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To cite this article: Etienne Schneider (2023) Germany's Industrial strategy 2030, EU competition policy and the Crisis of New Constitutionalism. (Geo-)political economy of a contested paradigm shift, *New Political Economy*, 28:2, 241-258, DOI: [10.1080/13563467.2022.2091535](https://doi.org/10.1080/13563467.2022.2091535)

To link to this article: <https://doi.org/10.1080/13563467.2022.2091535>



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Published online: 22 Jun 2022.



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# Germany's Industrial strategy 2030, EU competition policy and the Crisis of New Constitutionalism. (Geo-)political economy of a contested paradigm shift

Etienne Schneider 

Department of Political Science, University of Vienna, Universitätsstraße 7, Vienna, Austria

## ABSTRACT



In early 2019, the German Ministry of Economic Affairs revealed its National Industrial Strategy 2030. Even though attenuated due to fierce domestic opposition, it marks a shift towards a more selective, interventionist industrial policy. In particular, this shift has instigated far-reaching upheavals in EU competition policy under Franco-German pressure. This article probes into the determinants of this shift in Germany, a country (in-)famous for its allegedly ordoliberal stance, especially with regard to competition policy and EU economic integration. Drawing on regulation and critical state theory, neo-Gramscian IPE as well as historical materialist policy analysis, and based on trade and investment data, document analysis and expert interviews, it reconstructs the crisis tendencies and the constellation of interests and actors which have underpinned this shift in Germany. The article argues that – in face of growing geopolitical rivalries and technological decoupling – the NIS 2030 indicates a strategic re-orientation in relevant parts of the German power bloc towards actively promoting 'technological sovereignty' and 'European champions', thereby also calling into question an important facet of the EU's neoliberal neo-constitutionalist architecture. However, this re-orientation is deeply contested, revealing growing divisions within German capital along diverging competitive positions and patterns of internationalisation.

## KEYWORDS

Industrial policy; EU competition policy; Germany; New Constitutionalism; historical-materialist policy analysis

## Introduction

1989: After intense negotiations, Sir Leon Brittan, British competition commissioner in the European Commission and close confidant of Margaret Thatcher, prided himself that through the design of EC merger control, 'the supporters of industrial policy were effectively beaten back' (cited in Käseberg and Van Laer 2013, p. 188). The adoption of EC merger control provided the last building block completing European level competition regulation, comprehensively remodelled in the 1980s and 1990s along neoliberal tenets of competition policy elaborated by the Chicago School (Bartalevich 2016). In particular, this meant to expel any social or industrial policy consideration from competition regulation by constitutionalising a 'competition only' approach on the supranational level, largely detached from democratic control – a central prerequisite to secure British and German approval to surrender regulatory powers (Buch-Hansen and Wigger 2011).

**CONTACT** Etienne Schneider  [etienne.schneider@univie.ac.at](mailto:etienne.schneider@univie.ac.at)  Department of Political Science, University of Vienna, Universitätsstraße 7, 1010 Vienna, Austria

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2008: Looking into the abyss of a financial meltdown, EU state aid and competition rules were temporarily suspended to allow governments across the EU to inject massive public funds into tumbling banks and struggling industries. Yet, the European Commission quickly reinstated these rules after the crisis. No lasting paradigm shift away from neoliberal EU competition regulation towards more active, vertical industrial policy ensued (Wigger and Buch-Hansen 2014). Rather on the contrary, Germany's 2010 national industrial strategy paper insisted that industrial and technological development should be left to the 'invisible hand' and the market as a 'discovery procedure', instead of 'appointing artificial winners by the state' (BMW 2010, p. 32, own translation).

In 2019, however, the German Ministry of Economic Affairs and Energy (BMW) unveiled the National Industrial Strategy 2030 (abbreviated as NIS 2030 in the following) (BMW 2019a). Widely regarded as a striking 'paradigm shift' (Bardt et al. 2019), it proposes far-reaching, targeted and strategic industrial policy interventions to selectively promote 'game changer' technologies, to build 'national and European champions' large enough to persist in world market competition, to maintain and promote 'industrial and technological sovereignty' by reshoring global value chains and to prevent foreign take-overs of key technology firms through tightened FDI-screening and a 'national participation facility'. Only weeks later, and despite fierce opposition from business associations, the BMW, together with its French counterpart, launched the project of reforming EU competition regulation with a joint 'Manifesto for a European industrial policy' (BMW and Ministry of the Economy and Finance France 2019), initiating a profound, albeit still contested reconfiguration of EU competition policy (Meunier and Mickus 2020).

What explains this apparent paradigm shift towards selective and interventionist industrial policy and corresponding initiatives to relax EU competition regulation – particularly in a country which has been (in-)famous for its allegedly ordoliberal stance, first and foremost regarding industrial and competition policy (Ergen and Kohl 2019) and European economic integration after the Eurozone crisis (Nedergaard and Snaith 2015)? Scholarly literature on the NIS 2030 is scarce to date and has not yet engaged with this question (Bofinger 2019; Gerlach and Ziegler 2019, Zettelmeyer 2019). Media coverage in Germany has typically portrayed the NIS 2030 as an outlier, an erratic and misguided flirt of Germany's conservative economic minister Peter Altmaier with strategic industrial policy, quickly and comprehensively retracted after a 'business rebellion' against him (e.g. Böcking and Taufetter 2019, for a similar take on the debate cf. Germann 2021).

By contrast, this paper, informed by regulation and critical state theory as well as neo-Gramscian IPE, argues that the NIS 2030 indicates a deeply contested strategic re-orientation on behalf of major, world-market oriented capital fractions in Germany. As far as conceivable in early 2022, the new German government formed in December 2021 is set to continue this industrial policy re-orientation in key respects (e.g. by heavily promoting so called Important Projects of Common European Interest), complementing it with a 'transformation fund' and a 'mission-oriented' approach in research policy (SPD et al. 2021, 64, 19-20, cf. Mazzucato 2018). Yet, as this article contends (focussing on the period of investigation from 2019 to 2020), the origins of this re-orientation are rooted in contested shifts in the German power bloc which pre-date the formation of the new government. Opposition to and intense conflicts over the NIS 2030, far from being simply a 'business rebellion' per se, reveal growing divisions within German capital over how to react to increasing geopolitical rivalries and technological decoupling between the US and China. These frictions within the German power bloc were mediated and refracted through key German state apparatus and transposed to the European level, triggering intense conflict over competition regulation. The ensuing reconfiguration of the tension between EU competition regulation and industrial policy resonates with emergent debates on the erosion of the liberal world order in face of geopolitical turbulences (Babic 2020, Lavery and Schmid 2021), new forms of state interventionism and capitalism (Alami and Dixon 2021) as well as backlashes against New Constitutionalism 'from above' (Slobodian 2021).

Section 2 introduces the conceptual and methodological approach. Based on an extended version of regulation theory, section 3 traces the patterns of internationalisation and crisis tendencies of Germany's mode of regulation as an important background for understanding the

emergence of the NIS 2030 and related conflicts in the German power bloc. Section 4 outlines the key features of the NIS 2030 and its attack on EU competition regulation in the context of the evolution of EU competition policy as a core pillar of neoliberal economic integration. To unravel the main determinants of current shifts in the German power bloc, section 5 zooms in on the constellation of actors and interests within the German power bloc laid bare in the clashes over NIS 2030. Section 6 reconstructs how these fault lines were mediated through the German state and its strategic selectivities and tracks the repercussions on EU competition regulation. To conclude, section 7 discusses the political implications of these shifts, particularly with regard to widening cracks in new constitutionalist arrangements and the question of emergent post-neoliberal trajectories.

### ***German political Economy and EU competition policy – conceptual approach***

Recent literature on EU state aid and competition policy analyses current changes underway in EU competition regulation in the light of digitisation, geopolitical competition, Brexit and Covid-19 (cf. Meunier and Mickus 2020). This literature also highlights the decisive role of ‘Franco-German leadership’, but has hardly touched upon the question what drives Germany’s recent shift towards ‘French-style’ industrial policy. Critical political economy contributions, by contrast, have extensively dealt with the strategies of transnational capital in the neoliberalisation of EU competition policy, also taking into account the agency of key member states (Buch-Hansen and Wigger 2011), but have not yet engaged with current ruptures in EU competition policy and Germany’s role in it.

Dominant strands in the study of German political economy, in turn, all have their respective impasses in explaining this shift. Ideational or constructivist accounts typically refer to the continued legacy and efficacy ordoliberalism when explaining Germany’s stance towards competition policy and European economic integration more generally (Bonefeld 2012, Ergen and Kohl 2019, Nedergaard and Snaith 2015). Central to ordoliberal thought is the idea of a strong state which establishes a rule-based economic order and prevents the concentration of market power through strict anti-trust rules, but refrains from direct and discretionary interference with market competition (Eucken [1952] 2017). While never fully convincing in explaining the trajectories of German political economy and Germany’s Eurozone crisis management (Young 2020, cf. Feld et al. 2015 for an ordoliberal perspective), these accounts are clearly at odds with the recent shift towards strategic, interventionist industrial policy, at least in parts of the German power bloc.

Institutionalist Comparative Political Economy (CPE), particularly the Varieties of Capitalism approach (VoC) (Hall and Soskice 2001), has produced a comprehensive body of scholarship on various institutional components of the German political economy and the relation of institutional continuity and change under neoliberal globalisation (e.g. Streeck 2009, Rothstein and Schulze-Cleven 2020). Recent advances in institutionalist CPE have sought to overcome the main deficiencies of VoC, namely its microeconomic foundations, its supply-side bias and its static character due to its focus on self-reinforcing institutional path dependencies, by exploring demand components of various ‘growth models’ as well as the politics of institutional configurations and change (cf. Bohle and Regan 2021, p. 77-79). Drawing on (neo-)Gramscian thought, some authors have emphasised the role of dominant ‘social blocs’, i.e. cross-class alliances, which underpin different growth models or regimes (Baccaro and Pontussen 2019). Others focus on business power and the interaction between corporate and business elites in different policy arenas, thereby developing a granular view on economic policy-making in policy areas with low salience (‘quiet politics’) (Culpepper 2010).

While the approach taken here shares many of the concerns of these more recent advances in CPE – namely the role of final demand (specifically export orientation), the formation of social blocs and alliances, and the interaction between corporate and state actors in economic policy-making – it seeks to expand this debate through (1) regulation theory, (2) critical state theory and (3) the neo-Gramscian concept of ‘New Constitutionalism’. (1) Regulation theory centres around the idea that due to the inherent contradictions and crisis tendencies of capitalist accumulation, relatively

stable periods of capitalist development can only emerge under specific structural forms of regulation which process and mediate these contradictions. Such provisionally stable configurations are understood as specific 'modes of development' with a degree of coherence between a 'regime of accumulation' and a 'mode of regulation', the latter comprising different forms of regulation (e.g. the wage relation, the form of competition and the monetary relation). Recent extensions of regulation theory distinguish – with striking parallels to the growth model approach – different regimes of accumulation along the axis of introversion/extroversion (inward vs. export orientation) and productive/financialised accumulation, and explore their asymmetric interactions in core–periphery constellations (Bieling et al. 2016). In this extended version, regulation theory permits a conceptualisation of conflicts over economic policy as contested processes of calibrating structural forms of regulation in face of underlying crisis tendencies.

(2) Critical state theory, in turn, provides important theoretical avenues for conceptualising the role of the state in such processes, thereby going beyond rather generic accounts of 'mutual dependency' between business and state elites in parts of the business power literature. As Nicos Poulantzas with his famous theorisation of the capitalist state as a 'material condensation' ([1978] 2000, p. 128) of class relations of forces insists, the state is relatively autonomous from individual social forces. This is primarily because the material and institutional structures of the state, itself the result of past struggles, filter social interests along 'structural' or 'strategic selectivities' (Jessop 1990). Due to this relative autonomy, the state not only provides the central terrain on which social struggles are fought out. State apparatuses as well as state-affiliated think tanks also actively seek to mediate between different social forces and interests and formulate (asymmetric) compromises. Through such processes of mediation, class forces can assume and maintain their dominant social position as a 'power bloc' with a relatively coherent strategic orientation, despite internal frictions and competing interests.

(3) In addition, this paper draws on the neo-Gramscian concept of 'New Constitutionalism', understood as the strategy of enshrining neoliberal economic principles and imperatives into legal or constitutional arrangements, which – insulated from democratic accountability – constrain discretionary economic policy making (Gill 1998). However, neo-Gramscian IPE more generally, particularly in its 'Amsterdam variant', tends to perceive nation states as 'passive receivers of transnational ruling-class hegemony' (Ryner and Cafruny 2017: 110). By contrast, and following Bieling and Brand (2015), the approach taken here conceives struggles over EU competition regulation as 'second order condensation', i.e. as a condensation of relations of forces between member states which are themselves condensations of class relations. While taking into account the relative autonomous agency of supranational state apparatuses such as the European Commission or transnational organisations such as the European Roundtable of Industrialists (ERT), this approach captures the continued centrality of member states, particularly France and Germany as the most dominant ones, in European integration.

This conceptual approach is operationalised through historical-materialist policy analysis (HMPA). HMPA focuses on moments of open political contestations to elucidate 'how specific policies are formulated against the background of competing and contradictory interests of different social forces' and whether and how 'they contribute to [...] the regulation of underlying contradictions and crisis tendencies (Brand et al. 2021, p. 7). The analysis integrates quantitative data on trade and investment patterns with qualitative data generated through document analysis (from business associations, state apparatuses, parties, think tanks, trade unions etc.), media analysis as well as seven expert interviews. These interviews were conducted between November 2019 and February 2021 with representatives of interest groups (the Federation of German Industries – BDI, the German Trade Union Confederation – DGB), party representatives (CDU, *Die Linke*), a senior civil servant of the BMWi as well as two industrial and competition policy experts of the Austrian Chamber of Labour. The exclusive knowledge obtained through interviews with actors in Germany specifically served to uncover realms and dynamics of the actor constellation and policy process inaccessible through document analysis. Even though, as Stuart Hall (1977, 44) famously noted, '[o]nce class forces appear as political

forces', their political 'results, outcomes, [and] consequences [...] cannot be translated back into their original terms', this methodological integration of quantitative and qualitative approaches makes it possible to establish at least some tentative connections between the material interest of different social forces and the contingent ways these interests are worked out, articulated and mediated in political struggles.

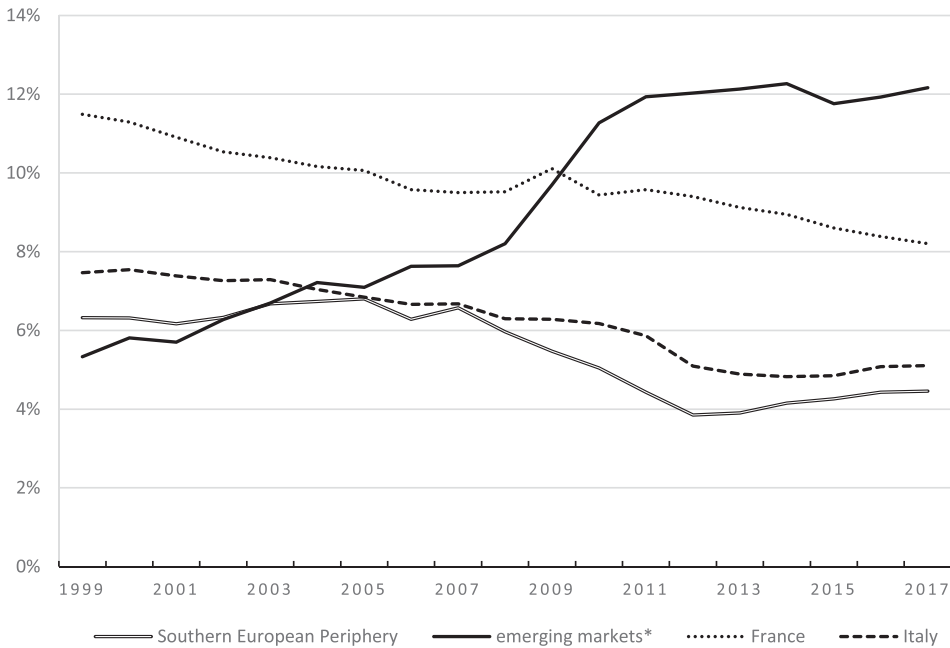
### ***Patterns of internationalisation and crisis tendencies of Germany's mode of development***

Far from being an erratic outlier, the NIS 2030 can be best apprehended as a response to specific crisis tendencies of Germany's predominantly productive, extraverted regime of accumulation, characterised by the large weight of the automotive and chemical industry, mechanical and electrical engineering as well as small and medium-sized enterprises (SMEs, comprising the so-called *Mittelstand*) (Becker 2015). Notwithstanding intense controversies in institutionalist CPE about continuity and change of the 'German model' under globalisation (Streeck 2009, on the *Modell Deutschland* Simonis 1998, Haas 2021), Germany's active extraversion and structural dependence on exports has almost continuously intensified over time. The relation of exports to GDP progressively climbed from 8.6 percent in 1950 to 25.8 percent in 1988. After reunification, it briefly dropped to 20.3 percent in 1993 and then soared again to an enormous 47.3 percent in 2018, indicating an enormous deepening of the productive extraversion of the German regime of accumulation (Statistisches Bundesamt 2022a, 2022b, own calculations before 1991).

Since the 1990s – and contrary to claims of a strong continuity of the German model as the prime example of a coordinated market economy (Hall/Thelen 2009) – this trajectory was sustained by a profound reconfiguration in the mode of regulation: Regarding the wage relation, the system of industrial relations was partially eroded, a precarious, low-wage sector emerged, and overall wage development remained depressed (cf. Baccaro and Benassi 2017, Nölke 2021). Regarding the form of competition, restrictive state aid and competition policy in the EU and the successive deepening of the common market facilitated the expansion of Germany's industrial dominance in Europe, specifically by constraining the space for protective industrial policy in other member states (see below, Pianta et al. 2016: 19, 21). At the same time, and despite a long tradition of mostly hidden 'vertical' industrial policy in (West-)Germany, including the prominent *Energiewende* (Gerlach and Ziegler 2015, Naqvi et al. 2018, Haas 2021), Germany pre-dominantly pursued an extensive but 'stealth' industrial policy in the form of horizontal innovation policies with a regional focus, undergirding its international technological dominance in many industries (Kattel et al. 2020). Regarding the monetary relation, Germany's integration into the European Monetary Union (EMU) facilitated this export-orientation (Scharpf 2015), particularly as German exports seem to have become increasingly price-sensitive since the 1990s (Baccaro and Benassi 2017).

Overall, successive modes of regulation have processed underlying contradictions and crisis tendencies of capitalist accumulation by *externalising* them – not only in ecological terms, i.e. through a disproportionate appropriation of global resources and sink capacities, but also by relying on the continued expansion into foreign markets to maintain a dynamic correspondence between the development of productive capacities and final consumption. However, this overarching line of continuity in Germany post-war political economy currently appears to be reaching its limits, mainly for two interrelated reasons.

First, while export oriented German industry shifted its focus to the so-called 'emerging markets' in recent years, first and foremost to China, thereby successfully overcompensating sluggish demand from the crisis- and austerity-ridden Eurozone (Figure 1, Celi et al. 2018), this strategy of re-orientation seems increasingly exhausted: China is pushing into high-tech markets while, at the same time, decoupling itself technologically from the West in face of mounting geopolitical competition with the USA. This concomitantly increases Sino-German competition on the world market, impedes German access to the Chinese market and exposes German technology firms to Chinese acquisition and merger activities (Lavery and Schmid 2021, European Chamber of Commerce in China 2021).



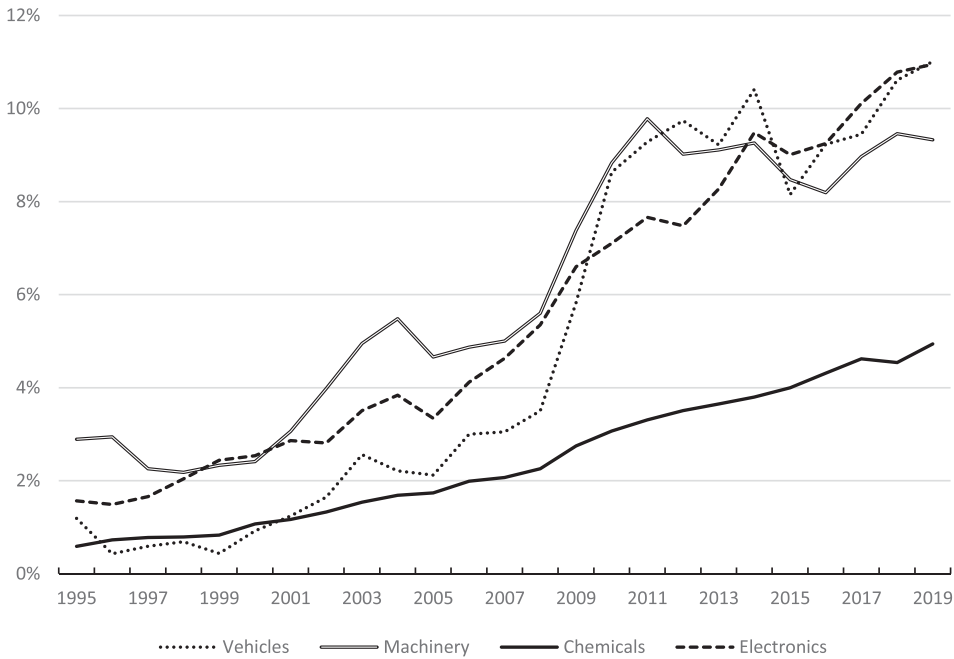
**Figure 1.** Regional structure of exports, percentage of total exports, \* = China (incl. Hong Kong, India, Brazil, Indonesia, South Korea, Turkey). Source: IMF Direction of Trade Data, own calculation.

To understand the fault lines in the German power bloc regarding the NIS 2030, it is necessary to zoom-in on the diverging patterns of internationalisation across different capital fractions in the context of this export re-orientation. Although a relevant part of the *Mittelstand* consists of ‘Hidden Champions’, i.e. relatively unknown leaders in global niche markets, German SMEs in general are much less export-oriented than large firms (IfM Bonn 2021). Even more importantly, those SMEs that are export-oriented have remained predominantly focused on the European market between 2011 and 2018, irrespective of the overriding re-orientation of Germany’s export economy to the emerging markets and China (KfW 2020, p. 4).

The extent of re-orientation has also varied by industry, however. While the expansion into the Chinese market has been particularly important for the automotive industry, mechanical engineering and electrical engineering, it has been much less pronounced in the case of the chemical industry (Figure 2). But this trade-based picture of re-orientation requires some further qualification regarding German FDI stocks in China (Figure 3). The automotive industry has significantly expanded its FDI stock in China over the past years, thus markedly increasing its dependence on the Chinese market (amounting to 29 percent of its total FDI). German mechanical engineering FDI to China has remained low in absolute terms, but also is quite substantial in relative terms (18 percent of total FDI, its low absolute amount owing predominantly to the preponderance of medium-sized firms in mechanical engineering without foreign subsidiaries). Electrical engineering FDI stocks in China, however, have almost halved over the past years, and chemical industry’s stocks have remained rather low in relative terms (only 8,4 percent of its total FDI stocks in 2019), despite a slight increase in absolute terms.

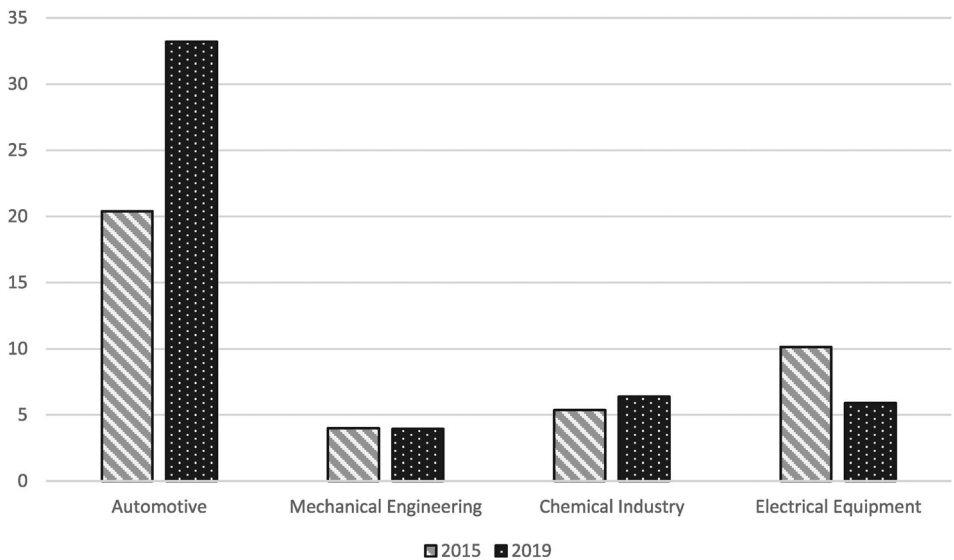
Secondly, Germany’s deep-seated export orientation is hitting limits because German industry has significantly lost ground in world market competition over the past years. While industrial capacities in Europe have become increasingly agglomerated in a ‘central-European manufacturing core’ centred around Germany, consolidating Germany’s dominant position in the European division of labour (Stehrer and Stöllinger 2015), Germany’s position in the international division of labour has become much more fragile. As one of Germany’s most prominent corporate think tanks points out,





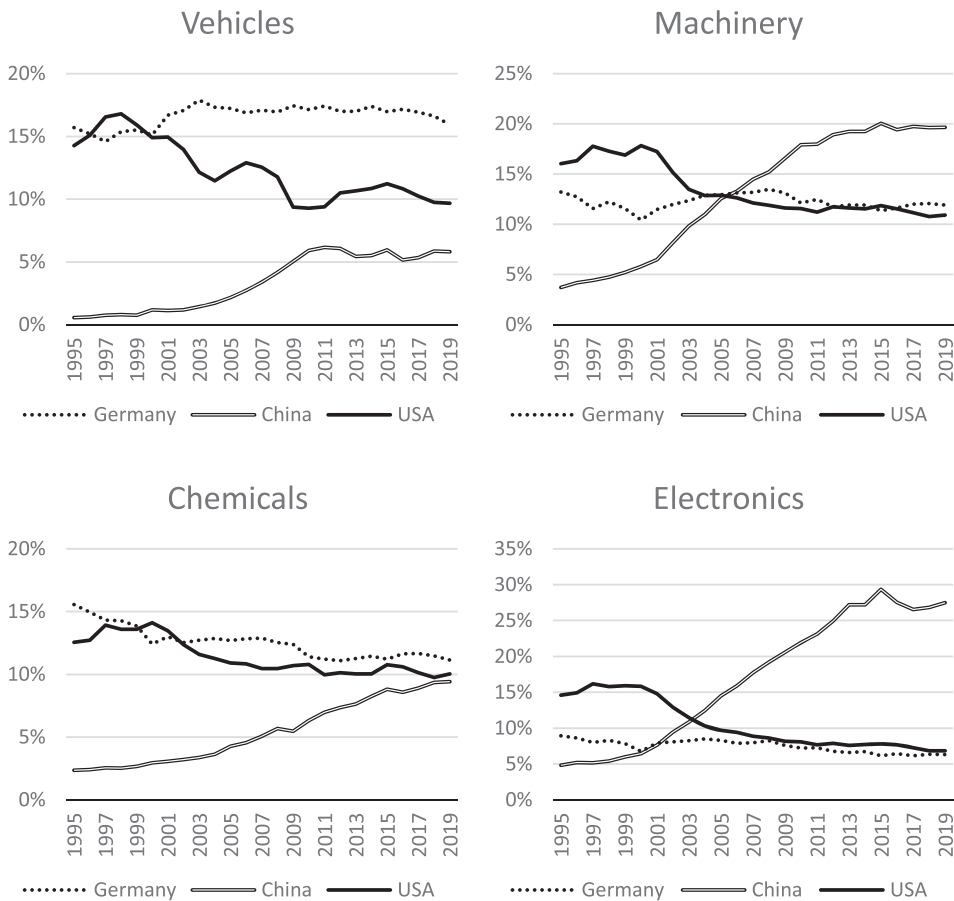
**Figure 2.** Exports to China by sector, percentage of total exports. Source: Atlas of Economic Complexity, based on UN Comtrade data, HS4 classification.

Germany’s share in high tech has drastically declined over the past decade (Bertelsmann-Stiftung 2020). Again, this trend has affected the core industries of the German production system very differently. While Germany’s automotive and mechanical engineering industries, unlike their US-American counterparts, were able to more or less maintain their world market position despite the ascendance of Chinese and other East Asian competitors, the chemical and the electrical engineering industries have significantly lost world market shares (Figure 4, for a similar take cf. Germann 2021). Particularly



**Figure 3.** German FDI stocks in China (in Billion Euro). Source: Deutsche Bundesbank, FDI Statistics.





**Figure 4.** Country share in exports by selected product groups. Source: Atlas of Economic Complexity, based on UN Comtrade data, HS classification (vehicles = 86-89 HS2, machinery = 84, 90-96 HS2, chemicals = 28-40 HS2, electronics = 85 HS2).

the German electrical engineering industry has faced a rapidly growing Chinese global market dominance, and experienced a profound erosion in the areas of consumer electronics, telecommunication and computer electronics over the past decades (BMW 2019a: 5). While this perforation of Germany's once highly diversified production system was initially confined to specific areas, it has by now resulted in ever more obvious instances of technological dependence, such as in the case of 5G. More importantly even, there are growing concerns that Germany and the EU more generally could become disconnected from the evolution of new, data and artificial intelligence driven technological paradigms due to their weak stance in the information technology and platform economy (cf. European Political Strategy Centre 2019) – a shift with the potential to also disrupt Germany's traditional core industries, e.g. through autonomous driving in the case of the automotive industry.

### **Germany's National Industrial Strategy 2030 as an attack on EU competition regulation**

It is these crisis tendencies of Germany's actively extraverted regime of accumulation which the NIS 2030 seeks to address. Crafted in early 2019 by one of Germany's key economic state apparatuses, the Ministry of Economic Affairs and Energy (BMW), it aims at formulating an industrial policy approach capable of maintaining and defending Germany's 'industrial and technological sovereignty' (BMW 2019a, p. 10), preserving 'closed value added chains' (ibid., p. 11) and 'launching

catch-up processes' (ibid.) to halt the further erosion of Germany's industrial base. To do so, it introduces a 'new economic principle of proportionality' as the basis of a strategic industrial policy which radically breaks with the ordoliberal principle of market non-interference: While the state should refrain from intervening into economic processes with little economic significance, '[t]he larger the economic significance of a process, the greater the room for manoeuvre for the state must be for active and activating involvement' (BMWi 2019a, p. 13).

On this basis, the NIS 2030 primarily outlines three industrial policy strategies: First, it proposes a strategic and protectionist FDI policy. This does not only pertain to tighter FDI screening procedure where national security, including critical infrastructures and technologies, is concerned – an approach the BMWi has been pursuing already since 2017. The NIS 2030 also advances the idea to expand state ownership through a state fund ('national participation facility') to prevent foreign take-overs that endanger Germany's 'technology and innovation leadership' (BMWi 2019a, p. 12). Secondly, and in contrast to the horizontal, 'technology-neutral' approach that has dominated German industrial policy to date, the NIS 2030 suggests propping up selected technology areas through state aid, state assistance in the 'formation of syndicates', and – in 'eminently important' cases – 'direct state involvement', as was the case with Airbus (BMWi 2019a, p. 13). Thirdly, the NIS 2030 aims to promote the formation of 'National and European Champions' in areas where 'critical mass [is] necessary for an industrial stakeholder to successfully participate in international competition', explicitly elevating the survival of individual large German firms such as Siemens or Thyssen-Krupp to 'national and economic interest' (BMWi 2019a, p. 11-12).

On this basis, the NIS 2030 also aims at a reconfiguration of the form of competition as a key structural form of regulation. It insists that an interventionist industrial policy as outlined by the NIS 2030 'must be possible in line with EU law' (BMWi 2019a, p. 13). Consequently, it pushes for 'reviewing and reforming existing law on subsidies and competition' (ibid.), particularly in the areas of EU state aid and merger control. This thinly veiled attack on EU competition policy was further elaborated only weeks later in a joint 'Franco-German Manifesto for a European industrial policy' (BMWi and Ministry of the Economy and Finance France 2019). It maintains that EU state-aid guidelines must be in line with 'the aim to develop innovative industrial capacity', demands a revision of EU merger control to better take into account global competition as well as foreign state-control and subsidies, and goes as far as to suggest 'a right of appeal of the Council' to override Commission decisions (ibid., p. 3).

With this thrust, the NIS 2030 and the Franco-German Manifesto represent a full-fledged push to reconfigure the long-standing tension between industrial policy and EU competition law – thereby challenging a key component of the EU's new-constitutionalist economic architecture as it emerged in the 1980s. During this period, the Commission began to aggressively enforce antitrust and state aid law against member states (Buch-Hansen and Wigger 2011). State aid control in particular – an exclusive Commission competence, considerably expanded over time through the development of 'soft law' in the form of guidelines and block exemption regulations – proved decisive in promoting privatisation and liberalisation policies and in clamping down on national 'vertical' industrial policies, which the Commission deemed to 'distort' the common market (Buch-Hansen and Wigger 2011, p. 34, 96-8; Doleys 2013, p. 35; Pianta et al. 2016). Similarly, the specific design of EU merger control, established in 1989, aimed at constraining active industrial policy: Its exclusive and distinctly neoliberal focus on promoting competition and efficiency, defined as allocative efficiency in line with the Chicago School antitrust thinking (Bartalevich 2016), precludes consideration of any industrial (or social) policy criteria in merger control (Lianos 2019). Despite the close genealogical intertwining of neoliberalism and ordoliberalism (Biebricher 2017), by partly incorporating the Chicago School's effect-based and efficiency-enhancing rationale as opposed to the strictly form-based ordoliberal approach, EU competition policy has arguably become more neoliberal than ordoliberal (Bartalevich 2016, on the distinction of effect- and form-based approach in competition policy Ergen and Kohl 2019).

As such, the Europeanisation of competition policy bears central features of new constitutionalism. It enshrines neoliberal economic policy principles (specifically by constraining the policy space

for discretionary industrial policy) in a supranational – hard and soft – legal framework which is largely detached from democratic accountability. Thereby, it concomitantly strengthens economic policy-making powers of ‘technocratic’ bodies such as the Directorate-General for Competition (DG COMP). In this way, it significantly limits ‘the possible in the making of economic policy’ on other levels of governance more permissible to societal demands (Gill 1998, p. 17). This specific design of EU competition policy was deeply contested, however, even within globally oriented European capital, which was split between a pro-industrial policy ‘neo-mercantilist’ and a ‘competition-only’ neoliberal fraction well into the 1980s (van Apeldoorn 2002, p. 123-127). Therefore, even though constraining discretionary industrial policy space was a deliberate strategy by competition Commissioner Brittan as well as the German and British governments at the time (Buch-Hansen/Wigger 2011, p. 85), the new-constitutionalist features do not represent a coherent and uncontested policy approach on behalf of European elites. Much rather, the constraining effects of EU competition regulation on industrial policy in general and on the promotion of industrial ‘champions’ in particular have come under recurrent criticism, especially by the ERT and the French government (ibid, p. 99, 114-117).

Yet, no profound shift in the tension between EU competition regulation and industrial policy ensued until very recently (cf. on the missing regulatory paradigm shift after the global financial and economic crisis Wigger/Buch-Hansen 2014). Industrial policy experienced a remarkable renaissance in academic and policy debates, and the Commission produced an almost bewildering number of industrial strategies in and after the Great Recession. Nevertheless, the Commission continued to adhere to a predominantly horizontal industrial policy approach, backed by Germany’s reluctance to relax EU competition rules (Ambroziak 2014, Meunier/Mickus 2020, p. 1088). Since 2017, however, and in light of increasing contemplations on ‘strategic autonomy’ in EU policy circles in face of mounting Sino-American geopolitical tensions (Lavery and Schmid 2021), some initial, but widely unnoticed modifications can be observed: The Commission introduced a tighter FDI-screening framework regulation and activated an instrument called Important Projects for Common European Interests (IPCEI), which exempts subsidies for research and development up to the first industrial deployment in transnational industrial alliances from state aid rules. While this further stretched the arc of tension between industrial and EU competition policy, it was not until the Commission’s decision to prohibit a planned merger of German Siemens and French Alstom in early 2019 that this conflict over the relation between industrial and EU competition policy erupted openly. With France having long pushed for a relaxation of EU competition policy (Ambroziak 2014), and the UK falling out of the equation due to Brexit, the positioning of the German power bloc on this issue became decisive.

### ***Constellation of interests and faultlines in the German power bloc***

An in-depth analysis of the positions and strategies adopted by various political actors in Germany in reaction (and partly also prior) to the NIS 2030 and the Franco-German Manifesto reveals three main coalitions or groups of actors. First, a group which can be characterised as *ordoliberal-defensive*, staged a full-blown assault on the NIS 2030 and the BMWi. It comprises business associations which aim to represent the *Mittelstand*, such as the Federal Association of *Mittelstand*-Businesses (BVMW) or the association of family enterprises (*Die Familienunternehmer*), the mechanical engineering association (VDMA, at least to some extent), the (neo-)liberal party FDP, parts of the conservative parties (CDU/CSU), the majority of state-affiliated economic think tanks (such as the Munich-based ifo, the Kiel-based IfW or the Council of Economic Experts in its majority position) as well as the American Chamber of Commerce in Germany. This group vigorously opposed the paradigm shift towards a selective-interventionist industrial policy approach as outlined by the NIS 2030 as a problematic ‘trend towards autarky’ (IfW 2019, p. 1, own translation) and an ‘imitation of Chinese industrial policy’ (Fuest 2019, own translation), and fiercely criticised the ‘hollowing out’ of EU competition law along industrial policy consideration such as the formation of ‘champions’ (IfW 2019, p. 1, cf.

Familienunternehmer 2019, p. 9). Along these lines, it defied the push for weakening the Commission in competition policy, and resisted tighter FDI-screening and a 'national participation facility'.

While the legacy of ordoliberal thought in Germany cannot account for the multiplicity of positions in the German power bloc, ordoliberalism does appear to be characteristic and influential for the position of this particular faction: Even though EU competition rules are arguably rather neoliberal than ordoliberal (see above), this faction of the German power bloc opposes their erosion, highlighting in particular the important role of competition and the resolute prevention of market concentration for the continued existence of the *Mittelstand* as a key pillar of Germany's economic success. At the same time, the position of this group cannot solely be attributed to ordoliberal ideologues. It also reflects the interests of relevant parts of the German *Mittelstand*, i.e. non-oligopolistic capital factions which are predominantly oriented towards the domestic or European market. As these factions do not compete directly on the global market, it is barely surprising that they primarily fear an erosion of their competitive position vis-à-vis national or European 'champions' that are promoted through generous subsidies and loose merger policy.

The mechanical engineering association VDMA, representing a highly export and world-market oriented industry, is an interesting outlier, though. What explains its proximity to the ordoliberal-defensive group are the structure of the industry and its patterns of internationalisation: it is dominated by medium-sized enterprises (many so called 'Hidden Champions'), has so far largely been able to withstand global market competition with China, and it is strongly oriented towards the Chinese market in terms of both exports and the relative share of its direct investments abroad (see above). Along these lines, the VDMA maintains that European champions do not emerge through 'protection and subsidies' but through competition, and opposes any 'politicisation of competition rules' (VDMA 2020).

A second group can probably be best described as *world market-oriented-strategic*. It revolves around the Federation of German Industries (BDI), the most powerful and influential German business association to date, and some major corporations which explicitly positioned itself, such as Siemens or Deutsche Telekom. Although the BDI formally represents the concerns of all the industry associations organised in it, its positions tend to be biased towards the faction of world market-oriented, oligopolistic capital due to internal voting procedures and channels of influence (Heine and Sablowski 2013, Behrens 2011, p. 101). This group has not only supported key elements of the NIS 2030, but also provided important ideas that were incorporated into the strategy, particularly through the BDI's widely noticed strategy paper on China as a 'partner and systemic competitor', released just a month before the NIS 2030 (BDI 2019a). The paper reveals a profound ideological unsettlement and re-orientation, most evident in the BDI's remarkable statement that 'Germany and the EU cannot rest on the *supposed* certainty that our model of [...] a liberal and social market economy will bring long-term macroeconomic advantages over the Chinese system' (ibid., p. 8, emphasis added).

On this basis, and even though the BDI remains critical of industrial policy goals such as 'industrial and technological sovereignty' and 'closed value added chains' (BMW 2019a, p. 10-11), it generally supports a more interventionist industrial policy approach. Along these lines, it calls for 'modernising regulations on state aid and competition law' (BDI 2019b, p. 9) to permit 'the market-driven formation of European champions' (BDI 2019a, p. 9) as well as a flexibilisation of state aid rules through broad deployment of the IPCEI-instrument (BDI 2019b, p. 9). It also considers weakening the DG COMP by strengthening the 'checks and balances inside the Commission' (ibid., p. 10). However, at least in principle, the BDI opposes 'technology protectionism' through tighter FDI screening and a 'participation facility' (BDI 2019a, p. 14, BDI 2019b, p. 2-3). Interestingly, though, this position is far from uniform: The Association of the Automotive Industry (VDA), obviously due to its extra-ordinary dependence on the Chinese market both in terms of exports and FDI stocks (see above), most vigorously opposes any protectionist steps which could provoke 'corresponding countermeasures' (VDA 2019, p. 11). By contrast, the electrical engineering association (ZVEI), in line with the information and telecommunication (bitkom), the security and defence industry

(BDSV) and, to some extent, also the chemical industry association (VCI), is far more open to such measures. The ZVEI even actively promotes the concept of ‘technological sovereignty’ (ZVEI 2020), evidently due to its declining position in world-market competition and its disentanglement from China, at least regarding FDI stocks (see above).

A third, social democratic-interventionist group, comprising the main trade union organisations and think tanks as well as the SPD, shares many of these positions and takes them even further. While critical of the supply-side elements in the NIS 2030, it whole-heartedly supported the proposed shift towards a selective-interventionist industrial policy, the relaxation of EU state aid and competition rules, and even the re-shoring of value chains and tightened FDI screening procedures and the participation facility (cf. German Trade Union Confederation DGB 2019). The position of this group is in line with the general aim of these actors to regain industrial policy capacities to actively shape production structures. Concomitantly, though, it also corresponds to the consideration that the promotion of large corporations secures and possibly even expands employment precisely in those areas where unions’ organisational power is greatest (Dullien 2019). The key state apparatuses, in turn, particularly the Chancellery and the BMWi, the latter being traditionally deeply interwoven with business associations (Löffler 2016), acted as mediators and organisers in this conflict, seeking to articulate an overarching, relatively coherent position of the power bloc through mediation and recalibration of positions and strategies.

### ***Refraction through the state: compromise building and repercussions in the EU***

While the paradigm shift formulated in the NIS 2030 caught many commentators off guard, its origins go back well into the mid 2010s. Whereas the BMWi had been largely under the influence of the conservative CDU/CSU since the 1970s (except for 2002–2005 under Schröder II), it fell into the hands of the SPD from 2013–2017, punctually altering its selectivity. In this period, the BMWi launched an ‘Alliance for the Future of Industry’ which developed into the ‘central dialog body for industrial policy issues’ in Germany (Interview BMWi). This alliance involved various industry associations, all organised in the BDI, and, even though in clear numerical disadvantage, trade unions (Gerlach and Ziegler 2015) but completely excluded the ordoliberal-defensive group except for the VDMA. It is therefore little surprising that the NIS 2030 was heavily tilted towards the world market-oriented-strategic group (and to a lesser extent towards the social democratic-interventionist group). The fact that Peter Altmaier, minister of economy since 2018 and formerly the head of the Chancellery with frequent and close interactions with CEOs of major corporations, is said to have formulated the strategy in a closed circle (Heide et al. 2019), i.e. without consulting the relevant departments in the ministry with more balanced selectivities towards various capital factions, is likely to have reinforced this bias.

The fierce attacks on Altmaier and the NIS 2030 – the association of family enterprises calling it an ‘Anti-Mittelstand policy’ (Böcking and Taufetter 2019) – primarily reflect this exclusion of the ordoliberal-defensive group from the (informal) agenda-setting process. In light of calls for resignation, and with the Chancellery distancing itself from the most controversial parts of the strategy (Heide et al. 2019), the BMWi leadership initiated a process of compromise building. This did not only include a ‘dialogue process’ with several stakeholder consultations and conferences, prominently involving actors from the ordoliberal-defensive group (Interview BMWi). The BMWi leadership also modified the structurally condensed selectivity of the ministry, providing two main *Mittelstand*-representatives from the CDU with key functions in the ministry (Stratmann and Hildebrand 2019). At the same time, it also sought to split the ordoliberal-defensive group internally by using its right to overrule the Federal Cartel Office, approving of a controversial merger between two medium-sized but world-market oriented bearings manufacturers – a decision obviously intended to reconcile the faction of Hidden Champions with the idea of promoting national and European ‘champions’ (Streihammer 2019).

What resulted from this process was a second version of the NIS 2030, now merely called Industrial Strategy 2030 (BMW [2019b](#)), combined with a *Mittelstand*-strategy, which features many prominent supply-side demands (so called 'framework conditions') that the ordoliberal-defensive group had pressed for particularly vehemently (such as lowering corporate taxation or reducing social security contributions). The Industrial Strategy itself represents a somewhat defused paradigm shift, in that it rhetorically butters up the *Mittelstand* and drops some of the most controversial formulations, positions and projects (such as naming individual 'champions', the new economic principle of proportionality or the 'national participation facility'). Overall, though, it maintains the NIS 2030s main positions regarding competition policy surprisingly clearly. At the same time, it now combines these positions with a call to *strengthen* EU competition rules against dominant (read: US-American) digital and platform companies, similar to the new German (Digital) Competition Act that provides German competition authorities with globally unprecedented regulatory powers.

Once this compromise was settled, the shift in the position of the German power bloc towards the French position has resulted in far-reaching, still ongoing and heavily contested upheavals at the European level (for a more comprehensive account cf. Meunier and Mickus [2020](#)). While dropping the call for a right of appeal of the Council to override Commission decisions, Germany and France, joined by Poland and later also Italy, increased the pressure on the Commission to relax merger control and to weaken the DG COMP by strengthening the intergovernmental advisory body and the 'Council's input into [competition] policy- and decision-making' (BMW [et al. 2019](#), p. 3). At the same time, the position of the world market-oriented-strategic in the German power bloc was also articulated by BusinessEurope ([2019](#)) and the ERT ([2019](#)), which generally supported Franco-German initiative to relax merger control. In face of this increasing pressure from both member state governments and transnational organisations of major, world market-oriented European capital, the Commission climbed down in December 2019, launching a revision of the Market Definition Notice relevant for merger control and signalling a permissive stance towards an equally controversial planned merger of Orange and Deutsche Telekom (Meunier and Mickus [2020](#), p. 1087).

Moreover, with the French push to nominate Thierry Breton as Internal Market Commissioner, former CEO of major world market-oriented multinationals such as France Télécom oder Atos, the conflict over industrial and competition policy was displaced into the Commission, leading to increasing tensions between the DG COMP and the DG GROW (van Dorpe [2019](#)). This is also reflected in the Commission's industrial strategy published in March 2020, already overshadowed by the Corona pandemic, which announced a comprehensive review of EU competition and state aid rules (European Commission [2020a](#), p. 5-6), and committed to further puncturing the state aid and competition framework with more industrial alliances and IPCEIs as well as a simplified procedure to set them up (*ibid.* 12-13, 15). Under the German council presidency in the second half of 2020, and in light of the Corona crisis exposing Europe's industrial and technological dependencies, the German power bloc took this approach of hollowing out state aid rules even further, pushing for IPCEIs in a wide range of technology areas such as microelectronics, battery cells and hydrogen (BMW [2020](#)). Internally, and despite some concessions regarding thresholds and technology definitions, the BMWi successfully and comprehensively tightened FDI screening procedures, expanding these procedures to areas of 'critical infrastructures' and 'critical technologies', which can now take effect already in the event of a 'foreseeable impairment' (and not only in the event of an 'actual threat') to public safety and order (Hoppe [2021](#)).

Nonetheless, these developments have so far not resulted in a straightforward weakening of EU competition policy. The Commission actively and in part successfully sought to shift the debate over EU competition policy reform away from merger control towards areas and political projects which enjoyed a high level of consensus (also within the German power bloc) and allowed it to strengthen its regulatory powers in competition policy (Meunier and Mickus [2020](#)). Key among those projects has been the design of instruments against distortions caused by foreign subsidies in the single market (Commission [2020b](#)), i.e. a project which aims to expand and project outwards EU state aid rules. The Commission also readily seized on the proposal to tackle the market power of 'big



tech' digital and platform companies with new and far-reaching regulatory powers, envisioned in its drafts for a Digital Markets and Digital Services Act (Scott et al. 2020). Overall, then, what emerges from these strategic shifts in the German power bloc and ensuing reconfigurations on the European level is an ambivalent double-tendency of strengthening-weakening of EU competition in the face of growing geoeconomic competition and rivalries.

### ***Conclusion: Crisis of New Constitutionalism – post-neoliberal trajectories?***

This article has argued that Germany's National Industrial Strategy 2030 (NIS 2030), although partly 'defused' in a process of compromise building within the German power bloc, marks a decisive paradigm shift from a predominantly horizontal and 'technology-neutral' towards a selective and interventionist industrial policy approach. Confronted with substantial crisis tendencies of Germany's highly export-oriented, extraverted regime of accumulation in face of the crisis of the liberal world order, increasing geopolitical rivalry and technological decoupling between China and USA, relevant parts of the German power bloc have changed course. Triggering intense conflicts, they are turning towards promoting technological sovereignty (at least in key strategic areas) by relaxing EU competition and state aid policy, and towards actively protecting the core of Germany's industrial production system from foreign acquisition, especially from China, and from competition with powerful US-American digital and platform corporations, potentially signalling a transition from 'competitive' (Beck 2014) towards a 'defensive' mercantilism (Germann 2021). The determinants of this shift remain largely elusive to ideational or constructivist accounts with their emphasis on ordoliberal ideas, but also in part to comparative-institutional approaches with their focus on institutional continuity and change. Even though recent advances in CPE have moved to explore the politics of institutional configurations and change, the concept of 'social blocs' as dominant cross-class alliances remains too generic to capture the social forces, particularly the fractionisation of capital along diverging patterns of internationalisation, which have underpinned this shift.

However, is it really justified to speak of a paradigm shift in Germany's industrial policy approach, or are we rather witnessing a more gradual shift of emphasis? To be sure, as highlighted above, there is a long tradition of interventionist industrial policy in Germany, selectively promoting specific technology areas. However, these forms of industrial policy played a subordinate role compared to Germany's 'stealth', pre-dominantly horizontal and technology-open innovation policy approach (Kattel et al. 2020), which was largely compatible with neoliberal EU competition regulation (cf. Naqvi et al. 2018). By contrast, and even though fiercely contested, the NIS 2030 signals the transition towards a pre-dominantly vertical industrial policy approach, selectively promoting key technology areas (battery cells, hydrogen, semi-conductors etc.), especially through the increasingly widespread formation of IPCEIs. Crucially – and this also points towards a paradigm shift – this new industrial policy orientation provokes open tensions with the established neoliberal EU competition policy framework. Moreover – and probably even more importantly – the conflicts over the NIS 2030 indicate not only a shift in policy instruments but also a radically different problem focus, which is, according to the policy paradigm literature (Hall 1993, p. 279), a critical manifestation of a paradigmatic shift: While there is certainly a strong line of continuity in the focus on promoting the international competitiveness of export oriented capital, the geopolitical rationale of averting technological dependence in the face of growing geopolitical rivalries and technological decoupling between China and the US is gaining more and more clout. As such, the paradigm shift in the German power bloc may also be interpreted as part of a larger re-orientation of European power blocs from a strategy of relative autonomy through alignment within a US-led global order towards the attempt of attaining a more extensive strategic autonomy (Lavery and Schmid 2021).

Along these lines, the consensus in the German power bloc regarding new-constitutionalist arrangements enshrined in the EU's legal and institutional architecture, long taken for granted in critical European integration studies, appears to be eroding, at least in regard to EU competition policy. Relevant factions of the German power bloc seek to 'flexibilise' merger control to permit



the formation of ‘European champions’ large enough to withstand global competition, to riddle state aid rules to promote industrial alliances in strategic technology areas with generous subsidies, and to reclaim regulatory powers from the DG Comp, a technocratic body largely detached from democratic accountability. This bears remarkable parallels to the backlash against new constitutionalism ‘from above’ in the United States, borne particularly by those factions of US industry which have been undercut by competition from China in the course of neoliberal globalisation (Slobodian 2021). There are also striking parallels to the gradual erosion of new-constitutionalist features the Eurozone architecture such as the monetary financing prohibition and the ‘no bailout clause’, first passively accepted in the Euro crisis and then more actively (yet ‘exceptionally’) advanced by the German power bloc with the NextGenerationEU in the Corona crisis (Ryner 2021). And yet, it is far from clear whether this trajectory indicates the transition towards, or ‘interregnum’ on the way to a new, relatively coherent post-neoliberal mode of development. Much rather, a picture of ambivalence and concurrence is emerging, revealing growing internal frictions within the German and European capitalist class: EU competition policy is concomitantly strengthened and weakened along geopolitical and geoeconomic considerations, the EU–China investment agreement is being pushed forward while FDI screening procedures are tightened. Without once again prematurely declaring neoliberalism over, critical political economy should be sensitive to these deepening fissures, and to the development trajectories and novel strategic conditions that emerge from them.

### Data availability statement

The primary data that support the findings of this study are derived from resources available in the public domain. URLs to the original source are provided in the reference list.

### Declaration of interest statement

none.

### Acknowledgements

The arguments developed in this article are deeply indebted to the work of and exchange with Julian Germann, who – without knowing from our respective research for most of the time – has delved into the same problems and questions from a strikingly similar theoretical perspective. It also owes to important feedback provided by Alina Brad, Ulrich Brand, Thomas Sablowski and Felix Syrovatka as well as the two anonymous reviewers – the remaining errors are all mine.

### Disclosure statement

No potential conflict of interest was reported by the author(s).

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Interview BMWi: Official in the German Federal Ministry of Economic Affairs and Energy, 18 February 2021.

### ORCID

Etienne Schneider  <http://orcid.org/0000-0002-4243-7337>

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