Parliament, the Council and the Commission on a mandatory transparency register, OJ 2021, L 207/1.

¹¹⁸On this, D Dyzenhaus, *The Long Arc of Legality: Hobbes, Kelsen, Hart* (Cambridge University Press 2022) Chapter 6.

¹¹⁹D Dyzenhaus, 'The Rule of (Administrative) Law in International Law' 68 (2005) *Law and Contemporary Problems* 127, 151–2.

over whether that is better than possible alternatives rather than doing simply to use unspent Recovery and Resilience Facility support.

The final principle is *responsibility*. This requires institutions be responsible for public tasks over which they exercise authority. One dimension is accountability for acts or omissions that happen on their watch, where this be a direct consequence of their actions or action taken by other actors that is subject to their oversight. The Commission has extensive powers of oversight in Industrial Policy over a medley of industrial alliances, projects and entities. That should generate a responsibility on its part for what takes place there. The other dimension of responsibility extends beyond accountability to require each EU Institution to show it sought to fully realise the public interest for matters that fall within its authority. In that regard, it has been suggested a culture of performance management risks stultifying the forms of collective action that EU Industrial Policy has instituted. The principle would require the Commission not merely to ensure these processes meet the conditions set but that circumstances are provided for them where they can thrive. It would require, therefore, the Commission both cultivate the conditions for their success more actively and show how it is doing this.

7. Conclusion

One objection to the proposal above might be that it fetishises governance at the expense of substantive change. Overlaying more principles onto EU Industrial Policy underestimates the transformation needed and obstructs action. Such an objection has, however, to explain the fissile qualities of existing EU Industrial Policy. It has been driven by a series of exogenous shocks: underinvestment following the sovereign debt crisis, the urgency of the climate crisis, Covid-19, the Russian invasion of Ukraine. These give it a stop-start quality and a perspective that drives the future by reacting to yesterday's news. None of this is transformative. At the very least, a sturdier and more settled institutional arrangement is necessary to protect against this. If that is so, the only question goes to what should centre that arrangement. In that regard, industrial policy is about the realisation of public goals that transcend those of private profit and allocative efficiency. The outlined principles secure this. The principle of responsibility requires EU Institutions to deliver upon those goods. The principle of integrity requires them to reflect on the means deployed, notably by seeking to know the world better and attentiveness to the consequences of their actions. The principle of constraint requires this be done in a way that is neither self-aggrandising nor expansionary.

A further concern might be that these principles are too vague. Such vagueness may either bemuddle things or not generate sufficiently specified responsibilities. These principles are, however, intended to transform the decision-making culture by informing institutions' sense of what they ought to do in realising EU Industrial Policy. The principles' generality arguably allows them to do this more effectively by enabling a greater responsiveness to context and setting goals to be realized rather than formal criteria that are simply either complied with or breached.

The principles' generality adds, however, greater imperativeness to the question as to how they will be institutionalised so that the commitment to them is internalised within the Commission's processes. To that end, the Interinstitutional Agreement should, in addition to establishing these principles, change the Terms of Reference of the Industrial Forum. These changes should require it to review annually how well Commission EU Industrial Policy activities have met the principles of constraint, integrity, and responsibility. It should engage broadly with stakeholders in this. The Commission should be required to address its reviews, with the Forum having *locus standi* to go to the General Court if it fails to do this adequately. This would not only hold the most powerful Institution in this field more fully accountable. It would also generate the resettlement that is so central to modern industrial policy but so lacking in EU Industrial Policy. For the Industrial

Forum is both a plural body and an industrial body. Having such a body anchor EU Industrial Policy around the principles of constraint, integrity, and responsibility would finally be an EU-Industry resettlement.

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