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ARTICLES



Is the Welfare Partnership's End in Sight?

Germany's Government/Nonprofit Relations under the Strains of COVID

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Abstract

This article provides an overview of how German social welfare nonprofits in health and human services fared during the COVID-19 pandemic to gauge whether the historically strong complementary relationship between the sectors has continued to hold. Conceptually, we use third-party governance theory to frame German social welfare policy and see what the pandemic experience suggests about government/nonprofit relations. Using an exploratory approach, the analysis is based on a national CAWI survey, conducted in late 2020, covering initial effects of the pandemic and nonprofit countermeasures; financial and non-financial impacts; and the uptake of support programs. The survey data presents the first attempt to analyze the pandemic effects on the most crucial component of Germany's social welfare infrastructure. The findings suggest that while the traditional partnership still exists, the government showed little interest in addressing the needs of nonprofits. This raises questions as to whether neo-liberal policies have undercut the sense that government is as dependent on nonprofits in social welfare service provision as nonprofits are on government support.

Keywords

third-party government, interdependence theory, welfare partnership, government/nonprofit relationship, human services, Germany, COVID-19

1 Introduction

The second half of the 20th Century saw the blossoming, and subsequent scholarly recognition, of close collaborative relationships between governments and the nonprofit sector across Western industrialized countries (Wuthnow & Anheier, 1991; Gidron et al., 1992; Salamon, 1995). The comparative exploration of the collaborative nature of sector relations became so dominant that it effectively resulted in a partnership paradigm. With the growth of neo-liberal policies, on one hand, and authoritarianism, on the other, however, the continued prevalence of the partnership paradigm is being called into question (Toepler et al., 2023). Next to the USA, Germany has long been held as a paragon of the welfare partnership, with its corporatist structures that vested large

responsibility for core health and social welfare services to the nonprofit sector (Anheier, 1992; Salamon & Anheier, 1998; Zimmer, 1999). In the recent past, changing government policies and attitudes (discussed below under social policy) appear to have softened the commitment of the government towards its nonprofit partners (Zimmer & Priller, 2023). In this article, we seek to gauge how well the partnership held up under the strains of the COVID-19 pandemic.

On 16 March 2020, the German government imposed a first round of contact restrictions in reaction to a drastic increase in COVID-19 infections, temporarily closing shops, bars, restaurants, schools, and kindergartens and prohibiting assemblies of people. With masking and social distancing requirements staying in place, closures were largely lifted or eased as summer approached. With infection rates rising again in the fall, a new round of severe measures to contain the spread of the virus was imposed on 2 November 2020. Contact restrictions were reimposed; services requiring close interpersonal contact, recreational activities, bars and restaurants were once again closed; entertainment events prohibited, and get-togethers in public and private places severely limited.

While these measures received widespread media and public attention and were widely debated, their implications for civil society and Germany's nonprofit sector remained largely below the public's radar, compared to the economic impact on business. The consequences for social services as well as civic activities did not get broadly recognized, nor did the substantial contributions of volunteers to mitigating problems and addressing the crises. Yet, these contributions gained in importance as, like elsewhere, the crisis also accentuated social problems beyond economic concerns, including growing social isolation, rising social inequities, reduction of civic space, and growing political fragmentation of the population over the acceptance of government-imposed restrictions. At the same time, a chosen few large organizations, notably the five large social welfare peak associations (umbrella groups representing individual human service organizations) and the four disaster care organizations (with the German Red Cross included in both counts) became indispensable contractors of governments at all levels, staffing vaccination centers throughout the country.

Yet, while their plight was not broadly acknowledged, lots of Germany's approximately 700,000 civil society organizations saw their scope of action significantly reduced during the pandemic. They nevertheless took on important roles in the mitigation of pandemic effects, attempting to maintain services when possible while some of them were facing survival threats. Overall, the impact of the pandemic on civil society organizations was very differentiated. Some were no longer able to operate at all and had to try to digitally reorganize their activities, while others had to take on additional tasks and responsibilities. Business lobbies and industry associations dominated the public discourse from the beginning by pointing to the difficult economic situation and demanding government relief programs for businesses. The pandemic sharpened awareness, as one observer noted, of the dependence of economic value creation on a functioning governmental infrastructure and public services (Heinze, 2020, 2). The Government responded by pledging unprecedented levels of support, primarily geared towards stabilizing businesses and preventing lay-offs.

Civil society in Germany, by contrast, was less successful in making the case for its potential or its needs, which differed markedly from other European countries, such as the U. K., Austria, or Switzerland. As a result, the government's offers of rescue packages during the pandemic – referred to as *Rettungsschirme* (rescue shields), connoting an image of protection from the economic storm – proved insufficient and often inaccessible to many nonprofits due to specific pre-conditions that were difficult to meet. In addition, federal, state, and local responses to the economic threats were overall poorly coordinated in contrast to the public health response to the

crisis (Hattke & Martin, 2020). The situation remained somewhat better, however, for nonprofits in federated structures, such as the free welfare peak associations, which were better positioned to articulate demands for support and had the political access at the federal level to pursue them.

The free welfare peak associations were able to do so because their members working in healthcare and human services account for the majority of the roughly 3.7 million employees in Germany's nonprofit sector, and because the government depends on their contribution to public welfare production (which had naturally gained in importance due to the pandemic). A third of all German hospital beds, for example, are in nonprofit institutions (Deutsche Krankenhausgesellschaft, 2020, 6). The five major welfare peak associations – Lutheran *Diakonie*, Catholic *Caritas*, *Arbeiterwohlfahrt* (rooted in the trade union movement), the German Red Cross, and the independent *Paritätischer Wohlfahrtsverband* – rank among the largest private employers in Germany, putting them on a level footing with industry interests. These peak associations that were created between the mid-19th and early 20th centuries (Strachwitz et al., 2020; Strachwitz, 2023), are substantially involved in both healthcare and social service provision and were granted social policy consultation rights. Also, *Malteser-Hilfsdienst*, *Johanniter-Unfallhilfe*, and *Arbeiter-Samariterbund*, as well as the German Red Cross, actually did very well financially during the crisis by managing and staffing 80% of all Germany's vaccination centres through government contracts. Using exploratory data from a national survey of civil society organizations by the Maecenata Institute for Philanthropy and Civil Society, conducted at the end of 2020, this article will discuss how German nonprofit organizations in the human services fared during the pandemic.

Our principal interest lies in gauging what the pandemic response suggests about the state of government/nonprofit relations in Germany. Underpinned by the principle of subsidiarity (Strachwitz, 2023, 51), the post-WW II era was characterized by a pronounced interdependence between the government, which relied near exclusively on nonprofits for the delivery of social welfare and much of health care services, and the human service organizations (HSO) federated under the free welfare associations, which in turn depended very heavily on government support and protection of their privileged position. In recent decades, however, the government, acting in pursuit of competition regulations imposed by the European Union, had started to loosen these protections and financial guarantees, and admitted for-profit service providers in fields previously reserved for nonprofits. As this raises the question whether the pandemic, with its extreme economic demands, further strained the partnership and the concept of interdependency, this article seeks to contribute to the discussion about the future of government/nonprofit partnerships in an age of neoliberalism.

We will first briefly outline the conceptual framework of interdependence in government/nonprofit relations and then describe the German social welfare policy context and the changes over recent decades that put human services organizations in a somewhat precarious position at the outset of the pandemic, and the governmental support programs – the rescue packages that supported nonprofits during the economic restrictions. We then discuss the survey, present findings for the human services, before concluding with an overall assessment of the pandemic's impact on the sector and the state of the German welfare partnership in general.

2 Third-Party Government and Interdependence Theory

One of the more consequential efforts to re-model the role of the modern welfare state, especially in social welfare and the human services, was the theory of third-party government (Salamon,

1995), which foreshadowed much of the modern governance literature (Salamon & Toepler, 2015; Toepler, 2023). Salamon's key contribution was to dismantle the monolithic state thinking by insisting that the functions of the financing of public services and of the actual provision be treated as analytically distinct in order to understand the full complexity of modern public service delivery. By enlisting third parties, including lower levels of government, commercial businesses, and nonprofit organizations in the delivery of government-financed public services, the post-WW II American welfare state was able to expand without increasing the government bureaucracy at the same rate.

Making this distinction then allowed Salamon (1995) to argue for a natural division of labor between the sectors, particularly in the human services, in a mutually beneficial, interdependent, collaborative relationship that “combines the respective strengths of government and the nonprofit sector while avoiding their respective weaknesses” (Salamon & Anheier, 1998, 159). Referred to as voluntary failure or interdependence theory, it remains a key conceptualization of government/nonprofit relations (Lecy & Van Slyke, 2013; Bae & Sohn, 2018) within the human services (Jang et al., 2023) and beyond (Shafiq et al., 2023).

Although historically and institutionally very different from the US, the German welfare state has served as a prime international example of the third sector government/interdependence theory and its collaborative relationship pattern (Anheier, 1992; Anheier & Seibel, 1997; Salamon & Anheier, 1998). It traditionally featured a large nonprofit social welfare sector, largely funded by the state (and/or the arms-length social security system), which guaranteed the financial viability of social welfare nonprofits with a specified role in social policy making while historically protecting the sector from commercial competition (Anheier & Toepler, 2023).

Given the presumed interdependence between the sectors, the theory would suggest that the German government would take special measures to protect its nonprofit social welfare delivery infrastructure during the COVID pandemic, while the nonprofit human service field would primarily look to government for assistance in maintaining services and organizational viability. Indeed, as Anheier et al. (1997) had shown, the primary strategy of German nonprofit managers in crisis situations has traditionally been to turn, first and foremost, to their government partners for help. Albeit still in place, the influence of NPM since the 1990s has weakened the collaborative relationship pattern in Germany, which made the COVID pandemic a significant stress test for the intersectoral partnership. When the pandemic arrived, it so happened that business lobbyists were infinitely more successful in securing government aid. In the following, we review the basis of the German collaborative pattern and the recent developments that have begun to weaken it. In doing so, it needs to be emphasized that the services provided by civil society organizations are not funded by way of subsidies, but are negotiated in scope and details between various government agencies at different level (federal, state, and local plus the semi-governmental public social security system) and subsequently performed by the organizations and funded by the respective agencies on the basis of contracts that specify the fee due for any one service provided.

3 Social Policy and the Free Welfare Associations

Germany features a substantial nonprofit sector with a total employment share of close to 12% and accounting for about 4% of GDP. More than half of German nonprofit employees are employed in social services and health care as the most significant parts of the sector (Zimmer et al., 2022). In Germany's post-WW II corporatist order (Backhaus-Maul & Langner, 2014, 115),

nonprofit organizations in health and human services, organized within the five welfare peak associations, enjoyed a special position in the social welfare field. This position was formed in the 1920s, when the welfare state, established under the 1919 constitution, had to come to terms, for practical as much as for political reasons, with the strong existing and indispensable involvement of non-state actors, church-affiliated and other, in welfare production. It was then that Catholic theorists further developed the principle of subsidiarity, which not only became a cornerstone of Catholic social theory (laid down with authority in Pope Pius XI. Encyclical *Quadragesimo Anno*, 1931, para. 79) but also a hallmark of the interplay between the state and the non-governmental social service providers organized within one of the welfare peak associations. This principle “defended the priority of individual and communal solidarity over state-run welfare programs” (Anheier & Toepler, 2023, 43). Subsidiarity accords precedence for addressing needs to smaller social units over larger ones, which should only step in where smaller units reach their limits. In practice, this suggests that nonprofits are preferable to direct government intervention, but should be supported by the government in their efforts to address social welfare needs (Backhaus-Maul & Langener 2014, 113).

Subsidiarity became enshrined in post-WW II social welfare legislation, which limited the government’s legitimacy to create health and human services agencies, provided non-governmental organizations existed that were able to implement welfare policies. As the government exponentially expanded the range of services from the 1970s, Caritas and Diakonie in particular became, in aggregate, the largest non-governmental employers in Germany, benefiting from contracts with federal, state, and local governments and the public social security system.

Beginning in the mid-1990s, however, incremental neoliberal reforms and policy adaptations began to undercut the privileged position of the non-state welfare associations. Healthcare reforms lowered contractual insurance reimbursement rates for hospitals, and some fields, including long-term and daycare, were opened up to for-profit players as pre-approved providers. While the subsidiarity principle remained technically in effect, it practically mattered less, as the establishment of quasi-markets and efforts to increase competition weakened the position of nonprofit human service organizations (Zimmer & Priller, 2023). This was also promoted by the European Commission, which viewed the privileged status of tax-exempt organizations with some skepticism, deeming it to be incompatible with European free trade regulations.

Putting nonprofits on equal footing with commercial providers in much of the human services was prone to erode the financial security as well as the advocacy capacities of nonprofit service providers over time (Zimmer & Priller, 2023). It also forced a business mindset and efficiency concerns on them that, in combination with financial constraints, increasingly degraded their ability to function as independent civil society actors (Strachwitz, 2023). In addition, tax laws significantly handicap nonprofits by limiting the building of financial reserves. What is more, emergency response capacities were reduced, entitlements pared back for the sake of economic efficiency, and regional emergency response plans became neglected despite warnings by nonprofit providers. The Federal Office of Civil Protection and Disaster Assistance, for example, collated these concerns in a 2012 report to the German parliament (Deutscher Bundestag, 2013), which outlined several potential scenarios that eventually turned real in 2020, but did not lead to any political action at the time. Non-governmental service providers were hampered in their ability to act on their own by the constraints imposed through collective contracts.

4 The Government's Rescue Packages

Because of the shortcomings in emergency preparedness, government support programs were slow to start at the onset of the pandemic. At the beginning, it was private initiatives by individuals, nonprofits, and small and medium-sized businesses that provided resources to procure personal protective equipment (PPE), disinfectants, and other necessities for first responders in human service organizations. The peak welfare associations themselves mobilized their limited resources to provide financial and other support targeted at organizations most impacted at the frontlines of pandemic mitigation. These helped defray general costs, such as rents, for CSOs, employees, and citizens, and helped stabilize those that fell through the cracks of the governmental economic rescue programs.

Whereas the Paycheck Protection Program (PPP) in the United States applied equally to small businesses and nonprofits, covering 95% of all US nonprofits (Salamon & Newhouse, 2020), the German federal government's economic rescue packages intended to mitigate the economic effects of the pandemic proved less comprehensive, although they did apply to nonprofits under certain circumstances. State governments supplemented the federal rescue efforts by offering additional economic relief, generating a diverse array of supportive initiatives for nonprofits between the federal and state governments as well as among the latter (Schrader et al., 2020; Zimmer & Priller, 2021). In contrast to neighboring Austria, for example, where a unified federal approach across all relevant ministries was developed in consultation with civil society representatives (see Meyer et al., 2021), the German federal government did not develop such a comprehensive approach. Support programs, launched to provide immediate aid, were nearly exclusively financial in nature, located at various federal and state agencies, frequently policy field-specific, and barely coordinated. The various programs were also never fully tallied up (Schrader et al., 2020).

The Federal Government launched a general immediate aid program in March 2020 to help cover revenue losses for small enterprises during the initial lockdown. Separate state-level programs were initiated in April 2020 as short-term financial aid for nonprofits in specific policy fields lasting through July 2020. As the pandemic progressed through the summer, these initiatives were largely replaced with federal bridge support (*Corona-Überbrückungshilfen*) (Ehrenamt 24, 2021), although a few states continued their own programs into 2021 (Zimmer & Priller, 2021). The federal government introduced the bridge support program in the summer of 2020 to keep businesses and organizations alive that were facing permanent closure. The first phase applied broadly across the economy, but later phases from November 2020 through June 2022 were more targeted (*Table 1*). The programs focused on covering up to 90% of the fixed costs of small and medium-sized enterprises, the self-employed, as well as commercially-operating nonprofits that had experienced significant fee-for-service income losses due to pandemic restrictions, with a cap of €50,000 (\$60,000) (BMW & BMF 2021). With the so-called "Lockdown Light" in November 2020, a second, supplementary Extraordinary Aid to the Economy program (*Ausserordentliche Wirtschaftshilfen*) was created that allowed unbureaucratic aid in the form of non-repayable aid to businesses and organizations experiencing constant turnover reductions of at least 80% during the lockdown. Eligible entities could claim 75% of the average turnover/business income of November and December of the prior year (BMW 2020, 1.1, 5.3).

Table 1. Key federal aid programs during the pandemic

Timeline	Programs
March to May 2020	Immediate Aid (<i>Soforthilfe</i>) 2.2 mln applications; 1.8 mln approved; vol: €13.28 bln – Compensation for lockdown revenue losses for small enterprises and the self-employed
June to August 2020	Federal Bridge Support I (<i>Corona-Überbrückungshilfen</i>) 137,188 applications; 129,595 approved; vol: €1.42 bln – For businesses and organizations facing permanent closure
September to December 2020	Federal Bridge Support II 215,300 applications; 203,990 approved; vol: €2.76 bln – Covering the fixed costs of small and medium-sized enterprises, the self-employed, and commercially-operating nonprofits. Extraordinary Aid for the Economy (<i>Außerordentliche Wirtschaftshilfen</i>) 761,282 applications; 706,382 approved; vol: €13.79 bln – Non-repayable subsidies for November and December of 2020 to businesses and organizations experiencing constant turnover reductions of at least 80% during “Lockdown Light” in November and December of 2020.
November 2020 to June 2022	Federal Bridge Support III & IV 900,372 applications; 673,404 approved; vol: €38 bln – 90% of fixed costs could be subsidized for each month in which revenue losses amounted to at least 30%.

Sources: based on BMWI, 2022; Schrader, 2021

While the bridge support and the extraordinary aid covered tax-exempt nonprofits, they were, however, limited to subsidies for fee-for-service income losses and did not factor in lost membership dues, donations, or other public subsidies, nor did the government recognize or even acknowledge the contribution offered by nonprofits in fields like community building and self-help. In addition, applications had to be submitted through certified public accountants (CPAs) or tax attorney offices, which proved a significant barrier for smaller and mid-sized nonprofits. Taken together, this severely limited the number of nonprofits that were able to avail themselves of aid through these programs. All support programs that nonprofits could avail themselves of were limited to their business, i.e., fees for services and other semi-commercial activities. Services provided free of charge in pursuit of their charitable mission did not qualify for government support, although these proved to be more urgently needed than before the pandemic. Governmental support was primarily focused on the services provided by the nonprofit sector and overlooked advocacy and other more expressive activities. In particular, political initiatives that were less likely to obtain tax-exempt public benefit status, and those not represented by peak associations or unable to demonstrate COVID-enforced service reductions, lost out (Schrader et al., 2020). Bridge support only began to allow nonprofits to apply for reimbursements of total revenue losses, that is, including reduced donations, membership dues, and other public subsidies in addition to fee-for-service income in 2021 (Ehrenamt 24, 2021).

On balance, the various programs provided a patchwork of short-term financial aid that lacked a comprehensive strategy for countering any longer-term effects of the pandemic on the nonprofit sector (Zimmer & Priller, 2021). In addition, it was not only financial shortfalls that posed a problem for organizations. With the rise of digitalization, many organizations also

experienced new additional costs as they were forced to invest in hardware and software or organize additional space for their activities due to minimum distance regulations. This was not compensated for by the rescue packages. Service providers that were better integrated into the corporatist structures, by contrast, particularly in social welfare, culture, education, environment, youth, and sports, were more successful in advocating for, and receiving, comprehensive aid from the government. Independent, often smaller nonprofits that were not embedded into the governmentally financed public service delivery networks, on the other hand, remain largely excluded from the rescue efforts. This was very noticeable when activities exceeded the provision of services and included advocacy and/or community-building activities. The latter in particular bore the brunt of the restrictions imposed, received no support, and suffered a sharp decline in voluntary engagement, while the government failed to recognize the long-term societal consequences of this development.

5 Data

Research on the effects of crises on nonprofits in Europe has been few and far between (Pape et al., 2016). Moreover, prior crises did not provide a useful blueprint for the COVID response, and the effects of the pandemic and the public health mitigation measures to contain it constituted an unprecedented and ill-defined challenge, not only for government and business, but also for a wide range of nonprofit organizations, that exceeded prior crisis situations in complexity and multidimensionality. This range of new crisis challenges constituted an empirical situation that suggested taking an exploratory approach (Stebbins, 2001; Swedberg, 2020) to gauging the initial reactions of nonprofits to the pandemic. The country-wide public health mitigation measures did not expire until April 2023 in Germany, and the global public health emergency was not lifted until May 2023 by the WHO. Our research aimed at gauging the range of experiences that human service and other nonprofits experienced at the height of the pandemic.

The data used in this article draws on a web-based organizational survey that was designed and commissioned by the Maecenata Institute for Philanthropy and Civil Society and conducted by the data analytics and market research firm Kantar. Following the results of an earlier study (Schrader et al., 2020) that had explored the initial effects of the pandemic on Germany's civil society sector, the survey sought to embrace how nonprofits fared during the second COVID wave in the fall and early winter of 2020, what core needs were and to what extent government support mitigated problems.

The survey using computer-assisted web interviewing (CAWI) technology was conducted between November 25 and December 31, 2020. It was promoted to a broad range of civil society actors in Germany through newsletters, social media, online ads, and e-mail address databases provided by various relevant associations and organizations. The questionnaire was broken down into four parts. The first part sought information on the financial impact of the pandemic (how and to what extent the organization was affected; how key revenue sources had developed; measures taken and new expenditures). The second part asked about potential opportunities resulting from the pandemic crisis, and the third part focused on public and private aid programs and the support needs of nonprofits). The fourth part collected general information about the organization and its activities. The survey generated 282 responses from organizational representatives. Four self-identified as representing public agencies and were omitted from the analysis for 278 usable responses. The quantitative analysis was supplemented

with five semi-structured expert interviews, conducted in March and April 2021 with peak association representatives to contextualize the findings.

For the purposes of this article, we re-analyzed the data to differentiate between human service organizations (HSOs) in the social welfare field and other responders. Included as HSOs here are disability and health services; welfare, social assistance, homelessness; child welfare and youth; and nursing and senior care. These services accounted for 135 of the 278 total responses. The remaining 143 responses were from nonprofit service providers in a variety of other fields, advocacy, social movement, and consumer protection organizations, philanthropic foundations, and community and grassroots groups.

6 Analysis and Findings

The coronavirus pandemic and the public health measures to combat it had substantial effects on German social welfare nonprofits. Three-fourths of these organizations reported significant to very significant impacts, with another fifth noting at least some impact. HSOs reported very significant impacts at higher rates than other NPOs, of which two-thirds reported significant or very significant impacts overall. *Table 2* shows specific effects that the pandemic had on operations. The largest concern among HSOs was related to demands on, and changing deployments of staff (66%). Extra workloads and shifts to different tasks and assignments were exacerbated by the need to cut program services (58%); new government demands, such as requirements to develop and enforce hygiene plans, making working conditions more difficult (48%); growing bureaucratization to manage changing routines (43%); and staff shortages due to sickness (23%), as front-line workers continued to be exposed. Although some HSOs saw an increase in volunteering (10%), a much larger share saw a decline in volunteer engagement (35%), further adding to staff workloads. Many HSOs found the pivot to digital services difficult (44%) amid generally rising costs (37%) and financial shortfalls (41%).

Other NPOs reported similar impacts, but in all but one case (loss of visibility) at lower levels than HSOs. Among the greater discrepancies are that other NPOs saw much less need to cut programs (40%); were more adept at digitizing operations (34%); had only half the incidence of cost increases (19%); lost fewer volunteers (22%); and experienced fewer staff shortages due to sickness (11%), most likely because of less direct client contact.

Table 2. Organizational effects of the pandemic
(% very strong and strong agreement)

	HSOs (n=131)	Other NPOs (n=138)
Demands on staff	66%	61%
reductions in program services	58%	40%
Difficult working conditions due to government requirements	48%	42%
Insufficient digitalization	44%	34%
More bureaucratic work routines	43%	38%
Financial shortfalls	41%	38%

	HSOs (n=131)	Other NPOs (n=138)
Higher costs	37%	19%
Reduced volunteer engagement	35%	22%
Lower visibility of activities	24%	31%
Sick staff	23%	11%
Changes among the core clientele	22%	16%
Membership decline	12%	5%
Growing volunteering	10%	5%

Source: COVID Survey

These general assessments underscore the complexity and multidimensionality of the pandemic challenges that exceeded those of prior crises that were largely limited to financial shortfalls. HSOs appear to have been affected more strongly than other nonprofits, likely because of the greater need to maintain face-to-face services. This, in turn, should have called for more focused government support to cushion the impact on the social welfare infrastructure. The potential need for a more specialized, custom-tailored government response for HSOs is also suggested by strategies that HSOs utilized to manage operations during the pandemic crisis, which imply different needs than those of other nonprofits.

Table 3. Organizational responses
(% very strong and strong agreement)

	HSOs (n=124)	other NPOs (n=123)
Canceled face-to-face events	74%	70%
Canceled/postponed projects	73%	65%
Pivot to digital services	69%	74%
Switched to home office	66%	65%
Using financial reserves	40%	25%
Across-the-board spending cuts	37%	38%
Simplified office routines	34%	43%
Canceled/postponed new investments	33%	31%
Increased fundraising expenditures	17%	11%
Staff time cuts	15%	18%
Leased new space	10%	5%
Renegotiated/canceled contracts	10%	20%
Started to fundraise for the first time	6%	5%
Canceled leases	2%	6%
Cutting fundraising costs	2%	5%
Workforce reductions	1%	1%
Special members assessments	1%	2%
Other	6%	5%

Source: COVID Survey

Table 3 shows the organizational responses, that is, the measures that HSOs and NPOs undertook to address the difficulties they experienced from the beginning of the pandemic crisis. Nearly three-quarters of HSOs had to reduce face-to-face events (74%) and cancel or postpone projects (73%) at higher rates than other NPOs (70% and 65%, respectively). The latter were better able to offer digital services than HSOs (74% to 69%), although about two-thirds of both groups were able to let some staff work from home. In terms of instituting across-the-board cuts and canceling or postponing investments, the differences were only minor, but HSOs had to dip into financial reserves more frequently than other NPOs (40% vs. 25%).

They were less able to renegotiate or cancel contracts (10% vs. 20%) and more likely to have to lease new space (10% vs. 5%), likely to respond to new needs and to maintain client services in compliance with distancing requirements, thereby increasing financial pressures. Accordingly, HSOs found it more necessary to raise fundraising expenditures than other NPOs (17% vs. 11%) and were more reluctant to seek cost savings by cutting fundraising outlays (2% vs. 5%). Few organizations (1%) found it necessary to let staff go and reduce their workforces in marked contrast to the US, where initial job losses in the nonprofit sector had been estimated as substantial (Salamon & Newhouse, 2020).

6.1 Expenditure and Revenue Impacts

Like other places of work in Germany, nonprofits were required to develop hygiene concepts to continue activities. These involved conducting risk assessments and developing specific plans and protocols to mitigate the spread of COVID at the workplace and implement public health workers’ protection mandates, such as measures to reduce interpersonal contacts, providing medical facemasks, offering home office options where feasible, and ensuring approximately 100 sq. ft. of space for each person per room or, alternatively, installing ventilation or barriers. As shown in Table 4, the creation and implementation of these hygiene concepts proved to be the most noted reason for higher expenditures by HSOs (77%), followed by digitalization expenses (73%) and limits on participation (55%), that is, the number of persons, including clients, allowed to gather for events or interventions. Offering the same services to smaller groups of clients required additional personnel (27%), and together with the hygiene concept implementation, increased training needs and costs (39%). Nearly all of these cost drivers affected HSOs to a higher degree than other NPOs (Table 4), suggesting a financial crunch that forced HSOs also to increase fundraising expenditures at a higher rate (26% to other NPOs’ 20%) in an effort to generate new private revenues.

Table 4. Main Drivers of Expenditure Changes since the Beginning of the Pandemic
(% very strong and strong agreement)

	HSOs (n=124)	other NPOs (n=123)
Hygiene concepts	77%	65%
Digitalization costs	73%	73%
Participation limits	55%	54%
Increased training needs	39%	26%
Personnel cost	27%	18%
Higher fundraising expenses	26%	20%
Other	7%	7%
No changes	3%	9%

Source: COVID Survey

The financial crunch is also borne out in *Table 5*, which shows how nonprofits assessed changes at the end of 2020 among the main revenue categories, as compared to 2019, the year before the pandemic’s onset.

Table 5. Revenue situation in 2020, compared to 2019
(HSOs n=131; other NPOs n=138)

	Donation and dues		Fees-for-service		Commercial operations		Investments	
	HSOs	other NPOs	HSOs	other NPOs	HSOs	other NPOs	HSOs	other NPOs
Better	14%	18%	2%	5%	0%	3%	3%	0%
Same	35%	43%	27%	18%	20%	25%	61%	47%
Worse	48%	36%	67%	75%	76%	72%	24%	53%
No response	4%	2%	5%	2%	4%	0%	13%	0%

Source: COVID Survey

While more than 60% of HSOs were able to maintain the levels of their investment income, the lockdowns and other pandemic restrictions took their toll on their auxiliary businesses and commercial operations. One in five, however, managed to maintain commercial income levels of 2019, but three-quarters (76%) noted worse results than the year before. Fees-for-service, that is, mission-related business activities, fared somewhat better with 2% improving on and 27% maintaining prior year results. Two-thirds (67%) still saw their fees-for-service decline. Although the survey respondents suggested an overall decline of donations by 10%, the situation with dues and donative income looked relatively better, which in part may be a reflection of increased fundraising efforts. Only about half of the respondent HSOs saw their dues and donations income decline. More than one-third (35%) maintained dues and donations at 2019 levels, and 14% actually generated better results, suggesting that some sections of the social welfare field were better able to reach the public. Compared to NPOs in other fields, though, HSOs overall did not do as well. While the former had more problems with their fee-for-service and commercial income, they outperformed HSOs in terms of raising donative income. More than six in ten improved (18%) or maintained (41%) fundraising levels, and only 36% saw declines (*Table 5*).

6.2 Non-Financial Challenges

Beyond the considerable financial concerns, HSOs also struggled with a number of additional challenges caused by the pandemic. While maintaining services was a significant issue for only 36% of HSOs, two-thirds reported that uncertainty about financial outlooks led to a lack of planning security. One-fifth felt that the government did not provide enough information (22%) to help HSOs adjust in a timely manner. Public health measures intended to mitigate the pandemic increased space needs (35%) and constraints introduced through government requirements, like the hygiene concept, led to a perception of reduced managerial freedom (66%).

Issues relating to digitalization, or pivoting to online processes and services, were among the most pressing concerns. A vast majority of HSOs (74%) reported difficulties with reaching clients digitally. Deficiencies at the organizational level further exacerbated the situation:

About half note not having sufficient digital know-how (51%), 44% lack the requisite computer hardware, and about as many see their digitalization efforts stymied because of inadequate access to the public digital infrastructure (43%). Problems with taking processes and services online have led to reduced access of volunteers and some staff to core activities (54%). Most organizations have found it more difficult to contact volunteers (58%). In nearly all of these dimensions, HSOs fared worse than NPOs in other fields, which, on balance, were less likely to have to maintain some level of face-to-face client service than the human services. It should be noted, however, that many community-building NPOs, such as recreational or sports clubs, were also disproportionately affected in terms of non-financial challenges because they were hit particularly hard by contact restrictions, although the need for personal contact was rated lowest here.

6.3 Uptake of Aid Programs

At the end of 2020, only about a third of HSOs had applied for government support (30%) or were planning to do so (4%). Slightly more than another third did not apply because the government requirements proved too complex for them to handle (6%) or because they did not meet eligibility criteria (29%), which included public benefit status, sufficient losses caused by pandemic restrictions, and membership in designated peak associations and federations. One-fifth of HSOs felt in a strong enough position during the pandemic not to need any aid (19%), and another 6% were not interested in receiving aid from the government (*Table 6*).

Table 6. Applications for Public and Private Support in 2020

	<i>HSOs</i> (n=124)	<i>other NPOs</i> (n=123)
Government Support Programs		
<i>Applied for government support</i>	30.6%	20.3%
<i>Not applied, but planning to</i>	4%	2.4%
<i>Not applied: not meeting eligibility criteria</i>	29%	26.8%
<i>Not applied: programs are too complex</i>	5.6%	9.8%
<i>Not applied: no interest in government support</i>	5.6%	5.7%
<i>Not applied: aid not needed</i>	19.4%	30.1%
<i>No response</i>	6.5%	6.5%
Private Support Programs		
<i>Applied to foundations/other nonprofit sources</i>	30.6%	16.3%
<i>Applied for corporate support</i>	8.1%	4.1%
<i>Applied to other sources</i>	2.4%	0%
<i>Did not apply</i>	51.3%	78.9%
<i>No response</i>	5.6%	3.3%

Source: COVID Survey

Among NPOs in other fields (*Table 6*), the share of organizations not needing aid was considerably higher (30%), but the number of organizations seeking government support was considerably lower, with only about one-fifth having applied (20%) or planning to do so (2%).

Slightly fewer didn't meet eligibility criteria (26%) compared to HSOs, but more found the government programs too complex (10%). HSOs and other NPOs also differed considerably in their approaches to applying to the pandemic support programs of private institutions and organizations (*Table 6*). Whereas about half of HSOs applied for private aid (52%), nearly four out of five (77%) of other NPOs did not. 31% of HSOs sought help from foundations and other philanthropic sources within the nonprofit sector, and 8 percent from corporations, at about twice the rate of other NPOs (16% and 4%, respectively).

7 Discussion

Germany's peak welfare associations, comprising some 120,000 individual member HSOs with a capacity of over four million beds or other placements, about two million employees, and many more volunteers, continue to form the bedrock of the country's health and social care (Zimmer & Priller, 2021). Accordingly, they bore the brunt of the crisis response and mitigation efforts and took on central tasks and responsibilities to ensure the continuance of public social welfare services. In maintaining care for the needy and those requiring assistance, HSOs frequently went beyond and above their contractual obligations under adverse circumstances (Grunau, 2021). While childcare centers and some other facilities were subject to lockdown requirements, other services, such as rescue and ambulance services, hospitals, nursing homes, shelters, and other care facilities, needed to stay open (BAGFW, 2020). Staff temporarily moved into facilities to protect patients and residents or into home care if facilities had to close. In some cases, they were the only social contacts for people living in such institutions. As volunteers stayed away because of the risk of infection, employees had to put in additional efforts, working overtime without additional compensation (interview, welfare association representative; Zimmer & Priller, 2021). As the pandemic progressed, the government drew the Red Cross and other emergency responders into setting up and operating vaccination centers. Inoculation drives among vulnerable and hard-to-reach populations were also coordinated and conducted through the infrastructure of the welfare associations, as an interviewed representative pointed out.

The burden on staff due to the extraordinary requirements of maintaining services during the pandemic was a major concern of HSOs, as borne out in the survey. The human service response to the crisis required continued face-to-face care and interaction more so than in other fields, such as education. Various digitalization barriers nevertheless prevented lifting at least some of the burdens on the staff through online options.

Realizing that a retreat from service provision obligations was not an option, welfare representatives early on appealed to the government for a "protective commitment that [current] public financial flows will be maintained and economic losses threatening the existence [of providers] will be compensated" in addition (Hensel, 2020). This call was reflective of concerns that contractual arrangements could frequently result in the public insurance systems refusing to cover costs if services could not be delivered as contractually required, and HSOs would get stuck with unreimbursed expenses (see AWO Bezirksverband Westliches Westfalen, 2020; BAGFW, 2020). In one of the larger federal states, a welfare association was able to negotiate more flexibility in service delivery as well as financing guarantees, but such commitments were walked back, and the government eventually issued reclamation requests after all. Moreover, another association anticipated that the government would seek to recover current excess expenditures by reducing future regular subsidies, which would suggest continued long-term negative impacts of the pandemic crisis (interview, welfare association representative).

This incident is indicative of a perceived lack of recognition by the government of the contributions of HSO staff and volunteers to maintaining the social infrastructure during a time of extreme stress, and its resulting failure to provide the needed financial and immaterial support (Diakonie Deutschland, 2020). This lack of recognition of the free welfare associations' special role and needs is reflected in the government support programs which largely treated HSOs like businesses rather than crucial partners at the forefront of crisis management (Zimmer & Priller, 2021), making some concession to the peculiarities of the nonprofit form (e.g. treatment of donations as recoverable revenues) only in later rounds. The survey findings show that the government programs were too cumbersome in their complexity and eligibility requirements to provide substantial support to more than just one-third of HSOs. That half of HSOs and an even higher share of other NPOs did not apply to private sources of assistance may be a reflection of limited pandemic response programs by private funders as much as a continued tendency among German nonprofits to look to government for assistance (Anheier et al., 1997). What is more, the lack of a more tailored government response to aid HSOs also meant that major, especially non-financial, needs of the social welfare sector went unaddressed. This was particularly visible in the prominence of digitalization as a pandemic cost driver (second only to the hygiene concept mandate) and the various digital readiness and infrastructure issues among the non-financial challenges.

The government's commitment to its partnership with the peak welfare associations and the historically strong complementary relationship between the sectors (Seibel, 2022, 72) has shown strains during the pandemic, but overall corporatist patterns arguably still held (Benevolenski et al., 2023). The preferential treatment that characterized the welfare partnership between the sectors in much of the last century, however, has largely waned. "With respect to the acknowledgment of the sector as a valuable partner in the policy process, particularly in difficult times, the programs of the Federal government are disappointing [and] were developed in a top-down approach without giving civil society the possibility of making its voice heard" (Zimmer & Priller, 2021, 56). While the economic support programs did help mitigate the financial impacts of the crisis, government help with much-needed investments in the digitalization of HSOs or with the flexibilization of contractual obligations and arrangements remains elusive. There was also virtually no recognition of the significant extra effort put in by HSO employees. The special commitment of those working in system-relevant professions in health care and social services, was recognized only briefly with much applause. Sustained acknowledgment of services, however, did not take place because, in collective bargaining, if at all, only one-time payments in the form of COVID bonuses were agreed upon.

8 Conclusion

Cross-national comparisons suggest a continuum of government-civil society relations in the pandemic crisis response, ranging from governments blocking civil society action, on one end, to extensive, cross-sectoral cooperation with extensive public funding, on the other (Kövé, 2021). Germany, formerly a paragon of government-nonprofit collaboration in social welfare (Salamon & Anheier, 1998), occupied only a middle ground. Conceptually, this suggests that third-party government still provides a key rationale to explain the German government's social welfare policy stances, but that interdependence theory is considerably weakened as a theoretical rationale behind German social policy. The government did not consult with the free welfare associations about the need for special programs for the human services, leaving HSOs not much better off than other

nonprofits; and the crisis raised new costs (i.e., physical space needs due to hygiene requirements and digitalization) and organizational needs (i.e., loosening of contractual obligations) that the government chose not to address. This is consistent with the move towards quasi-markets in social welfare, granting access to commercial competition, and the abolition of financial guarantees for HSOs that preceded the pandemic crisis (Zimmer & Priller, 2023). This is demonstrated, *inter alia*, by the successful bids for contracts that five nonprofit rescue and disaster care organizations submitted to the government agencies responsible for the extensive public vaccination programs. The contracts were exclusively awarded on the basis of business plans and capacity, with no regard to their nonprofit status and longstanding partnerships. As a result, 80% of the vaccinations nationwide (and 100% in some areas) were organized by nonprofits.

Yet, with commercial entities now available to act as “third parties” in social welfare, the government’s dependence on nonprofit HSOs is diminished, and the lack of support programs focused on the specific needs of HSOs during the pandemic is among the clearest signs yet that Germany’s welfare partnership has become unbalanced. An open question is to what extent HSOs remain dependent on the government. Given the strength of the dependency in the past (Anheier, Toepler, & Sokolowski, 1997), it is noteworthy that only a minority of HSOs chose to apply for the government’s rescue shields, which is only partially explainable by the misalignment of the support programs’ goals with the needs of HSOs. In some of the nonprofits concerned, a strategic rethinking has begun to determine, to what extent this dependency could be tolerated in the future. In the mid-term, this might lead to a fundamental reshuffling of social service provision in Germany.

Exploratory research has its limitations. While we can say what challenges German human service and other nonprofits experienced at the height of the pandemic and what strategies they employed in response, we cannot determine what share of Germany’s 120.000 HSOs had these experiences and to what extent, or how differences between various nonprofits shaped their experience. At this point, confirmatory research still needs to address these questions conclusively. Here, we can only offer suggestions for future hypotheses and research themes. Nevertheless, our findings are broadly compatible with other similar studies conducted during the same time period on social welfare organizations in Austria (Meyer et al., 2024) or immigrant-serving nonprofits in Canada (Preston et al., 2024)

Among these, digitalization emerged as a core issue. Upgrading computer systems and digital know-how, and developing new ways to reach and serve both clients and volunteers, requires significant investments on the part of HSOs, but the post-pandemic return to more face-to-face service provision reduces the urgency to make these investments, especially if the government is unwilling to support the effort. On the policy level, the government’s relative inattention to HSOs during the pandemic suggests a further erosion of the privileges once granted to the preferred nonprofit “third parties.” With the social welfare structure not collapsing during the pandemic stress test, there seems to be little incentive for the government to reverse course in the neo-liberalization of social welfare. Future research will have to ascertain, however, whether all sub-fields held up equally well during the pandemic or whether HSOs in some areas did better than in others. Crucially, research also needs to examine how commercial, for-profit providers performed in comparison to nonprofit HSOs during the pandemic. Whether they did better or worse might well determine how the government will evaluate the welfare partnership in the future. Unfortunately, such evaluations will likely not consider the counterfactual, that is, how much better German HSOs might have responded if the government had chosen to loosen the constraints of neo-liberal funding arrangements. This is what the Canadian government did in the case of immigrant-serving nonprofits, which freed these organizations to invest in digitalization and organizational capacity and improve their service delivery outcomes (Preston et al., 2024).

Finally, and importantly, the fuzzy edges between service provision and community building in HSOs during the crisis have as yet not been adequately researched. While the plummeting of volunteerism in sports clubs is well researched (e.g., Feiler & Breuer, 2021) and the drawbacks for developing communities of choice during a crisis have come to be recognized as long-term negative outcomes of the crisis, the issue as to whether HSOs in their role as community organizations are affected merits further attention. There are indications that volunteering in HSOs has not only mushroomed to some extent but has also prompted discussions within these organizations as to whether their role as “just service providers” deserves to be revisited.

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Transposition of the Mobility Directive into Slovak Law

Preventing Tax Avoidance in Cross-Border Conversions

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Abstract

This article examines the transposition of Directive (EU) 2019/2121 into the Slovak legal framework, with particular emphasis on mechanisms designed to prevent tax law abuse in the context of cross-border company conversions. The objective is to evaluate whether the Slovak legislation has established adequate safeguards and institutional frameworks for detecting and mitigating abusive or fraudulent conduct. The research is based on doctrinal legal analysis, comparative assessment, and critical evaluation of relevant case law. The findings indicate that while the legislative intent is aligned with the Directive's objectives, the procedural framework for reviewing the legality of cross-border conversions and institutional coordination fall short of ensuring effective prevention of tax abuse. The article concludes with specific legislative recommendations for strengthening procedural guarantees and authority cooperation.

Keywords

cross-border conversion, tax law abuse, fraudulent practices, anti-tax avoidance

1 Introduction

The possibility of cross-border mergers of companies has long been perceived within the European Union as an important step towards strengthening the internal market and fulfilling the freedom of establishment. Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 (hereinafter the “Directive”), which extended the harmonization of rules to include cross-border conversions and divisions of companies, represents another significant milestone in this area. At the same time, it responds to the need to combat abusive or fraudulent practices, including tax avoidance. The development of this legal framework for cross-border operations commenced back in 2015 (European Commission, 2015). The Directive thus builds upon the previous legal framework governing cross-border mergers and amalgamations (Directive 2005/56/EC of the European Parliament and of the Council), and expands the existing regulatory framework to cover cross-border conversions and divisions. In Slovak law, the Directive was transposed by Act No. 309/2023 Coll. on Conversions of Companies and Cooperatives (hereinafter the “Act on Conversions”), the part of which dealing with cross-border conversions entered into force on 1 March 2024.

The primary objective of this paper is to evaluate whether the Slovak transposition of the Directive has established adequate legal and procedural mechanisms to effectively identify and prevent abusive and fraudulent practices in the area of taxation.¹ This leads to the core research question, namely whether the scope and quality of the legal instruments entrusted primarily to notaries, but also to other public authorities, are sufficient for effectively preventing the abuse of tax law in case of cross-border conversions of companies?

Despite an increasing number of academic contributions, dealing with cross-border company mobility (e.g., Dipietro, 2025; Grambličková & Macko, 2022a; Garcimartín & Gandía, 2019; Pokryszka, 2021; Papadopoulos, 2023; Gilotta, 2023), a comprehensive doctrinal and institutional analysis of the Slovak implementation of the Directive is still lacking. This paper aims to contribute to filling this gap by analyzing the procedural safeguards incorporated in Slovak law, their alignment with EU anti-abuse standards, and the challenges related to their enforcement. By examining the interaction between notaries and tax authorities, the paper seeks to identify practical and legislative shortcomings that undermine the effective prevention of tax law abuse. Through this contribution, I seek not only to enrich the existing literature but also to stimulate broader academic and professional discussion on the proper calibration of legal mechanisms aimed at counteracting tax-motivated abuses in cross-border company mobility. Methodologically, this paper relies on legal analysis of relevant legislation, case law of the Court of Justice of the EU, and available informational resources, followed by synthesis and a partial comparative assessment of Slovak and Czech legal frameworks.

The first part of the paper clarifies the context of the Directive, emphasizing issues related to the abuse of law. The second part outlines the process for reviewing the legality of cross-border conversions under the Directive. In the third part, I focus on the Slovak transposition of the Directive into national law, analyze the role of notaries in assessing the legality of cross-border conversions, and closely examine selected problematic aspects of this transposition. Finally, the conclusion summarizes key findings, provides an answer to the research question, and proposes legislative solutions aimed at strengthening the prevention of abusive practices in taxation.

2 Abuse of law in the context of the Directive

The original intention of the European legislator in the field of harmonizing cross-border operations was to adopt a directive concerning the cross-border transfer of company seats (the so-called 14th Company Law Directive).² Its adoption aimed to establish a legislative framework for the cross-border transfer of company seats, currently referred to in legal theory and professional practice by the more accurate term “cross-border conversion of companies”. The proposed regulation reflected the implementation of the principle of freedom of establishment (Articles 49 and 54 TFEU). Its implementation into national legal systems would allow companies to freely relocate their seat to another Member State and utilize the legal regime that best aligns with their economic or business needs. However, due to the

¹ According to Babčák et al. (2020, 5), abuse of the tax system, particularly illegal and antisocial conduct by taxpayers, undermines the authority of the European Union and its Member States, thereby weakening their position within the global economic and social sphere.

² For more details regarding the so-called 14th Company Law Directive, see Ballester & Del Monte (2013, 50) and Rammeloo (2008).

lack of consensus among Member States, the 14th Directive was never adopted. Subsequent harmonization efforts by the EU continued in 2018 with the introduction of a Proposal for a Directive regulating cross-border conversions, mergers, and divisions (European Commission, 2018). This proposal included limitations on cross-border conversions and divisions when these could lead to the abuse of law through so-called artificial arrangements. This step by the Commission was preceded by the Court of Justice's decision in the *Polbud* case, concerning the freedom of establishment and its limitations arising from combating abusive practices (the Directive proposal was published 6 months after the CJEU ruling). In this case, drawing on its previous decisions, the Court indicated that a company's decision to relocate its seat to another Member State solely to benefit from a more favorable legal regime (including tax advantages) does not inherently constitute an abuse of law.³ From the perspective of interpreting freedom of establishment, this was a relatively liberal decision of the Court, appearing contradictory to the interests of Member States. Consequently, it was necessary to develop a politically acceptable text for the Directive, inevitably introducing certain restrictions on the freedom of establishment (Davies et al., 2018, 6).

Regarding Member States' concerns about abusive practices, the Directive proposal introduced the concept of an "artificial arrangement",⁴ according to which the Member State of origin would refuse to authorize cross-border conversions or divisions if, after assessing a specific case and considering all relevant facts, the competent authority concluded it represented an artificial arrangement aimed at obtaining undue tax advantages or inappropriately affecting employees', creditors', or minority shareholders' statutory or contractual rights. This concept represented a general proposal to prohibit the abuse of law in cross-border conversions (Grambličková & Macko, 2022b, 610). However, this concept contradicted the Court of Justice's conclusions, expressed in the *Polbud* and other rulings (e.g., *Centros*, *Inspire Art*), particularly regarding the concept of abuse of law. The Court consistently held in these cases that it is not an abuse of the freedom of establishment for a company to relocate to another Member State to benefit from more advantageous legal conditions, including tax benefits. Dipietro (2025) demonstrates that, following the rulings in *Polbud* and *Edil Work*,⁵ the CJEU has progressively expanded the interpretation of the freedom of establishment to allow purely formal relocations of a company's registered office without any real economic link to the host Member State. This development, while consistent with a literal reading of the TFEU, arguably weakens the preventive mechanisms aimed at protecting creditors, minority shareholders, and employees. Dipietro (2025) further points out that although the Directive introduces a detailed procedural framework for the control of cross-border conversions, it fails to provide a material definition of "abuse" and thereby delegates the decisive interpretative standard to national authorities and courts.

The concept of artificial arrangements from the Directive proposal faced criticism for the practical challenges involved in conducting detailed assessments of cross-border operations by the Member State of origin. Such assessments included examining attributes such as the intent of establishment in the target Member State, industry, investments, net turnover, profit or loss, employee count, balance sheet structure, tax residency, asset locations, usual place of

³ For a detailed analysis of the CJEU's jurisprudence, see Judgment of 25 October 2017, *Polbud*, C-106/16, EU:C:2017:804, paragraph 40; Judgment of 9 March 1999, *Centros*, C-212/97, EU:C:1999:126, paragraph 27; Judgment of 30 September 2003, *Inspire Art*, C-167/01, EU:C:2003:512, paragraph 96.

⁴ Proposal of the European Parliament and Council Directive, 2018, Article 86c(3).

⁵ Judgment of 25 April 2024, *Edil Work*, C-276/22, EU:C:2024:348.

employees' work, or business risks.⁶ Many of these indicators (discussed further in the text) relate to business and entrepreneurial aspects not directly connected to applicable company law (*lex societatis*). Thus, it remains unclear how examining net turnover or business risks could justify denying the right to a cross-border conversion (Garcimartín & Gandía, 2019, 38). Determining the public authority capable of conducting such an extensive assessment was also problematic.⁷ Some Slovak authors have similarly indicated that this detailed review could frequently result in refusal of cross-border conversions, often for formal reasons or generalized presumptions of law abuse (Grambličková & Macko, 2022b, 610–611).

The Commission ultimately abandoned the concept of artificial arrangements, replacing it with a provision allowing Member States of origin to refuse issuing a certificate of conversion if national authorities find the cross-border conversion seeks abusive or fraudulent objectives aimed at avoiding or circumventing EU or national law, or pursuing criminal goals. This broader concept effectively extends grounds for refusing certificates beyond the original artificial arrangement concept. In this context, the Court of Justice in the *X GmbH* case further indicated that an objective test (i.e., negation of a measure's object and purpose), rather than a subjective one, should guide the assessment of abuse.⁸ The Directive's final text no longer includes the detailed examination of cross-border operations (Article 86n of the Directive proposal); rather, it is replaced with the requirement to consider all relevant facts and circumstances brought to the attention of competent national authorities during the review of the legality of cross-border conversions. Individual business and entrepreneurial indicators remain, however, in recital 36 of the Directive's preamble, and the designated public authority assessing legality must still consider them. Crucially, the adopted Directive applies the concept of abusive and fraudulent objectives to all cross-border operations, whereas the original proposal covered only conversions and divisions.

The Directive's provisions prohibiting cross-border operations that pursue abusive and fraudulent objectives or attempt to circumvent EU or national law (including tax law) have thus extended European anti-abuse efforts. Combating tax abuse aligns with EU tax policy, focusing since 2001 on removing tax obstacles to cross-border transactions, fighting harmful tax competition, and enhancing cooperation among Member States' tax administrations (European Commission, 2001). The Directive justifies measures against abuse by noting that cross-border operations could, under certain circumstances, be exploited for fraudulent purposes. Demonstrative examples of abusive practices listed include circumventing employee rights, tax obligations,⁹ social benefits, or criminal activities. Member States should particularly monitor "shell companies" or artificial legal structures, intended to evade or circumvent EU or national law.

The substantive definition of the term "tax avoidance", explicitly mentioned, yet not further specified by the Directive, must be sought in the Anti-Tax Avoidance Directive (ATAD), aimed

⁶ Proposal of the European Parliament and Council Directive, 2018, Article 86n.

⁷ Regarding the assessment of the appropriateness of the artificial arrangement concept (see Garcimartín & Gandía, 2019, 37–38; Davies et al., 2018, 8–9).

⁸ Judgment of 26 February 2019, *X GmbH*, C-135/17, EU:C:2019:136, paragraph 84.

⁹ The term mentioned is defined by EU law in the Anti-Tax Avoidance Directive (ATAD). EU legislative and non-legislative acts classify aggressive tax planning practices – including profit shifting and base erosion – under this term. See Council Directive (EU) 2016/1164 of 12 July 2016 Laying Down Rules Against Tax Avoidance Practices That Directly Affect the Functioning of the Internal Market (ATAD Directive).

at combating tax avoidance.¹⁰ Tax avoidance is approached in Slovak literature as a concept situated between lawful tax planning and unlawful abuse. Babčák et al. (2020) emphasizes the distinction between optimization and circumvention of tax law, highlighting the limits of legality. Románová (2015) distinguishes tax avoidance as legal conduct aimed at minimizing tax liabilities through arrangements, lacking genuine economic substance, from tax abuse, which involves intentional circumvention of tax law with artificial schemes, designed to secure undue tax advantages. Bonk (2017a; 2017b) analyses the evolution of anti-abuse rules in EU and Slovak law, particularly the introduction of the general anti-abuse rule (GAAR) in the Slovak Tax Procedure Code and its links to EU directives. According to the ATAD Directive, tax avoidance encompasses various tax practices such as base erosion and profit shifting, artificial reduction of tax liabilities, aggressive tax planning, double deductions, or double non-taxation of income. To address these practices, the Directive introduces harmonized rules such as the general anti-abuse rule (GAAR), the interest limitation rule, the exit taxation rule, or the controlled foreign company (CFC) rule.¹¹ The concept of tax avoidance has also been repeatedly addressed by other EU legal instruments, related to the abuse of tax law¹², as well as by the jurisprudence of the Court of Justice of the European Union, which supplements these legal acts with interpretation and application.¹³ Given the extensive case law of the Court of Justice concerning the abuse of law (particularly in tax matters),¹⁴ the final design of the anti-abuse mechanism, introduced by the Directive, aligns with the typical allocation of the burden of proof between public authorities and regulated entities. Primarily, the existence of abuse is established by the public authority, while the regulated entity has the right to provide arguments, demonstrating that the cross-border operation in question does not constitute an abuse of law.

3 Review of the Legality of Cross-Border Conversions under the Directive

The Directive imposes an obligation on Member States to establish in their national legislation a procedure for reviewing the legality of cross-border conversions, conducted through the issuance of a certificate by the competent public authority before such conversion becomes effective (Article 86m of the Directive). Should the public authority have serious doubts that the intended cross-border conversion might pursue fraudulent or abusive purposes, it shall not issue the certificate, thereby preventing the completion of the proposed cross-border operation. Depending on national legislation, competent authorities may include courts, notarial offices, other administrative bodies, tax authorities, or financial services authorities.¹⁵ Their role is to

¹⁰ Council Directive (EU) 2016/1164, 2016.

¹¹ In the context of Slovak law on tax law abuse, see Bonk & Štrkolec (2017, 61–75), Štrkolec (2016, 465–476), Románová (2015, 212–228), Bonk (2017a, 668–680), and Bonk (2017b).

¹² For example, Council Directive 2011/16/EU (DAC Directive); Council Directive (EU) 2017/952 (ATAD 2).

¹³ We reference selected CJEU judgments: Judgment of 21 February 2006, *Halifax*, C-255/02, EU:C:2006:121; Judgment of 12 September 2006, *Cadbury Schweppes*, C-196/04, EU:C:2006:544; the Danish cases: Judgment of 26 February 2019, *T Danmark*, C-116/16, *Y Danmark Aps*, C-117/16, EU:C:2019:135; Judgment of 26 February 2019, *N Luxembourg 1*, C-115/16, *X Denmark A/S*, C-118/16, *C Danmark I*, C-119/16, *Z Denmark Aps*, C-299/16, EU:C:2019:134; Judgment of 8 December 2022, *Orde van Vlaamse Balies*, C-694/20, EU:C:2022:963.

¹⁴ For further details, see Cibul'a & Kačaljak (2019, 44–51).

¹⁵ If multiple competent authorities exist, a company should be able to request the pre-operation certificate from a single competent authority designated by the Member States, which should cooperate with the other competent authorities.

verify compliance with all requirements prescribed by the legal system of the respective Member State and to ensure adherence to procedural steps and formalities related to the cross-border conversion. Provided the competent authority has no serious doubts regarding the fraudulent or abusive objectives of the cross-border operation, it shall issue the certificate preceding the cross-border conversion within three months following the submission of the application. In assessing legality, the authority may consider requesting additional information, performing further actions, or engaging the services of an independent expert. Should the competent authority have doubts regarding the legality of the proposed cross-border conversion, it should further examine indicative factors concerning the characteristics of the establishment in the Member State where the company or companies are to be registered after the cross-border operation. These include the purpose of the operation, industry, investments, net turnover, profit or loss, employee count, balance sheet structure, tax residency, assets and their location, beneficial owners, and others, always being considered in their mutual interrelation. At this point, one can observe the overlap with the original Directive proposal and its catalogue of indicators for an in-depth examination of cross-border conversions. In such cases, the period for issuing the certificate should be extended by an additional three months.

The Directive provides an exception to the legality control, applicable when the place of effective management or economic activity of the company is situated in the Member State where the company or companies are to be registered following the cross-border conversion. The competent authority may consider this situation as presenting no obstacles to issuing the certificate.

Important from the perspective of the Directive's objectives, combating abuse of law, and ensuring legal certainty, is the provision regulating the relationship between these objectives in case of conflict. The Directive ensures legal certainty for the entities concerned by stipulating that an effective cross-border conversion cannot be declared null and void. However, this does not affect the competence of Member States, particularly in taxation matters, especially if the competent authority subsequently discovers significant new information, indicating that the conversion pursues fraudulent or abusive objectives. To protect the interests of Member States, the Directive also explicitly states that the cross-border operation does not affect the liability of the company regarding tax obligations related to activities performed prior to the conversion.

In accordance with the general principle of fairness, the Directive provides legal protection to companies through the right to judicial review of decisions made by the competent authority, as well as the right to request suspension of the effectiveness of the cross-border conversion.

4 The Legal Framework in the Slovak Republic

The legality review of a cross-border conversion is regulated by the Slovak Act on Conversions in the general provisions applicable to cross-border conversions, specifically in Section 87. The Act illustratively defines the formal and substantive requirements for applying for the issuance of a certificate. However, regarding the assessment of tax abuse risks, the participating company is not obliged to submit documents that would allow for a thorough evaluation of whether the transaction in question pursues fraudulent or abusive objectives. Similarly, the auditor's report, accompanying the draft cross-border conversion project (as one of the required elements of the application), does not provide the notary with direct grounds to rule out tax-motivated abusive purposes, as its focus lies primarily on the valuation of the company and the appropriateness of the valuation methods employed (Section 82 of the Act on Conversions). The Act does not

impose a general obligation to obtain an auditor's report in every case; the requirement may be waived based on the agreement of all shareholders or in cases where the company has a sole shareholder.

From the perspective of preventing tax law abuse, enhanced transparency is primarily to be achieved through the obligation imposed on Slovak companies¹⁶ to notify the tax administrator in advance of their intention to carry out a cross-border conversion (Section 84). The explanatory memorandum to a similar provision of the law, which introduced the obligation to notify the tax administrator of certain facts (Section 11 Notification to the Tax Administrator), states that this notification requirement is introduced “as an instrument to combat fraudulent mergers and divisions.” Although it would be reasonable to expect that the Act on Conversions would contain additional concrete measures aimed at curbing the abuse of tax law, neither the Act itself nor its explanatory memorandum includes such provisions.¹⁷

Protection against abusive practices, beyond the obligation to notify the tax authority of the intention to carry out a cross-border conversion, is further embodied in the provisions governing the grounds for refusing to issue a certificate. These grounds include: (1) failure to submit documents required by law; (2) non-fulfilment of conditions established by law or a specific legal regulation; (3) the existence of a well-founded suspicion that the cross-border conversion pursues the circumvention of European Union legal provisions; and (4) refusal to perform the act based on the notary's general duty of professional diligence under Section 36(1) of the Notarial Code (Section 87(3)).¹⁸ It should be noted that point (3), concerning the circumvention of EU law, was incorporated into the Act only following the inter-ministerial review process. The original draft limited the grounds for refusal to the notary's professional discretion and the failure to submit legally required documents.

To dispel doubts concerning the legality of the conversion based on the circumvention of EU law and the general professional diligence of the notary – i.e., where the intended legal act is contrary to the law, circumvents the law, or violates public policy – the notary is, in addition to extending the deadline for issuing the certificate, authorized to: (1) request cooperation from Slovak public authorities and authorities of other Member States with competence in areas affected by the cross-border conversion; such cooperation includes the provision of information and documents necessary for assessing the conversion; and (2) request an expert opinion at the expense of the company concerned. If the public authority fails to provide the requested cooperation within 30 days from the submission of the request, the notary shall instruct the participating company to obtain and submit the documents and information required to rebut the suspicion (Section 87).

The Slovak legal framework indicates a clear legislative intent to fulfil one of the core objectives of the Directive, namely the prevention of abuse of law, primarily through the

¹⁶ Of the dissolving or dividing Slovak company.

¹⁷ Slovak legislators have previously introduced legislative measures addressing fraudulent mergers and amalgamations of companies in inadequate financial situations, where the largest creditor was usually the state. The 2017 amendment to the Commercial Code introduced rules preventing insolvent or liquidated companies from participating in corporate conversions. It required notifying tax authorities and secured creditors of the intended merger and submitting an auditor's report confirming compliance with stipulated conditions.

¹⁸ Act No. 323/1992 Coll. on Notaries and Notarial Activities (Notarial Code), Section 36(1): “A notary is obliged to perform notarial activities with professional diligence. A notary must refuse to perform the requested act if it is clearly contrary to the law, circumvents the law, is contrary to good morals, or if performing the act is entrusted to another public authority by special law. Upon request, the notary shall issue a written confirmation stating the reasons for refusing the act.”

involvement of two public authorities. The first of these is the notary, who is presumed to possess the capacity to identify fraudulent or abusive intentions, particularly in the field of taxation. From a practical standpoint, however, the expectation that such detection falls within the scope of standard notarial professional diligence appears excessive and may exceed the traditional boundaries of the notary's role. Positively, the legal framework confers upon the notary the authority to request the assistance of an expert or to seek cooperation from another public authority. These mechanisms significantly enhance the analytical capacity of the notary and reduce the risk of overlooking potential indicators of abuse. The extent to which these tools will be employed in practice will become apparent only through the actual application of the law; however, their effectiveness may be limited by economic, temporal, or methodological constraints. Given the wide range of considerations that must be considered when assessing the legality of a cross-border conversion, including tax, accounting, and corporate law aspects, it is submitted that the notarial review should not be confined to the framework of general professional diligence alone. It is therefore essential that the legislation and its implementing provisions not only permit, but actively encourage, meaningful cooperation between the notary and other specialized entities. Moreover, the provision of clear methodological guidelines would serve to equip notaries with the expert support necessary to fulfil their role effectively and lawfully.

On the other hand, the tax authority indirectly participates in the process, as it should be notified in advance about the planned cross-border conversion. However, neither the Act on Conversions nor any other tax legislation subjects this notification obligation to further procedures or sanctions, nor do they condition the issuance of the certificate on any form of confirmation from the tax authority. Consequently, several risks emerge: the company lacks an incentive to genuinely inform the tax authority since the legislation does not specify any repercussions for non-compliance, and the notary does not possess any mechanism to verify whether the notification was delivered. Without the active involvement of the tax administration authority, there is a substantial risk that matters relating to the company's tax situation and potential tax avoidance will remain unexamined during cross-border conversions.

Another problematic area involves cooperation with other public authorities, as the legislation addresses it only superficially, implicitly anticipating the possibility that the requested authority might fail to provide cooperation altogether. In such cases, the notary is required to instruct the company to independently procure the necessary documents or supporting materials, which logically would have to be provided by the very authority that initially refused cooperation. Consequently, the effective linkage between notarial oversight and the practical activities of other public institutions is diminished. If we consider a scenario in which the successful completion of a cross-border conversion depends on feedback from a specific public body that refuses cooperation, serious concerns regarding legal certainty emerge. Both the company and the notary remain in a state of uncertainty, as the law does not define any mechanism to compel the relevant authority to act or at least ensure a binding response within the necessary timeframe.

For comparison, the Czech Republic has adopted more precise rules aimed at combating the abuse of law. Due to its shared legal tradition, a similar structure of company law, and parallel implementation of the Directive, the Czech Republic appears to be a legitimate subject of comparison. What is more, both jurisdictions also face comparable challenges in tax compliance and procedural coordination. Although the notary also retains competence over the

legality review of cross-border conversions,¹⁹ Czech legislation more explicitly defines abusive purposes of conversions, characterizing them as “an abusive or fraudulent purpose aimed at evading or circumventing legal regulations of the Czech Republic or European Union law, or committing criminal acts” (Section 59x (8)). In doing so, Czech legislators directly transpose the wording of the Directive, rather than relying solely on the general professional diligence of notaries, as is the case in Slovakia. Furthermore, the cooperation with other public authorities is more precisely regulated; the notary is empowered to establish a reasonable deadline by which the requested authority must provide the necessary cooperation.²⁰

5 Discussion

The preceding analysis reveals substantial discrepancies between the objectives of the Directive and the practical application of its Slovak implementation. Notaries, although legally empowered to prevent abusive practices, are institutionally under-resourced and lack access to the specialized information held by the tax authorities. While the legal framework does enable cooperation between public institutions, it fails to provide mandatory timelines, enforceability mechanisms, or incentives for timely response. Furthermore, the absence of sanctions for non-notification and the limited scope of mandatory documentation weaken the effectiveness of the legislation. Comparative observations suggest that adopting a more defined regulatory approach, as in the Czech Republic, for instance, could increase both efficiency and legal certainty.

6 Conclusion

One of the core objectives of Directive (EU) 2019/2121 is to prevent the abuse of law in the context of cross-border operations. Although the Directive introduces key procedural safeguards and promotes inter-institutional coordination, the Slovak transposition does not fully reflect this ambition. The legal framework in place lacks mechanisms for verifying tax compliance, does not mandate active participation of the tax authority, and over-relies on the professional judgement of notaries without equipping them with sufficient institutional support. This paper has demonstrated that, without more stringent procedural and institutional arrangements, the existing legislation cannot fulfil the Directive’s preventive function. The European legislator explicitly emphasizes the necessity of procedural rules and rigorous coordination among public authorities. However, an analysis of its transposition into Slovak national legislation indicates that these ambitions have not been effectively realized to a degree sufficient to adequately address the practical risks associated with abusive and fraudulent tax practices. Insufficient regulation of both substantive and procedural aspects results in existing provisions potentially causing legal uncertainty and unintended procedural delays in practice. For example, the obligation to notify tax authorities appears largely formal, as the law neither specifies sanctions for non-compliance nor requires evidence of such notification to accompany an application for issuing the certificate. Similarly lacking are the mechanisms to compel effective cooperation from other public authorities, resulting in the notary’s final decision potentially being based on incomplete information, even in cases of clear indications of legal abuse. To overcome these obstacles, I

¹⁹ Act No. 125/2008 Coll. on Transformations of Commercial Companies and Cooperatives.

²⁰ For the implementation of the Directive in the Czech Republic see Kolas (2024).

consider it essential to amend the existing legislation by introducing at least minimal guarantees to enhance the effectiveness of the cross-border conversion review process. I identify three primary areas in which concrete measures should be introduced. First, it is essential to include the obligation to notify the tax authority as a substantive requirement of the application for the issuance of a certificate, thereby ensuring that the company has genuinely informed the tax authority and that such notification is not merely a formal declaration. Second, in the case of transactions exceeding a predetermined threshold, it would be appropriate to introduce a requirement for the submission of the tax authority's consent to the cross-border operation. Such a measure would provide an additional safeguard for the verification of tax-related aspects before the actual execution of the cross-border conversion. Finally, considering the frequent delays encountered in the cooperation of other public authorities, I recommend a more precise formulation of the rules governing their mutual communication, including clear deadlines and consequences for inaction. In my view, these steps would enhance the transparency of the overall process and reduce the risk that abusive tax practices go unnoticed while reviewing cross-border conversions.

The effective prevention of abuse in the field of taxation requires the consistent and systematic application of anti-abuse instruments. Legislative measures can fulfil their intended purpose, namely the safeguarding of the integrity of cross-border company conversion, only insofar as they are supported by robust and operational enforcement mechanisms. This presupposes not only the formal existence of legal norms, but also their practical enforceability through coordinated action by all relevant public authorities, particularly notaries, tax administrations, and supervisory bodies. In this context, a direct response may be offered to the central research question posed in the introduction of this study: "Is the scope and quality of legal instruments entrusted primarily to notaries, but also to other public authorities, sufficient to effectively prevent the abuse of tax law in the context of cross-border conversions of companies?" Based on the current legal framework, the answer must be in the negative, unless and until the legislative structure is further elaborated and refined.

The principal shortcoming lies in the allocation of responsibility to notaries as the primary guardians against tax-motivated abuse, without granting them commensurate powers or imposing a binding obligation of cooperation on other authorities. Under the existing regime, the tax authority is only marginally involved in the pre-certification process, despite being uniquely positioned to provide critical insights into the tax history and risk profile of the entity concerned. This disconnect undermines the preventive function of the legal framework. Should these structural deficiencies remain unaddressed, the very objectives of the Directive are being fundamentally undermined. The lack of institutional coordination and the asymmetrical distribution of responsibilities, where notaries are tasked with ensuring compliance without being afforded the requisite authority or institutional support, threatens to erode both the legal certainty and the normative coherence of the cross-border conversion regime. In such a fragmented framework, the preventive potential of the legislation is significantly diminished, creating fertile ground for the persistence, and even proliferation, of abusive tax practices.

Accordingly, reinforcing the substantive and procedural foundations of the Slovak transposition is not merely a matter of legislative refinement, but a prerequisite for the meaningful realization of the Directive's aims. A well-calibrated legal framework grounded in institutional cooperation, methodological clarity, and enforceable obligations would serve not only to enhance transparency and accountability in cross-border operations but also to reaffirm the commitment of the Slovak Republic to the principles of tax fairness, rule of law, and the integrity of the internal market.

Future research should focus on evaluating the practical implementation of the reviewed mechanisms through empirical legal studies, including case studies of cross-border conversions processed under the new regime. It is also necessary to assess the degree to which tax authorities become actively involved in cooperation with notaries over time, and whether institutional routines gradually develop to mitigate the currently observed shortcomings.

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Some Constitutional Dimensions of Legislation with Supermajority in an Illiberal Context

What might be Learnt from the Case of Hungary?

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Abstract

The main goal of this article is to draw attention to the potential tools of the Hungarian Constitutional Court in the shaping of the future of cardinal law. The three main dilemmas around which the relevant HCC practice can be grouped are the legal rank of cardinal laws, ordinary and cardinal provisions occurring in the same laws, and the vertical scope of the cardinal regulation. The science of constitutional law and legal practice must focus on these three main issues in connection with supermajority legislation. Of course, many other sub-problems can be identified, which are important in themselves, but all of them can be classified into one of the aforementioned three areas. If these issues can be settled satisfactorily, a predictable jurisprudence may develop in the long term, which would greatly promote the effectiveness of the entire concept of cardinality. A wide-ranging professional dialogue from this would serve not only the interests of the Hungarian constitutional framework, but might also be an important point of reference for other countries operating with supermajority legislation.

Keywords

cardinal law; supermajority; hierarchy of legal sources; two-thirds parliamentary majority; competence principle; hierarchical principle; cardinality clause

1 Introduction

The present study fits into the strand of the international legal scholarship, reviewing the jurisprudence related to supermajority legislation, and it thematizes, in an international context, the decisions taken by the Hungarian Constitutional Court (HCC), which are related to supermajority legislation in the last three decades. In doing so, I kept in mind the already known case law of the HCC, as well as the possible perspectives that can be observed in the field. Consequently, my hypothesis also points in these two directions. On the one hand, I assumed that the HCC has played a crucial role in initiating model changes related to supermajority laws in Hungary. This is in contrast to the generally observable phenomenon that the activity of the HCC follows rather than causes legislative developments. On the other hand, I believe that this

body, at least in principle, could play a significant role in the search for solutions that preserve the advantages of the current cardinality concept, but eliminate its disadvantages, even without any substantive changes to the constitutional and legislative environment, simply by applying the tools of legal interpretation.

From these two basic assumptions, it follows that I provide a comprehensive picture of the decisions regarding the Hungarian cardinal laws of the last three decades, and the related trend-like attitudes, without analyzing each relevant decision in detail. This may provide orientations for further progress, in connection with which, in my opinion, we should take into account at least three aspects. First, the legal rank of supermajority laws should be clarified. Second, I suggest reconsidering the situation when simple and supermajority provisions coexist in the same law. Finally, the development of a depth test could lead to a consistent delimitation of the vertical scope of supermajority legislation. In my study, I formulate possible answers to such and similar questions.

This contribution aims to demonstrate that a Constitutional Court with a more activist attitude and less political engagement (Drinóczi & Bień-Kacała, 2019) could considerably tighten the arena of supermajority legislation, which could broaden the margin of movement of any future government without a two-thirds parliamentary majority. The main findings of this article might also be noteworthy for other constitutional courts facing with constitutional implications of supermajority legislation; at least certain elements of the suggested interpretive tools might also be implemented into the constitutional practices of several other countries as well, as will be illustrated later.

Apart from this, the outcome of the present research may entail far-reaching practical implications. Although the fact that the Venice Commission also referred in its report on the Fundamental Law of Hungary to the extensive use of cardinal laws during 2011 and 2012 as a factor of potentially undermining the rule of law,¹ this aspect of rising illiberal constitutionalism (Szente, 2023; Drinóczi & Cormacain, 2021) has still been somewhat neglected. Most of the authors focusing on the available instruments of overturning illiberal tendencies have dealt with the possible revision or amendment of the Current Fundamental Law without a two-thirds parliamentary majority (Bakó, 2021). However, less attention has been paid to those interpretive methods, which could reconsider and narrow the scope of current cardinal laws imposing a two-thirds parliamentary majority requirement for the amendment of the most important acts. Furthermore, these interpretive techniques might also be of great use for other constitutional courts dealing with supermajority legislation, since inherently similar constitutional concerns have been raised wherever supermajority law has been introduced.

2 Methodology

For the sake of this contribution, all HCC cases related to supermajority legislation have been collected from 1990 to 2024, and then the main issues raised and the most important tendencies have been identified. Instead of a detailed overview of the decisions concerned, I will identify the main principles on which the relevant arguments are based, which can serve as starting points for further analyses. At first, the definition of supermajority law will be given; moreover, a brief international overview will be provided of the various versions of supermajority law

¹ Venice Commission, opinion no. 621/2011 on the new Constitution of Hungary, sections 22–27, online: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)016-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)016-e)

around the world. What might be learned from the cardinal law concept, as the Hungarian form of supermajority, legislation might be understood just in the light of this comparative insight. Apart from this, a terminological clarification will also be needed to properly distinguish the terms of supermajority, cardinal, organic, two-thirds, and constitutional law. The article will continue with the research on the main findings of the HCC on the dogmatic bases of supermajority legislation until the entry into force of the Fundamental Law in 2012. In the last subsections of my work, the latest developments of the cardinality concept will be discussed; finally, the question will be asked whether the HCC can remedy the shortcomings of the current cardinal law concepts by simply changing the jurisprudence, without explicit constitutional or legislative amendment. If the answer to this question is in the affirmative, then the main possible directions for further progress should be advised.

3 Supermajority legislation: an international overview

As a preliminary consideration, the exact meaning of the term of supermajority law should be given. In the different constitutional systems, various interpretations of supermajority law have been developed, yet the common features that are the characteristics of all relevant national legal institutions may still be identified. The term of supermajority law describes a constitutionally defined subcategory of laws, which includes, at least in principle, the most important legislative subjects, and which is associated with stricter procedural guarantees than the general legislative process (Camby, 1998; Szentgáli-Tóth, 2022b).

In national constitutional systems, multiple expressions have been elaborated for naming supermajority laws. Although terminology issues usually have less significance than the substantial analysis, in this case, it might still be advisable to devote them considerable weight, since terminology closely correlates with the main functions assigned to supermajority legislation. In addition to the constitutional, the political (Szabó, 2024, 66), historical, and sovereignty-centered conceptualizations are also noteworthy. The terminology of organic law appears, amongst others, in the French,² the Spanish,³ the Romanian,⁴ the Moldovan,⁵ the Croatian,⁶ and the Georgian⁷ constitutions, where emphasis is given to the distinction between supermajority and ordinary laws. In Spain, these laws form part of the constitutional bloc (Chofre Sirvent, 1994, 99–202); supermajority laws might also be invoked in other countries as points of reference during the constitutional review of ordinary laws (Troper & Chagnollaude, 2012, 346).⁸

² Art. 46. of the Constitution of France [October 4, 1958], online: <https://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/texte-integral-de-la-constitution-du-4-octobre-1958-en-vigueur>

³ Art. 81. (1) of the Constitution of Spain [December 7, 1978], online: <https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf>

⁴ Art. 72. (3) and 74. (1) of the Constitution of Romania [November 21, 1991], online: https://www.constituteproject.org/constitution/Romania_2003

⁵ Art. 72. (3) and 74. (1) of the Constitution of Moldova [July 29, 1994], online: https://www.constcourt.md/public/files/file/Actele%20Curtii/acte_en/MDA_Constitution_EN.pdf

⁶ Art. 82. (1) of the Constitution of Croatia [December 22, 1990], online: <https://www.sabor.hr/en/constitution-republic-croatia-consolidated-text>

⁷ Art. 66. (2) of the Constitution of Georgia [August 24, 1995], online: https://sos.ga.gov/sites/default/files/2022-02/state_constitution.pdf

⁸ Décision n° 66–28 DC du 8 juillet 1966 (Rec., p. 15).

The category of constitutional law was introduced in Italy shortly after WW II,⁹ and later was also implemented in several Central- and East-European and Central-Asian countries during the democratic transition, such as Azerbaijan,¹⁰ Kazakhstan,¹¹ Kyrgyzstan,¹² Russia,¹³ Slovakia,¹⁴ and Tajikistan.¹⁵ According to this concept, supermajority laws were placed at the same level as the constitution in the hierarchy of legal sources (Kilényi, 1994). The “two-thirds law” formula was used in Hungary during the two decades between 1990 and 2011. This wording prioritized the political role of supermajority: a broad consensus was needed to amend these laws instead of a simple majority. The Fundamental Law of Hungary reinstated an old terminology, creating the category of cardinal law,¹⁶ with very similar content to the former two-thirds laws. This symbolic step was in conformity with the rhetoric of the Fundamental Law, relying on legal historical traditions (Küpper, 2014, 2–5).

France, Spain, and Hungary represent three significant models of supermajority legislation. However, supermajority law does not only affect these three countries, but also many other legal systems. Although the initial logic of supermajority law can already be seen in certain aspects of the English historical constitutional development (Leyland, 2012, 25–42), the modern history of supermajority laws begins in 1958, with the Constitution of the Fifth French Republic.¹⁷

After the decolonization of Africa, following the French model, organic laws were included in the constitutions of many francophone African countries (René, 1964, 477). Currently, organic laws have been introduced into the constitutions of Algeria,¹⁸ Senegal,¹⁹ and Tunisia,²⁰ and other countries from all around the continent.

The second wave of the spread of supermajority laws is related to the fall of the Spanish and Portuguese nationalist dictatorships.²¹ Supermajority laws have been incorporated into the

⁹ Art. 137. and 138. of the Constitution of Italy [December 22, 1947], online: https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf

¹⁰ Art. 94. (1) and (2) of the Constitution of Azerbaijan [November 12, 1995], online: <https://www.globalhealthrights.org/wp-content/uploads/2013/09/Azerbaijan-Constitution-English.pdf>

¹¹ Art. 61. (4) and (5) of the Constitution of Kazakhstan [August 30, 1995], online: https://www.akorda.kz/en/official_documents/constitution

¹² Art. 86. (5) of the Constitution of Kyrgyzstan [April 11, 2021], online: <https://constsof.kg/wp-content/uploads/2022/06/constitution-of-the-kyrgyz-republic.pdf>

¹³ Art. 76. of the Constitution of the Russian Federation [December 25, 1993], online: <http://www.constitution.ru/en/10003000-01.htm>

¹⁴ Art. 93. (1) of the Constitution of Slovakia [September 3, 1992], online: <https://www.prezident.sk/upload-files/46422.pdf>

¹⁵ Art. 61. of the Constitution of Tajikistan [November 30, 1994], online: <https://mfa.tj/uploads/berlin/2020/08/constitution-The-Repablik-of-Tajikistan.pdf>

¹⁶ Art. 7) (4) of the Fundamental Law of Hungary [April 25, 2011], online: <https://www.parlament.hu/documents/125505/138409/Fundamental+law/73811993-c377-428d-9808--ee03d6fb8178>

¹⁷ Art. 46. of the Constitution of France [October 4, 1958].

¹⁸ Art. 145. of the Constitution of Algeria [November 1, 2020], online: https://www.constituteproject.org/constitution/Algeria_2020

¹⁹ Art. 78. of the Constitution of Senegal [January 7, 2001], online: https://adsdatabase.ohchr.org/IssueLibrary/SENEGAL_Constitution.pdf

²⁰ Art. 65. of the Constitution of Tunisia [January 26, 2014], online: https://www.constituteproject.org/constitution/Tunisia_2014

²¹ Art. 81. (1) of the Constitution of Spain [December 7, 1978]; art. 278. of the Constitution of Portugal [April 2, 1976], online: https://www.constituteproject.org/constitution/Portugal_2005

constitutions of both countries (Conversi, 2002), and this was also followed by certain Latin-American countries, such as Ecuador²² or Venezuela,²³ to mention but two examples.²⁴

Finally, as the third phase of the rise of supermajority laws, after the collapse of the Central European socialist systems, this solution was included, amongst others, in the Hungarian, Romanian,²⁵ and the Moldovan²⁶ constitutional systems.

4 Thematising the main interpretive challenges related to supermajority laws in Hungary

First of all, I will address the most important dilemmas that the HCC has faced from the very beginning, and which, in terms of essence, have not been reconsidered despite successive model changes (Tóth, 2016). However, this constancy can be observed not only in time, but also in space: foreign constitutional courts have usually found themselves faced with similar difficulties, and their answers are mostly not consistent either (Szentgáli-Tóth, 2022a).

One of the typical topics of the relevant HCC rulings is the question of the rank of supermajority laws in the hierarchy of legal sources (Jakab & Cserne, 2001). Two answers might be provided to this: one is based on the competence principle, and the other is based on the hierarchical principle (Camby, 1989, 1401). According to the principle of competence, supermajority laws are placed on the same level as ordinary laws, so we cannot speak of any subordination between these two legal categories.²⁷ The ordinary rules can even override the cardinal provisions if the given provision does not belong to the reserved regulatory terrain of the cardinal law. This can be contrasted with the hierarchical principle, which assumes that supermajority laws are placed above ordinary laws in the hierarchy of legal sources, so the constitutional protection of the two categories may differ considerably. During the constitutional review of ordinary laws, supermajority laws can also be invoked, as lower-level legislation, as, according to the hierarchy of legal sources,²⁸ they ought to substantially comply with superior norms.²⁹ The provisions adopted by a two-thirds majority can no longer be amended by a simple majority, regardless of whether the supermajority is justified according to their subject matter (Jakab & Cserne, 2001).

In practice, these two principles are never clearly enforced; hierarchical and egalitarian elements coexist. In principle, the Fundamental Law names supermajority laws as a special subcategory of laws, which may contain a kind of answer to this problem, though the priority between the competence and the hierarchical principle is not clear even today. Another aspect

²² Art. 133. of the Constitution of Ecuador [September 28, 2008], online: https://www.constituteproject.org/constitution/Ecuador_2008

²³ Art. 203. of the Constitution of Venezuela [December 20, 1999], online: https://www.constituteproject.org/constitution/Venezuela_2009

²⁴ Art. 195. of the Constitution of the Dominican Republic [June 13, 2015], online: <https://faolex.fao.org/docs/pdf/dom187716Eng.pdf>; art. 151. and 152. of the Constitution of Colombia [July 4, 1991], online: https://www.constituteproject.org/constitution/Colombia_2015; art. 165. of the Constitution of Panama [October 11, 1972], online: https://www.constituteproject.org/constitution/Panama_2004; art. 106. of the Constitution of Peru [December 31, 1993], online: https://www.constituteproject.org/constitution/Peru_2021

²⁵ Art. 73. (3) of the Constitution of Romania [December 8, 1991].

²⁶ Art. 72. (3) and 74. (1) of the Constitution of Moldova [July 29, 1994].

²⁷ 4/1993. (II. 12.) HCC, ABH 1993, 48, 60; SJCC. no. 236/2007.

²⁸ 19/2005. (V. 12.) HCC, ABH 2005, 644; 193/2010. (XII. 8.) HCC, ABH 2010, 997.

²⁹ 43/1992. (VII. 16.) HCC, ABH 1992, 374.

of this problem sets the relationship between cardinal laws and the Fundamental Law,³⁰ which has less relevance in the current context. In the period of the democratic transition, the quasi-constitutional nature of constitutional laws could arise reasonably (MacDonnell, 2016), the HCC also highlighted that their main function was to extend the Constitution. Today, there seems to be a consensus that cardinal laws cannot be endowed with any constitutional character.³¹

Another direction of the relevant HCC practice, but not independent from the previous one, is the simultaneous presence of cardinal and ordinary statutory rules within the same law. This construction appeared already in the mid-1990s, when the legislator wanted to amend two-thirds laws with a simple majority on the basis that the provisions to be amended were not essential elements of the regulatory concept. The HCC finally established that legislation subject to a supermajority requirement can only be amended with a two-thirds majority, so the terrain of the supermajority might be expanded, but not narrowed. Jakab and Cserne called this mechanism a “one-way street” (Jakab & Cserne, 2001).

The presence of rules subject to different majorities in the same law is a well-known phenomenon also in other countries,³² but in Hungary, this was considered exceptional until the adoption of the Fundamental Law. The Fundamental Law institutionalized the so-called cardinal clauses, which enumerate which sections of each law require a two-thirds vote to be adopted or amended. Still, the Fundamental Law serves as the primary source of the heightened majority requirement, so the HCC can still decide on the question of whether the legislator adopted certain legal rules in accordance with the constitutional orientations by a simple or two-thirds majority. At first glance, this system may serve clarification by providing the list of cardinal provisions, but in reality, as we will see later, it generates more constitutional problems than it can manage.

An additional aspect connected to this might fundamentally raise in itself the need to reconsider the current cardinality concept. Both the previous Constitution and the current Fundamental Law operate with two-thirds or cardinal laws, rather than such statutory provisions. Compared to this, from the beginning, legal interpretation has often taken a position on the cardinality of certain legal norms, rather than entire legislation, or the lack thereof. Should be taken seriously, this shortcoming can call into question the constitutionality of the entire cardinal legislation. Neither from the previous Constitution, nor from the Fundamental Law can it be deduced that two types of provisions could exist within a given law. How this can be prevented in practice constitutes another question. At the same time, it must also be taken into account that the recognition of two separate categories within each law entails numerous, almost irresolvable, dogmatic and practical contradictions.

As the third aspect in connection with cardinal laws, the HCC regularly faces with the expected and justified depth of cardinal regulation within each cardinal subject area.³³ The Fundamental Law provides a list of cardinal legislative subjects with paramount importance, so it provides clear guidance in this regard. However, it has already remained questionable to what degree of detail the regulations for each of the specified subject areas must be enacted with a supermajority. In this regard, the previous Constitution did not contain any guidelines, it merely stated that the specified legislative areas should be covered by a two-thirds law. Based on this,

³⁰ 55/2010. (V. 5.) HCC, ABH 2010, 366.

³¹ 43/2012. (XII. 20.) HCC, ABH 2012, 296.

³² Décision n° 99–419 DC du 9 novembre 1999.

³³ 4/1993. (II. 12.) HCC, ABH 1993, 48; décision n° 84–177 DC du 30 août 1984.

the HCC, especially in the early 1990s, dealt with the question multiple times, where to draw the line between two-thirds and ordinary legislation.³⁴

This question also appears in the case law within a new context since 2012, when the Fundamental Law chiselled the constitutional orientation regarding the scope of cardinality. In certain cases, especially in the case of public policy subjects such as the pension or tax system, the supermajority requirement covers just the basic rules of the given area. On the other hand, in the case of the most cardinal subject areas, cardinality is related to the detailed, not the basic, rules. In this situation, the task of the HCC may be to define criteria on the basis of which it can be decided whether a specific provision, for example in the area of citizenship, falls within the domain of the cardinal or the ordinary law.³⁵ This task shows extreme complexity, as the thirty or so cardinal subjects show huge diversity, and the regulatory structure of each subject also differs significantly. A depth test should take this diversity into account, but also should provide a framework that can always be called upon for such problems (Acquaviva, 2021, 200–201).³⁶ This brings us back to the two previous aspects: what will be the legal consequences if the two-thirds majority expands beyond its constitutionally designated scope, and if the ordinary majority intervenes in the sphere of the two-thirds.

5 Developments during the democratic transition and the subsequent two decades

Before analyzing the specific case law, those developments should be briefly outlined that fundamentally influenced the legal practice related to two-thirds laws in this period (Bozóki, 2002). The introduction of supermajority legislation arose in 1989, during the so-called round table negotiations, based partly on domestic legal historical traditions and partly on foreign models. At that time, the democratic transition was surrounded by significant uncertainty: huge fears were expressed that the future government would intend to use the acquired power to silence its opposition, so tools were needed that ensured as many political actors as possible the meaningful participation in decision-making (Chronowski et al., 2013). Constitutional laws, which had to be voted for by two-thirds of all parliamentarians in the same way as amendments to the Constitution, seemed suitable for this purpose (Kukorelli, 1994). In addition, the scope of the supermajority was unreasonably wide: all provisions relating to fundamental rights and obligations had to be included in such legislation (Szabó, 2023, 285). The MDF-SZDSZ pact sought to resolve this situation in the spring of 1990: a compromise between the two dominant political parties of the first freely elected Parliament created the system of two-thirds laws.³⁷ The vote of two-thirds of the deputies present was enough to enact or amend them, while the list of supermajority subject areas was also narrowed down similarly to the Spanish model,³⁸ thanks to the specific naming of the fundamental rights that belong to it (Chronowski et al., 2013).

The HCC was created in the midst of these rapid changes, and almost immediately faced the constitutional and dogmatic disputes raised by the presence of supermajority legislation in the Hungarian legal system.³⁹ In relation to the legal hierarchy, it initially seemed to be a bigger

³⁴ 1260/B/1997. HCC, ABH 1998, 816.

³⁵ 64/1991. (XII. 17.) HCC, ABH 1991, 297-300.

³⁶ Décision n° 98-401 DC du 10 juin 1998.

³⁷ 66/1997. (XII. 29.) HCC, ABH 1997, 397.

³⁸ SJCC 76/1983, of 5 August, LC 2.

³⁹ 4/1993. (II. 12.) HCC, ABH 1993, 48.

challenge to separate the constitutional laws from the Constitution, since these norms arose as extensions of the Constitution in the justification of the relevant decisions (Petrétei, 1999, 109). This position causes additional dogmatic issues, as it stretches the uniform and coherent structure of the Constitution and assigns a quasi-constitutional role to legislation that, despite the supermajority requirement, was basically created as law.⁴⁰

The interpretation of the relationship between the ordinary and two-thirds laws caused even greater difficulties in the two decades following the democratic transition.⁴¹ The HCC clearly stated that no hierarchy can be observed between the two categories of laws, and thus took a clear position on the issue.⁴²

At the same time, in its decisions, the HCC did not consistently apply this approach. It was stated that the supermajority sets the substantive requirement of the supermajority legislative procedure, the disregard of which presupposes a substantive constitutional violation⁴³ and would cause invalidity.⁴⁴ In addition, the hierarchy is also strengthened by the phenomenon that the HCC has, on several occasions, annulled provisions that were created with a simple majority instead of a supermajority, but we do not see an example of the opposite. We must once again refer back to the phenomenon often referred to as a “one-way street”, which reinforces the primacy of supermajority law presupposing some kind of hierarchy over ordinary laws. By contrast, it would follow from the competence principle, i.e., from the acceptance of the equality of the two legislative categories, that the regulatory terrains of ordinary and two-thirds laws are entitled to the same constitutional protection.

The HCC failed to find a satisfactory answer to these questions until the adoption of the Fundamental Law, and this confusion raised a completely new constitutional dilemma: whether ordinary and two-thirds legal provisions could constitutionally occur within a given law due to their subject matter or importance. In this regard, the Constitution did not provide any guidelines, so the HCC had to form its own position on how to handle this situation (Szentgáli-Tóth, 2023). Quoting from the reasoning of the HCC: “Legislative consensus compulsion arising from the substantive rules of the Constitution – as a condition for the validity of the legislative procedure – represents a constitutional limit determining the formal validity of the legislative procedure against even the reasonable aspirations of a simple majority.”⁴⁵ In other words, the two-thirds vote, which has already been validated as a constitutional requirement, can no longer be ignored, even if otherwise relevant substantive arguments can be put forward for the sake of a simple majority. The HCC gave priority to practical aspects when, ignoring constitutional concerns, it decided to adapt to the situation and give the green light to the solution of including provisions subject to different majorities in the same law.

It would have been a dogmatically obvious and well-justified decision to declare the ordinary provisions contained in the two-thirds law invalid, but this would have been in contrast to the often asserted, but at least questionable, principle of the equality between the two types of legislation. The opposite has a greater chance; we can find numerous examples of this in the Hungarian case law: the annulment of supermajority provisions enacted by a simple majority.⁴⁶

⁴⁰ 4/1990. (III. 4.) HCC, ABH. 1990, 28–30.

⁴¹ 66/1997. (XII. 29.) HCC, ABH 1997, 397.

⁴² 4/1993. (II. 12.) HCC, ABH 1993, 48.

⁴³ 1/1999. (II. 24.) HCC, ABH 1999, 25.

⁴⁴ 53/1995. (IX. 15.) HCC, ABH 1995, 238; 1/2017. (I. 17.) HCC, ABH 2017, 3.

⁴⁵ 1/1999. (II. 24.) HCC, ABH 1999, 25.

⁴⁶ 4/1993. (II. 12.) HCC, ABH 1993, 48; 1260/B/1997. HCC, ABH 1998, 816.

At this point, we can clearly perceive the controversial and unequal application of the principles of hierarchy and competence in the arguments of the HCC.⁴⁷ If we consider the competence approach to be the guiding principle, a provision is deemed to be constitutional if and only if it was adopted by the relevant majority, or it can be amended later accordingly.⁴⁸ It would therefore not be possible to apply the supermajority requirement to otherwise ordinary provisions, starting from the assumed higher level of guarantee, since we are not talking about an expanded interpretation of a constitutional guarantee, but about the replacement of a constitutionally fixed legislative procedure by another, equal equivalent, without a proper legal basis.⁴⁹

In the absence of a specific designation within each law, the HCC had to consider on a case-by-case basis which provisions might be subject to a two-thirds majority.⁵⁰ This could be evaluated as a significant factor of uncertainty, and clearly shows the already indicated difficulty that, prior to the adoption of the Fundamental Law, the delimitation of the ordinary and two-thirds statutory provisions had been rather inconsistent.

Nevertheless, the key question of the consolidation following the democratic transition was not the above-discussed problem, but the extent to which each cardinal subject area named in the Constitution needs to be regulated by a supermajority. The first, rather undifferentiated answer to this was given by the autumn 1989 amendment to the Constitution, which stated that the rules regarding fundamental rights and obligations must be laid down in constitutional laws. The HCC, established in January 1990, faced as one of its first greater tasks to point out the disadvantages of this situation, that as a result of such a concept, all rules affecting fundamental rights and obligations can only be adopted with the vote of two-thirds of all parliamentarians.⁵¹ What was explained by the HCC at the time significantly contributed to convincing the leading political parties of that period of the unsustainability of the original constitutional law model.

In the period after 1990, the relevant case law had to deal with the depth of the two-thirds regulation several times. The HCC pointed out, in a manner similar to the Spanish model, which highlights a reserved constitutional domain for organic law, that in the case of fundamental rights, the two-thirds requirement encompasses both the essential content of the fundamental right and its substantive guarantees.⁵² For the two-thirds regulation, it is sufficient to settle the conceptual issues of the given subject area with a two-thirds majority, but this requirement shall not apply to detailed rules.⁵³ However, even the detailed rules, once placed at the two-thirds level, cannot be amended later with a simple majority.⁵⁴

To conclude, until the adoption of the Fundamental Law, the HCC was mostly able to contribute constructively to the settlement of legal interpretation issues related to two-thirds laws during the democratic transition and in the years immediately following. The case law played a meaningful role in replacing constitutional laws with two-thirds laws; moreover, important decisions discussed the depth of the two-thirds regulation, even if the body did not set

⁴⁷ 3/1997. (I. 22.) HCC, ABH 1997, 33.

⁴⁸ 31/2001. (VII. 11.) HCC, ABH 2001, 258.

⁴⁹ 1/1999. (II. 24.) HCC, ABH 1999, 25; 27/2008. (III. 12.) HCC, ABH 2008, 289.

⁵⁰ 1/1999. (II. 24.) HCC, ABH 1999, 25.

⁵¹ 4/1990. (III. 4.) HCC, ABH. 1990, 28–30; 5/1990. (IV. 9.) HCC, ABH 1990, 32.

⁵² 4/1993. (II. 12.) HCC, ABH 1993, 48; 54/1996. (XI. 30.) HCC, ABH 1996/173; 47/2001. (XI. 22.) HCC, ABH 2001, 308.

⁵³ 4/1993. (II. 12.) HCC, ABH 1993, 48.

⁵⁴ 1/1999. (II. 24.) HCC, ABH 1999, 25; 55/2010. (V. 5.) HCC, ABH 2010, 366.

coherent standards in this regard. Nevertheless, the relationship between provisions of different ranks in the same law had not been satisfactorily resolved, while the position of two-thirds laws in the legal hierarchy remained controversial.

6 The concept of cardinality and the relevant case law under the Fundamental Law

The entry into force of the Fundamental Law of Hungary in 2012 entailed changes of paramount importance also in the field of supermajority legislation.⁵⁵ In harmony with its historicizing rhetoric, the Fundamental Law revived the terminology of the cardinal law before 1945, albeit with a changed content compared to the original concept (von Bogdandy & Spieker, 2022). By contrast, the concept of the previous two-thirds laws was predominantly incorporated into the Fundamental Law, which the HCC confirmed when it ruled that the relevant findings regarding previous two-thirds laws can be referred to in decisions related to the Fundamental Law, despite the repeal of previous HCC decisions.⁵⁶ In addition, the HCC had to face challenges similar to the previous ones, but under changed circumstances, so a certain shift can be perceived in the decisions of recent years compared to relevant argumentations based on the previous Constitution.⁵⁷

Regarding the legal rank of cardinal laws, the Fundamental Law stipulates that cardinal law constitutes a subcategory of the law, which is distinguished from ordinary laws only by the majority required for its adoption.⁵⁸ Accordingly, the HCC continues to reject the hierarchical principle and considers cardinal and ordinary laws as two categories of equal rank. The HCC illustrated this when it ruled in favor of the latter based on the principle of *lex posteriori derogat legi priori* between the provisions of the cardinal law on the protection of families and the provisions of the Civil Code as an ordinary law regulating the same subject matter.⁵⁹ However, this approach seems to be even more difficult to maintain than the previous one, since in such a situation it could be deduced from the principle of competence that the appropriate level, rather than the temporal factor, should be the decisive factor. In my opinion, one may draw a well-founded conclusion⁶⁰ about the lack of differentiation between the two legislative categories from the equal rank of the two levels: both must be provided with the same constitutional protection in their reserved regulatory areas.

In connection with the presence of rules of different characters within the same act, the Fundamental Law brought considerable innovation, which, however, has not led to the resolution of the disputed issues. The so-called cardinal clauses appeared in the laws containing cardinal provisions, expressly enumerating which sections of the given law must be adopted by a supermajority (Bodnár & Módos, 2012, 33–34). These provisions just implement the relevant provisions of the Fundamental Law introducing the supermajority, but they do so in a way that conflicts with the Fundamental Law itself in multiple aspects. Since the Fundamental Law speaks of cardinal laws rather than cardinal subject matters, there would be no need for such sections if the delineation of the two categories worked properly in compliance with constitutional standards. In addition, the cardinal clauses do not declare themselves as cardinal provisions, so

⁵⁵ Art. T. (4) of the Fundamental Law of Hungary [April 25, 2011].

⁵⁶ 17/2013. (VI. 26.) HCC, ABH 2013, 583.

⁵⁷ 24/2016. (XII. 12.) HCC, ABH 2016, 560.

⁵⁸ Art. T. (4) of the Fundamental Law of Hungary [April 25, 2011].

⁵⁹ 43/2012. (XII. 20.) HCC, ABH 2012, 296.

⁶⁰ Like the French Constitutional Council did: décision n° 87–234 DC du 7 janvier 1988 (Rec., p. 2).

the legislator could, in principle, modify the scope of the rules subject to the two-thirds vote ratio with a simple majority. This would make the supermajority requirement worthless, which the incumbent government could easily circumvent. The HCC also recognized this regulatory anomaly and ruled that even the cardinal clauses can only be amended with a supermajority.⁶¹ The HCC was therefore able to consolidate this aspect through the interpretation of the constitutional rules. The French Constitutional Council also highlighted the confusion between organic and ordinary provisions: each law should provide its character; ordinary provisions may be included in organic laws, but should be declassified. By contrast, despite the formal equality of the two legislative categories, even declassified organic laws might not be incorporated into ordinary laws.⁶²

However, it remained an open question whether the cardinal clauses really designate the scope of the cardinal provisions within the given law in accordance with the respective sections of the Fundamental Law. In this regard, the HCC still has the right to pronounce the final word; therefore, the cardinal clauses cannot be regarded as anything other than the legislator's opinion on which statutory rules should be cardinal and which should be ordinary.⁶³ Nevertheless, this expression of opinion, which potentially conflicts with the Fundamental Law, can even determine the character of the relevant legislation for years, since a constitutionality review procedure can last for a longer period. This should also be emphasized because, since 2012, the HCC, which has been operating with a partially renewed profile, can reach far fewer norm controls than before (Barna & Szentgáli-Tóth, 2013). The conclusion can be drawn from this that the practice of the HCC under the Fundamental Law has been unable to eliminate most of the constitutional uncertainties that arise in connection with the appropriate legal classification of statutory provisions. A primary goal of the revamped cardinal law model was undoubtedly to remedy the dilemmas uncovered by the HCC under the previous Constitution, but in this regard it did not achieve its intended purpose, while due to the renewed profile and attitude of the HCC, the elimination of systemic malpractices has been more difficult than it was before (Sólyom, 2020).

In relation to the depth of the cardinal regulation, the practice of recent years has not brought a decisive breakthrough, but here, too, we have to reckon with a new phenomenon, whose thorough analysis the HCC has so far remained indebted to. The previous Constitution usually stated that a given subject area needed to be regulated by a two-thirds law. By contrast, the Fundamental Law provides somewhat more specific guidelines regarding the vertical scope of the cardinal regulation, which, of course, still does not mean any kind of standard that can be followed in the long term. In the case of cardinal legislative subjects, such as citizenship, the Fundamental Law stipulates that the relevant detailed rules must be covered by cardinal law.⁶⁴ This wording is particularly informative in comparison with other clauses, especially concerning public policy subjects, where the Fundamental Law refers to the basic provisions of a particular legislative subject area. This can be seen in connection with the tax system

⁶¹ 16/2015. (VI. 5.) HCC, ABH 2015, 363.

⁶² Décision n° 75–62 DC du 28 janvier 1976; décision n° 87–228 DC du 26 juin 1987; décision n° 88–242 DC du 10 mars 1988; décision n° 86–217 DC du 18 septembre 1986.

⁶³ 22/2012. (V. 11.) HCC, ABH 2012, 10; 13/2013. (VI. 17.) HCC, ABH 2013, 440.

⁶⁴ Art. G) (4) of the Fundamental Law of Hungary [April 25, 2011], online: <https://www.parlament.hu/docu-ments/125505/138409/Fundamental+law/73811993-c377-428d-9808-ee03d6fb8178>; act LV. of 1993. on the Hungarian citizenship, online: <https://njt.hu/jogszabaly/en/1993-55-00-00>

and the pension system,⁶⁵ where by the basic provisions we may understand the norms of a fundamental nature that affect the entire field of expertise. However, for now, this makes only an assumption (Szentgáli-Tóth, 2014). Until now, the HCC has not dealt with the consequences of this ambiguity, so the only thing that can be ascertained is that the new concept on the vertical scope of the cardinal regulation should lead to a duplication of the standard that matured before 2012.⁶⁶ Such differentiation amongst organic law has been also experienced in France: organic law on public finances as well organic laws related to the Senate have special rank over other organic laws.⁶⁷

In my opinion, the relevant decisions of the HCC under the previous Constitution should be interpreted in the current situation within the scope of “detailed regulation”, and in comparison, the narrower range of norms that are considered fundamental within a given subject area should be defined. One may consider whether the given provision describes a specific legal institution, or whether it lays down principles that are generally applicable requirements in the given sector. Since this apparently abstract legal discussion currently affects such important areas as the tax or pension system, it would be advisable to place more emphasis on the conceptualization of this problem in the literature, either in Hungary or elsewhere. This would later be a point of reference also for constitutional courts to take a position on this issue.

In the practice of the HCC, the attitude of considering cardinality as exceptional compared to the general rule of ordinary legislative procedure and following a strict interpretation on this basis has strengthened.⁶⁸ It relies on the ambiguity that accompanies the entire Hungarian history of supermajority legislation: on the one hand, this legal institution has always appeared as a guarantee, on the other hand, huge fears have been also associated with it, because in certain circumstances it can lead to the excessive strengthening of a strong government majority, while in other cases it can become a barrier to effective governance by distorting the original logic of parliamentarism.⁶⁹ Keeping these points in mind, in the following, I will discuss through what interpretive steps and conceptual changes the HCC could contribute to the rationalization of the current Hungarian cardinality concept without explicitly changing the constitutional and legal framework.

7 Interpretive tools to be exploited: margin of movement of the HCC to precise and narrow the scope of supermajority legislation

In my opinion, the HCC could achieve major breakthroughs without any explicit constitutional amendment in at least three respects: firstly, by clarifying the legal rank of cardinal laws, secondly, by eliminating the inclusion of two types of provisions in the same law, and thirdly, by elaborating a depth test.

In my view, the HCC should expressly provide that the cardinal laws are placed above the ordinary laws, but below the Fundamental Law in the hierarchy of legal sources (Mazza, 2013). With this, a supermajority would form, undoubtedly not only a substantive constitutional

⁶⁵ 40/2012. (XII. 6.) HCC, ABH 2012, 229.

⁶⁶ 29/2017. (X. 31.) HCC, ABH 2017, 633.

⁶⁷ Décision n° 85–195 DC du 10 juillet 1985.

⁶⁸ 27/2017. (X. 25.) HCC, ABH 2017, 567.

⁶⁹ 66/1997. (XII. 29.) HCC, ABH 1997, 397; 55/2010. (V. 5.) HCC, ABH 2010, 366.

requirement, embodying the need for a broad consensus,⁷⁰ but a category essentially different from ordinary law. In principle, the most important regulatory subjects are included here, with particular regard to the main institutions of the state, since fundamental rights were removed from the list of cardinal matters. Clarifying the legal rank of cardinal laws could consolidate a series of dogmatic debates by creating a transparent relationship between ordinary and cardinal laws, as well as cardinal laws and the Fundamental Law.

To abolish the practice of incorporating two types of provisions within the same act would go even further. As we have seen, many uncertainties stem from the coexistence of fundamental and ordinary provisions within a given act;⁷¹ moreover, these can never be separated from each other on completely objective grounds.⁷² In my opinion, the most appropriate solution to resolving this dogmatic tension would be for the HCC to state that only cardinal or only ordinary provisions can be included in a given law, and that the title of each statute should specify its classification. As a general rule, a cardinal law would be linked to a cardinal subject area named in the Fundamental Law, and would also refer in its preamble to the article of the fundamental law that forms the basis of cardinality, and would include all essential safeguards belonging to the given subject area. If ordinary provisions are included in a cardinal law, or if the opposite were to occur, the HCC would annul the relevant provisions due to invalidity. The final word would remain with the HCC, but the situation would be much clearer, and it would also eliminate the current unconstitutional practice of the legislator linking cardinality to legislative subjects. The HCC has not dealt with this issue until now, even though it constitutes not only a formal violation of the Fundamental Law, but also generates many substantive disputes regarding the delimitation of cardinal and ordinary statutory norms.

The term of cardinal law does not describe precisely the current regulatory concept, since supermajority is in reality always linked to specific statutory provisions enumerated by the cardinal clauses with reference to the constitutional articles on the background. However, while the distinction within the given law was supposed to be the exception before 2012, today it must be considered the general rule. In this situation, the consistent separation of cardinal and ordinary laws would seriously serve the predictability of the system in the long term, although HCC may only be able to stimulate rather than complete this process. The HCC's role here could be somewhat similar to the one it played in the spring of 1990 in connection with the introduction of the two-thirds laws. If, in the case of a suitable motion, it would be pointed out that the incompleteness of the regulation would cause conflict with the Basic Law, a violation of the Basic Law manifested in an omission could be established, which would impose a legislative obligation on the Parliament. I do not consider the consistent separation of cardinal and ordinary laws to be feasible without legislative intervention, but the HCC could be the actor giving the initial step, as it has already done in other cases. Another way could only arise if the HCC were to filter out and annul the cardinal provisions contained in ordinary laws, but this would be an extremely slow process and could only happen in the case of appropriate norm control motions. The viable and realistic way can therefore be to establish a violation of the Fundamental Law manifested in an omission.

The third and the most complex challenge that the HCC may face is the issue of the depth test. It should be added that no other similar body has yet been able to elaborate such a tool, but it would produce significant added value in terms of legislation and law enforcement. In this

⁷⁰ 1/1999. (II. 24.) HCC, ABH 1999, 25.

⁷¹ 1/1999. (II. 24.) HCC, ABH 1999, 25.

⁷² 4/1993. (II. 12.) HCC, ABH 1993, 48.

study, some considerations are highlighted that may help further thinking about this. The depth test must simultaneously reflect on the specificities of the cardinal law as a legal institution, as well as on the regulatory structure of each cardinal subject area. Currently, around thirty cardinal subjects exist in Hungary, and as can already be seen from the practice of the 1990s HCC, the structure of a fundamental right and an institutional field differ considerably; therefore, the boundaries of the supermajority requirement must be drawn in a differentiated manner.

Taking these factors into account, it is not deemed possible to create the depth test focusing solely on cardinal law as a legal institution; a thorough examination of each cardinal subject area, as well as expertise in these fields of legislation, might also be needed. Therefore, a broader research group consisting of several members could deal with this issue, in which experts of legislation with supermajority, as well as experts in each cardinal subject area, could take part. Only in this way can it be hoped that an in-depth test truly applicable and meaningfully reflecting the diversity of the cardinal regulation could be developed.

In addition, the two aforementioned levels of supermajority regulation must also be taken into account: a separate standard must be set for the detailed regulation and another for the basic regulation as well. It is hardly possible to formulate anything more precise than the current guidelines at the constitutional level. However, the envisaged depth test does not require legislative intervention: it may be the task of the HCC to elaborate this framework. In addition to the above, many other proposals can, of course, be formulated, for example, narrowing the range of cardinal laws. However, this is primarily a constitution-making and legislative competence; the HCC can contribute to this by strictly interpreting the terrain of the cardinal regulation, but this has already been essentially implemented.

Therefore, the HCC alone cannot be able to reinterpret the concept of cardinal laws, but it can significantly contribute to the search for better and more effective alternatives than the current one. Until now, the HCC has actively participated in shaping the framework of cardinal legislation. If this attitude were to meet with a greater level of engagement and consciousness, the HCC may still have serious perspectives in this area.

8 Conclusions

At least three different Hungarian models of supermajority law have been experienced in three decades (Jakab & Szilágyi, 2014). When the regulatory environment is so unpredictable, even at the constitutional level, the institutions responsible for protecting the constitution are of particular importance (Halmai, 2023). For this reason, particular attention must be paid to the margin of movement available to the HCC for influencing the legal surroundings. In exploiting these instruments, the HCC cannot take over the tasks of the legislator, but it can extensively use the tools of legal interpretation (Szentgáli-Tóth, 2018). In my present work, I have given examples that only with the help of these can serious changes be achieved without any amendment of the constitutional framework.

I attempted to provide a comprehensive picture of the constitutional dilemmas that the HCC continuously faced in the past three decades in connection with supermajority legislation, and one may see from this that the current concept of cardinal law is mostly inherited from the previous Constitution; however, the relevant issues might be aggravated by the long-term presence of a two-thirds parliamentary majority (Schweitzer, 2013). Although these concerns, cardinal laws constitute frequently contested, but in my opinion, valuable elements of the Hungarian constitutional system, as I have previously explained in more detail elsewhere (Szentgáli-Tóth, 2017). Therefore, it is

advisable to preserve this legal institution, but at the same time, we must look for solutions that can serve to eliminate the obvious errors of the current concept. This contribution, which focused on the practice of the HCC, aims to make a significant step in this direction not only in Hungary but also elsewhere, where supermajority legislation has been implemented, raising similar issues to those in Hungary. The specialty of the Hungarian model is caused by the frequent changes of the framework itself, by the extensive use of a two-thirds majority requirement for legislative purposes, and by the long-term existence of a two-thirds parliamentary majority behind the government.

In my opinion, regarding cardinal laws, it would be necessary to put more emphasis on international comparison as well as interdisciplinary and broad perspectives than before, since there are still many unclear and disputed details concerning the main dilemmas. We have seen that the legal rank of cardinal laws, and even the scope of the cardinal legislation itself, is extremely uncertain, so in the first instance, we have to revisit the conceptual questions. This study also intended to contribute to this, offering a new approach to at least some of the key issues related to cardinal laws. I did not attempt to formulate definitive answers, but rather to outline alternative tools of interpretation.

As a concluding remark, one should keep in mind that my proposals would not be relevant for the current HCC, comprised exclusively of members elected by the two-thirds parliamentary majority. Nevertheless, it must be underlined that important tools of legal interpretation would stand at the disposal of a future HCC or the constitutional courts of other countries with a less deferential attitude and more willingness to conduct effective constitutional review.

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Beyond Linz: Institutional Safeguards and the Viability of Presidentialism in Africa

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Abstract

The debate on presidentialism and its impact on democratic stability has been a central concern in political science, particularly following Juan José Linz’s seminal work on the perils of presidentialism. Linz contends that the separation of powers in presidential systems engenders democratic instability, primarily due to political rigidity, dual legitimacy, and zero-sum electoral politics. While many scholars support Linz’s argument, others critique it as overly simplistic, emphasizing institutional weaknesses rather than inherent flaws in presidential systems. This study engages with these scholarly debates by highlighting divergent perspectives on the relationship between presidentialism and democratic consolidation. This study moves beyond the abstract argument of whether presidentialism is inherently stable or fragile to discussing its viability in postcolonial Africa and whether external factors, such as weak institutions, play a more decisive role. And it concludes that presidentialism is not inherently detrimental to democracy, but requires robust institutional safeguards.

Keywords

Africa, executive, legislature, Juan José Linz, parliamentary, presidentialism

1 Introduction

The study of presidentialism gained popularity in the 1980s, following the seminal work of Juan José Linz, who highlighted how the separation of powers in presidential systems can lead to instability. His contributions set the stage for comparative studies in presidentialism and evoked scholarly debates (Cheibub & Limongi, 2010). Linz argued in one of his early projects that “most of the countries with presidential constitutions have been unstable democracies” (Linz, 1985, 1). This raises a fundamental question: to what extent is Linz’s description of the relationship

between presidentialism and democratic (in)stability true? As a result, scholars have attempted to address these questions by presenting debates that support this notion, as exemplified in Linz's works and echoed by other scholars, including Giovanni Sartori, Scott Mainwaring, Matthew Soberg Shugart, José Antonio Cheibub, David J. Samuels, Alfred Stepan, Cindy Skach, Anthony Mughan, Aurel Croissant, and Wolfgang Merkel. Meanwhile, other scholars, such as Nic Cheeseman, Steven Ellis, and Steffen Ganghof, hold the view that the relationship between the executive and legislative arms under presidentialism, as represented by Linz, is too simplistic and does not necessarily promote democratic instability. As Ellis and Samuels (2011, 7) argue, "In many cases, a key difficulty is a pattern of weak institutionalization, rather than problems with the formal distribution of power between legislatures and presidents". In response to these debates, this study takes a stance on the matter and situates it within the African context.

A form of presidentialism, where the president is directly elected and assumes both the roles of head of state and head of government, is still deeply rooted in the politics of Africa. African countries that have presidential systems, including Nigeria, Kenya, Tanzania, Ghana, and Zambia, do not have a dual executive; they operate the president as head of state and head of government (Cheeseman, 2024). But Africa has many hybrid systems as well, with a *de facto* similarity to complete presidential systems, as the power balance of the executive leans heavily in favor of the presidency. According to the Comparative Semi-Presidential Database (CSPD) (Åberg & Denk, 2024), of all semi-presidential regimes in the world, the presidential-parliamentary subtype, in which the president can appoint and dismiss the prime ministers, is much more common than the premier-presidential one, and this is rather typical within the African context. As such, and for the sake of comprehension, this study includes semi-presidentialism as part of presidentialism to capture the actual distribution of executive power on the African continent. However, the subtype differentiation of CSPD up to 2021 still enables the recognition of which semi-presidential constitutions operate in practice as presidential regimes. And so, the data gathered on the subject helps to avoid inflating the differences that, in most instances, are formal but not substantive (Åberg & Denk, 2024).

In terms of the original criticism, Linz argued that a parliamentary system is more conducive to stable democracy than a presidential one (Linz, 1990). "It might or might not be an accident that so many countries with presidential regimes have encountered great difficulties in establishing stable democracies" (Linz, 1990, 4). For Linz, it is these flaws of the presidential system that influenced the popularity of parliamentary democracies. That is why he maintains that a parliamentary system is superior to a presidential system, which is well exemplified by the title of his work: *The Perils of Presidentialism*. There, he argues that the flaws of presidentialism include "political rigidity, dual democratic legitimacies, zero-sum politics, an undemocratic 'style' of presidential governance and a tendency for political outsiders to gain office independently of political parties" (Samuels & Shuggart, 2003, 34). For Linz, these structural issues not only pose threats to democratic stability and threaten breakdown, but also increase the chances of political paralysis and military takeover (Mughan, 1995).

Linz's critique of presidentialism has sparked scholarly discussions since its publication, with some scholars focusing on the primarily destabilizing nature of the concept and others concentrating on the possible benefits. On the one hand, Sartori (1994, 86) cautions that the assumption of the political systems of the president as necessarily strong and efficient is nothing but a thin-sliced assumption. Similarly, Cheibub et al. (2004, 580) illustrate that presidential democracies are significantly weaker than those of parliamentary democracies and that presidential democracies are more prone to dissolution in any circumstance. Stepan and Skach

(1993, 17) furthered this criticism that the mutual independence of branches, which defines presidentialism, results in predictable incentives of minority governments, coalition failures, stalemates in legislative processes, and executive excess as well as military intervention. Samuels (2004, 427), however, suggests that the separation of powers may, actually, make democratic accountability better as more information is available to the public. Ellis and Samuels (2011, 27) also argue that, under certain circumstances, strong presidents can stabilize divided legislatures, promote deliberation, and increase the range of political bargaining, but the risk of being divisive remains.

This study aims to contribute to the literature beyond the speculation on the theoretical aspects of the inherent stability or instability of presidentialism by paying attention to the institutional and contextual dynamics that contribute to the results of presidentialism in Africa. It does not focus on respective binary, Linz-inspired criticisms and counter-criticisms, but on finding the mechanisms that allow presidential systems to function effectively within instability. In particular, it examines the interaction of constitutional design, electoral credibility, term limits, and executive-legislative relations with the political practice to find out whether presidentialism can cause instability or provide democratic strength. Based on this, the research endeavors to add to the existing body of knowledge on the developmental path of presidentialism in Africa by placing the discussion in the context of regionally based evidence and highlighting the institutional checkpoints that are necessary to ensure its sustainability.

2 What is presidentialism?

The presidential system is a globally recognized form of government that has its roots in the American system, as provided for in the United States Constitution of 1787, which recognizes the office of the president as the head of state. The system has its roots in a monarchical government, where one person occupies the offices of both the head of state and the head of government. According to Mainwaring and Shugart (1997, 449), presidentialism refers to “a regime in which, first, the president is always the chief executive and is elected by popular vote or, as in the U.S., by an electoral college with essentially no autonomy concerning popular preferences and, second, the terms of office for the president and the assembly are fixed”. It is a system characterized by the concentration of executive power in a single individual (Ganghof, 2021). According to Sartori’s (1994, 84) criteria, a political system is presidential “if, and only if, the head of state (president) i) results from popular election, ii) during their pre-established tenure cannot be discharged by a parliamentary vote, and iii) heads or otherwise directs the governments that they appoint. When these three conditions are met, then we doubtlessly have a pure presidential system”.

Additional insights may be gained from Fix-Fierro and Salazar-Ugarte (2012), who described presidentialism as an alternative system to parliamentarism; hence, Sartori’s (1994, 83) insistence that “a presidential system is non-parliamentary”. Further clarifying the distinction, Cheibub et al. (2004, 565) note that “parliamentarism and presidentialism are different: the former is a system of ‘mutual dependence’ and the latter of ‘mutual independence’ between the executive and the legislature”. For Cheibub et al. (2014), it is the mode of electing presidents that distinguishes them in terms of ‘origin’ and ‘survival’ from parliamentary leaders.

Sartori (1994) characterized presidentialism by two key features: the direct election of the head of state and the executive appointment. Croissant and Merkel (2004) buttressed this, noting that in presidentialism, the president is elected directly and serves a fixed term. The

president exercises constitutional powers and is empowered to appoint the members of his cabinet. The system allows for the separation of powers among the various arms of government, ensuring independence among them. Croissant and Merkel (2004), in their categorization of presidentialism, observe that it encourages a loosely organized political party structure that focuses on elections and possesses limited leverage on the president's success after the election. As a result, parties restructure for election purposes to gain political advantage, thereby weakening their ideological bond and increasing the chances of volatility. The system is noted for creating a personalistic and clientelist structure whereby candidates rely on personal networks and where competition centers on individual leaders rather than the party's program. This necessitates a zero-sum game and a winner-takes-all contest, thus exacerbating social division and confrontation.

The debate on presidentialism has undergone three distinct phases (Cheeseman, 2024). The first phase, perhaps the most significant one, features the works of Linz, who argued that the friction between the president and the legislature, the prevalence of winner-takes-all elections, and the rigidity of the system compared to parliamentarism render presidentialism problematic (Cheeseman, 2024). However, scholars reject this premise on the grounds of abundant evidence of stable presidential systems. As Cheeseman (2024, 570) puts it, "there were several cases in which presidential systems proved to be comparatively durable and to lead to executive dominance rather than presidential paralysis".

The second phase featured the contributions of scholars such as Mainwaring, who argued that the weakness of presidentialism is attributable to the absence of an executive majority and the inability to control a complex legislature. According to Cheeseman (2024, 570), this is due to a "difficult combination of presidentialism and legislative multiparty fragmentation". Thus, the ability of presidents to manage such multiparty coalitions as in a parliamentary system influenced the third phase. There, scholars such as Blondel argue against the common misconception that presidentialism is inherently problematic. In his view, "presidentialism also has distinct advantages when it comes to states in the throes of nation and state-building" (Blondel, 2019, 570). This suggests, to an extent, and contrary to the previously conceived notion, that parliamentarism may pose a more serious threat to democracy. According to Cheeseman (2024, 570), "this argument effectively turns the perils of presidentialism thesis on its head". As a result, we turn to appraise the arguments of Linz, also known as the Linzian framework.

3 The terms of the Linzian framework

Linz discusses the perils of presidentialism, comparing the system to parliamentarism. He notes that "the best way to summarize the basic differences between presidential and parliamentary systems is to say that while parliamentarism imparts flexibility to the political process, presidentialism makes it rather rigid" (Linz, 1990, 55). To substantiate his argument of the flaws of presidentialism, he identified factors such as zero-sum elections, the style of presidential politics, dual legitimacy, the issue of stability, the time factor, and the election of an outsider as reflecting these perils. Presidentialism is rigid due to the fixed term that presidents are to serve. This places power in the hands of the president and makes its removal from office difficult, except through impeachment. Although a direct popular election confers democratic legitimacy upon the president, the extent of the executive powers will ultimately be determined by specific provisions established in the constitution and prevailing political norms. The system

is characterized by conflict between the executive and legislature, with both arms laying claim to democratic legitimacy (Linz, 1985). And this often results in conflict, especially when their political agendas clash or when they belong to opposing political factions. As such, it increases the likelihood of democratic instability and, in some cases, results in a military takeover, signaling the utter erosion of democratic structures (Linz, 1985; Linz, 1990). Since the president and the legislature are both elected and enjoy democratic legitimacy, they cannot be removed arbitrarily, thus making the system excessively rigid (Linz, 1994).

Presidentialism promotes a zero-sum game or a winner-takes-all system, where the winner gains exclusive control of executive power during their term, while excluding losers from the system and restricting their access to resources. Because it does not support coalitions and alliances, the stakes of winning become high, thus intensifying the competition and increasing the chances of polarization. The resulting friction and conflict are undoubtedly detrimental to democratic stability (Linz, 1985). Linz (1985, 6) notes that “perhaps the most important implication of presidentialism is that it introduces a strong element of zero-sum game into democratic politics with rules that tend towards a ‘winner takes all’ outcome”. And therefore it is “ineluctably problematic [...] with all the potential for conflict such games portend” (Linz, 1990, 56).

Moreover, the losing party may have to wait for years before it gains political power. To this end, when a majority has its way of selecting a leader, it may inadvertently polarise the minority and create tension (Linz, 1990). Meanwhile, it is challenging to remove a leader in a presidential system without triggering a political or constitutional crisis (Linz, 1994). As Samuels (2004, 16) surmises, “the time limit associated with presidential systems combined with the zero-sum character of presidential elections, the winner-take-all position that excludes those defeated from any chance to share in executive power and the control of the administration, including patronage, is likely to make choices in a presidential election more dramatic and polarizing than most parliamentary elections”. This view was held by Croissant and Merkel (2004) as well, who opine that “the highest prize to be won in the political game. The concentration of political power in this office impels the parties to focus almost all their efforts on its attainment. As a consequence, presidential elections take on the character of final judgments over the winners and losers of the political game.” Here, Croissant and Merkel (2004) note that “the loose party structures in combination with the focus of political conflict on the presidency further amplify the personalistic character of political competition in presidential systems.”

Since the executive powers in presidentialism are vested in one person, this person’s political style and personality set the tone for leadership. A president may decide to reconcile various opposing groups after an election or advance the partisan interests of their party. While a conciliatory move may help douse the tension in the polity, it may weaken their position, especially when the opposition rejects their overtures. This may further intensify the polarization in the system. Since the president is independent of the legislature and there is no neutral figure to resolve conflicts, the president may promote a populist agenda to the detriment of democratic stability (Linz, 1990). Moreover, presidentialism often carries with it a paradoxical mechanism aimed at limiting the abuse of power, in the form of oversight, judicial control, and term limits (Linz, 1985). According to Linz (1990, 61), “some of presidentialism’s most notable effects on the style of politics result from the characteristics of the presidential office itself. Among these characteristics are not only the great powers associated with the presidency but also the limits imposed on it”. Meanwhile, Linz (1985, 4) concedes that “presidentialism leads to a personalisation of power”.

It is believed that the frequent changes in leadership permissible in a parliamentary system may threaten stability. However, because parliamentarism allows for flexibility in changing a leader, especially during a crisis situation, it has an edge over presidentialism, where the rigidity and cumbersome process of impeachment make it challenging to change a president even during such circumstances. This may further inflame the situation and increase volatility (Linz, 1990). Moreover, if a president loses support and refuses to resign, its opponents may resort to unconstitutional means, which can lead to violence and increase the likelihood of military intervention (Linz, 1994). Presidents may not rely on collaboration with their cabinet to make decisions and may also dismiss a minister easily, thus limiting the independent opinions of cabinet members (Linz, 1985). Because the cabinets in a presidential system play an advisory role rather than acting as equal partners, the president may fill the cabinet with party members, ensuring that their views are dominant (Lijphart, 1999).

Presidentialism is a system that operates within a fixed term stipulated in the constitution. This makes it difficult for presidents to implement their lofty ideas, leading to frustration. This inflexibility can exacerbate crisis processes, particularly when fixed-term limits prevent a president from serving an additional term or prompt rapid decision-making in the final year of their presidency. Moreover, as presidents' successors seek to occupy the presidential seat, this may create tension between them, as the former president may intend to assert influence. In contrast, the new president aims to operate independently. These contests and disagreements increase tension and conflict.

4 Subsequent supports for and criticisms of the Linzian framework

Linz's work on the perils of presidentialism has gained wide traction and generated some support in the literature. He notes that "the odds that presidentialism will help preserve democracy are far less favourable" (Linz, 1990, 68). Supporting this view and suggesting that the presidential system is susceptible to instability and breakdown, Mughan (1995) argues that, since World War II, presidential democracies have experienced breakdowns more frequently than parliamentary systems. It is believed that presidential systems are more prone to being overtaken by military coups, unlike parliamentary systems, which have internal mechanisms to resolve political impasses. The possibility of a deadlock due to the separation of powers between the president and the legislature remains a cause for concern. When such a deadlock arises, presidents may choose to circumvent the legislature, thus increasing tension. Moreover, when political or economic crises persist in a presidential system, there is a tendency for the system to break down, providing impetus for military intervention (Stepan & Skach, 1993).

Linz argued that presidential systems do not support coalition formation as effectively as parliamentary systems. As a result, they tend to engender disagreements between the executive and legislature, making them prone to instability and collapse. This Linzian presupposition suggests that presidentialism weakens democratic consolidation (Cheibub & Limongi, 2010). In support of this argument, Stepan and Skach (1993, 18) note that "presidents and legislatures are directly elected and have their own fixed mandates. This mutual independence creates the possibility of a political impasse between the chief executive and the legislative body for which there is no constitutionally available impasse-breaking device". This, then, as Samuels and Shugart (2003) argue, can lead to a 'divided government'. On the other hand, Samuels (2004, 427) claims that "presidentialism obscures government responsibility generally and that coalition and divided governments under presidentialism are particularly bad for accountability". And

generally, scholars on this side of the debate tend to characterize presidentialism as a system prone to vulnerabilities, which gives impetus to a divided government. For Sartori (1994, 89), “ironically, then, the belief that presidential systems are strong systems draws on the worst possible structural arrangement - a divided power defenceless against divided government - and fails to realise that the American system works, or has worked, despite its constitution - hardly thanks to its constitution”.

Samuels and Shugart (2003) note that there is a heavy dependence of the executive and legislative arms on each other for political survival in a presidential system, increasing the chances of tension between them, even when they belong to the same party. However, since there is no form of mandated representation, each arm can still function independently. Accordingly, “presidentialism typically allows for the possibility that voters can hold presidents and legislators accountable for different things” (Samuels & Shugart, 2003, 41). In support, Mainwaring and Shugart (1997, 449) posit that “presidentialism tends to function better where presidencies have weak legislative powers, parties are at least moderately disciplined, and party systems are not highly fragmented”. For Cheibub et al. (2004, 566), “stable multiparty presidential democracy [...] is difficult, ‘presidential systems which consistently fail to provide the president with sufficient legislative support are unlikely to prosper’”. However, despite the strong argument put forward by these scholars, their submission is weakened by the susceptibility of parliamentarism to democratic instability and the growing relevance of presidentialism. One would expect that, given their characterization of presidentialism, the system would have experienced a decline or been rejected globally.

However, such a pessimistic evaluation made by Linz is challenged by several scholars who believe that the alleged threats of presidentialism are exaggerated. As Mughan (1995) notes, the main issues raised by Linz are not new but have been developed based on previous criticisms, thus questioning the novelty and the depth of the arguments made by Linz. In more recent times, Ganghof (2021) argues that Linz overblows the threat of legislative paralysis and highlights stabilising characteristics of presidentialism. In his view, presidential systems lead to a better democratic choice, as the identifiability of competing cabinet options prevailing before the election is ensured, and the executive is stabilized, as an assembly majority can no longer dismiss the president and the cabinet through regular parliamentary means (Ganghof, 2021, 157–158).

It is argued that the president may become too powerful and unaccountable to others, thus making it challenging to balance a strong presidency (Howell & Moe, 2023). These powers, which may be derived from decrees, vetoes, exclusive powers to introduce legislation on specific items, and urgency powers, often create strong presidencies, increasing the chances of conflict with the legislature and, by implication, instability within the system (Cheibub & Limongi, 2010; Cheibub et al., 2014). However, Ellis and Samuels (2011, 17) contend that “strong presidential power can be constructive when the president expands the bargaining circle in the core political center and thus encourages deliberation. A strong president can be a unifying and integrating figure symbolizing the state, who can step in to unify when the legislature is divided. However, a strong president can also be divisive where they are not truly representative of the whole society”.

Tsebelis (1995, 292) opines that “the logic of decision making in presidential systems is quite similar to the logic of decision making in multiparty parliamentary systems”. This suggests that both presidential and parliamentary systems have similar decision-making processes and face similar challenges in achieving consensus or compromise. For instance, in a presidential system, the president may engage in negotiations with the legislature to implement policies, just as collaborations between different parties are needed in a parliamentary system to form a

coalition. This negotiation, consensus, cooperation, and compromise are required to maintain stability irrespective of the system in operation.

A salient aspect in the normative discussions on presidentialism that has not received sufficient academic attention is the historical experience of colonialism, particularly how European imperialism has shaped institutional paths and political party development in postcolonial Africa. Unlike the European experience, where parties emerged gradually through societal bargaining, ideological struggle, and mass mobilization, African parties often arose as offshoots of anti-colonial liberation movements or were hastily formed by elites to seize control of the colonial state upon independence (Dias, 2017). Both the models of transplanted European parties and those in Africa lost their pluralism and representation with time, becoming an instrument of state control and a tool of clientelism. The fact that parties were weakened as independent brokers further put executive dominance, and hence limited the limitations on presidentialism in Africa by competitive party politics (OECD, 2025). In Nigeria, Senegal, Kenya, and Tanzania, parties had been centralized, leader-dominated, and integrated into the administrative machines left behind by colonialism (Mamdani, 1996). Therefore, they are heirs to the repressive logics of the colonial state and deprived of institutionalized democratic norms to check executive power.

For example, in Senegal, the Socialist Party, led by the Socialist leader Léopold Sédar Senghor, was not a mass party but a device to accommodate the elite. Although the nation has often been commended for its democratic persistence, it was not a one-party state in strict terms after gaining independence. Instead, Senegal maintained a controlled multiparty system since the 1970s, with only a few legalized parties representing various ideological streams, and subsequently, opening up to full multiparty competitions in 1981 (Diop, 1993). This course, which was partly informed by the policies of French colonial assimilationism (Gellar, 2005), however, fixed the executive hegemony and limited the development of parties as independent vehicles of plural representation (Boone, 1992). Similarly, in Kenya, the development of a centralized hierarchical nation, maintained by the colonialists, compromised the establishment of independent political organizations. Parties like KANU were used as hegemonic tools of presidential consolidation under Jomo Kenyatta and subsequently Daniel Arap Moi, and ethnic patronage networks superseded institutionalized parties.

This constitutional legacy imposed a significant restriction on presidential engagement. The product was not the model of presidential democracy envisioned by Linz, which described horizontal accountability, but rather a neo-patrimonial adaptation, whereby the presidency became the supreme authority, conduit of powers and resources. The executive, therefore, filled an institutional vacuum created by strong legislatures and divided parties, but failed to moderate power; instead, it concentrated it. The merging of the logic of authoritarianism inherent in colonialism with postcolonial presidential regimes explains why even democratic systems that were once designed would evolve to one-party systems, military dictatorships, or illiberal constitutionalism.

This constitutional legacy placed a significant limitation on the rise of presidentialism in Africa. Instead of giving rise to the model of presidential democracy as conceived by Linz, which is based on horizontal accountability and checks and balances, postcolonial systems gave rise to neo-patrimonial adaptations where the presidency was the ultimate power and the primary source of power and resources (Kieh, 2018). In an actual sense, the vacuum created by divided legislatures and feeble parties was consolidated by the executives, but instead of tempering power, they centralized it. It was not just a matter of constitutional design that this resulted in that way, but a meeting of colonial authoritarian logics with postcolonial presidential

institutions. As a result, democratic constitutions often became one-party or, in other words, military-interventionist or illiberal presidentialism (Kwasi Prempeh, 2007).

The authoritarian predispositions of presidentialism in Africa should not be reduced to the working of the mechanism; they should be placed in the colonial context. The colonial rule left disunited societies, inefficient and foreign institutions, and top-down and centralized governmental forms (National Research Council, 1992). All these structural factors implied that the legislatures had no actual ability to check the executive, and parties were so weak that they could not be used as an instrument of representation. In this way, the issue of democratization in the form of presidential systems is not merely a constitutional engineering problem in the legislature; it entails the necessity to deal with the path-dependent consequences of colonialism that still influence political culture, baffle the party system, and strengthen the elite.

5 Presidentialism in postcolonial Africa

Blondel (2019) advanced the study on presidentialism by integrating African political systems into the discourse, challenging the notion that democratic progress in Africa is fragile (Cheeseman, 2024). According to Cheeseman (2024), this is significant, considering the region has a higher number of presidential systems compared to the other areas. Blondel (2019) argues that African presidentialism has contributed to enhanced political stability and economic development, although, according to Cheeseman (2024), presidentialism thrives in politically polarized, economically challenged, and ethnically diverse societies as found in Africa. This implication is that if presidentialism can survive in such a volatile environment, the system is likely to be stable in even more peaceful and democratically consolidated environments. Drawing on the work of Blondel, Cheeseman (2024) argues that there have been positive presidencies in Africa, whereby presidents have either positively impacted the system through democratic reform or corrected a period of political crisis, tilting towards stable democracy in a ‘corrective’ manner through continuity. Examples of such positive turnarounds include Armando Emilio Guebuza of Mozambique, Hifikepunye Pohamba of Namibia, and Quett Masire of Botswana. A relatively smooth transfer of power was witnessed throughout the presidency of Jakaya Kikwete, with more or less intra-party openness. Still, later down the line, under his successors, the vulnerability of the Tanzanian democratic experiment is highlighted (Osei et al., 2020).

Executive power under President John Magufuli became even stronger, as evidenced by the silencing of the opposition, heavy control of the media, and weakening of the civil space. President Samia Suluhu has continued to operate under this centralized system (Minde, 2024), and, as a result, Freedom House declared Tanzania to be Not Free, the first time in decades (Freedom House, n. d.). This demotion suggests that the authoritarian tendencies are not simply a factor of the personal approach of the leadership process. However, Suluhu is described as being less violent than Magufuli, but rather a sign of institutional frailty. The lack of strong checks by the legislature and the judiciary has enabled an incessant executive perversion in Tanzania’s presidential system, regardless of the temperament of the leaders (Mureithi, 2024). The case also shows how endemic weaknesses that are both instantiated by the institutional design and the political culture allow ostensibly moderate presidents to slip into authoritarian trends when power is concentrated to an unreasonable degree.

The specified dynamics are not limited to Tanzania but characterize a broader African trend in which the structural concentration of power, which the presidential systems imply, enhances executive control, contributing to the lack of democratic resilience within the regimes of different leadership styles.

Meanwhile, the case of Abdoulaye Wade in Senegal shows that the semi-presidential constitutional system can serve to support but not limit presidential control (Heyl, 2019). The controversial bid for a third term of office by Wade in 2012 was eased by his growing monopolization of state institutions, a tendency that conforms to the characterization of Elgie (2011) of the president-parliamentary subtype of semi-presidentialism. In this system, the president will have exclusive powers to hire and fire the prime minister and the cabinet. Thus, the ability of the legislature to give a credible check is undermined. Therefore, the institutional asymmetry helped Wade to abuse constitutional provisions and form networks of the elite, thus hastening the undermining of democratic norms. Instead of restraining presidential authority, this subtype actually contributed to its concentration and, therefore, confirms Linz (1990) by arguing that systems that are predisposed to presidential supremacy are structurally susceptible to aggrandizement of the executive.

These complex cases remind us that the dangers of presidentialism in Africa are real, particularly in areas marked by weak institutions and where executive authority is established. However, these instances do not exhaust this phenomenon. Cheeseman (2024) notes that African presidentialism cannot be simplified to the straightforward story of authoritarian drift. Although the examples of Tanzania and Senegal demonstrate the dangers of institutional imbalance, other developmental paths suggest that presidential rule can also become a substantial contribution to the stability of democracy. As part of a discussion on the warnings of Linz, Blondel (2019) argues that, in certain circumstances, presidential republics can contribute to accountability and developmental governance instead of their destruction, based on the example of African cases (cf. Cheeseman, 2024, 575). It is this healthier outlook that brings to the fore the dual aspect of presidentialism: it can either lead to autocratic entrenchment of power through the institutionalization of power, or it can, in a context where there are credible elections, term limits, and strong checks, offer a sense of clarity and stability, which augurs well with democratic consolidation.

The discussion of presidentialism's viability gains a special thrust in North Africa. Tunisia and Egypt, as two nations created as a result of European colonialism, provide contrasting empirical lenses through which we may evaluate Linz's cautionary tale of the dangers of presidentialism and how governments can provide mechanisms that stabilize executive power without falling into autocracy. Tunisia and Egypt were both products of French and British colonial activities, with their centralized systems of administration. In Tunisia (1881–1956) and Egypt (formal protectorate, 1882–1952), colonial governments promoted hyper-balkanized bureaucracies that ran low on substantial local self-government (Herb, 1999). After independence, leaders such as Habib Bourguiba in Tunisia and Nasser in Egypt maintained highly centralized systems, replacing the colonial governorates with highly powerful presidents. This absence of pre-existing local institutions implied that even when democracies shifted to multiparty politics, executive offices continued to be centers of state resources and patronage (Yerkes & Muasher, 2018).

The republican institutions in Egypt date back to the overthrow of the monarchy during Gamal Abdel Nasser's rule in 1953. Egypt, under successive military-led presidencies, was a *de facto* one-party state until briefly holding competitive elections after 2012–2013. A military coup ended the one-year reign of President Mohamed Morsi, and President Abdel Fattah el-Sisi further cemented authority by instituting constitutional amendments in 2019, which increased presidential tenures to six years and allowed a third term (Brownlee et al., 2015). At the same time, the nominally independent National Election Authority remains subordinate to executive decree, and the judiciary has readily accommodated the executive's will (Blaydes, 2011).

Egyptian authoritarianism scholars note that such relations demonstrate the routine of informal norms and patronage networks prevailing over the official stipulations of the constitution (Choudhry et al., 2014). The 2019 amendments were endorsed following a referendum that was marred by the influence of military and security personnel at the polling centers and excluded independent observers (Brownlee et al., 2015). In the meantime, legislative-executive collaboration is facilitated by a pro-Sisi Nationwide List with a supermajority in parliament, which renders the legislature a rubber stamp rather than a check on the presidency. Egypt confirms Linz's fear that, in the absence of a genuine separation of powers and with no absolute independent electoral authority, presidential systems can become a form of hegemonic presidentialism, characterized by formal rules and practices that circumvent them.

After the 2011 revolution, Tunisia implemented a semi-presidential constitution with the express purpose of preventing the personalization of power, as criticized by Linz. The 2014 Constitution introduced a two-executive structure, where the president had significantly reduced, mostly ceremonial, authorities, and there was a prime minister who was accountable to the parliament (Zhang & Zoubir, 2021). Control over voter registration and election administration was transferred to a newly empowered Independent High Authority for Elections, and the Superior Council of the Judiciary was placed beyond executive influence. A nine-member selection committee, comprising judges and representatives from civil society, was established (Bulmer, 2019). Such institutional checks have thus far avoided concentration of power in the hands of an individual office holder. The Court overturned a proposed extension to the mandate of President Beji Caid Essebsi in 2019, when the Constitutional Court, established just five years previously, invalidated the amendment. This ruling highlighted the act of a genuinely independent judiciary to oppose executive aggrandizement (Zhang & Zoubir, 2021).

Nevertheless, Tunisia's experience also has its weaknesses. Prolonged party fissures have led to unstable coalitions that are unable to enact policies in the government. This move created a breakthrough for President Kais Saied in 2021, who used Article 80 of the constitution to fire the government and suspend parliament (Anderson, 2021). Technically, Saied was right to do so, but his actions exploited the grey areas in the emergency powers provisions. Critics argue that these loopholes stem from the rapid drafting of the legislation in 2013–2014, a period marked by coalitions of Islamist and secular parties, all of which prioritized swift action over clarity. Tunisia, then, is a good example of the power and potential danger of institutional design: the robust courts and electoral institutions can restrain presidents, but half-baked or ambiguous constitutional drafting can leave backdoor operators to do so in the future.

The effect of this path dependence is that any meaningful separation of powers cannot be institutionalized other than by a constitutional amendment, and it also contributes to the development of sub-national governance and civil society, which will curb the executive's excess. The 2018 municipal elections in Tunisia were initially celebrated as a move towards decentralization, where local councils were going to provide some political power outside the capital (Bulmer, 2019). Nonetheless, the recent events have defused this optimism. Since 2021, the government of President Kais Saied has been systematically undermining independent institutions, which have subordinated the judiciary and electoral commission, and used legal persecution against political opponents (Freedom House, n. d.). This trend highlights the fact that decentralization measures in themselves are ineffective unless they are incorporated with long-term mechanisms of checking executive control. In comparison, Egypt illustrates an even stronger trend of presidential monopolization, where Sinai and Upper Egypt are still under the military governors who are appointed and strengthen the executive to control politics and even security (Blaydes, 2011).

The significance of constitutional design is eminent in North Africa; however, the effects of politics are also dependent, to a great extent, on informal norms, historical backgrounds, and the strength of civil society (Swart, 2016). For instance, the classical analysis of presidentialism by Linz (1990) in divided societies finds an echo in Egypt, where election cancellation and exclusion of the legislature have strengthened authoritarian retrogression. Nonetheless, executive aggrandizing is not unavoidable. Comparative experience suggests that it is reproducible by strong institutional restraints, especially the insularity of the courts, election commissions, and other types of supervision, which limit presidential authority (Laebens, 2023).

Tunisia was the first country to be seen as moving in this direction, especially after changing the governance structure, which strengthened subnational governance and local councils in 2011 (Bulmer, 2019). However, the last steps of President Saied discredited the independence of the judiciary and undermined the electoral commission, which emphasizes the fragility of such mechanisms unless they are institutionalized (OECD, 2025). Meanwhile, the divergent paths of Egypt and Tunisia emphasize the point that presidentialism alone is not a determinant of authoritarianism; in fact, its democratic basis rests on other supportive institutions and political culture that support constitutional limits (Hassan et al., 2019).

West Africa presents an irresistible opportunity to test and refine Linz's ongoing argument about the dangers of presidentialism. Whilst Linz cautioned about the structural rigidity, dual legitimacy crisis, and winner-takes-all logic of presidential politics, the reality on the ground in West Africa makes it clear that the outcomes are highly varied depending on the kind of constitutional design, political culture, elite behavior, and institutional environment. Thus, the subsequent analysis develops the critique that both proponents and opponents of Linz's thesis have offered, focusing on particular cases in West Africa, namely, Nigeria, Ghana, and Senegal, to shed light on the relationship between formal presidential systems and informal politics.

The presidential system of Nigeria, which is closely related to the USA, has demonstrated the strengths and weaknesses of the constitutional design of the largest democracy on the continent. The office of the president has enjoyed vast powers as head of state and head of government, including the powers to appoint senior judicial and legislative personnel and to exert control over federal finances, since the government shifted to civilian hands in 1999 (Hoffmann & Wallace, 2022). Even though the 1999 Constitution officially binds the separation of powers, the other branches have often been compromised by patronage groups and executive encroachment (Adejumobi, 2010). However, the examples of efficient horizontal accountability are also evident in Nigeria: most prominently, in 2006, the legislature rejected the effort of President Olusegun Obasanjo to change the constitution to enable him to stay in office, which represented a unique, although noteworthy, instance of an institution exercising vertical restraining powers (NBC News, 2006). This oscillation between executive dominance and seminal resistance underscores the hybrid nature of Nigerian presidentialism. This institutional structure enables the concentration of power while allowing for the scope of democratic self-correction by legislative and judicial actors to assert their constitutional authority.

Invasive personalization of power has taken shape through several patterns of interference with electoral bodies, police, and anti-corruption agencies. A rejected third-term bid under President Olusegun Obasanjo (1999–2007) highlighted just how readily presidential regimes may slip into authoritarian solidification as alliances break down, strong constitutional protections are neglected, and an elite compromise on term limits fails to emerge. Even though civil society and the National Assembly opposed the move, the episode revealed the weakness of horizontal accountability mechanisms (Akinyetun, 2021; Akinyetun & Ebonine, 2022; Isike & Idoniboye-Obu, 2011).

Over the past few years, the centralization of power in Nigeria under President Muhammadu Buhari (2015–2023) has been intensifying, and the process has been accompanied by accusations of biased anti-corruption investigations, executive infiltration of the judiciary, and the suppression of the independent press (Human Rights Watch, n. d.). The systemic weaknesses listed by Linz (1990) remain of very current interest, particularly the zero-sum game that underlies presidential campaigns in a multi-ethnic federation. Though the informal zoning arrangements are meant to bring about ethnic balance, they have not been effective in reducing the winner-takes-all dynamics that have enhanced political division and created succession crises. Thus, the official division of powers has not been very effective in curbing presidential excesses. Instead of dispelling the skepticism of Linz, the Nigerian experience helps to put into perspective his fundamental argument, which is that the institutional protections of presidentialism, checks and balances on paper, are often too thin in reality to guard against executive aggrandizement.

Conversely, the situation in Ghana presents a somewhat hopeful example of how presidentialism can function within a system of democratic consolidation. As with many other nations, Ghana has a presidential system as established in the 1992 Constitution, where an elected executive, who performs as the head of state and government simultaneously, serves as the head of state (Commonwealth Governance, n. d.). The uniqueness of the system can be attributed more to the gradual accumulation of democratic norms, rather than the institutional architecture of the system, and the relative independence of critical institutions. The Electoral Commission, which is considered to be a reputable organization, has played a significant role in maintaining such a developmental path, as it presided over peaceful power transfers at the 2000, 2008, and 2016 elections (Graham et al., 2017). Another striking fact was the election petition of 2012, when the opposition challenged the results of the elections in the Supreme Court and later accepted the decision as it is, an indicator of how well the constitutionally prescribed mechanisms of dispute resolution are established in Ghana (Agbevide, 2024).

More importantly, the term limits have been reasonably complied with in Ghana by the presidents. There has been no move to meddle with the tenure stipulations in the constitution, some of the most vigorously contested matters among the rival political parties. In addition, the Ghana legislature, which is less potent than the executive, has sought to exercise its control role, such as budget oversight and ministerial vetting. Although civil society's weaknesses in countering the power of executive presidents remain, the case of Ghana moderates this pessimism by showing how norms of political behavior, consensual action by elites, and institutional change in presidential systems can help reduce the structural hazards of presidentialism.

Senegal stands at the center of presidentialism discourse. It has been widely praised for having one of the most consistent democracies in the West African region, and its constitutional development has been influenced by a series of vague questions related to executive design. Since gaining independence, the nation has officially existed under a semi-presidential system; however, political and economic instability have triggered incidents of heightened presidential supremacy. Overall, interim governments have enabled leaders to dominate executive and legislative branches of power even when there are constitutional limits, like the successive reigns of Léopold Sédar Senghor, Abdou Diouf, and Abdoulaye Wade (Basedau, 2023).

The leadership of Abdoulaye Wade (2000–2012) was a vivid example of the dangers of democratic destruction in the person of the leader. Despite its original status as a liberalization of the political scene, Wade has slowly concentrated power and weakened judicial independence over time, and eventually attempted to secure an unconstitutional third term of office in 2012. Despite Constitutional Council approval of his candidacy, his effort to seek a third term of office

was blocked by massive protests and electoral mobilization, which highlights the weakness of the judicial branches and the dangers of constitutional flexibility in executive control (Heyl, 2019).

The leadership under Macky Sall exacerbated the conflict between constitutional limitations and the executive's desire. A rhetoric of democratic reform notwithstanding, charges of press censorship, judicial interference, and centralization of power marked his tenure (Africa Center for Strategic Studies, 2024). The election of Bassirou Diomaye Faye to office in 2024, after months of political unrest and the controversial management of the term limits by Sall, is both a testament to Senegalese pluralism and a weakness of its institutions (Yabi & Holman, 2024). The result is a testament to the fact that civil society and opposition forces can counter the authoritarian drift. Still, it also confirms that democracies founded primarily on procedural premises, with no strong institutional controls, are easily susceptible to a process of executive dominance.

West African experience suggests that institutional barriers surrounding executive power, in the form of institutional safeguards, determine the course of presidentialism not simply by its nominal content. Nigeria, Ghana, and Senegal demonstrate three different ways that provide insight into the weaknesses as well as the opportunities of presidential systems. In Nigeria, politics have become highly centralized, with a strong presidential system coupled with poor institutions, which have resulted in frequent episodes of democratic backsliding (Akinyetun, 2022a, 2022b, 2022c). Despite the National Assembly's efforts to thwart President Obasanjo's attempts to amend the constitution and secure a third term, thereby exemplifying good horizontal accountability, the absence of fully independent electoral and judicial institutions has allowed executive men to dominate successive regimes. Weaknesses in viable mechanisms of dispute-resolution, along with the politicization of anti-corruption efforts, are examples of how weak protections make presidentialism prone to personalization.

In comparison, Ghana is an illustration of how presidentialism may be anchored by strong institutional checks. Since 1992, the Electoral Commission has received extensive legitimacy by undertaking transparent elections, and constitutional term limits have been observed during consecutive changes of power. Most importantly, cases like the 2012 presidential election petition were determined in Court with the losing side accepting the result, thereby strengthening the belief in judicial independence (Agbevade, 2024). Such protections as free and fair elections, binding term limits, and an independent judiciary have been the reason behind the relative political stability in Ghana despite the strong executive authority.

Senegal occupies a middle ground. In 2012, when Abdoulaye Wade sought a third term, it revealed how the constitutional manipulation took place through judicial malleability and executive-legislative vagueness. The additional mobilization of masses of civil societies and electoral turnover thwarted further entrenchment of authoritarianism (Heyl, 2019). The subsequent tenure of Macky Sall had, however, revived the worry of executive aggrandizement, with the point being that unless legislatures are strong and the courts are independent, popular accountability will not be sufficient to check presidential excess all the time (Africa Center for Strategic Studies, 2024). The fact that Bassirou Diomaye Faye was elected in 2024 is not only an indication of the vitality of pluralism but also the frailty of the Senegalese institutions.

Taken together, these cases suggest that presidentialism in Africa can succeed not by appealing to an abstract notion of positive political culture but through material protection, namely: (1) independent electoral commission to ensure fair competition, (2) constitutional court with the power to enforce term limits, (3) legislature with actual independence and capacity to check, (4) civil society with sufficient strength to mobilize in the event of failure in

institutions. In places where they are lacking, such as in Nigeria, where the highly centralized system has been adopted, presidentialism is strongly drawn towards the executive; where partially present, such as in Senegal, either pluralism or authoritarian drift ensues; and where they are well established, such as in Ghana, presidentialism can be the source of both stability and democratic consolidation.

6 Conclusion and recommendations

The debate regarding presidentialism and its impact on democratic stability remains unclear. Juan José Linz's argument that presidentialism inherently predisposes democracies to instability has shaped scholarly discourse, emphasizing issues such as executive-legislative deadlock, zero-sum politics, and political rigidity. However, counterarguments challenge Linz's framework, asserting that the survival of democratic systems is influenced more by institutional strength, political culture, and governance practices than by the mere structure of the government. Evidence from stable presidential democracies, including cases from Africa, suggests that presidentialism can function effectively when institutional mechanisms are strong and political actors adhere to democratic norms. While presidential systems may be susceptible to executive dominance and political polarization, they also offer advantages, such as direct electoral legitimacy and apparent executive authority. The resilience of a democracy depends not only on its structural framework but also on the adaptability of its institutions and the willingness of political elites to engage in consensus-building. The experiences of different countries indicate that democratic breakdowns under presidentialism are not inevitable but rather the result of weak institutionalization, lack of political accommodation, and governance failures. Therefore, rather than advocating for the total rejection of presidentialism, the focus should be on institutional reforms that mitigate its potential weaknesses. Strengthening legislative-executive cooperation, fostering political party discipline, and ensuring mechanisms for conflict resolution are all critical for democratic consolidation.

In light of the ongoing debate on presidentialism and its implications for democratic stability, this study offers several recommendations. The above discussion has once again revealed that presidentialism *per se* is not the cause of democratic failure. Guaranteeing the effective functioning of presidentialism depends on a combination of institutional safeguards, particularly judicial independence, electoral autonomy, legislative strength, and decentralization. The establishment of constitutional courts with clear jurisdiction, tenure security, and insulation from executive interference serves as a vital bulwark against extra-constitutional amendments and executive overreach. These courts act as the final line of defense in constitutional interpretation and can serve to check presidential excesses where political institutions fail.

Similarly, the credibility of electoral processes depends on the autonomy of election management bodies. When electoral commissions are shielded from executive appointments and partisan interference, they foster transparency, reduce post-election crises, and reinforce public trust in democratic transitions. Non-partisan, procedurally sound election administration is essential in curbing state-orchestrated referenda and ensuring the authenticity of presidential mandates. Equally important is the strict observance of term limits and the institutionalization of succession norms. Explicit constitutional provisions, backed by strong civic coalitions, serve to constrain the ambitions of incumbents and prevent manipulation of tenure. Where elite consensus and societal vigilance align, executive abuse of succession rules can be effectively curtailed.

Strengthening legislatures also remains a critical component. Empowered parliaments with budgetary independence, robust oversight committees, and reduced presidential appointment powers provide substantive checks on the executive. They ensure that the legislature does not become a mere rubber stamp, allowing it to perform its role in maintaining a balance of power. Decentralizing authority and empowering local governments reduces the concentration of power at the center and broadens democratic participation. By granting local councils greater budgetary control and administrative autonomy, political power is dispersed, reinforcing democratic culture at multiple levels and limiting the scope of presidential dominance. Together, these measures create a more resilient institutional environment that is capable of upholding the constitutional order within presidential systems.

In addition, the enhancement of party discipline should not be just a matter of rhetoric. Internal party rules and sustainable standards regarding candidate screening and leadership turnover are being adopted, supporting programmatic parties over personality-based vehicles, in systems such as Ghana. Mechanisms such as the legal enforceability of intra-party democracy and the punishment of floor-crossing, as witnessed in the early parliament of post-apartheid South Africa, are also stabilizing. Furthermore, executive and legislative cooperation arrangements are essential in the constitution. The 2010 Constitution of Kenya brought greater clarity to the roles of cabinet ministers (appointed outside parliament), and formalized parliamentary committee vetting of appointments, enhancing transparency and alleviating tension. Also not African, but interesting is the Chilean presidential system, in that it has granted the legislature budgetary initiative, meaning parliament has a genuine interest in policy construction, hence compromise.

Additionally, the prevention of deadlock through a conflict resolution mechanism is possible in a constitution. Finally, institutionalization of democratic norms necessitates collaboration between formal regulations and socialization. These would entail long-term civic education, a free press, and a strong civil society that monitors government administration to ensure transparency and opposes an unconstitutional accumulation of power. The peaceful alternation of power in Ghana, the annulment of invalid elections led by the judiciary in Kenya (2017), and the zoning principle in Nigeria, even if informal, are part of the context-specific mechanisms and processes that incorporate norms over time.

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Evaluating the Nexus between Credit Supply and Sectoral Performance in Nigeria

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Abstract

This study investigates the impact of commercial bank credit on the performance of the agricultural, industrial, and commercial sectors of the Nigerian economy from 1991 to 2023. The analysis employed the Fully Modified Ordinary Least Squares (FMOLS) method and standardized regression analysis to evaluate the relationships. The FMOLS results reveal that in the agricultural sector, commercial bank credit exhibited a positive but statistically insignificant effect on sectoral performance, while the Agricultural Credit Guarantee Scheme Fund and agricultural employment had positive and statistically significant impacts. In the industrial sector, commercial bank credit demonstrated positive and significant effects on sectoral performance. Similarly, in the commercial sector, credit supply exerted positive and significant impacts, whereas the interest rate had a negative and significant effect on performance. The standardized regression analysis further highlighted that credit to the industrial sector had the greatest relative impact on Nigeria's economic growth. Based on these findings, the study recommends prioritizing credit allocation to the industrial sector to enhance its contribution to the overall growth and development of the Nigerian economy.

Keywords

credit supply, interest rate, agriculture, industry, standardized regression

1 Introduction

The economy stands to benefit significantly from financial intermediation, as it facilitates the transfer of financial resources from business surplus units to business deficit units, thereby promoting efficient resource allocation. Gerschenkron (1962) argues that in developing economies, banks represent the most effective and efficient source of funding for industrial expansion. In Nigeria, banks dominate as the principal financial intermediaries (Adenugba, 2015), playing a central role in channeling funds across sectors of the economy. Vane and Thompson (1982) highlight that financial intermediaries bridge the gap between lenders and

borrowers by creating distinct markets for each party, offering securities tailored to their respective needs. However, the potential for financial intermediation to drive economic growth is contingent on the level of development within the financial sector and the saving behaviors of the public. As Adenugba (2015) posits, the availability of investible capital is a critical precondition for economic investments, which are essential for sustained economic growth and development.

The function of banks as intermediaries in promoting technical innovation was already recognized by Schumpeter (1911). He asserted that the best way to accomplish this goal was to identify and support entrepreneurs who had the highest possibility of successfully adopting innovative goods and production methods, which would allow for the effective distribution of savings. Since then, several scholars, including McKinnon (1973), Shaw (1973), Fry (1988), and King and Levine (1993b), have further substantiated the theory regarding the critical role of banks in driving economic expansion. In order to ensure sustained economic progress, banks in emerging nations are required to play extremely important and productive roles in funding their economic initiatives and operations. This assumption stems from the fact that the world's emerging nations are severely short on capital. Theoretical debates over the significance of credit development and the contribution of financial intermediaries to economic growth have long had a prominent place in the literature on developmental finance.

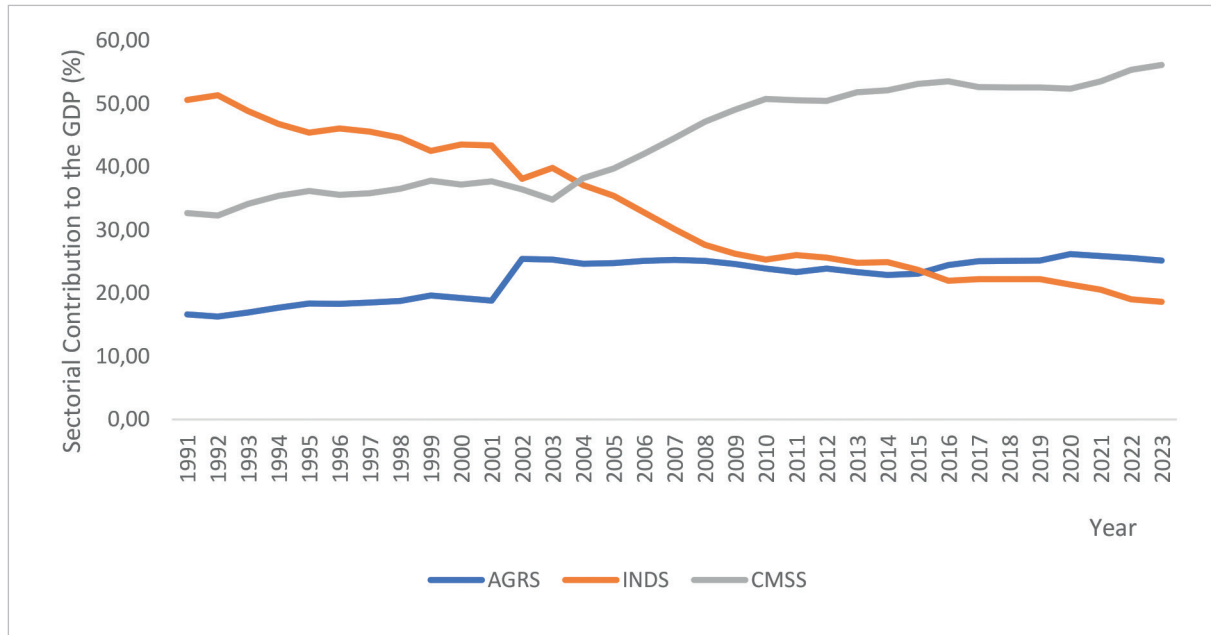
Financial or credit development can foster economic growth by promoting capital accumulation, increasing savings, and enhancing the efficiency of loanable funds (Shaw, 1973). Access to financial services is crucial for both economic growth and poverty alleviation. By securing financing, individuals or firms can enhance their productive capacity through investments in microbusinesses, new tools, equipment, fertilizer, or in sectors like health and education. Such investments can substantially elevate income levels and productivity, thereby driving broader economic development.

Businesses in Nigeria have found it challenging to invest in information technology, up-to-date machinery, and human resource development due to a lack of funding. These investments are essential for lowering production costs, increasing productivity, and enhancing competitiveness. Banks' reluctance to grant manufacturers credit has been widely attributed to low investment, in part because of the mismatch between the medium- to long-term nature of industry funding requirements and the short-term nature of bank finances. Additionally, banks in Nigeria view manufacturing as a high-risk business; as a result, they prefer to lend to low-risk businesses like commerce, which also yield very high profits. Also, fear towards lending to the agricultural sector is attributable to the high risk involved in agribusinesses, as they are rather prone to the vagaries of weather and climate, like floods and droughts, which do not guarantee higher yield.

The argument about banks' intermediation function in economic growth has influenced a lot of literary discourses. However, it appears that most people agree that banks' intermediation function promotes economic development and progress. According to Akinola (2020), banks have historically been involved in manufacturing, financing agriculture, and syndicating loans to economically productive industries. As a result of the banking sector performing these crucial roles effectively, economic growth, as measured by GDP, will increase proportionately. Furthermore, Akpansung and Babalola (2016) noted that the Central Bank of Nigeria has been perceived as playing a leading and catalytic role by employing direct control to manage the expansion of credit generally, as well as to decide the percentage of bank loans and advances that are allocated to "high priority sectors". They contend that the goal of this sectoral bank loan allocation is frequently to boost the nation's productive sectors and, as a result, boost economic growth.

The Nigerian economy has been experiencing declining trends in the performance of key sectors in recent times, as indicated in Figure 1. While the agricultural and industrial sector exhibits a declining trend, the commercial service sector maintains a rising trend.

Figure 1. Trends in the contribution of agricultural (AGRS), industrial (INDS), and commercial service sectors to the GDP of Nigeria. 1991–2023.



Source: Authors’ edit

The agricultural sector’s contribution to the GDP has exhibited a downward trend, declining from 25.43% in 2002 to 23.89% in 2010. This was followed by a modest recovery to 25.16% in 2019. However, in the wake of the COVID-19 pandemic and its associated macroeconomic repercussions, the sector’s GDP share continued to decline, reaching 26.21% in 2020, and further decreasing to 25.58% and 25.18% in 2022 and 2023, respectively. Employment within agriculture has similarly decreased, from 52.36% in 1991 to 49.58% in 2000, and continued to decline to 40.58% in 2010. This downward trend persisted, with the employment share falling to 38.60% in 2021 and 37.99% in 2022.

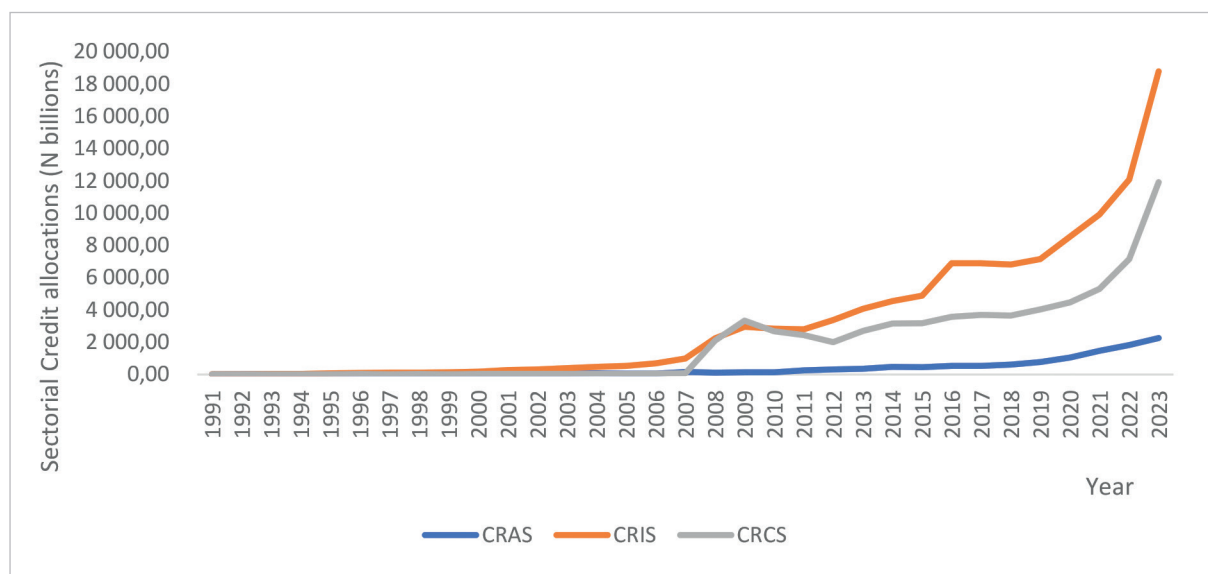
In contrast, the industrial sector’s contribution to the GDP has shown a concerning decline, falling from 50.65% in 1991 to 43.56% in 2000, and further to 25.32% in 2010. This decline reached a record low of 21.36% in 2020 and continued to decrease to 18.65% in 2023. Employment within the industrial sector has also experienced a steady decline, from 11.41% in 1991 to 11.23% in 2000. A slight recovery was observed between 2001 and 2004, with industrial employment rising to an average of 11.58%, compared to 11.30% in the 1990s. However, the sector witnessed a significant decline between 2005 and 2011, averaging just 10.67%. Recent statistics, however, indicate a positive shift in industrial employment, which rose from 10.89% in 2012 to 13.77% in 2019 and further to 14.56% in 2022.

The commercial service sector of the Nigerian economy, conversely, has demonstrated a consistent upward trajectory, reflecting sustained growth and performance. The sector’s contribution to the GDP increased from 32.68% in 1991 to 37.81% in 1999. Despite a temporary decline to 34.81% in 2003, the sector rebounded sharply, contributing 50.79% to the GDP in 2010, with further increases to 53.18% in 2015 and 56.18% in 2023. Employment in the commercial

service sector has followed a similar positive trend, rising from 36.23% in 1991 to 38.53% in 1999. Between 2000 and 2010, employment in the sector averaged 43.64%, compared to 37.13% in the 1990s. This upward trend continued through to 49.93% in 2013, though it slightly declined to 42.08% in 2018 before recovering to 47.45% in 2022.

These fluctuations in the output contributions of these sectors to the GDP occurred in the period where their respective credit allocations have been on the rise, as indicated in Figure 2.

Figure 2. Sectorial credit allocation to agricultural (CRAS), industrial (CRIS), and commercial service (CRCS) sectors in Nigeria, 1991–2023



Source: Authors’ edit

The importance of bank credit to the Nigerian economy has led to a sustained increase in credit to the productive sectors of the Nigerian economy. For instance, commercial banks’ credit to the agricultural sector in recent times has been the least compared to other sectors. It increased from ₦5.01 billion in 1991 to ₦31.05 billion in 1999, and averaged ₦20.58 billion in the 1990s. Between 2000 and 2010, commercial banks’ credit to the agricultural sector averaged ₦82.23 billion as it increased from ₦41.03 billion in 2000 to ₦128.41 billion in 2010. Recent statistics indicate that credit to the sector has increased to the tune of ₦610.15 billion in 2018, with a further increase to ₦2.26 trillion in 2023.¹ For the industrial sector, Figure 2 portrays that it has the highest credit allocation in recent times, with an increase from ₦2.84 trillion in 2010 to ₦6.82 trillion and ₦18.78 trillion in 2018 and 2023, respectively.

The commercial service sector has experienced a substantial increase in credit allocation, rising from ₦2.69 trillion in 2010 to ₦3.65 trillion in 2018, and reaching ₦11.92 trillion in 2023. This represents significant growth in credit allocation, with increases of 270.49% in the agricultural sector, 175.37% in the industrial sector, and 226.58% in the commercial service sector between 2018 and 2023. Given the predictions of the finance-growth nexus based on the supply-leading hypothesis, the key question arises: can this substantial credit allocations catalyze the desired growth in the agricultural, industrial, and commercial service sectors of the Nigerian economy? Moreover, can they stimulate overall economic growth?

¹ <https://www.cbn.gov.ng/documents/Statbulletin.html>

There is a growing consensus regarding the strong relationship between business cycles and credit supply expansions (Jordà et al., 2013; Mian et al., 2017a; Baron & Xiong, 2016). The expansion of credit supply generally signals a willingness to lend, which, under typical conditions, is indicative of favorable economic prospects. Justiniano et al. (2015), Bordo et al. (2016), and Greenwood et al. (2016) contend that credit expansion can be influenced by behavioral factors, such as deregulation, liberalization, or the global savings glut. While it remains difficult to establish a direct causal relationship between credit and economic cycles, the mechanisms through which credit influences business cycles are not fully understood.

Credit expansion has the potential to affect the macroeconomy in two key ways. First, it enables businesses with limited capital to borrow and invest, thus increasing the economy's productive capacity. Second, expanded credit allows households to borrow and spend more, boosting aggregate demand. These two channels differ in their economic impact: the local demand channel increases aggregate demand, while the production capacity channel enhances aggregate supply (Mian et al., 2017b).

The main objective of the paper is to examine the influence of commercial banks' credit on different sectors of the Nigerian economy from 1991 to 2023. The specific objectives are: (i) to examine the effect of commercial banks' credit to agriculture on agricultural sector performance in Nigeria; (ii) to explore the influence of commercial banks' credit to industry on industrial sector performance in Nigeria; (iii) to investigate the impact of commercial banks' credit to commercial services on commercial service sector performance in Nigeria; and (iv) to determine the relative impact of commercial banks' credit to agriculture, industry, and commercial services on economic growth of Nigeria.

This paper is structured in five major sections. The first section is the introduction, followed by the literature review in section two. In section three, the methodology of the research is presented. Section four presents the empirical findings, while the conclusion and recommendations are outlined in section five.

2 Literature review

In the subsequent analysis, we offer a succinct overview of both the theoretical and empirical literature.

2.1 Theoretical literature

In terms of the theoretical literature, we have decided to focus on three approaches, namely, the Theory of Financial Intermediation, the Harrod-Domar Growth Model, and the Loanable Fund Theory.

2.1.1 Theory of Financial Intermediation

Gurley and Shaw (1967) propounded the theory of financial intermediation to address the shortcomings of the direct financing method. It elucidates the significance of the credit allocation intermediation process for the economy at large. The theory's premise is that financial intermediation makes more financial resources available to the economy's productive sector, which raises output and ultimately propels economic growth. As such, effective credit allocation may lead to significant job creation and income, which inevitably raises the degree of economic

growth (Nwite, 2014). Investible financial resources are therefore the most important component in every economy's growth process (John & Lawal, 2019). This theory is relevant to the research because DMBs are essential components of economic systems since they play a significant role in financing and facilitating the flow of credit.

On the basis of this, the theory proposes three significant functions of credit in economic expansion (Levine, 1999; Wachtel, 2003). First, it makes it easier to scrutinize loan applicants and keep an eye on fund recipients. This makes resource allocation better. Second, by offering alluring tools and saving vehicles, it promotes the mobilization of funds. Finally, it offers chances for liquidity and risk control. As a result, these encourage the growth of credit markets as well as the usage of credit instruments that have appealing features that allow for risk sharing. Furthermore, Greenwood and Jovanovic (1990) claimed that effective bank development and credit distribution play a significant role in the expansion of the economy by acting as a middleman between investors and savers. This suggests that the banking industry is a crucial component of economic systems. As a result, the growth of the financial system affects a country's economic progress (Agu, 1988).

2.1.2 Harrod-Domar Growth Model

Harrod (1939) and Domar (1946) propounded the Harrod-Domar growth model to explain economic growth in terms of capital formation and savings levels. It was predicated on the idea that the money supply's influence on an economy is contingent upon its capacity to affect loan interest rates, or the loan-to-deposit ratio. Interest rates have an impact on investment levels, which in turn have an impact on national income. According to the model, changes in capital stock or investment have a linear relationship with changes in national income. It is assumed that savings determine investment. Therefore, because savings have a positive effect on capital formation, they are theoretically thought to have a beneficial effect on economic growth. The model's consequence is that the focus on saving precludes the conclusion that the allocation function of deposit money bank credit affects economic growth.

The McKinnon-Shaw hypothesis supported the idea that credit allocation affects economic growth. By contrasting restricted and liberalized financial systems, it is possible to verify the significant contribution banks provide to growth (John & Lawal, 2019). The Harrod-Domar Model posits that the financing for investment operations is derived from the deposits of consumers (Akujuobi and Chima, 2012). According to this concept, economic development will thus occur at the rate at which society is able to mobilize savings in conjunction with investment productivity (Levine, 1997; Azege, 2004). As a result, it is quite likely that credit will need to be allocated for investment in an economy that wants to develop.

2.1.3 Loanable Fund Theory

In accordance with the loanable funds theory, the rate of interest is the price of credit that is established by the demand and supply of loanable funds (Jhingan, 2011). The government, businessmen, and consumers require loanable funds for investment, hoarding, and consumption purposes. The government borrows money for the construction of public works or for war preparations; businessmen borrow for the purchase of capital goods and for starting investment projects; these borrowings are interest elastic and rely primarily on the expected rate of profit in comparison to the rate of interest (John & Terhemba, 2016); consumers' demand for loanable funds is for the purchase of durable and non-durable consumer goods; and individual borrowings are also interest elastic.

At lower interest rates, people are more likely to borrow money than at higher rates. According to this theory, when it comes to investment funds, the demand curve slopes downward, indicating that more money is borrowed at lower interest rates and less at higher rates. Commercial bank credits and real sector output are linked by the theory of loanable funds, which supports the idea that borrowing for real sector investment is interest rate elastic because it is based on the current interest rate.

2.2 Empirical Literature

Studies have been conducted to investigate how commercial banks' credit influences the real sectors of the economy, as well as its impact on aggregate economic growth. The study by Fapetu & Obalade (2015) was geared towards ascertaining the impact of sectoral credit allocations on the growth of the Nigerian economy across different regimes. The analytical technique of the study was based on the ordinary least squares approach. Under the intensive regulation regime (1960–1985) and deregulation regime (1986–1995), all the sectoral credit allocation (agriculture, industry, commerce, and others) were observed to exert an insignificant effect on economic growth. On the contrary, the guided deregulation regime (1996–2012) was matched with a positive and significant effect of credit (credit to the production sector – agriculture and industry) on economic growth. The study therefore recommended the use of guided regulation by the monetary authority against total deregulation.

John and Terhemba (2016) used the Cochrane-Orcutt technique to study how commercial bank credit affected Nigeria's manufacturing sector between 1980 and 2015. The analysis employed five variables: the output of the manufacturing sector, the rate of inflation, interest rates, loans/advances, and the broad money in circulation. The study discovered that while loans/advances, and the overall money supply had a beneficial impact on Nigeria's manufacturing sector, inflation and interest rates have a negative impact. Therefore, the research suggested creating and implementing policies that, on the one hand, would lower interest rates and inflation, and, on the other hand, would increase loans, advances, and the overall money supply in order to boost the sector's output. The model employed in the study failed to recognize labor and exchange rate as critical variables that could affect the performance of the manufacturing sector of the Nigerian economy.

Bada (2016) examined the effects of bank loans on Nigerian industry and agricultural outputs over a thirty-one-year span (1984–2014). The data was analyzed using the VAR model, the Vector Error Correction test, and the Causality test. The outputs of the industry and agriculture sectors were significantly impacted by bank loans. The study failed to adequately explore the impulse response function and variance decomposition and only relied on the VAR estimates which do not give adequate information on the forecasting power of the model. Using a two-stage least square and Granger causality test, Akpansung and Babalola (2016) investigated the relationship between bank credit and the growth of the Nigerian economy from 1970 to 2008. The findings showed that bank credit had a negative effect on the country's economic growth, with a causal relationship between the GDP and bank credit.

Similarly, Sogules and Nkoro (2016) used time series data from 1970 to 2013 to examine how bank credits on manufacturing and agricultural sectors affected Nigeria's economic growth. The study was conducted using the Error Correction Model (ECM) and the Co-integration test. They discovered that bank credit to the agricultural sector had a negative and negligible effect on economic growth, but that bank credit to the industrial sector had a negative and significant effect on economic growth.

In order to ascertain how bank loans affected the expansion of the Nigerian economy, Nwanyanwu (2018) used OLS econometrics approaches. According to the study, bank credit has a major and favorable influence on the expansion of the Nigerian economy. Amoo et al. (2017) used fully modified least squares to empirically assess the local characteristics and policy environment that affect the Nigerian economy's ability to absorb credit during the first quarter of 1993 to the fourth quarter of 2013. Results indicated that credit promotes growth even in the presence of low levels of trade openness, monetary policy, investment climate, and infrastructure. Additionally, when local or domestic conditions were favorable, private sector credit boosted economic growth, according to the composite local condition index analysis. In 2013, the domestic economy's potential to absorb credit was assessed to be 29% of the GDP. These findings imply that Nigeria has an opportunity to expand lending in a way that would boost the economy.

Olowofeso et al. (2017) used time series data from the first quarter of 1992 to the fourth quarter of 2015 to examine the link between agricultural output and credit to the agricultural sector in Nigeria using a nonlinear autoregressive distributed lag (NARDL) model. The findings indicated that there is no asymmetry in the short-term effects of credit on agricultural production growth (both positive and negative changes); nevertheless, there are distinct equilibrium relationships over the long term. The dynamic adjustments demonstrated that, with a four-quarter lag of the prediction horizon, the influence of the favorable changes in credit to agriculture is mostly responsible for the cumulative gain in agricultural production. The use of a bivariate analysis in the study is weak and blurs the potency of other critical variables, such as interest rate and labor employment, that could affect the agricultural sector of the Nigerian economy.

Using the ARDL model, Kalu et al. (2017) investigated the effects of bank lending on Nigeria's industrial sector between 1986 and 2013. They found that whereas interest rates have a negative and significant link with the output of the manufacturing sector, bank lending has a long-term positive and significant effect on manufacturing output. Andabai and Eze (2018) examined the relationship between bank lending and the expansion of Nigeria's manufacturing sector from 1990 to 2016. The results of the causality test showed that bank credit had no causal link with the expansion of the Nigerian manufacturing sector, while the Vector Error Correction Model showed that bank credit had no short-run equilibrium significant association with the growth of the Nigerian manufacturing sector.

In order to investigate the link between banks' private sector credits and economic growth in Nigeria over the period 1974–2010, Odhiambo (2008) used the Autoregressive Distributed Lag (ARDL) Bound Approach and Granger Causality test. The analysis found a strong connection between economic growth and private sector loans over the long term. However, the Granger causality test portrayed no causal relationship between credit and economic growth during the study period. The study came to the conclusion that Nigerian banks fit into the Schumpeterian independent hypothesis stage rather than performing either a supply-leading or demand-following function.

Kolapo et al. (2018) examined the relationship between Nigeria's economic progress from 1970 to 2016 and the credit provided by deposit money banks to the public and commercial sectors. The Ng-Perron and Augmented Dickey Fuller Breakpoint Unit Root Tests were used in this investigation. The outcome demonstrated that lending interest rates and bank credits to government agencies remained stable. In a similar vein, the feedback theory proves that banks' loans and economic growth are mutually dependent.

The study by Chukwunweike (2018) explored how bank credit could affect growth in agriculture, manufacturing, commerce, and the overall economy. The study utilized data spanning from 1981 to 2015, which were analyzed using the ordinary least squares approach.

The study observed a positive and significant effect of bank credit on each of the sectors of the economy. However, the volume of bank credit exerted a positive but insignificant effect on the overall growth of the Nigerian economy. Consequently, the government was advised to develop policies that would not only boost the economy's overall growth but also guarantee balanced growth by ensuring that each sector of the economy makes its fair share of contributions. This study established that the variables in the model were all stationary at first difference, but ended up using the OLS technique of estimation; hence, the methodology of the research is weak and cannot provide reliable estimates.

Orimogunje (2019) examined how bank credit affected Nigeria's inflation and economic growth between 1996 and 2014. The econometric method used was the Granger Causality test. According to the Granger causality test results, there is no significant causal relationship between domestic and net domestic credit and inflation, although there is a statistically significant association between them and gross domestic product.

From 1986 to 2015, John and Lawal (2019) took a view on how Nigeria's economic growth was affected by the sectoral distribution of bank lending. The vector error correction model (VECM), the Johansen co-integration test, and the fully modified Ordinary Least Square (FMOLS) regression were used to analyze the data. The results of this study show that the explanatory factors and economic growth have a long-term link. According to the regression's findings, credit allocated to the productive sector and the broad money supply significantly boost Nigeria's economic growth, whereas credit allocated to the service sector, general commerce, and other sectors significantly hinders growth. The study modelled growth as a function of only commercial bank loans/advances to the production sector, general commerce, service, and others. However, it fails to incorporate key variables like labor, exchange rate, and government spending in the growth model.

King and Levine (1993a) study examined how bank lending affects Nigeria's industrial production growth. Cointegration and vector error correction model (VECM) methods were used to assess time series data spanning 36 years. According to the result, bank lending rates and the manufacturing capacity utilization have a significant impact on Nigerian manufacturing production. They recommended that, in order to promote investment, lending, and borrowing by financial institutions, a coordinated effort by the government, manufacturers, and lending institutions is required to examine the lending and growth policies and offer a suitable macroeconomic environment.

The effect of bank credit on the expansion of Nigeria's industrial sector from 2004 to 2018 was examined by Akinola et al. (2020). The FMOLS approach was employed to assess the distinct effects of bank financing determinants on the expansion of the industrial sector, as shown by manufacturing sector output. The study demonstrated that the expansion of the industrial sector is significantly impacted by bank credits, the domestic money supply, and the maximum bank lending rate.

The impact of bank lending and economic expansion on Nigeria's industrial production was examined by Anyanwaokoro (1999). The study employed the co-integration and vector error correction model (VECM) methodologies for the model's analysis, using time series data spanning 36 years (1973–2009). The study's empirical findings demonstrated that bank lending and manufacturing capacity utilization have a major impact on Nigerian manufacturing output. Also, a strong effect of manufacturing production on economic growth was discovered, leading to the nation's prosperity and advancement.

Ogunlokun and Liasu (2021) used the ARDL approach to evaluate the link between bank financial intermediation and the performance of Nigeria's agriculture sector using an annual

dataset spanning 1992 to 2017. The findings also showed a weak but favorable correlation between the performance of the agricultural sector and the loans given to it by commercial banks. The ECM's findings showed that although most aspects of bank financial intermediation were beneficial in the long run, they had little effect on raising the agriculture sector's performance in Nigeria.

Effiong and Ekong (2022) looked at how bank loans affected the Nigerian economy's industrial sector performance between 1981 and 2018. The analysis employed the ARDL Bounds test to check for the presence of a long-term association. The Bounds test result showed that there was a long-term correlation between the model's explanatory variables and the performance of the industrial sector. According to the findings of the ARDL short-run dynamics and long-run form, bank credit significantly and positively impacted the performance of the industrial sector over the long term. Additionally, it was seen that the interest rate had a negative, albeit negligible, effect on the performance of the industrial sector.

Ogbonnaya et al. (2022) investigated the effects of agricultural sector finance on the agricultural industry's performance in Nigeria between 1981 and 2021. The Vector Autoregression estimation technique was used to estimate various regression analyses in this *ex post facto* investigation. According to the study, Nigeria's agricultural production performance improved by 0.07% and 0.04% for every 1% rise in the agricultural credit guarantee program fund and commercial bank lending to agriculture, respectively. The findings showed that Nigeria's agricultural production performance was enhanced by funding for agricultural lending.

Yerima and Idris (2023) looked at how bank loans affected Nigeria's economic expansion. Time series data from 1986 to 2022 were used in the study. The Vector Error Correction Model (VECM) and the Johansen cointegration approach were used to analyze the data and determine the short- and long-term relationships between the variables under consideration. Additionally, the direction of causation between bank credit and economic growth was assessed using Granger causality. According to the analysis' findings, economic growth was positively and significantly impacted by private sector, public sector, and combination sector credits. The study failed to incorporate important variables in the growth model and only incorporated credit variables. Further, the study incorporated credit to the private sector, credit to the public sector, and total credit (credit to the private sector and credit to the public sector) in the same model; hence, there is a high possibility of multicollinearity in the model.

2.3 A summary of the reviewed literature and identification of the research gap

Empirical studies have revealed diverse patterns regarding the relationship between credit and the real sector of the economy. Initially, many studies focused on the credit-growth nexus, which generally exhibited a positive correlation, yet often overlooked the sectoral impact of each credit component. This study seeks to address this gap in the scholarly literature. Furthermore, studies examining the credit-growth nexus typically failed to investigate the relative impacts of sectoral credit allocations on overall economic growth. In response, we aim to fill this gap by employing a standardized regression model to assess the relative impact of sectoral credit allocations on the growth of the Nigerian economy. The findings of this study hold significant implications for policy simulations that could inform credit allocation strategies within the financial system.

3 Methodology

3.1 Model Specification

In specifying the models for the study, inspiration was drawn from the work of Chukwunweike (2018), who adopted a multi-sectoral approach to model the link between bank credit and different sectors of the economy. The original model is specified as follows:

$$Y_t = f(VBC_t, CPS_t, IR_t) \tag{1}$$

Where Y_t is a vector of dependent variables, which were the manufacturing sector contribution to the GDP, the agricultural sector contribution to the GDP, and the commercial sector contribution to the GDP. The three explanatory variables were volume of bank credit (VBC), credit to the private sector (CPS), and interest rate (IR).

The model presented in Equation (1) was modified to capture unique features pertaining to some sectors as well as other key variables that could affect their performances. Consequently, the model for this study is expressed as follows for the first three objectives.

$$AGRS_t = f(ACGSF_t, CRAS_t, PRLR_t, EMPA_t, GEXE_t, EXCR_t) \tag{2}$$

$$INDS_t = f(CRIS_t, PRLR_t, EMPI_t, GEXE_t, EXCR_t) \tag{3}$$

$$CMSS_t = f(CRCS_t, PRLR_t, EMPC_t, GEXE_t, EXCR_t) \tag{4}$$

The variables in the above models are explained as follows:

- AGRS = agricultural sector output (% of GDP)
- INDS = industrial sector output (% of GDP)
- CMSS = commercial sector output (% of the GDP)
- ACGSF = Agricultural Credit Guarantee Scheme Fund (ACGSF) Operations – Value of Loans Guaranteed (₦' millions)
- CRAS = commercial bank credit to the agricultural sector (in ₦ billions)
- CRIS = commercial bank credit to the industrial sector (in ₦ billions)
- CRCS = commercial bank credit to the commercial sector (in ₦ billions)
- PRLR = prime lending rate
- EMPA = employment in the agricultural sector (% of total employment)
- EMPI = employment in the industrial sector (% of total employment)
- EMPC = employment in the commercial service sector (% of total employment)
- GEXE = Government expenditure on economic services
- EXCR = average monthly official exchange rate.

Equations (2) through (4) are further expanded in their econometric forms and are presented as follows:

$$AGRS_t = \alpha_0 + \alpha_1ACGSF_t + \alpha_2CRAS_t + \alpha_3PRLR_t + \alpha_4EMPA_t + \alpha_5GEXE_t + \alpha_6EXCR_t + \mu_{1t} \tag{2}'$$

$$INDS_t = \beta_0 + \beta_1CRIS_t + \beta_2PRLR_t + \beta_3EMPI_t + \beta_4GEXE_t + \beta_5EXCR_t + \mu_{2t} \tag{3}'$$

$$CMSS_t = \gamma_0 + \gamma_1CRCS_t + \gamma_2PRLR_t + \gamma_3EMPC_t + \gamma_4GEXE_t + \gamma_5EXCR_t + \mu_{3t} \tag{4}'$$

Where the α 's are the parameters to be estimated for Equation (2)', β 's are the parameters to be estimated for Equation (3)', γ 's are the parameters to be estimated for Equation (4)', and the μ 's are the respective error terms for the three models.

It is expected that the constant terms ($\alpha_0, \beta_0, \text{ and } \gamma_0$) (should be non-zero since the models are not treated as regression through the origin. For Equation (2)', it is expected that $\alpha_1, \alpha_2, \alpha_4, \text{ and } \alpha_5$, should be positive. This is because credits are treated as capital and should be able to drive growth in the agricultural sector; employment in the agricultural sector should have a positive effect on the agricultural sector since labor is a critical input in agricultural production function; and government expenditure on economic services should drive growth within the agricultural sector as it could aid in the provision of basic economic overheads. On the contrary, α_3 is expected to be negative since a higher interest rate will discourage borrowing to finance agricultural activities; α_4 is expected to be negative since a higher exchange rate can cause a higher cost of importing critical agricultural inputs, which can therefore stifle growth within the sector.

In Equation (3)', it is expected that $\beta_1, \beta_3, \text{ and } \beta_4$, should be positive. Increased credit to the industrial sector should boost industrial production, which can spur growth within the sector; increased employment in the industrial sector should boost output within the sector, so long as there is no diminishing marginal productivity of labor; and government spending on economic services should drive growth within the industrial sector since it is a form of injection into the economy. On the contrary, β_2 , is expected to be negative since a higher interest rate increases the cost of borrowing to finance industrial activities; and β_5 , is also expected to be negative since the Nigerian economy depends heavily on importation of key raw materials for industrial production.

For Equation (4)', it is expected that γ_1 should be positive since increased credit to commercial activities will boost production within the sector; γ_2 is expected to be negative since higher interest rate will discourage borrowing to finance commercial activities; γ_3 is expected to be positive since increased employment within the commercial service sector will boost output so long that there is no diminishing marginal productivity of labour within the sector; γ_4 is expected to be positive since government spending on economic services can help boost commercial services within the economy; and γ_5 is expected to be negative since exchange rate depreciation can stifle commercial activities within an economy.

To examine the relative impact of the various sectoral credit and loan advances on the aggregate economy (which is the fourth objective), the standardized regression model for the study is specified as follows:

$$RGDP_t^* = f(CRAS_t^*, CRCS_t^*) \quad (5)$$

Where $RGDP_t^*$ is the standardized real gross domestic product at time t, $CRAS_t^*$ is the standardized commercial bank credit to the agricultural sector, $CRIS_t^*$ is the standardized commercial bank credit to the industrial sector, and $CRCS_t^*$ standardized commercial bank credit to the commercial service sector.

Equation (5) is further explicitly written in its econometric form by incorporating the parameters and the error term as follows:

$$RGDP_t^* = \beta_1^* CRAS_t^* + \beta_2^* CRIS_t^* + \beta_3^* CRCS_t^* + \mu_{4t}^* \quad (5)'$$

Where β_1^* captures the relative impact of CRAS on RGDP, β_2^* captures the relative impact of CRIS on RGDP, β_3^* captures the relative impact of CRCS on RGDP, and μ is the error term which is assumed to be white noise. The regression coefficients of the standardized variables, denoted

by β_1^* , β_2^* and β_3^* , are known in the literature as the beta coefficients (Gujarati, 2003). Note that the standardized regression model is a regression-through-the-origin; hence, the constant term is absent.

3.2 Nature and sources of the data

The data for this study are generally time series in nature and were obtained for the period 1991 to 2023. The choice of the period of analysis was mostly dependent on data availability on key variables in the model. The period captures a total of thirty-three (33) years, which makes it a large sample size; hence, reliable estimates can be derived through analysis. The data were obtained from two secondary sources, namely: the World Bank and the Central Bank of Nigeria. Data on employment in agriculture, employment in industry, and employment in commercial services were obtained from the World Bank publication on world development indicators,² while data on the rest of the variables were obtained from the Central Bank of Nigeria statistical bulletin.³

3.3 Analytical technique employed

3.3.1 Unit Root Test

With the nature of the data, which is a time series in this study, the conduct of a diagnostic test by examining the unit root properties of the variables is crucial. The unit root test is conducted to establish the order of integration (or stationarity) of a given time series variable. In testing for the stationarity of the series, the Augmented Dickey-Fuller (ADF) developed by Dickey and Fuller (1979) is applied. The test is conducted under the constant and trend assumption on the level and first difference. The determination of the order of integration is of utmost importance as it directs the researcher on the appropriate technique of analysis to be utilized. This is because regressing a non-stationary time series variable on another non-stationary time series variable will produce a spurious result. Given a time series variable Y , the general form for the test equation is presented below:

$$\Delta Y_t = \alpha_0 + \delta t + \alpha_1 Y_{t-1} + \sum_{i=1}^m \alpha_2 \Delta Y_{t-i} + \varepsilon_t \quad (6)$$

Where Y_t is a time series, t is a linear time trend, Δ is the first difference operator, β_0 is a constant, i is the optimum number of lags in the independent variables, and ε_t is the random error term. Equation (6) follows the constant with a linear deterministic time trend assumption. The null hypothesis for the test is that Y_t contains a unit root and is specified as follows:

$$H_0: \alpha_1 = 1$$

Against the alternative hypothesis, that there is no unit root, expressed as:

$$H_1: \alpha_1 < 0$$

² <https://databank.worldbank.org/source/world-development-indicators>

³ <https://www.cbn.gov.ng/documents/Statbulletin.html>

If the estimated α_1 is significantly less than 0 as measured by a τ -statistic (read as tau statistic), then we can reject the null hypothesis of a unit root; this implies that the variable is stationary. If the estimated α_1 is not significantly less than 0, then we cannot reject the null hypothesis of a unit root; this implies that the variable is nonstationary.

3.3.2 Fully Modified Ordinary Least Squares (FMOLS) Regression Analysis

The fully modified ordinary least squares (FMOLS) method was developed by Stock and Watson (1993) to estimate parameters in a model with a higher order of integration. Thus, this technique of estimation is suitable when we have a series in the model being stationary at the second difference. Therefore, FMOLS is a simple and efficient approach to estimating the coefficients of a cointegrating relationship in this case. The FMOLS overcomes the problem of serial correlation and endogeneity of variables, so it is superior to other regression models, which are used to estimate the elasticities of regression coefficients. The technique is rooted on Monte Carlo simulations and is superior in small samples as well as being capable of accommodating higher orders of integration and accounting for possible simultaneity within regressors in the model (Masih & Masih, 1996).

3.3.3 Standardized Regression Model

If we deduct the variable’s mean value from each of its individual values and divide the result by the variable’s standard deviation, we say that the variable is standardized (Gujarati, 2003). Thus, in the regression model specified in Equation we redefine these variables as:

$$RGDP^* = \frac{RGDP_i - \overline{RGDP}}{S_{RGDP}}$$

$$CRAS^* = \frac{CRAS - \overline{CRAS}}{S_{CRAS}}$$

$$CRIS^* = \frac{CRIS - \overline{CRIS}}{S_{CRIS}}$$

And

$$CRCS^* = \frac{CRCS - \overline{CRCS}}{S_{CRCS}}$$

Where:

\overline{RGDP} = sample mean of $RGDP$

S_{RGDP} = sample standard deviation of $RGDP$

\overline{CRAS} = sample mean of $CRAS$

S_{CRAS} = the sample standard deviation of $CRAS$

\overline{CRIS} = sample mean of $CRIS$

S_{CRIS} = sample standard deviation of $CRIS$

\overline{CRCS} = sample mean of $CRCS$

S_{CRCS} = sample standard deviation of $CRCS$

The variables $RGDP^*$, $CRAS^*$, $CRIS^*$ and $CRCS^*$ are called *standardized variables*. An interesting property of a standardized variable is that its mean value is always zero and its standard deviation is always 1 (Gujarati, 2003).

By standardizing each regressor, we place them on an equal footing and enable direct comparison. A standardized regressor contributes more proportionately to the explanation of the regressand than another standardized regressor in that model if its coefficient is greater than the latter's. Stated differently, we may use the beta coefficients to gauge how strong one regressor is in relation to the others.

4 Empirical findings

4.1 Unit Root Test

To determine the order of integration of the time series variables utilized in the study, the Augmented Dickey-Fuller (ADF) unit root test is conducted. The result is presented in Table 1 and was based on the constant and deterministic trend assumption.

Table 1. Unit Root Test Result

Variables	ADF tatictic	5% Critical		Order of Integration
		Value	Probability	
AGRS	-5.8445	-3.5629	0.0002	I(1)
CRAS	-6.3001	-3.5629	0.0001	I(1)
ACGSF	-5.2607	-3.5629	0.0009	I(1)
EMPA	-6.1300	-3.6220	0.0003	I(2)
INDS	-6.6912	-3.5629	0.0000	I(1)
CRIS	-4.6299	-3.5629	0.0044	I(1)
EMPI	-4.2454	-3.5684	0.0113	I(2)
CMSS	-3.9367	-3.5629	0.0223	I(1)
CRCS	-5.5801	-3.5629	0.0004	I(1)
EMPC	-4.4212	-3.5742	0.0077	I(1)
PRLR	-5.2459	-3.5578	0.0009	I(1)
GEXE	-6.8099	-3.5629	0.0000	I(1)
EXCR	-4.3517	-3.5742	0.0091	I(2)

Source: Authors' edit

The unit root test result in Table 1 portrayed that the series used for the study exhibited a higher order of integration. While the majority of the series were stationary at first difference (being I(1) variables), the rest were stationary at second difference (being I(2) variables). This higher order of integration recorded in the analysis, therefore, warrants the use of the cointegrating regression analysis based on the fully modified ordinary least squares (FMOLS) as the appropriate technique of analysis for this study.

4.2 Cointegration Test

The cointegration analysis is based on the Hansen Parameter Instability test, and the result is presented in Table 2. The null hypothesis is that “Series are cointegrated”.

Table 2. Hansen Parameter Instability Cointegration Test Result

Model	Lc statistic	Stochastic Trends (m)	Deterministic Trends (k)	Excluded Trends (p2)	Probability
I	1.2707	6	0	0	> 0.20
II	1.6050	5	0	0	> 0.20
III	0.3406	5	0	0	> 0.20

Source: Authors’ edit

The cointegration result presented in Table 2 portrays the insignificance of the Lc statistics at the 5% level. Hence, the null hypothesis is accepted, and we conclude that there is a cointegrating relationship in the three models.

4.3 Fully Modified Ordinary Least Squares (FMOLS) Regression Analysis

To examine the influence of commercial banks’ credit on the agricultural sector and agricultural sector performance in Nigeria, the result of the FMOLS is presented in Table 3.

Table 3. The Fully Modified Ordinary Least Squares (FMOLS) Regression Result for Model I

Dependent Variable: AGRS				
Method: FMOLS				
Variable	Coefficient	Std. Error	t-Statistic	Probability
ACGSF	3.8339	0.5222	7.3422	0.0007
CRAS	0.7497	0.9675	0.7750	0.4734
PRLR	0.0998	0.1456	0.6858	0.5233
EMPA	1.2138	0.2734	4.4403	0.0068
GEXE	-1.4303	0.4708	-3.0378	0.0288
EXCR	0.0422	0.0051	8.3124	0.0004
C	-62.0385	20.3006	-3.0560	0.0282
R-squared	0.9900	Mean dependent var		22.8244
Adjusted R-squared	0.9418	S.D. dependent var		3.0202
S.E. of regression	0.7287	Sum squared resid		2.6553
Long-run variance	0.1289			

Source: Authors’ edit

Consistent with the result presented in Table 3, both the agricultural credit guarantee scheme fund (ACGSF) and commercial bank credit to the agricultural sector (CRAS) exerted a positive effect on the contribution of the agricultural sector to the GDP, though only the ACGSF posed a significant effect. The insignificant effect of commercial banks’ credit to the agricultural sector can be attributed to the untimely release of loans with the associated bottlenecks, which does not allow for the timely release of such credit to farmers. This implies, therefore, that increased ACGSF will boost the agricultural sector performance. From the obtained estimate,

a 1% increase in the ACGSF will prompt the agricultural sector’s contribution to the GDP to increase by 3.8339% on average. These findings align with the empirical works of Bada (2016), Olowofeso et al. (2017), Chukwunweike (2018), Ogunlokun and Liasu (2021), and Ogbonnaya et al. (2022). Also, the interest rate was observed to exert a positive but insignificant effect on the agricultural sector’s contribution to the GDP during the period of analysis.

The employment in the agricultural sector was observed to have a positive and significant effect on the agricultural sector’s contribution to the GDP. This implies that increased employment within the sector will cause an increase in output, which will further boost the GDP of the Nigerian economy. The estimated coefficient signifies that a 1% increase in employment in the agricultural sector will lead to a 1.2138% increase in the agricultural sector’s contribution to the GDP. This is an indication that there is no diminishing marginal productivity of labor within the agricultural sector. However, government expenditure on economic services exerted a negative and significant effect on agricultural sector performance during the study period. This implies that government spending on economic services has not been able to offer the desired effects within the agricultural sector. The coefficient, therefore, portrays that a 1% increase in government expenditure on economic services will lead to a 1.4303% decrease in agricultural sector contribution to the GDP.

The exchange rate was observed to exert a positive and significant effect on agricultural sector performance during the study period, though this is not in line with *a priori* expectations. A possible reason for this could be that exchange rate appreciation could increase the cost of food importation, thereby creating incentives for boosting domestic food production. The estimated coefficient indicates that a 1% increase in the exchange rate will lead to a 0.0422% increase in the agricultural sector’s contribution to the GDP.

The constant term of the model, which is statistically significant, implies that the agricultural sector’s contribution to the GDP will be -62.04% on average. The R-squared coefficient of 0.9900 implies that the explanatory variables in the model accounted for 99% of the total variations in the performance of the agricultural sector of the Nigerian economy. This is a good fit, and it remains so even being adjusted for degree of freedom as they account for 94.18% of the total variations in the performance of the agricultural sector.

To investigate the influence of commercial banks’ credit on the industrial sector and the industrial sector’s contribution to the GDP, Table 4 presents the regression result.

Table 4. Fully Modified Ordinary Least Squares (FMOLS) Regression Result for Model II

Dependent Variable: INDS				
Method: FMOLS				
Variable	Coefficient	Std. Error	t-Statistic	Probability
CRIS	6.7396	0.2397	28.1191	0.0000
EMPI	1.2729	0.3839	3.3153	0.0090
PRLR	0.3233	0.0869	3.7194	0.0048
EXCR	-0.0134	0.0050	-2.6513	0.0264
GEXE	3.0395	0.3681	8.2568	0.0000
C	41.4458	4.8609	8.5264	0.0000
R-squared	0.9988	Mean dependent var		32.4861
Adjusted R-squared	0.9960	S.D. dependent var		9.9687
S.E. of regression	0.6297	Sum squared resid		3.5684
Long-run variance	0.1247			

Source: Authors’ edit

The result presented in Table 4 indicated that commercial banks' credit to the industrial sector exerted a positive and significant effect on the industrial sector contribution to the GDP at the 1% level of significance. Thus, increased credit to the sector will increase the sector's productivity, which therefore boosts the overall productivity of the economy. The estimated coefficient implies that a 1% increase in commercial banks' credit to the industrial sector will increase the industrial sector's contribution to the GDP by 6.7396% on average. The positive effect of commercial banks' credit to the industrial sector on industrial sector performance aligns with the findings of earlier empirical studies like Bada (2016), John and Terhema (2016), Chukwunweike (2018), Andabai and Eze (2018), Kalu et al. (2017), Akinola et al. (2020), and Effiong and Ekong (2022). Therefore, we can say that finance is an engine of growth within the industrial sector of the Nigerian economy.

Employment in the industrial sector was also observed to exert a positive and significant effect on the industrial sector's contribution to the GDP at the 1% level of significance. A 1% increase in employment in industry will lead to a 1.2729% increase in the industrial sector contribution to the GDP. This is an indication that the diminishing marginal productivity of labor within the industrial sector has not yet been reached. This aligns with the findings of Effiong and Ekong (2022). The prime lending rate was observed to have exerted a positive and significant effect on the industrial sector performance at the 1% level of significance. Though this is against the *a priori* expectation, it could be a pointer that the interest rate within the period of analysis was favorable to boost industrial production within the Nigerian economy. The estimate is an indication that a 1% increase in interest rate will prompt the industrial sector contribution to the GDP to increase by about 0.3233% on average. High interest rate encourages more savings, which therefore provide a larger pool of funds to be borrowed for the expansion of industrial outlets.

The exchange rate exerted a negative and significant effect on industrial sector performance at the 5% level of significance. This implies that an increased exchange rate (exchange rate depreciation) will increase the cost of importing crucial raw materials and industrial inputs, which therefore stifles industrial production within the Nigerian economy. The estimated coefficient indicated that a 1% increase in the exchange rate will lead to a 0.0134% decrease in industrial sector performance in Nigeria. Government expenditure on economic services exerted a positive and significant effect on industrial sector performance at the 1% level of significance. The implication of this is that increased public spending on economic services will spur industrial sector productivity in Nigeria. The estimated coefficient signifies that a 1% increase in government expenditure on economic services will lead to a 3.0395% increase in industrial sector performance on average.

Given the R-squared value of 0.9988, it can be stated that the explanatory variables in the model accounted for about 99.88% of the total variation in industrial sector performance in Nigeria during the study period. The explanatory power of the model was 99.60% after being adjusted for degree of freedom and is still a good fit of the regression line.

In exploring the effect of commercial banks' credit on the performance of the commercial service sector of the Nigerian economy, the estimated regression model is presented in Table 5.

**Table 5. Fully Modified Ordinary Least Squares (FMOLS)
Regression Result for Model III**

Dependent Variable: CMSS				
Method: FMOLS				
Variable	Coefficient	Std. Error	t-Statistic	Probability
CRCS	1.5412	0.2984	5.1650	0.0006
EMPC	0.5437	0.1395	3.8969	0.0036
PRLR	-0.5702	0.1770	-3.2223	0.0105
EXCR	0.0054	0.0046	1.1675	0.2730
GEXE	-0.5960	0.5055	-1.1790	0.2686
C	24.7336	6.7100	3.6861	0.0050
R-squared	0.9958	Mean dependent var		44.6896
Adjusted R-squared	0.9865	S.D. dependent var		7.6970
S.E. of regression	0.8956	Sum squared resid		7.2181
Long-run variance	0.3713			

Source: Authors’ edit

The findings of the regression analysis presented in Table 5 indicated that both commercial banks’ credit to the commercial service sector and employment in the commercial service both exerted a positive and significant effect on the performance of the commercial service sector of the Nigerian economy. From the estimated coefficient, a 1% increase in commercial banks’ credit to the commercial service sector will lead to an increase in commercial service contribution to the GDP by 1.5414% on average. The positive effect of credit on commercial service sector performance aligns with the empirical study of Chukwunweike (2018). Also, a 1% increase in labor employment in the commercial service sector will lead to a 0.5437% increase in commercial service sector performance; hence, there is diminishing marginal productivity of labor within the commercial service sector.

Prime lending rate exerted a negative and significant effect on the commercial service sector contribution to the GDP at the 1% level of significance. This implies that higher interest rates stifle commercial service sector growth since it increases the cost of borrowing for investments. The estimated coefficient indicates that a 1% increase in interest rate will lead to a 0.5702% decrease in the commercial service sector’s contribution to the GDP.

Both the exchange rate and government expenditure on economic services exerted an insignificant effect on commercial service sector performance in Nigeria during the period of analysis. The R-squared indicated that the explanatory variables accounted for about 99.58% of the total variations in commercial service sector performance, and it remained at 98.65% after being adjusted for the degree of freedom. Hence, the estimated model represents a good fit of the regression line.

4.4 Standardized Regression Analysis

In order to ascertain the relative impact of the various credit components on the growth of the Nigerian economy, the standardized regression model was estimated, and Table 6 presents the results.

Table 6. Standardized Regression Model Estimates

Dependent Variable: RGDP*				
Method: Least Squares				
Variable	Coefficient	Std. Error	t-Statistic	Probability
CRAS*	1.1760	0.3622	3.2468	0.0029
CRIS*	2.3331	0.6802	3.4300	0.0018
CRCS*	-0.3552	0.4858	-0.7312	0.4703
R-squared	0.7870	Mean dependent var		0.0000
Adjusted R-squared	0.7728	S.D. dependent var		1.0000
S.E. of regression	0.4766	Akaike info criterion		1.4424
Sum squared resid	6.8152	Schwarz criterion		1.5784
Log likelihood	-20.7988	Hannan-Quinn criterion		1.4881

Source: Authors’ edit

The standardized regression model estimates presented in Table 6 indicated that both credit to the agricultural sector and credit to the industrial sector exerted a positive and significant effect on economic growth. However, credit to the commercial service sector exerted a negative but insignificant effect, as was earlier obtained in the empirical study by John and Lawal (2019). Going by the coefficient, if the (standardized) credit to the agricultural sector increases by one standard deviation, on average, the (standardized) RGDP increases by about 1.176 standard deviations. Also, if the (standardized) credit to the industrial sector increases by one standard deviation, on average, the (standardized) RGDP increases by about 2.3331 standard deviations. From the foregoing, it can be observed that the coefficient of credit to the industrial sector is larger compared to that of others. This implies that credit to the industrial sector impacted RGDP relatively higher compared to other sectorial credit allocations.

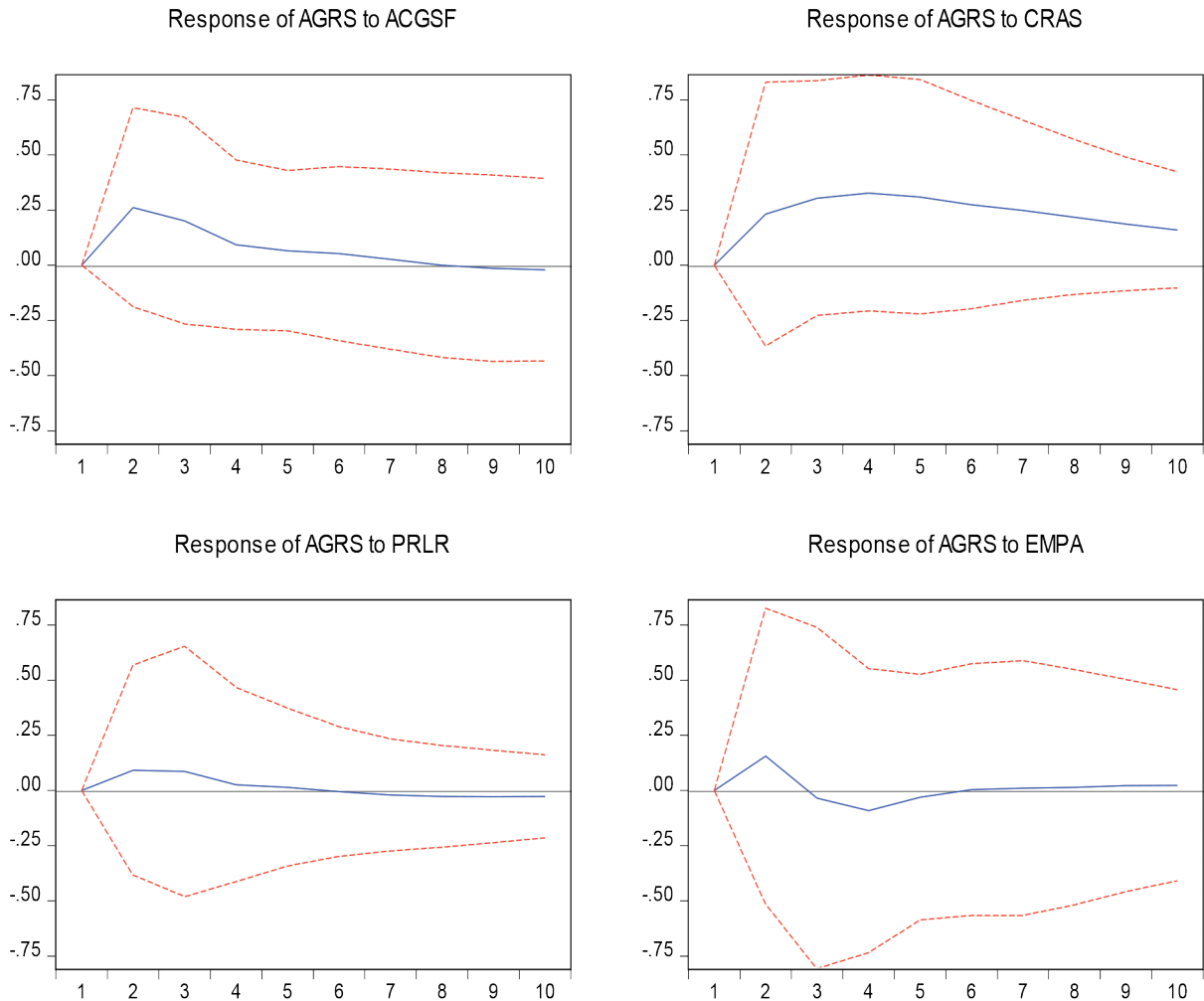
4.7 Impulse Response Functions

The impulse response functions (IRFs) have been obtained to check how shocks in key variables could affect the various sectoral performances. In Figure 3, the IRFs showcase how the agricultural sector performance responds to shocks in the agricultural credit guarantee scheme fund, commercial bank credit to the agricultural sector, interest rate, and employment in agriculture. The observed responses indicate that AGRS responds positively to innovations in ACGSF in the short run, after which the impact of the shock decomposes in the long run. Also, the agricultural sector performance responded positively to shocks in commercial bank credit to the sector both in the short run and in the long run, though the impact of the shock tends to decline in the long run. This portrays that credit is of core importance in the development of the agricultural sector of the Nigerian economy. Improved credit availability will spur agri-business expansion, thereby fostering productivity within the sector.

The agricultural sector performance responded positively to shocks in interest rates in the short run, but such an effect tends to decompose in the 7th period, after which the response becomes negative in the long run. This therefore signals the fact that though the farmers may tolerate the rate of interest rate in the short run to borrow to finance their business expansion, such a loan can be a burden in the future, which therefore impedes productive agricultural activities.

Figure 3. Response of agricultural sector performance to shocks in selected variables

Response to Cholesky One S.D. (d.f. adjusted) Innovations \pm 2 S.E.



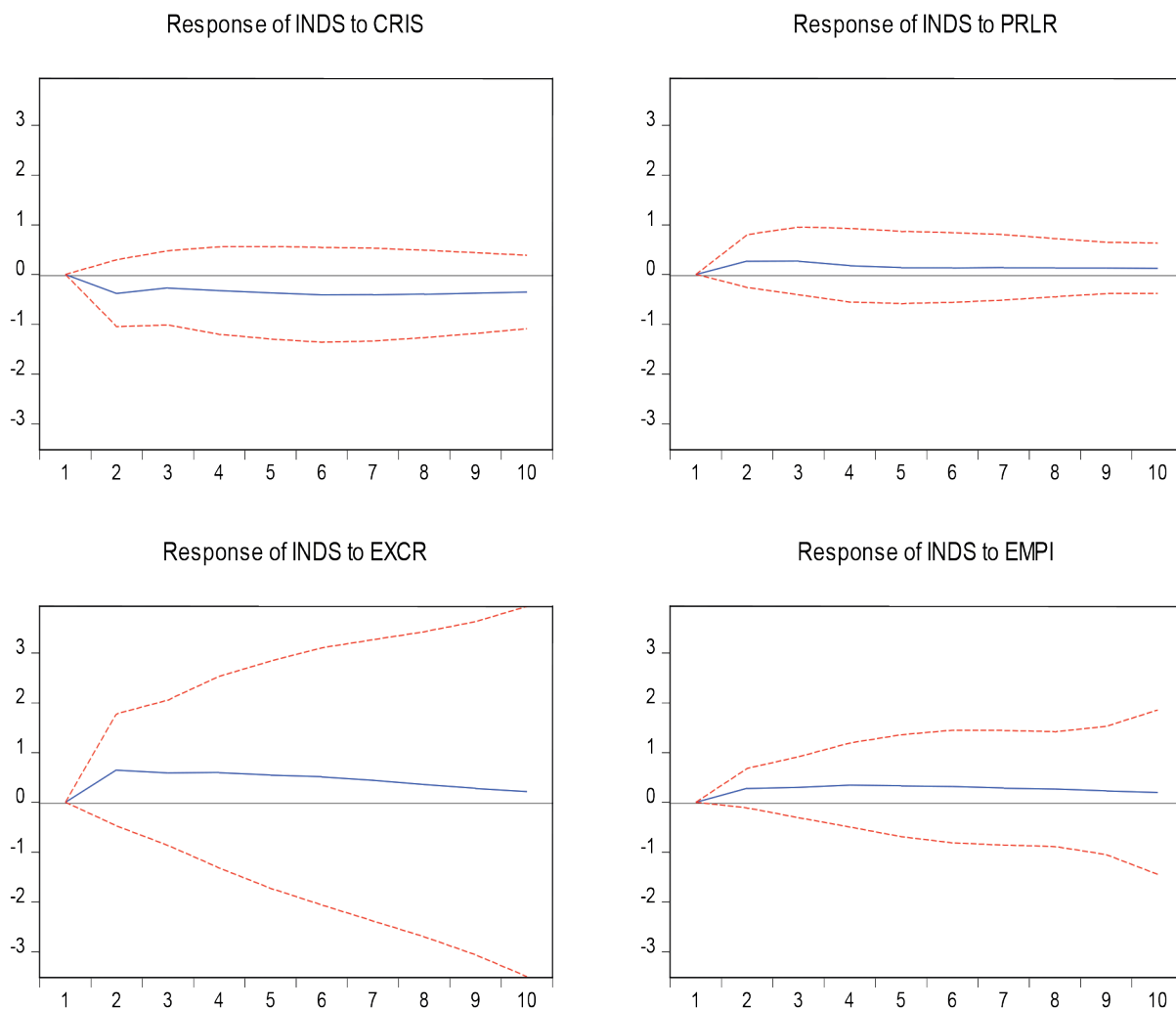
Source: Authors' edit

The response of the agricultural sector's performance to employment in the agricultural sector is not uniform, as it moves between positive and negative responses. The implication of this is that periods of greater labor involvement will spur agricultural productivity, while periods of declining employment within the sector will cause productivity to decline.

In Figure 4, the response of industrial sector performance to shocks in credit to the industrial sector, interest rate, exchange rate, and employment in the industrial sector is presented. From the IRFs, it is observed that the industrial sector performance responded negatively to innovations in credit to the industrial sector. This is contrary to the positive response that the sector should have from innovations in credit supply. This, therefore, underscores the fact that positive credit shocks will not drive the needed growth within the agricultural sector. This is a reflection of the need for the provision of the required economic overheads that are crucial for industrial enterprises to thrive, rather than greater reliance on credit to spur productivity.

Figure 4. Response of industrial sector performance to shocks in selected variables

Response to Cholesky One S.D. (d.f. adjusted) Innovations \pm 2 S.E.



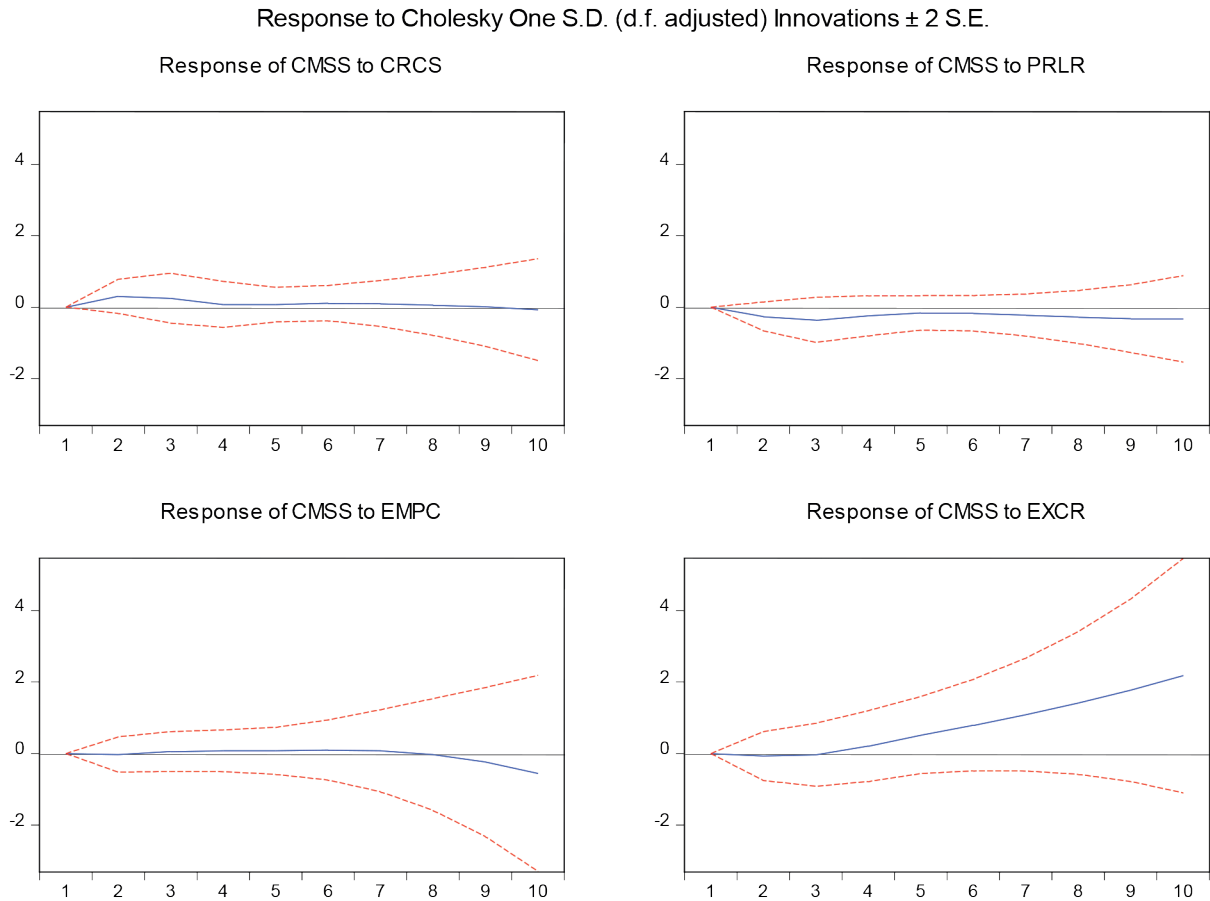
Source: Authors' edit

Though the industrial sector's performance responded positively to innovations in interest rates, such a response is weak and tends to decompose in the long run. The industrial sector's performance, however, responded positively to innovations in the exchange rate. This underscores the fact that improvement in the foreign exchange market through a favorable exchange rate policy will spur the capacity of industrialists to import the needed input for production at a cheaper rate, thereby aiding improved industrial operations. It is also observed that industrial sector performance responded positively to innovations in employment within the sector, both in the short run and in the long run. This signals that increased employment within the industrial sector, given that the marginal productivity of labor is not zero, will spur productivity within the sector.

On the response of the commercial sector to shocks in credit supply, interest rate, employment in the sector, and exchange rate, Figure 5 presents the impulse response function, where it can be observed that commercial bank credit to the commercial service sector only improves the sector's performance in the short run, after which the impact decomposes in the long run. This, therefore, signals the validity of the structuralists' hypothesis whereby banks have a limited role

to play in the provision of investment finance to firms after a certain period. This is because over time, businesses will rely on their retained earnings for their business expansion; hence, credit plays a less important role in the provision of finance for expansion in the long run.

Figure 5. Response of service sector performance to shocks in selected variables



Source: Authors' edit

It is further observed that the commercial service sector performance responds negatively to shocks in the interest rates. Consequently, a positive shock in the interest rate will discourage borrowing, thereby causing a decline in investment within the commercial service sector. In addition, the commercial service sector performance is less responsive to shocks in employment in the short run; however, the effect response becomes negative in the long run, showcasing the possibility of a capital-intensive mode of operation in the long run. The commercial service sector responded positively to shocks in the exchange rate. This portrays that improvement in the foreign exchange market could serve as catalysts for improved commercial service sector performance in Nigeria.

4.8 A discussion of the major findings

One of the key findings of the study is that commercial bank loans exerted a positive effect on all of the sectors (agriculture, industry, and commercial service sectors) of the Nigerian economy. This is an indication that increased credit allocation will help spur the performance of these sectors by increasing their productivity since credit is a crucial capital for production.

Hence, the findings of the study point out the role of the financial system in mobilizing financial resources to the real sector of the economy and therefore support the supply-leading financial hypothesis (Levine, 2005; Levine, 1997; King & Levine, 1993b; McKinnon, 1973; Shaw, 1973). Consequently, a developed financial system will aid in the efficient allocation of credit to the key sectors of the economy at the lowest possible cost, and this can spur the performance of such sectors.

The prime lending rate was observed to exert a positive effect on agricultural and industrial sector performance, while the effect on the commercial service sector was negative. This denotes the fact that different sectors of the economy cannot do well given a universal interest rate. Consequently, the prevalent interest rate during the study period was only favorable to the agricultural and industrial sectors but stifled growth within the commercial service sector of the Nigerian economy.

Another important finding of the study is that employment in each of the sectors positively affected their respective performance. Consequently, there are still potentials for these sectors to grow if more labor is employed. This portrays, therefore, the absence of diminishing marginal productivity of labor within the agricultural, industrial, and commercial service sectors of the Nigerian economy. Thus, greater outputs will be obtained from each of these sectors if more labor is combined with the available capital to boost production in each of the sectors.

It was also observed that credit to the industrial sector exerted a relatively greater impact on the economic growth of Nigeria compared to credit to the agricultural and commercial service sectors. Since the industrial sector has greater spillover effects compared to other sectors of the economy, it has been regarded as an engine of growth (Kaldor, 1966) and consequently, credit allocated to this sector will boost productivity within and beyond the sector, which will spur growth.

5 Conclusions

This paper examined the effect of credit to different sectors of the Nigerian economy on the performance of those key sectors. Specifically, the study examined: the effect of commercial banks' credit to the agricultural sector on agricultural sector performance; the influence of commercial banks' credit to industrial sector on industrial sector performance; the influence of credit to the commercial service sector and commercial service sector performance; and the relative impact of credit to agricultural, industrial, and commercial service sectors on the growth of the Nigerian economy. Time series data from 1991 to 2023 were deployed in the study and were obtained from the Central Bank of Nigeria's statistical bulletin and the World Development Indicators. The data analysis was conducted using the Augmented Dickey-Fuller (ADF) unit root test to ascertain the order of integration of the variables, the Hansen Parameter Instability test to check for the existence of cointegrating relationship in the models, the Fully Modified Ordinary Least Squares (FMOLS) to estimate the parameter estimates, and the standardized regression analysis to ascertain the relative impact of the sectorial credit to the growth of the Nigerian economy.

The result of the unit root test reported that the variables were integrated at a higher order of first difference and second difference. Therefore, the test for cointegration was conducted, and the result reported evidence of a cointegrating relationship in the three models. Given the higher order of integration, a cointegrating regression based on the FMOLS approach was utilized, and the results are briefly stated as follows.

Commercial banks' credit to the agricultural, industrial, and commercial service sector exerted positive effect on the performance of their respective sectors, though that of the agricultural sector was insignificant. However, the agricultural credit guarantee scheme fund (ACGSF) has been potent in spurring productivity within the agricultural sector of the Nigerian economy. Therefore, increased credit to the industrial and commercial service sectors was associated with an increase in their respective sectors' performances.

Employment in agriculture, industry, and commercial service sectors all exerted positive and significant effect on their respective sectors' performances. Therefore, increased labor employment in each of the sectors will lead to increased performance since there is no diminishing marginal productivity of labor across the various sectors.

Prime lending rate was observed to exert a positive but insignificant effect on the performance of the agricultural sector, while the effect on the industrial sector was positive and significant. Thus, the interest rate was favorable in boosting productivity in the industrial sector. However, the effect of interest rate on the commercial service sector was negative and statistically significant.

Government expenditure on economic services was observed to exert a positive and significant effect on industrial sector performance in Nigeria. However, its effect on the agricultural sector was negative and significant, while for the commercial service sector, it was negative but insignificant. Thus, government expenditure on economic services boosted industrial sector performance in Nigeria during the period of analysis.

While the exchange rate exerted a positive and significant effect on agricultural sector performance, it generated a positive but insignificant effect on the commercial service sector. Its effect on the industrial sector was, however, negative and statistically significant. This means that exchange rate depreciation retards industrial sector performance but boosts agricultural sector performance in Nigeria.

The standardized regression model was also estimated, and the result indicated that both credit to the agricultural and industrial sectors exerted both positive and significant effects on the economic growth of Nigeria, while credit to the commercial service sector exerted a negative but insignificant effect. With respect to their relative impacts, credit to the industrial sector was observed to have exerted the greatest impact on economic growth in Nigeria during the study period. The paper thus concluded that commercial banks' credit is a crucial factor that will spur growth within the Nigerian economy.

6 Recommendations

Based on the study's findings, the following practical recommendations are proposed, along with suggestions for the relevant organizations in Nigeria to carry them out and the recommended timeframes for implementation.

A) A timely release of the agricultural credit

Recommendation: Increased credit to the agricultural sector is crucial to combat food price inflation and enhance agricultural production. However, it is essential that funds are released to farmers in a timely manner to ensure they are used effectively for intended purposes, such as farm inputs and production enhancements. Delays in the disbursement of funds can lead to misuse or diversion, diminishing the intended impact.

Relevant Organizations: The Central Bank of Nigeria (CBN), in collaboration with the

Nigerian Agricultural Credit Guarantee Scheme Fund (ACGSF) and the Federal Ministry of Agriculture and Rural Development (FMARD).

Timeframe: Immediate implementation, with continuous monitoring and evaluation over the next 12 months. The CBN and ACGSF should expedite the disbursement process, ensuring that funds are accessible during planting seasons (typically from January to June).

Implementation Action: Establish a timeline and monitoring mechanism for the prompt release of funds and ensure that agricultural loans are linked to proper use and timely repayments.

B) An increase in credit allocation to the industrial sector

Recommendation: To stimulate industrial productivity, it is necessary to increase credit allocation to the industrial sector. This should be accompanied by strategic support from the Bank of Industry (BOI), which should oversee the monitoring, supervision, and evaluation of the credit utilization.

Relevant Organizations: The Bank of Industry (BOI), in partnership with the Central Bank of Nigeria (CBN) and relevant regulatory agencies such as the Federal Ministry of Industry, Trade, and Investment (FMITI).

Timeframe: Implementation should commence immediately with an increased focus over the next 24 months. Industrial credit allocations should be boosted annually to ensure sustainable growth in the sector.

Implementation Action: The BOI should roll out tailored credit programs that are well-monitored for specific industrial sectors such as manufacturing, agro-processing, and construction. CBN should facilitate the release of industrial credits, backed by robust support and tracking mechanisms from BOI.

C) Channeling credit to the commercial services sector

Recommendation: Commercial banks should significantly increase their credit allocations to the commercial services sector, but this should be done cautiously. Credit allocation should prioritize sectors such as trade, general commerce, oil and gas, real estate, and power and energy, while ensuring that funds are not diverted for speculative purposes, especially within the financial sector.

Relevant Organizations: The Central Bank of Nigeria (CBN), Nigerian Stock Exchange (NSE), and the National Economic Reconstruction Fund (NERFUND).

Timeframe: Implementation should be phased in over the next 18 months, with a focus on developing targeted programs for specific sub-sectors.

Implementation Action: The CBN should introduce targeted credit schemes, focusing on productive sectors, with strict guidelines to ensure funds are directed toward businesses engaged in real production rather than speculative activities. These programs should be closely monitored by relevant bodies such as NERFUND and NSE.

D) Credit rationing in favor of the industrial sector

Recommendation: Given the findings of this study, prioritizing the industrial sector for credit allocation will have the most substantial effect on overall economic growth. Credit rationing in favor of the industrial sector should be a consistent policy, supported by continuous assessment and adjustment to ensure optimal economic outcomes.

Relevant Organizations: The Central Bank of Nigeria (CBN), Bank of Industry (BOI), and the National Planning Commission (NPC).

Timeframe: Immediate policy adoption, with quarterly reviews and adjustments over the next 24 months.

Implementation Action: The CBN should introduce formal guidelines for credit rationing to direct resources primarily toward the industrial sector. The NPC should play a key role in forecasting the future needs of the industrial sector, ensuring that economic planning aligns with credit distribution policies.

These recommendations are aimed at addressing critical gaps in credit allocation and ensuring that such credit allocations have a meaningful impact on Nigeria's economic growth. Each recommendation involves the collaboration of key financial and regulatory institutions to facilitate effective implementation and long-term sustainability. Regular monitoring and adaptive policy measures will be required to ensure that these initiatives generate the desired economic outcomes.

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Entrepreneurship within the European Union's Industrial Policy in Academic Debates

A Scientometric Study

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Abstract

This study addresses a critical gap in understanding the evolving scholarly discourse on entrepreneurship within the European Union's industrial policy framework. While prior researches have examined isolated aspects of innovation or regional development, few studies have systematically mapped the intellectual landscape, thematic priorities, and collaborative networks shaping this important field. This study employs a mixed-methods bibliometric approach, leveraging Scopus data (1990–2024) and tools, i.e., RStudio, VOSviewer, and Python, to analyze 2,150 publications from 937 journals and 4,943 authors. This work offers the novelty of an evaluation of both quantitative trends (e.g., productivity, citation patterns) and qualitative thematic evolution, investigating entrepreneurship within the EU industrial policy research. Key findings reveal an 11.88% annual growth in publications since 1990, signaling heightened academic engagement with sustainability transitions (e.g., circular economy, Industry 4.0), regional innovation strategies, and policy frameworks. Leading journals, e.g., *Entrepreneurship and Regional Development*, dominates the discourse, while influential works done by Ghisellini et al. (2016) and Nelson and Winter (1985). Collaborative networks highlight interdisciplinary and cross-border partnerships, particularly in addressing climate resilience and digital transformation. This study may contribute to a roadmap for policymakers to align support structures with emerging research priorities, e.g., green entrepreneurship and SME digitalization, while underscoring the need for inclusive frameworks to integrate non-Anglophone and regional scholarship.

Keywords

bibliometrics, entrepreneurship policy, European Union, industrial policy, scientometrics

1 Introduction

Entrepreneurship is the foundation of economic development within the European Union (EU), as it drives growth, innovation, and contributes to regional development. It significantly mitigates unemployment, with 2.5 million new enterprises generating 3.3 million jobs in 2018 alone (Mercedes, 2021). These ventures, particularly in technology, innovation, and services,

not only address labor market gaps but also stimulate economic growth via the introduction of novel products and business models (Komninos et al., 2024). Entrepreneurship enhances productivity and competitiveness, strengthening the EU's strategic focus on sustained growth (Mercedes, 2021). The innovation-driven nature of entrepreneurship further supports the EU's global position, and such an ecosystem fosters adaptability, enabling small and medium-sized enterprises (SMEs) to adapt to the competitive markets while shaping flexible employment (Luna & Serrano, 2005). The EU has implemented various policies to support entrepreneurship, e.g., bureaucracy reduction, improving physical infrastructure, and providing access to financing (González-Morales et al., 2023; Komninos et al., 2024). Those are the keys to creating a constructive environment, as targeted policies are required to bridge regional gaps between the West-North versus the South-East, and foster inclusive entrepreneurial ecosystems (Bartekova & Janikovicova, 2025).

The EU's approach to establishing entrepreneurship policy has evolved considerably. In its early stages, prior to the late 1990s, efforts lacked dedicated frameworks for fostering entrepreneurial activity, relying instead on broad enterprise-promotion strategies that indirectly addressed the needs of SMEs and entrepreneurs, often incidentally (Arenal et al., 2021). Between the late 1990s and early 2010s, the focus transitioned toward analyzing the entrepreneurial landscape and implementing measures to boost SMEs, emphasizing systemic support (Arenal et al., 2021). From the 2010s onward, policy frameworks have grown, prioritizing not only the expansion of entrepreneurial ventures but also their strategic development in terms of innovation, scalability, and sustainability (Arenal et al., 2021). The same goes for the EU's industrial policy, which has undergone significant evolution. The launch of the Europe 2020 Strategy marked a flagship initiative prioritizing industrial competitiveness, SME expansion, and employment creation (Karlsson & Tavassoli, 2019). Designed to align with global economic integration and rapid technological progress, this framework promotes strategic state involvement in advancing innovation and sustainable growth (Benner, 2019; Fontana & Vannuccini, 2024). Central to this approach are programs, e.g., Horizon 2020 and smart specialization, which emphasize innovative public-sector-driven initiatives and strategic policy measures (Benner, 2019).

1.1 Industrial policy and entrepreneurship in the EU

The EU's industrial and entrepreneurship policies, while different in focus, reflect complementary yet different strategic priorities. Industrial policy centers on strengthening the competitive advantage and long-term feasibility of the manufacturing sector, addressing systemic challenges, e.g., technological disruption, globalization, and competition from emerging economies (Nemcová, 2006; Zourek, 2007). Industrial policy employs a dual approach of sector-specific interventions, i.e., targeting industries like automotive or renewable energy, and horizontal measures that cut across technology, environmental sustainability, and workforce development (Farla et al., 2015). Strategies include enhancing cost competitiveness through internal reduction, scaling innovation via frameworks like Horizon 2020, and reversing deindustrialization trends by elevating manufacturing's contribution to GDP (Benner, 2019; Wigger, 2018).

In contrast, entrepreneurship policy prioritizes the development of a dynamic ecosystem for business creation and innovation, with a focus on reducing bureaucratic administration and fiscal barriers to enterprise growth (Buracas et al., 2012; Dvouletý et al., 2020). While also leveraging multilevel governance, its strategies emphasize enabling conditions for SMEs and high-impact ventures, e.g., access to financing, skill development, and market-oriented innovation (Bate, 2021; Ignatov, 2018; Krakowiak-Bal et al., 2017). Such evolutionary shifts from a generic SME support

to targeted initiatives promoting high-growth entrepreneurship reflect efforts to drive sustainable economic development (Crudu, 2019; Gajewski, 2017). Strategy Europe 2020 underscores its role in sustainable development, linking entrepreneurial features to regional economic strategies (Varga et al., 2020). Table 1 explains aspects of the EU’s industrial and entrepreneurship policy.

Table 1. Aspects of the EU’s Industrial and Entrepreneurship Policies

Aspect	Industrial Policy	Entrepreneurship Policy
Key Frameworks	Europe 2020 Strategy, Horizon 2020, smart specialization	Tailored instruments for each country’s economic structure
Focus Areas	SME growth, innovation, technology, skills, productivity	Promotion of entrepreneurship, addressing financial barriers
Coordination	Integrated approach combining various policy dimensions	Intersectoral coordination, particularly in education and employment
Challenges	Technological change, global trade, emerging market competitors	Varying effectiveness depending on environmental conditions
Opportunities	Innovation-driven economy, structural change, productivity revolution	Eco-innovation, local development in rural areas

Source: Author’s edit based on: Benner (2019); Bosworth et al. (2011); Ghisetti et al. (2017); Karlsson & Tavassoli (2019); Larosse (2012); Zourek (2007).

1.2 Problem statement and main research question

Current scholarship on the EU’s industrial and entrepreneurship policies largely examines them as distinct domains, with industrial policy focusing on sectoral competitiveness and structural economic shifts, and entrepreneurship policy emphasizing ecosystem-building and SME facilitation. A critical gap lies in exploring entrepreneurship issues within the EU’s industrial policy. Those, as previously explained, tend to analyze these policies as disconnected frameworks, overlooking synergies such as SME-driven innovation within industrial sectors, or the influence of entrepreneurial innovation on reducing deindustrialization trends.

As entrepreneurship intersects with industrial policy, this raises an important question, namely: *How have the EU’s industrial policy frameworks, as discussed in academic literature, addressed entrepreneurship issues?* Bibliometric analysis, or scientometric study, a method mapping thematic development and citation networks, could explore such underexplored connections, addressing this important question.

2 Scientometric frameworks

The theoretical foundation of this scientometric study draws on probabilistic models of cumulative gain, which analyze systems overseen by stochastic procedures (randomness modelling systems) (Firmansyah et al., 2022; Priandani et al., 2025). These frameworks rely on skewed or hyperbolic distributions to statistically represent phenomena where prior achievements increase chances of future success (Hassan et al., 2022; Hudaefi, 2025). In academic contexts, for instance, highly cited works gain unequal visibility, prolonging their influence (Price, 1976), while productive researchers maintain higher publication rates compared to less-established

peers (Price, 1976). Such dynamics underpin Lotka's law (Pao, 1985), which models author productivity, and Bradford's law (Alabi, 1979), which examines journal distribution patterns.

To investigate entrepreneurship issues within the EU's industrial policy in academic works, this study employs scientometric approaches, specifically, intellectual landscape mapping and productivity evaluations, using data from the Scopus database. Intellectual mapping integrates methods such as citation or co-citation analysis, bibliographic coupling, collaboration networks, and conceptual co-occurrence to uncover thematic trends and institutional collaborations (Aria & Cuccurullo, 2015; Donthu et al., 2021).

2.1 Productivity evaluation

Bibliometric productivity analysis assesses scholarly contributions through metrics, e.g., publication counts, citation frequencies, and impact ratios. It identifies emerging trends, evaluates the influence of authors, institutions, journals, and countries, and maps thematic evolution across individual and collective levels (Donthu et al., 2021; Hudaefi, 2025). In this study, productivity analysis addresses the first research question (RQ1):

- *How have academic publications, author networks, and citation patterns evolved in addressing entrepreneurship-related issues within the EU's industrial policy?*

2.2 Citation networks and intellectual development

Citation analysis serves as an intellectual impact assessment tool, mapping citation flows to identify seminal works, journals, or researchers (Supriani et al., 2022). Co-citation analysis infers thematic proximity between frequently co-cited publications, revealing interdisciplinary clusters (Ma'ruf et al., 2024). Together, these methods trace the intellectual architecture of a field. For this study, they grounded the second research question (RQ2):

- *Which articles, authors, countries, and affiliations have made the most significant scholarly contributions to analyzing entrepreneurship-related issues within the EU's industrial policy?*

2.3 Conceptual and thematic linkages

Co-word analysis decodes evolving conceptual frameworks by examining term co-occurrence in academic texts (Aria & Cuccurullo, 2015), while bibliographic coupling groups publications sharing similar references, enabling the identification of thematic and collaborative clusters (Kessler, 1963). These techniques collectively ground the third research question (RQ3):

- *How do scholarly works addressing entrepreneurship issues within the EU industrial policy connect through shared theoretical frameworks, cited literature, and conceptual similarities?*

2.4 Collaborative network analysis

Network analysis evaluates authorship connections (Apriantoro & Septianozakia, 2024), focusing on micro-networks of high-impact contributors to map cross-institutional and cross-border partnerships (Donthu et al., 2021). It visualizes knowledge dissemination pathways and institutional associations. In this study, it addresses the fourth research question (RQ4):

- *How do collaborative networks among authors, academic institutions, and countries shape the entrepreneurship issues within the EU industrial policy?*

3 Data and tools

Data was collected via a systematic approach from the Scopus database, generating bibliographic data on entrepreneurship within the EU's industrial policy. The initial search was restricted to the 28 EU member states (the UK being included) to ensure geographic relevance. A keyword-based query in Scopus' database (article titles, abstracts, and keywords) using 'industrial policy' was first done, resulting in the initial 21,075 documents. Further search refinement was done within this initial result, in which the keywords 'entrepreneurship policy' were used, yielding the final dataset of 2,150 documents. This final corpus was used for analyzing conceptual and empirical works on entrepreneurship within the EU's industrial policy.

The bibliometric analysis in this study used primarily RStudio. It is a machine learning tool that requires proficiency in language programming, statistical computing, and graphical analysis. This study utilized the bibliometric packages, i.e., bibliometrix and biblioshiny, developed by Aria and Cuccurullo (2017). Furthermore, VOSviewer, developed by Van Eck and Waltman (2010), was utilized to generate graphical networks for various bibliometric analyses, e.g., co-occurrence, co-citations, and co-authorship analyses. In addition, Phyton was also used to reproduce the visualization of some part of the analysis.

3.1 Overview of the dataset

As detailed in *Table 2*, the dataset comprises 2,150 peer-reviewed publications sourced from the Scopus database, spanning from 1990 to 2024. This dataset highlights influential studies on entrepreneurship issues within the EU's industrial policy, showing a publication growth rate of 11.88% annually and an interdisciplinary scope disseminated across 937 different publication platforms. The majority of documents are journal articles (n=1,560), complemented by edited book chapters (n=202), conference proceedings (n=114), review papers (n=93), books (n=71), and others. The collaboration of this research domain is evident through the involvement of 4,648 scholars, with an average of 2.75 co-authors per paper and 37.85% of publications reflecting international research partnerships. Thematic diversity is captured through 5,197 author-assigned keywords and 4,348 algorithmically extracted keywords plus terms.

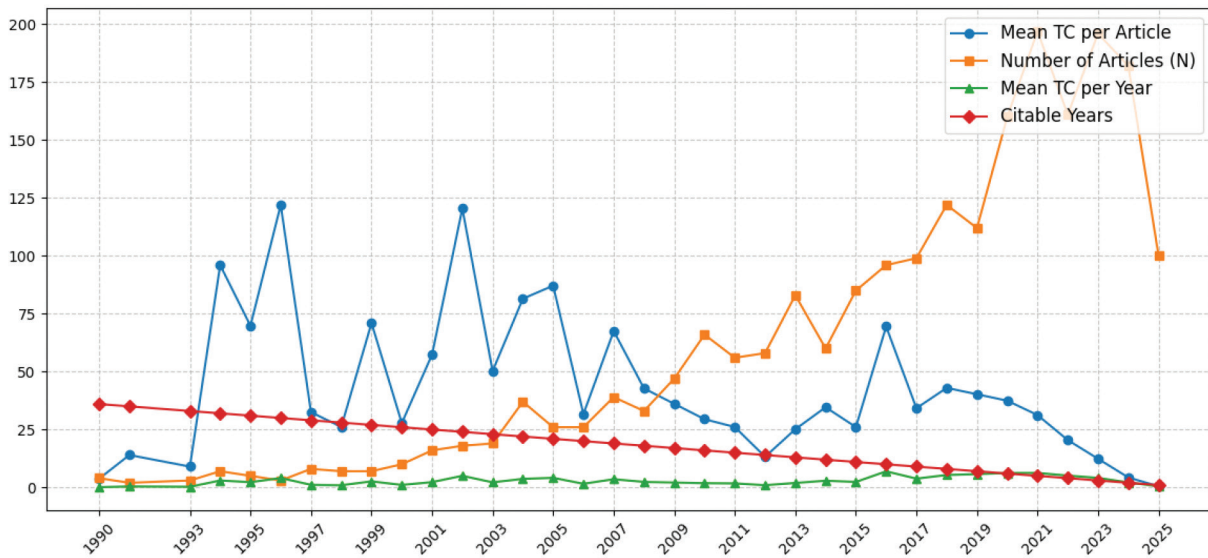
Figure 1 shows trends in academic citations from 1990 to 2024. Early years (1990–1994) show low mean citations per article (≤ 14) and declining citable years (36–32). A sharp increase occurs in 1995, with mean citations rising to 69.8 and stabilizing until 2000. Subsequent fluctuations follow, peaking at 120.44 in 2002 before declining. Notably, citable years steadily decrease from 36 to 1, reflecting reduced long-term citation relevance. Post-2010, the number of publication surges, reaching 100 in 2025, while mean citations per year fall below 1 after 2022. In addition, *Figure 2* visualizes the relationships between authors (AU), journals (SO), and their keywords (KW_Merged) from the dataset. The flow from left to right shows which authors publish in which journals and the keywords associated with their publications. M. R. Di Tommaso, F. Spigarelli, and E. Barbieri appear to be highly productive, with many papers published across multiple journals. The most popular journals seem to be *Industry and Innovation* and *Technovation*, which align strongly with keywords, e.g., 'industrial policy', 'innovation', and 'industrial development'.

Table 2. Descriptive statistics of the dataset

<i>Main Information About Data</i>	
Timespan	1990:2024
Sources (Journals, Books, etc.)	937
Documents	2050
Annual Growth Rate %	11.88
Document Average Age	8.53
Average citations per doc	32.96
References	135561
<i>Document Contents</i>	
Keywords Plus (ID)	4348
Author's Keywords (DE)	5197
<i>Authors</i>	
Authors	4648
Authors of single-authored docs	383
<i>Authors Collaboration</i>	
Single-authored docs	418
Co-Authors per Doc	2.75
International co-authorships %	37.85
<i>Document Types</i>	
Article	1560
Book	71
Book chapter	202
Conference paper	114
Editorial	6
Note	2
Retracted	1
Review	93
Short survey	1

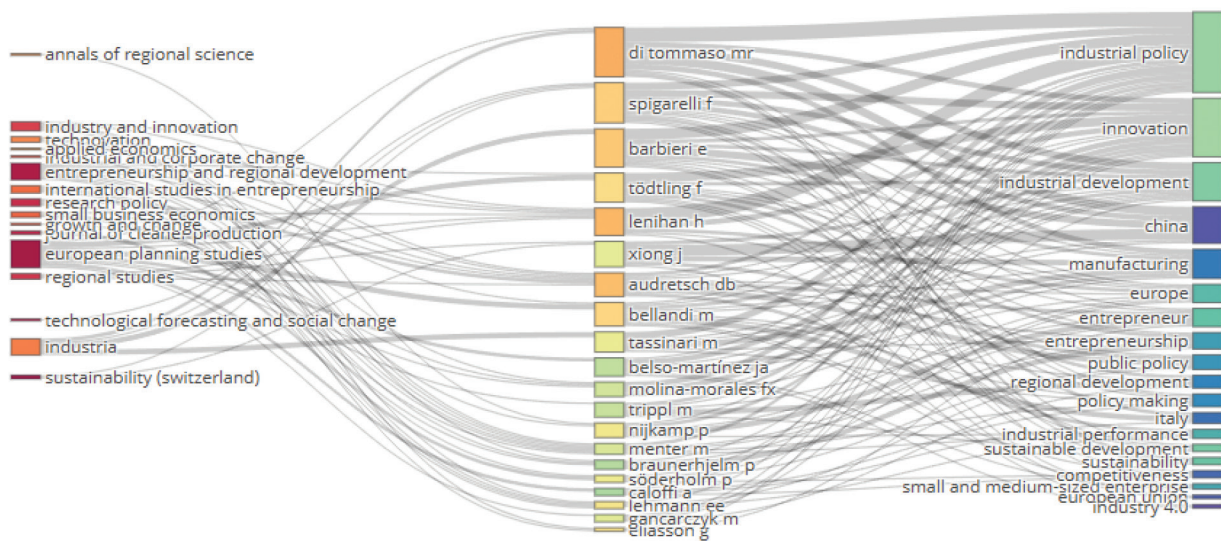
Source: Author's analysis via Biblioshiny.

Figure 1. Publication and citation trends



Source: Author’s analysis via Biblioshiny, reproduced via Phytton

Figure 2. Sankey flows of impactful authors, significant keywords, and academic sources



Source: Author’s analysis via Biblioshiny. Middle plot: Authors. Right plot: Keywords. Left plot: Academic sources.

4 Results and analyses

4.1 Impactful academic sources

Impactful academic sources (e.g., journals, books, conference proceedings, among others) are measured based on quantitative citation metrics, e.g., h-index, g-index, m-index, total citations (TC), and number of publications (NP). Of the 937 academic sources in the dataset, *Entrepreneurship and Regional Development* emerges as the most influential with the highest

h-index (30), g-index (50), among all entries. In terms of NPs, *European Planning Studies* is one of the most influential works with 90 NPs, while *Journal of Cleaner Production* was the highest in terms of TCs (7,811). *Technological Forecasting and Social Change* follows with a g-index of 47 and 3,204 total citations. *Table 3* details the top 10 academic sources, measured by academic index metrics, total citations (TCs), and number of publications (NPs).

Table 3. Top 10 academic sources

Impact based on index metrics					Impact based on TC		Impact based on NP		
h_index		g_index		m_index		Total Citations (TC)	Number of publications (NP)		
Entrepreneurship and Regional Development	30	Entrepreneurship and Regional Development	50	Sustainability (Switzerland)	2.4	Journal of Cleaner Production	7811	Sustainability (Switzerland)	90
European Planning Studies	27	European Planning Studies	47	Energies	1.5	Research Policy	4947	European Planning Studies	74
Research Policy	27	Technological Forecasting and Social Change	47	IEEE Transactions on Engineering Management	1.5	Technological Forecasting and Social Change	3204	Entrepreneurship and Regional Development	51
Journal of Cleaner Production	26	Sustainability (Switzerland)	45	Technological Forecasting and Social Change	1.1	Entrepreneurship and Regional Development	2565	Technological Forecasting and Social Change	47
Sustainability (Switzerland)	26	Journal of Cleaner Production	38	Journal of Cleaner Production	1	European Planning Studies	2415	Journal of Cleaner Production	38
Technological Forecasting and Social Change	24	Research Policy	35	Heliyon	1	Sustainability (Switzerland)	2300	Research Policy	35
Industry and Innovation	18	Regional Studies	32	Environmental Science and Pollution Research	1	International Journal of Information Management	2274	Regional Studies	32
Business Strategy and The Environment	15	Industry and Innovation	30	Journal of Environmental Management	1	Long Range Planning	1875	Industry and Innovation	31
Regional Studies	15	Business Strategy and The Environment	26	Sustainability (Switzerland)	1	Industrial and Corporate Change	1620	Business Strategy and The Environment	26
Industrial and Corporate Change	14	Industrial and Corporate Change	20	Biomass and Bioenergy	1	Regional Studies	1570	Energies	22

Source: Author’s analysis via Biblioshiny.

4.2 Impactful manuscripts

The top 10 papers are evaluated based on global citations (GC) (overall citation in Scopus), local citations (LC) (citation in the dataset), and most-referred works. Of the 2,150 manuscripts in the dataset, *A Review on Circular Economy: The Expected Transition to a Balanced Interplay of Environmental and Economic Systems* (Ghisellini et al., 2016) is the most influential

in the dataset, measured based on its 23 LCs and 4,192 GCs. Closely following in TC is *Territorial Dynamic, Innovative Milieus and Regional Policy* (Maillat, 1995) with 17 LCs, and in GC is *Artificial Intelligence (AI): Multidisciplinary Perspectives on Emerging Challenges, Opportunities, and Agenda for Research, Practice and Policy* (Dwivedi et al., 2021) with 2,257 GCs. In addition, *Digital Affordances, Spatial Affordances, and the Genesis of Entrepreneurial Ecosystems* (Autio et al., 2018) has 1,756 GCs and 15 LCs. Furthermore, in terms of the most cited references, of the 143,816 references in the dataset, *The Competitive Advantage of Nations* (Porter, 1990), *Principles of Economics* (Marshall, 2013), and *An Evolutionary Theory of Economic Change* (Nelson & Winter, 1985), are the most cited references with the total citations (TCs) 132, 106 and 68, respectively. Table 4 details the top 10 of the manuscripts in the dataset.

Table 4. Top 10 manuscripts

Total Local Citations (LCs)		Total Global Citations (GCs)		Most Cited References	
Title	LC	Title	GC	Title	TC
A review on circular economy: the expected transition to a balanced interplay of environmental and economic systems	23	A review on circular economy: the expected transition to a balanced interplay of environmental and economic systems	4192	The competitive advantage of nations	132
Territorial dynamic, innovative milieus and regional policy	17	Artificial Intelligence (AI): Multidisciplinary perspectives on emerging challenges, opportunities, and agenda for research, practice and policy	2257	Principles of Economics	106
Digital affordances, spatial affordances, and the genesis of entrepreneurial ecosystems	15	Building dynamic capabilities for digital transformation	1756	An evolutionary theory of economic change	68
Entrepreneurship and the process of firms' entry, survival and growth	12	Digital affordances, spatial affordances, and the genesis of entrepreneurial ecosystems	1063	Geography and Trade	49
Rebirth of Industrial Policy and an Agenda for the Twenty-First Century	11	Circular economy as an essentially contested concept	1036	The economy of cities	42
Industrial Policy: A Dying Breed or A Re-emerging Phoenix	10	Entrepreneurial orientation, technology transfer and spinoff performance of U.S. universities	738	Institutions, institutional change and economic performance	38
Start-up activities, individual characteristics, and the regional milieu: Lessons for entrepreneurship support policies from German micro data	10	Escaping carbon lock-in	733	Clusters and knowledge: local buzz, global pipelines and the process of knowledge creation	31
The promotion of innovation in regional policy: Proposals for a regional innovation strategy	10	Entrepreneurship Capital and Economic Performance	604	Proximity and innovation: a critical assessment	29
Place-based innovation policy for industrial diversification in regions	9	Circular business models: A review	563	Firm resources and sustained competitive advantage	28
Entrepreneurial orientation, technology transfer and spinoff performance of U.S. universities	9	Smart factory performance and Industry 4.0	535	Absorptive capacity: A new perspective on learning and innovation	26

Source: Author's analysis via Biblioshiny.

4.3 Impactful authorship

Table 5 highlights key contributors to the debates on entrepreneurship issues within the EU's industrial policy discussed in academic works. Of the 4,943 individual researchers, M. R. Di Tommaso emerges as the most influential author, evidenced by an h-index of 10, g-index of 15, and a cumulative total citation (TC) count of 4,192. This is closely followed by D. B. Audretsch (h-index: 9; TC: 2,265), and E. Barbieri (h-index: 9; TC: 2,257). Notably, H. Lenihan (h-index: 8; TC: 2,257) and P. Söderholm (h-index: 8; TC: 2,257) are also among the prominent scholars, reflecting their contributions to entrepreneurship issues within the EU's industrial policy. Meanwhile, the m-index values further highlight scholars like O. Lyulyov (m-index: 1.25) and T. Pimonenko (m-index: 1.0). Institutional contributions are led by Lund University (34 publications), followed by Utrecht University (30 publications) and the University of Florence (28 publications). Other notable contributors include Linköping University (25 publications), Luleå University of Technology (25 publications), and Politecnico di Milano (23 publications), all of which emphasize entrepreneurship issues within regional and industrial policy themes.

As depicted in *Figure 3*, geographically, Italy emerges as the leading contributor, with 250 publications, dominated by single-country publications (SCP) (teal), which may indicate a strong domestic research ecosystem. Spain (178) and Germany (132) follow, both exhibiting higher SCP than multiple-country publications (MCP) (red), suggesting localized scholarly activity. Sweden (120) and the Netherlands (91) also mark SCP dominance. Notably, China (62) and Poland (65) display modest MCP contributions, which may be reflective of emerging transnational collaborations. Others, e.g., Greece (35) and Hungary (20), contribute minimally, with small MCP engagement. Furthermore, depicted in *Figure 4*, the network visualized the 103 most impactful authors measured by co-citation frequency. Central to the network is the green cluster, dominated by M. R. Di Tommaso and F. Spigarelli, whose works form a hub in circular economy frameworks and regional innovation systems. This cluster is further supported by P. Söderholm, M. Landabaso, and J. Moodsson (pink cluster), whose cross-linkages emphasize environmental policy, industrial transformation, and entrepreneurship. A second prominent cluster is around J. Korhonen and C. Nuur (orange), emphasizing digital transformation and sustainable operations. Meanwhile, the blue cluster, with significant authors such as M. Trippel and F. Tödtling, focuses on innovation diffusion and policy design, with notable contributions from T. Hansen, reflecting a policy-oriented research agenda.

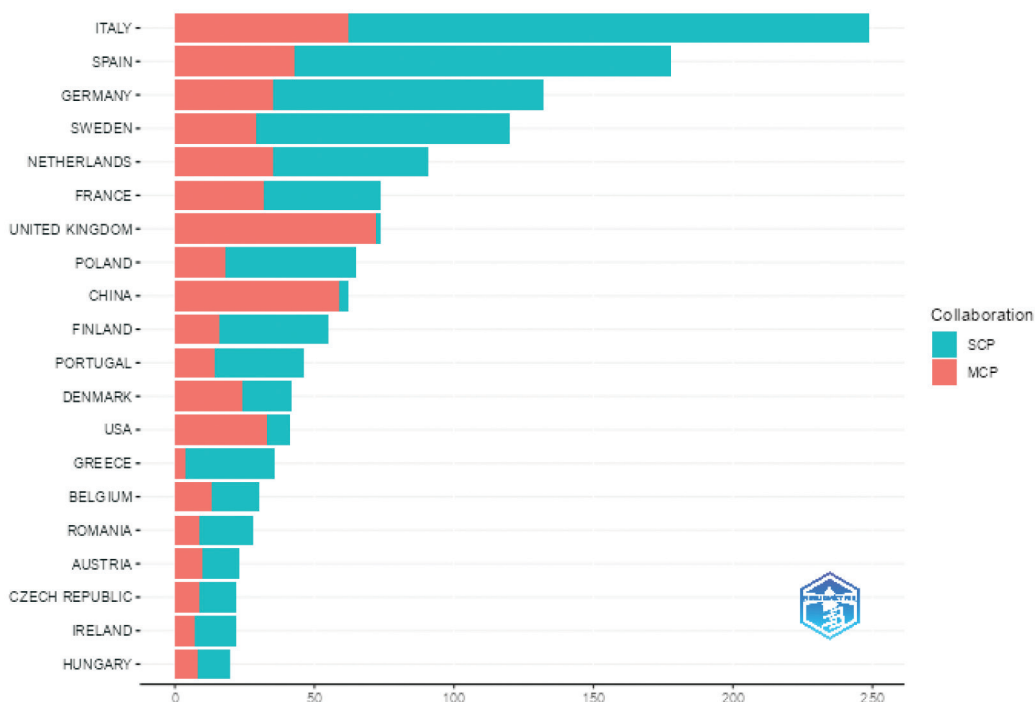
In addition, visualized in *Figure 5*, the historiography of impactful reveals important authorship. Foundational contributions include Johannisson et al. (1994), whose exploration of three phenomena, i.e., industrial districts, science parks, and corporate entrepreneurship in 1980s, shaped entrepreneurship via contextual networks, and Landabaso (1997), who examined the importance of regional innovation strategies to bridge the EU's technology gaps through enhanced public-private collaboration and targeted research and development investments in underdeveloped regions. Bellandi (2001) and Bellandi and Di Tommaso (2005) proposed a framework linking large firms and local economies through balanced social capital and policies, illustrated by China's specialized towns as "new industry" models, where state-driven industrial architecture challenges European competitiveness and informs strategies for regions like Italy's industrial districts. Audretsch (2004) and Wagner and Sternberg (2004) emphasized contextual networks influencing entrepreneurship, while Santarelli and Vivarelli (2007) critiqued entrepreneurial economic forecasting, underscoring cognitive biases in policy design. Aiginger and Rodrik (2020) and Nightingale and Coad (2014) later addressed state-led intrapreneurship and determinants of entrepreneurial success, respectively.

Table 5. Top 10 authorships

Impact Measures						Total Citations (TC)		Number of Publications (NP)		Top Affiliation		Top Country Affiliations	
Author	h-index	Author	g-index	Author	m-index	Author	TC	Author	NP	Affiliation	NP	Country	NP
Di Tommaso, M.R.	10	Di Tommaso, M.R.	15	Lyulyov, O.	1.25	Cialani, C.	4192	Di Tommaso, M.R.	15	Lund University	34	Italy	249
Audretsch, D.B.	9	Audretsch, D.B.	13	Pimonenko, T.	1	Ghisellini, P.	4192	Lenihan, H.	14	Utrecht University	30	Spain	178
Barbieri, E.	9	Lenihan, H.	12	Yan, S.	1	Ulgiati, S.	4192	Audretsch, D.B.	13	University of Florence	28	Germany	132
Lenihan, H.	8	Barbieri, E.	11	Ribeiro-Navarrete, S.	1	Jones, P.	2265	Spigarelli, F.	11	Linköping University	25	Sweden	120
Söderholm, P.	8	Spigarelli, F.	11	Žuk, P.	1	Aarts, G.	2257	Barbieri, E.	11	Luleå University of Technology	25	Netherlands	91
Spigarelli, F.	7	Bellandi, M.	10	Agostino, M.	1	Coombs, C.	2257	Bellandi, M.	10	University of Ferrara	25	France	74
Tassinari, M.	7	Tödtling, F.	9	Alaja, A.	1	Crick, T.	2257	Tödtling, F.	9	University of Helsinki	24	United Kingdom	74
Trippl, M.	7	Söderholm, P.	8	Alexandre, F.	1	Duan, Y.	2257	Söderholm, P.	8	Politecnico Di Milano	23	Poland	65
Bellandi, M.	6	Tassinari, M.	8	Aydin, M.	1	Dwivedi, R.	2257	Lehmann, E.E.	8	Umeå University	22	China	62
Grilli, L.	6	Eliasson, G.	8	Babadjanov, J.	1	Dwivedi, Y.K.	2257	Tassinari, M.	8	University of Macerata	22	Finland	55

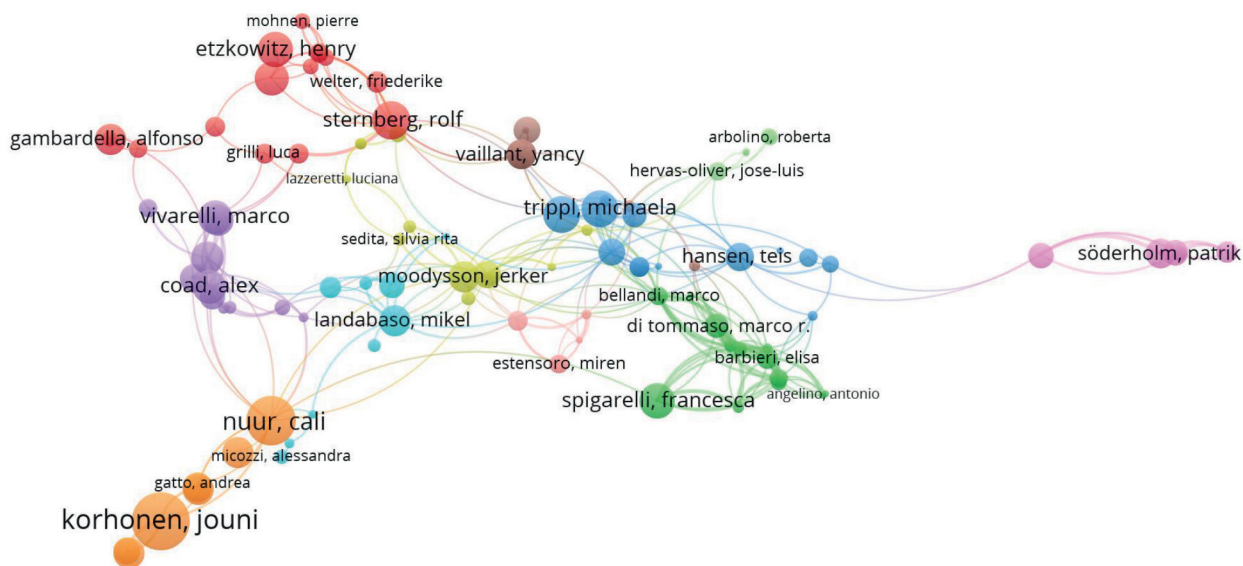
Source: Author’s analysis via Biblioshiny.

Figure 3. Corresponding authors' countries

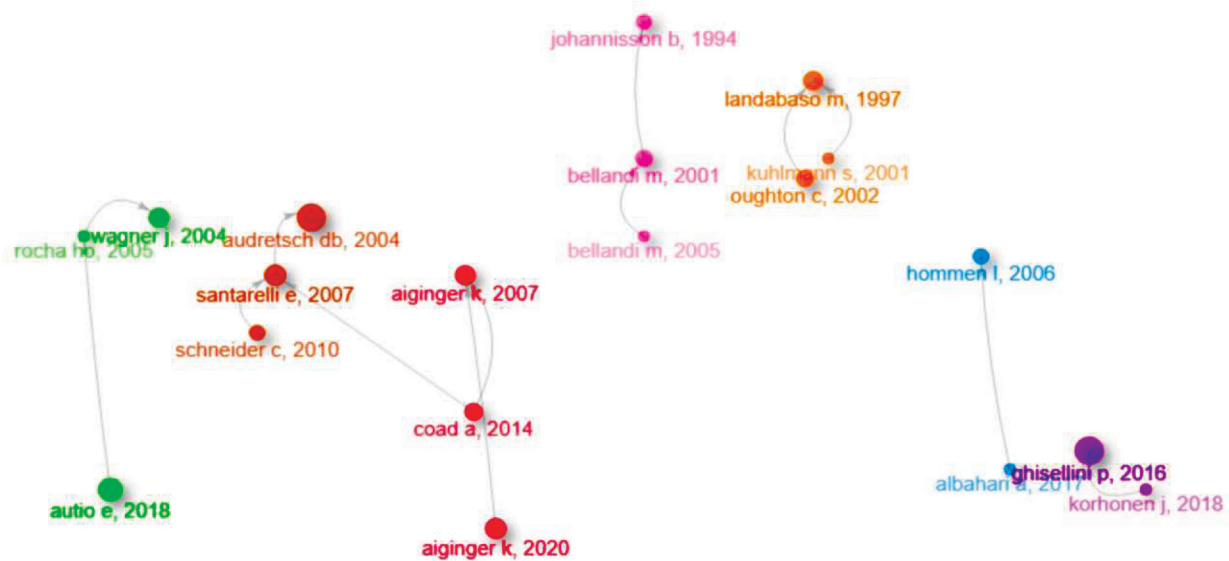


Source: Author’s analysis via Biblioshiny. SCP: Single Country Publications. MCP: Multiple Country Publications.

Figure 4. Authors' citations network



Source: Author’s analysis via VOSviewer. Data: 103 most impactful authors based on co-citations. Analysis used association strength with visualization weights used citations.

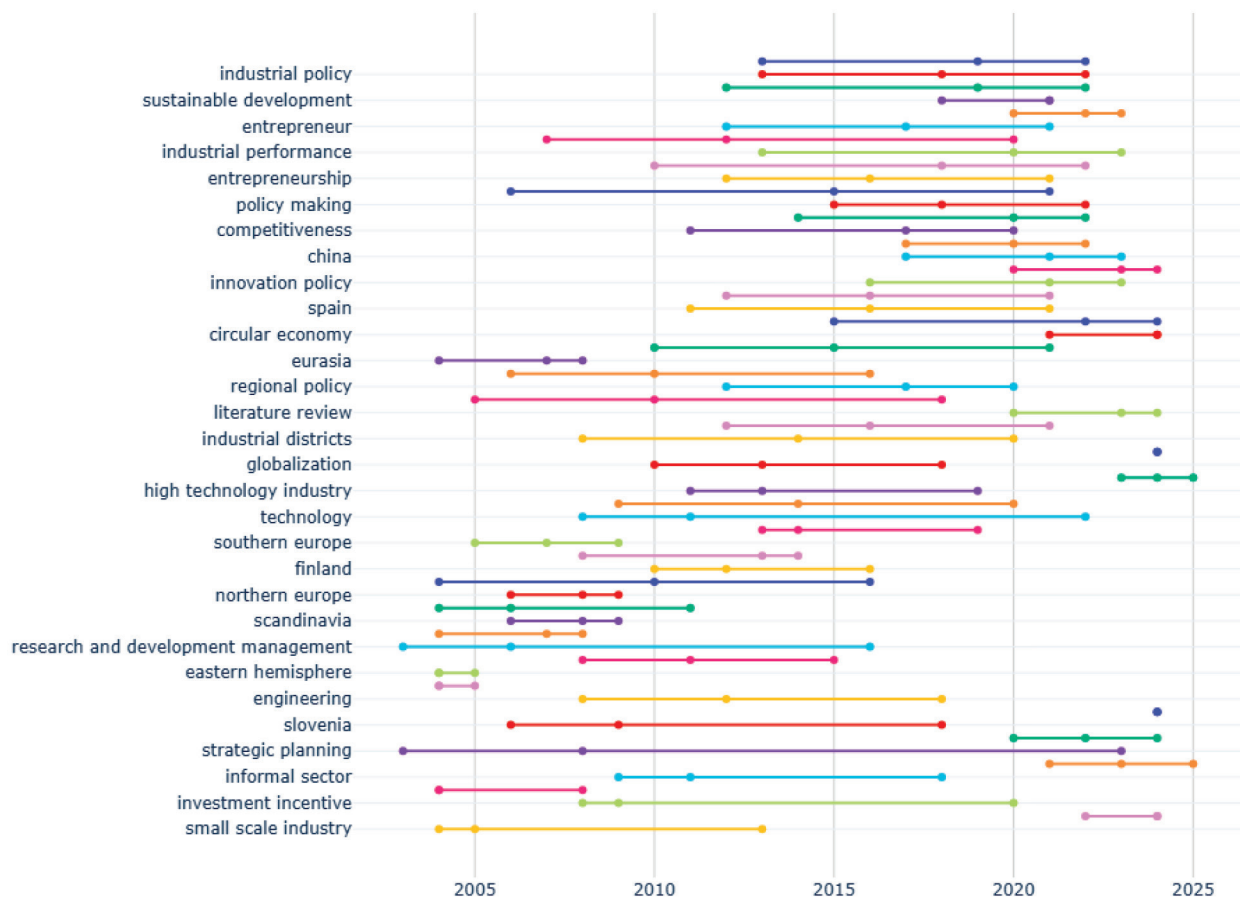
Figure 5. Historiography of impactful authorship

Source: Author's analysis via Biblioshiny.

4.4 Keyword analytics of trend topics

Figure 6 visualizes the trend topics generated from 9,957 keywords in the dataset. Keywords 'Europe', 'industrial policy', and 'entrepreneurship' dominate the frequency, given their substantial meaning to the dataset. The temporal distribution of these terms highlights a gradual shift toward contemporary challenges, e.g., 'sustainability', 'circular economy', and 'digital transformation', which exhibit rising importance in recent years (median years: 2022, 2023, and 2023, respectively). Geographically, keywords 'Southern Europe', 'Scandinavia', and 'Slovenia' emerge as focal regions, aligning with historical studies on industrial districts and clustered economies. However, the increasing frequency of 'China' and 'globalization' signals a growing emphasis on non-Western contexts and global interdependencies. The term 'industrial districts', with a median year of 2014, retains relevance but is increasingly intertwined with newer concepts like 'Industry 4.0' and 'smart factories', reflecting adaptations to digitalization and automation. Similarly, 'technology transfer' and 'research and development' demonstrate continuing importance, though their applications now extend to sustainability-focused innovations, as evidenced by overlaps with 'green development' and 'carbon emissions'.

Figure 6. Trend topics



Source: Author’s analysis via Biblioshiny, reproduced via Phytion.

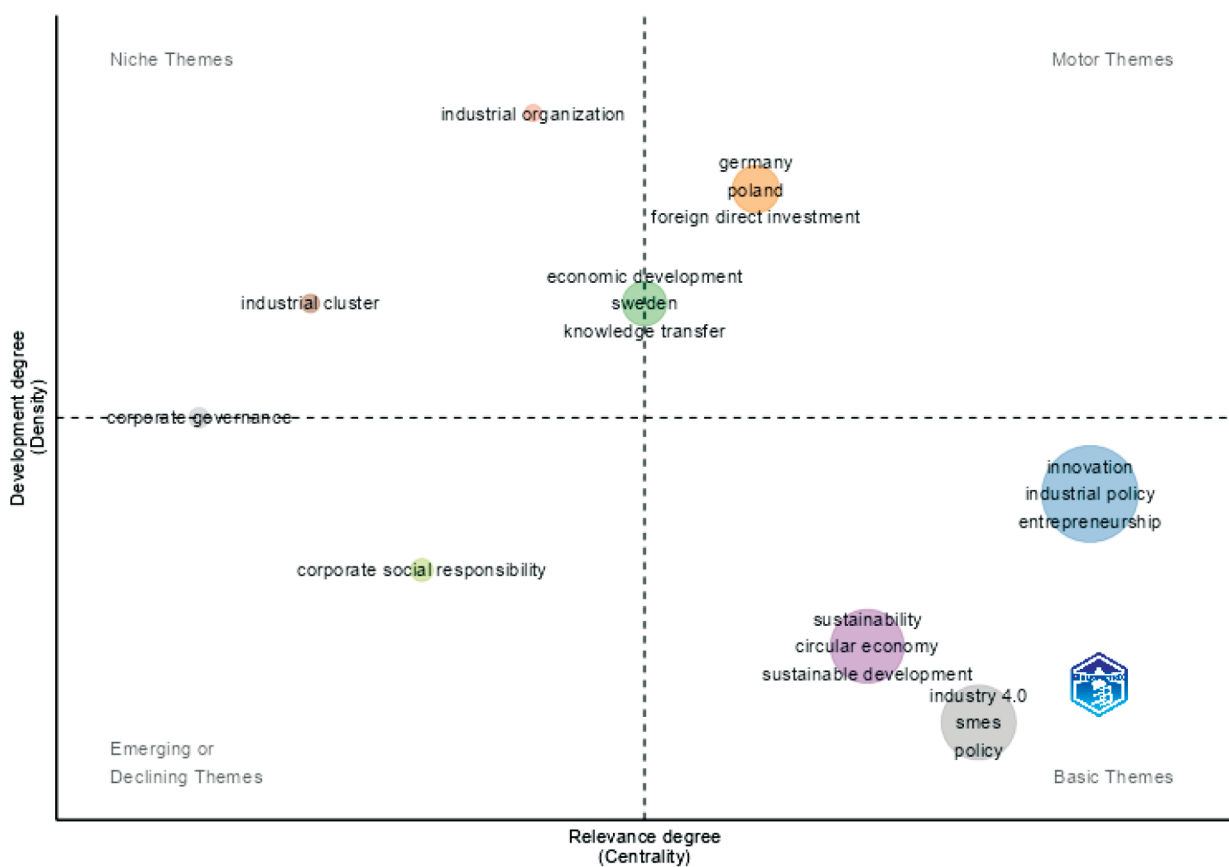
4.5 Thematic map and evolution

As in *Figure 7*, the thematic analysis was generated from the keywords (n=9,957) in the dataset. Central to the motor themes (high relevance, low density) are innovation, industrial policy, and entrepreneurship, which dominate the discourse, driven by policy requirements and technological disruption. In contrast, basic themes (high density, high relevance), e.g., sustainability, circular economy, and Industry 4.0, underscore foundational shifts toward ecological and digital transformation. Their clustered positioning highlights interdisciplinary meetings, particularly in addressing climate resilience and smart manufacturing. Geographical emphases, e.g., Sweden, Germany, and Poland, emerge as hubs for knowledge transfer and economic development, bridging niche and mainstream agendas. Niche themes (high density, low relevance), including industrial organization and corporate governance, retain specialized attention but lack broader traction. Meanwhile, emerging/declining themes, e.g., corporate social responsibility and sustainable development, span both relevance and usefulness, suggesting transitional phases in the dataset.

Furthermore, the thematic evolution depicted in *Figure 8* reflects a shifting scholarly focus from foundational industrial concepts to contemporary policy-driven and sustainability-oriented frameworks. Early research (1990–2007) centered on industrial districts and clusters, emphasizing localized economic structures and empirical analyses of regional development. Keywords like ‘industrial district’ and ‘industrial clusters’ dominated, often linked to studies

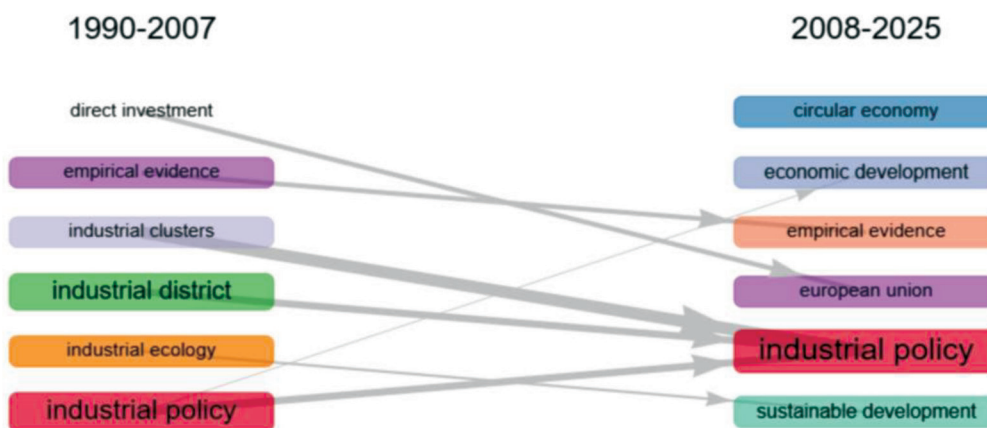
of European Union policies and foreign direct investment (FDI), as evidenced by the transition from direct investment (1990–2007) to foreign direct (2008–2025). This period also prioritized empirical evidence, which might show a methodological commitment to data-driven insights. By the 2008–2025 period, themes expanded to address global sustainability and systemic innovation. The evolution of ‘industrial policy’ (1990–2007) into ‘circular economy’ (2008–2025) highlights a hinge toward environmental stewardship, although with a low inclusion weight, suggesting emerging exploration. Conversely, the strong persistence of ‘industrial policy’ into ‘innovation policy’ signals its continuing relevance, now reframed through technological advancement and regional development. Notably, ‘sustainable development’ emerged as a critical connection, bridging earlier work on ‘industrial ecology’ (1990–2007) and reflecting growing urgency around ecological balance.

Figure 7. Thematic map



Source: Author’s analysis via Biblioshiny. Unit Analysis: Author’s keywords (n=9957).

Figure 8. Thematic evolution

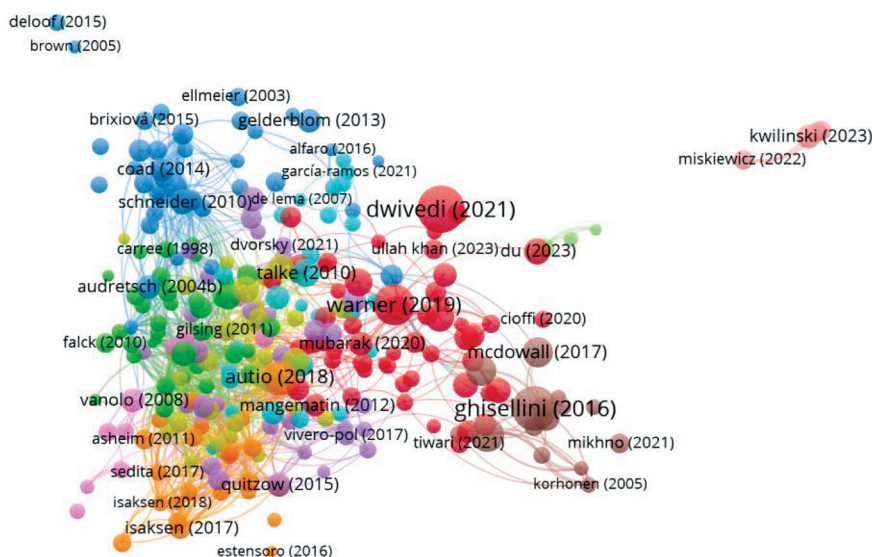


Source: Author’s analysis via Biblioshiny. Unit analysis (title of the manuscripts, n=2150)

5 Bibliographic coupling

Bibliographic coupling measures the similarity between documents based on shared references, indicating common research interests and thematic connections (Apriantoro et al., 2023; El Ashfahany et al., 2025). The analysis unit for bibliographic coupling in this study comprises n=2150 documents. This paper employed normalized citations for rectifying the temporal bias in citation counts, ensuring that recently published works are not disadvantaged compared to earlier manuscripts (Hudaefi, 2025). Such a normalized citation method is critical to effectively discover the newly important works on entrepreneurship debates within the EU’s industrial policy.

Figure 9. Bibliographic coupling



Source: Author’s analysis via VOSviewer. Unit analysis: 2150 documents. Included in the analysis: 287 selected manuscripts with 50 citations. Normalization method: association strength. Clustering: resolution 1.00, Min. cluster size 1 with merging small clusters.

Figure 9 is the bibliographic coupling, which reveals distinct clusters of scholarly collaboration and thematic conjunction within the dataset. The map's structure underscores how shared references form interdisciplinary bridges, with environmental management, technological forecasting, and circular economy themes filling multiple clusters. Central to the network is a densely interconnected red cluster dominated by Dwivedi et al. (2021) and Warner and Wäger (2019), both highly cited (2,257 and 1,756 citations, respectively), indicating their foundational role that links diverse research elements. These nodes connect to newer works, e.g., Mubarak and Petraite (2020) and Ullah Khan et al. (2023), suggesting ongoing dialogues on sustainability, innovation, and entrepreneurship. A blue cluster anchored by Brown et al. (2005) and Deloof and La Rocca (2015) reflects older, yet influential contributions to regional innovation and knowledge transfer. In particular, Kwilinski et al. (2023) and Miskiewicz (2022) form a marginal pink cluster, highlighting emerging topics, e.g., land-use dynamics and policy frameworks.

6 Discussion

The bibliographic coupling analysis, visualized in *Figure 9*, reveals 11 distinct thematic clusters that reflect key research paths in entrepreneurship issues within the EU's industrial policy. These clusters are identified based on their spatial distribution, color coding, and citation networks in the visualization. This section further discusses the most impactful clusters, highlighting their intellectual contributions, key authors, and theoretical implications.

6.1 Sustainability and green entrepreneurship

Dominated by red nodes, centers on sustainability transitions, circular economy, and green entrepreneurship. Key authors include Appolloni et al. (2022); Büchi et al. (2020); Ullah Khan et al. (2023), whose works explore the interaction between environmental strategies and industrial performance. Ullah Khan et al. (2023) underscore green leadership and knowledge sharing in manufacturing, while Appolloni et al. (2022) analyze green recovery in mature industries through sustainability certifications. In addition, Büchi et al. (2020) examine smart factory performance in Industry 4.0. This cluster underscores the growing urgency of integrating ecological and economic objectives, with studies frequently cited in journals like *Technological Forecasting & Social Change* and *Ecological Economics*.

6.2 Industrial policy and innovation systems

A prominent blue cluster, with impactful work of Brown et al. (2005) and Carree and Thurik (1998), focuses on industrial policy, innovation diffusion, and the role of institutions in fostering technological innovation. Carree and Thurik (1998) initiated research on small firm dynamics in Europe, while Brown et al. (2005) investigated growth determinants in Romanian SMEs. This cluster also includes Schaltegger (2002), who conceptualizes ecopreneurship, linking environmental management to small business strategy. Despite its foundational role, this cluster exhibits lower citation rates compared to newer themes, suggesting a shift toward more applied sustainability research.

6.3 Regional development and knowledge spillovers

The purple cluster, led by Asheim et al. (2011) and Vanolo (2008), examines regional economic strategies, knowledge spillovers, and the geography of innovation. Vanolo (2008) critiques urban branding in Turin, while Asheim et al. (2007) analyze knowledge-based regional advantage. This cluster bridges economic geography and innovation studies, with important contributions, e.g., Falck et al. (2010), evaluating the impact of cluster-oriented policies in Germany. These nodes often intersect with other clusters, reflecting the cross-disciplinary nature of regional development research.

6.4 University-industry-government interactions

The orange cluster, highlighted by Mangematin and Walsh (2012), groups the works addressing the triple helix collaborations and knowledge transfer mechanisms. Autio et al. (2018) explore how universities contribute to industry innovation, while Mangematin and Walsh (2012) divide the role of intermediaries in technology transfer. This cluster also includes Gatto and Re (2021), who analyze circular bioeconomy business models. Despite its theoretical richness, this cluster faces challenges in practical application, as noted in Caloghirou et al. (2021), which identifies barriers to industry-university knowledge flows during crises.

6.5 SMEs and entrepreneurial ecosystems

The orange cluster, centered on Isaksen and Tripl (2017) and Sedita et al. (2017), addresses SME resilience, entrepreneurial ecosystems, and digital transformation. Isaksen and Tripl (2017) examine new industrial paths in peripheral regions through synthetic routes, emphasizing exogenous knowledge and policy interventions, challenging conventional models with Norwegian and Austrian case studies. Meanwhile, Sedita et al. (2017) identify related variety and symbolic knowledge bases as key drivers of regional resilience, evidenced by Italy's post-2008 employment recovery, with policy implications for fostering economic adaptability through cultural and knowledge-led strategies. This cluster also incorporates Doloreux (2017), who defines maritime clusters, illustrating the diversification of SME research beyond traditional manufacturing.

7 Practical implications

The identified thematic clusters may offer actionable insights for policymakers and entrepreneurs, aligning with EU policy frameworks. For sustainability and green entrepreneurship, the emphasis on circular economy and Industry 4.0 innovations (e.g., Ullah Khan et al., 2023) may underscore the need for EU policymakers to strengthen the European Green Deal via incentivizing green certifications and funding eco-innovation hubs. Entrepreneurs can leverage these findings to adopt sustainability certifications and knowledge-sharing networks, thus enhancing competitiveness.

In industrial policy and innovation systems, the declining citation rates of foundational studies (e.g., Carree & Thurik, 1998) suggest a need to modernize the EU SME Strategy. This way may be done through integrating newer themes, e.g., digital transformation into support programs, and hence, ensuring SMEs adapt to evolving markets. For regional development,

the focus on knowledge spillovers and cluster policies (e.g., Falck et al., 2010) aligns with the European Regional Development Fund, calling for tailored regional strategies that amplify localized strengths, e.g., Germany's cluster initiatives.

Lastly, SMEs and ecosystems research (Isaksen & Trippl, 2017) advocates for policies promoting related variety in knowledge bases, investigating the emergence of novel industries in two remote areas, i.e., the electronics and software sector in Arendal-Grimstad, Norway, and the software industry in Mühlviertel, Austria. These insights bridge scholarly findings to EU policy tools, enabling targeted interventions for sustainable and inclusive industrial growth.

8 Conclusion and limitations

This study provides an analysis of the intellectual landscape in the domain of entrepreneurship issues within the EU's industrial policy through bibliographic coupling and citation metrics. With a sample of 2,150 scholarly works and leveraging normalized citation frameworks, this research identifies key academic sources, influential manuscripts, and thematic clusters. Key findings reveal the centrality of journals, e.g., *Entrepreneurship and Regional Development* and *Sustainability*, in advancing debates on entrepreneurship with the EU's industrial policy innovation and policy, while foundational works, e.g., Ghisellini et al. (2016) on circular economy and Dwivedi et al. (2021) on artificial intelligence, underscore the field's interdisciplinary range. The bibliographic coupling further outlines thematic clusters, with green leadership, digital ecosystems, and land-use policy emerging as critical nodes bridging historical and emerging research agendas. Notably, the analysis highlights the continuing relevance of classical theories, e.g., Porter's Competitive Advantage of Nations, while emphasizing the need to address temporal biases in citation practices to ensure equitable recognition of recent contributions.

A key limitation of this study is the exclusive use of Scopus data, which underrepresents non-English, regional journals, and grey literature, potentially marginalizing EU country-specific contributions to entrepreneurship and industrial policy. In addition, Scopus' unavailability of policy reports in the database may skew the findings toward Anglophone perspectives. That is, these may underestimate regional policy debates and cross-lingual research, limiting our study's generalizability. Thus, future works may combine Scopus with other databases, e.g., Web of Science, Dimensions, or regional repositories to enhance coverage of non-English and policy-oriented sources, ensuring a more equitable representation of global scholarly databases.

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Policy Content and Governance: A Perspective

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Abstract

In the scholarship and teaching of public policy, policy content has often been a neglected area, despite the fact that policy content is an important mediating factor in policy implementation, governance, structural arrangements, and coordination, among others. This, despite the presence of complex problems in the complex 21st century, requires multiple policies, in multiple governance arrangements, to solve these policy problems. This perspective article discusses the importance of studying these issues, in complement to other approaches, from a policy content perspective to allow for more precise analysis and examination of policy implementation and governance with the possibility of a more nuanced understanding of governance. From a policy design-as-content perspective, it is possible that hidden insights can emerge beyond studying policy as a ‘single dependent variable’, whilst the disaggregation of policy content into components, and interacting components across policies, could provide important insights for public administration scholarship and public administration and policy education.

Keywords

policy content, policy design, policy components, policy mix, policy analysis.

1 Introduction: The need for a policy content perspective

Policy content has been the focus of study in public policy for decades. For Lasswell (1951, 3), the historic mission of policy sciences is to “improve the concrete content” of public policies. Historically, and from an analytical perspective, policy content became a focus of study in the 1980s with the conceptual split between the actual process of public policy making and the abstract concept of policy design as content (Linder & Peters, 1988, 742). This distinction was refined by Howlett and Rayner (2018, 390), who characterized policy design as a *verb*, as a process of creating a policy configuration, and a *noun*, which is the actual product or artifact. In addition, the design, as the verb, can be situated within the realm of policy formulation. In this orientation, the focus is on the “choice of policy instruments, as well as the individual, societal and contextual factors that influence the instrument choice” (Siddiki, 2020, 1–2). Policy design as policy content is essentially the output of the designing process in which the decisions taken in the formulation process are reflected in the content of the policy, which is embedded in the actual text.

Policy content can be conceptualized as the policy text, which is the “content or substance of the public policy” (Schneider & Ingram, 1997, 2) that are text-based designed outputs or artifacts of the policy process. Empirically, these are wordy, formal texts such as legislation, guidelines and policy documents (Sager & Thomann, 2017), from which central components can be extracted, including the different nested elements and their interaction. According to Capano and Howlett (2021), policies are composed of different parts, which interact with each other to change behavior and alter a given situation to achieve the aims of a government. Improved understanding and specification of policy components, embedded in the policy content, is a critical element for policy effectiveness (Howlett et al., 2023).

Despite the advancements in understanding policy content and design, the use of policy content to study and teach governance, with other policy theories such as Punctuated Equilibrium, Social Construction Framework, Policy Feedback Theory, Advocacy Coalition Framework, Narrative Policy Framework, and so on, has been limited. However, it has been used more extensively in Institutional Analysis and Development Framework theory (Weible & Cairney, 2021), that inspired the Institutional Grammar (Frantz & Siddiki, 2022). These are dominant theories of public policy (ToPP) textbooks, including the latest *Handbook of Teaching Public Policy* (Denny & Zittoun, 2024), which do not explicitly have a focus on policy content, even though the textual content of policy is an important mediating factor for effective policy implementation with various roleplayed (Lejano & Park, 2015). Siddiki (2020) adds that policy design as content has received limited attention in the literature, despite the increasing value of thinking about policy design as content, as theorizing and research on policy as content is relatively limited.

This perspective reviews the progression in the science of policy design-as-content, the various areas of focus, the development in the study of these areas, and methods and measures to study these areas. The perspective provides theoretical, analytical, and some practical insights into the usefulness of policy design-as-content approaches for their potential in terms of generating more nuanced and hidden insights of policy content as an analytical lens to make sense of governance and policy implementation. To this end, the paper is divided into four key sections, first, the understanding of policy content and how the science has progressed, two, the inter-temporal nature of policy content and its co-evolution with context, three, the various approaches to study policy content and potential insights; and finally, some insights in the discussion section providing a policy content lens to governance with implications for education.

2 Understanding policy content: Progression in the science

In the study of policy content, Hall’s (1993) seminal work, which disaggregated public policies into three different components, formed the basis of understanding the composition of policies. By deconstructing policy content into three policy elements, namely, paradigms, tools, and tool calibration, the dominant view in the policy scholarship of conflating all the policy elements into a “single dependent variable” (Howlett et al., 2024, 2) was challenged. This work was a critical development in the progression of policy design scholarship, “facilitate[ing] greater conceptual and empirical work” (Cashore, 2022, 1). Later, Hall’s (1993) model was expanded by Cashore and Howlett (2007) to include aims and means at three different levels of specificity (see Figure 1), which comprised a taxonomy of nested policy design components. The levels included a high *macro* level of abstract goals and means, middle or *meso* level policy objectives and policy instruments, and *micro* level of policy settings and calibration. Thus, three more policy components were added (Howlett et al., 2024, 3).

Figure 1. Modified taxonomy of policy components (from Hall, 1993)

		Policy Content		
		<i>High-Level Abstraction</i>	<i>Program Level Operationalization</i>	<i>Specific On-the-Ground Measures</i>
Policy Focus	<i>Policy Ends or Aims</i>	HIGH-LEVEL POLICY GOALS What General Types of Ideas Govern Policy Development?	PROGRAM-LEVEL POLICY OBJECTIVES What Does Policy Formally Aim to Address?	OPERATIONAL SPECIFICATIONS or POLICY GOAL TARGETS What are the Specific On-the-ground Requirements of Policy?
	<i>Policy Means or Tools</i>	GOVERNING INSTRUMENT LOGIC What General Norms Guide Preferences?	POLICY TOOL CHOICES What Specific Types of Instruments are Utilized?	CALIBRATIONS OF POLICY TOOLS What are the Specific Ways in Which the Instrument is Used?

Source: Howlett et al. (2024, 3)

The taxonomy of policy components model allows for conceptual disaggregation of the policy content, providing for a better understanding, description, and investigation of the internal complexity of the policy components and their impact in real-world policy making. This body of work focuses on what exactly comprises a policy and how these components fit together (Capano & Howlett, 2021). Cashore (2022, 1–2) traces the evolution of the model in different works, citing it as “components of public policy”, “policy elements”, “components of a policy mix”, as the literature advanced.

The policy components outlined in *Figure 1* can also be described in more detail by considering the example on housing, which is described by Howlett et al. (2024, 4) as:

... policy objectives are operationalised goals, for example, ‘eliminating homelessness’ can be a paradigm goal, deciding to achieve it through the construction of housing apartments is an ‘objectives’. The specifications are the actual targets expected to be achieved, for example, 10 000 units over the next 10 years.

Howlett et al. (2024, 4) continue that the same logic can be applied to policy means, where at a “macro-level, governance or instrument logics are the counterparts of ideational paradigms that express overall governance preferences, like preferring state driver or state-led policy efforts opposed to market driven ones”. Preferences are operationalized in the choices of the tools made to implement the goals and objectives, for example, choosing tax credits for developing social housing, rather than council or state housing, in which the private sector and initiatives are favored. At the micro-level, these tools are operationalized in terms of decisions about “how much or how little credit to provide or which agency will be used to monitor or implement it” (Howlett et al., 2024, 4).

The revised model has been used in many studies across the policy literature; however, the focus on the different components has been critiqued for being focused on unevenly (Capano & Howlett, 2021). Focusing on the “micro-dimension” of policy design (thus, specification and calibration in *Figure 1*), it criticized the existing literature. Many studies focus on the abstract

level of goals or paradigms (Hogan & Howlett, 2015), with extensive literature on governance and bundles of aims or ideas (Peters et al., 2022) or “meso-level” studies, which focus on policy tools (Howlett, 2022) and policy objectives (Petek et al., 2022). The focus on specificity and calibration “on-the-ground” (micro), in the literature has been sparse, “despite these components of policy design typically being the key ones affecting the world of policy practice” (Capano & Howlett, 2021, 160).

It is important to bear in mind that studying policy content is an important analytical focus when studying policy in a disaggregated manner to move away from conflating policy as a “single dependent variable” as there are various insights that might emerge from studying policy based on its various dimensions. Focusing on policy content allows for understanding how and why policies might fail or succeed, as it provides an analytical focus for understanding and explaining policy design in terms of the policy components (goals, objectives, tools), policy dynamics (means-end interaction), and potentially, the policy practice and outcomes or policy integration. In addition, policy content is an important analytical locus of the policy sciences as it is linked to governance activities, implementation outcomes, and outputs.

3 Study of policy content as various policy components

In the study of policy design and policy analysis literature, policy content has been studied in the main through the conceptualization and categorization of policy components. This conceptualization and progression in the literature have also deepened the understanding of the specifics of the policy components and their relations to policy effectiveness, policy change, or the inter-temporal nature, policy mix interaction, as well as their implications for policy coherence, integration, and coordination. These are important insights that can be studied through the lens of policy content.

3.1 Policy goals, objectives, and specifications: A continuum perspective

At the highest level of abstraction, the policy level, according to *Figure 1*, are the *policy goals*. Policy goals have been considered central components for defining public policy, as well as being a constitutive part of policy analysis in seminal and more recent literature (Howlett, 2010; Cashore & Howlett, 2007). In addition, policy goals have been the focus of study in much of policy literature as a key vision or embedded in the political ideology or worldview of what the overall aim is, translating political party policy to government policy. A recent work by Petek et al. (2022), however, critiqued the idea that policy goals “comprise a single-lined hierarchy” in which they suggest policy goals can be measured based on a continuum, according to their technical dimensions. Petek et al. (2022) provide a more precise conceptualization of goals and their technical dimensions, based on empirical policy goals and responding to terminological inconsistencies on policy goals in the literature. As a result, different types of goals were derived, including broad, mode-centered, actor-centered, direction-centered, semi-structured, and structured (see for a detailed explanation: Petek et al., 2022, 732). Adding to existing studies, the focus on the technical dimensions of policy goals has the potential to provide important insights drawing on policy content. For example, Petek et al. (2022) argue that more complex and specific goals are not lower goals. The focus on technical types of goals to achieve policy implementation correlates with policy success and failure, “serving as a basis for more practical advice for policy planning” (Petek et al., 2022).

3.2 Policy instruments

At the level of means or tools, policy instruments have proven to be an important “pillar in policy studies, they are essential heuristic devices for understanding and explaining policy dynamics” (Capano, 2024, 1). Policy instruments are “an identifiable method through which collective action is structured to address a public problem” (Salamon, 2002, 19), or the means that governments use “to deliberately affect the nature, types, quantities and distribution of the goods and services provided in a society” (Howlett, 2000, 415). Policies adopt specific instruments to achieve the expected (more or less shared) objectives, central to the policy-making process for achieving outcomes. Of importance is that policy instruments are designed for and represent the content of the policy, which are the “real outputs of policymaking” (Capano, 2024, 3). Stated differently, policy instruments are embedded in policy designs, which are captured in the content to change a specific situation through the implementation of the policy instruments, through which they change behavior to affect the initial situation.

The instrument logic deals with choices between guiding principles on instruments, for example, the state, market, and/or collective governance. In the study of policy instruments, based on how they are captured in the content of policies, they can be placed at various analytical dimensions, including coercion, behavioral assumptions, and governmental resources (see Capano & Engeli, 2022). At the meso-level, there are also different typologies of instruments to induce behaviors such as expenditure, regulation, information, and taxation as outlined by Capano and Toth (2023). Focusing on the policy design content allows for a better understanding of the decision-making of policy and measuring policy change. Studying policy instruments embedded in the policy content is complex but is “promising for improving our understanding of the main drivers and characteristics of policymaking” (Capano, 2024, 5). In the new policy design literature, it has also become clear that policies often deploy more than one policy instrument, and their interaction is also important, which is studied based on policy content, for policy integration for their trade-offs and synergies (Knill et al., 2021).

3.2.1 Micro-dimensions: Specification and calibration

As these policy instruments must also be operationalized, this can be investigated at the micro-dimension, which is the calibration of the different tools being used on-the-ground. This is a very understudied and undertheorized area, which is now receiving the much-needed attention for a more precise understanding of policy performance, content, change, and outcome. The micro-dimension of policy designs deals specifically with policy specifications (targets) and tool calibrations, which is glossed over “in the mainstream policy sciences” (Howlett et al., 2023). However, neglecting this component of policy content creates challenges for fully understanding the impact and potential linkage between different policy aspects and the related outcomes. The micro-dimension of policy content provides analysts with a more precise understanding of what an intervention entails, and what differences it makes, as inadequate answers to these questions makes it difficult to gauge policy performance (Capano & Howlett, 2021).

In addition, delving into the micro-dimension of the policy component can help elucidate the specifications, answering the *what*, *who*, *when* questions, while calibration provides the answers for the *how* question, “how the specified goals are to be achieved on the ground” (Howlett et al., 2024). Scholars found that focusing on the policy content using the micro-dimension as the locus of analysis helps “grasp the real content of policy design” (Capano & Toth, 2023, 7), allowing for finer-grained comparison with respect to the content of policy (Howlett et al.,

2023), assessing the drivers of policy performance based on disaggregating the content of policy design and how the micro-dimension contribute to changes in policy performance (Capano & Toth, 2023).

However, these policy components, albeit being placed at various levels of specification and abstraction, have to work together to gain the intended policy ambitions. The disaggregation of policy content also allows for presenting and understanding the policy dynamics. Policy components interact to achieve outcomes. For example, to achieve policy specific goals, answering the *what*, *who*, *when*, the on-the-ground tool calibration are important as they interact and answer the *how* question, and “should match like two pieces in a jigsaw puzzle [...] where one is the potential outcome [...] and the other is a real or actual administrative allocation” (Howlett et al., 2024, 16). The interaction between these components also allows for comparative analysis between policies in terms of the policy components as embedded in the policy content. Recent studies focusing on the policy content or components also allowed for the study of policy adaptation in terms of its robustness, such as static and dynamic robustness (see Howlett & Ramesh, 2022) and policy adaptability (see Siddiki, 2020).

3.3 Inter-temporal nature: Policy change

Following on, an understanding of policy dynamics is an important consideration as policy design “evolves over time as the context in which it is situated changes” (Siddiki, 2020, 2). This is an important insight as the inter-temporal nature of policies in their context also affects policy effectiveness. Lejano and Shankar (2013) argue in congruence that design is dialectic between (social) construction and (ecological) adaptation of policy. Lejano and Shankar (2013) suggest that text must complement the context, drawing on evidence from the “stock Structural Adjustment Programmes in different countries failed because the policy design failed to match the complexity of the real work context” (Rapley, 1997, 84).

From a policy content perspective, it is important that policy designs are compatible with their environment and context in which the “process of policy de-composition is useful analytically as it allows for each component changes on its own to be better observed [...] as well as the interaction between them which determines the overall nature of policy dynamics visible over time” (Howlett et al., 2024, 2). Focusing on the policy design content, Ambrose et al. (2024) studied policy evolution (change) of Net-meters using the policy language captured in the provisions and how they changed over time.

Synthesizing literature on policy change, including understanding policy layering, which includes patching (new statements without readjusting previous policy), packaging (layering new statements while terminating others to readjust previous policy), and calibrating (making changes to text within the statements (Ambrose et al., 2024). Using a policy content analytical approach, policy evolution could be better observed in terms of targets, namely, those who implemented and tracked policy change based on the micro-dimension over decades. The study of policy evolution, according to Ambrose et al. (2024), allows for precise observation of the nuances regarding to whom policies apply and how they should be implemented. This provides important insights for policy effectiveness as policy patching has been demonstrated to increase tensions within policies (Howlett & Rayner, 2013), and this can be observed “when added statements introduce intra-policy inconsistencies” (Ambrose et al., 2024, 8). This explains a process where policy elements are restructured, which often leads to inconsistent, incoherent, and incongruent elements in a policy mix, often resulting in sub-optimal policy designs (Howlett, 2014). The analysis of policy components for policy dynamics enables analysts to

investigate issues of policy compatibility, interactions, policy change, policy conflict, policy adaptability, policy resilience, and robustness that emerge in the inter-temporal nature and evolution of policies.

Although there has been a focus on single policies or intra-policy compatibility for some time now, it has been recognized that to deal with complex policy problems, single policy instruments do not suffice. The idea of policy mix is an important part of policy content as it contains the bundles or portfolios of policy instruments (Howlett & Rayner, 2007; Capano & Howlett, 2020), which must be synergic and not counterproductive, as counterproductive interactions undermine policy effectiveness. Policy mixes interaction has also been conceptualized as a system of interconnected elements susceptible to interaction, which can be multi-level, cross-sectoral (Goyal & Howlett, 2022). As these policy mixes can have varied results, understanding the nature of their interaction is important.

3.4 Policy mixes and interaction

Focusing on policy mixes has also opened the door for inter-policy compatibility, which occurs when multiple policies address complex issues. Focusing on policy content requires an analysis of the individual policy component level (dimensions) as well as their interaction. In addition, Howlett and Rayner (2007) suggest the need to consider interactions among the structure and content of related policies. This has become important in two ways. Firstly, the focus on individual components allows for a clear focus on calibrations and related specifications, which offer a lens for inter-sectoral comparison (Capano & Howlett, 2021). Secondly, it allows for the study of policy coherence, integration, and coordination. For example, it is understood that a lack of policy coherence amongst different policies implemented in different policy subsystems might lead to fragmented action, unintended outcomes, or where one policy undermines or duplicates the efforts. Policy coherence, for example, refers to “how well policies with similar objectives go together” (May et al., 2006, 382). Policy product (content) integration focuses on the integration and consistency of cross-cutting policies in relation to other policies and sectors (Knill et al., 2021).

Policy integration and coherence are seen as the antidote to fragmented government action (Cejudo & Michel, 2017). In addition, the importance of policy content interaction is motivated by Peters et al. (2022, 39), who argue that coordination and policy integration are fundamental challenges of policy design, as effectiveness is assessed by how well policy components are integrated and coordinated (Peters et al., 2018). Moreover, policy mixes research has been used to study policy coherence, indicating the importance of policy coherence for alignment, how policies are coordinated at the organizational level (between agencies, ministries, and departments), how policy content (provisions and directives) *creates* interactions such as horizontal and vertical coordination in multilevel governance situations, and overcomes policy fragmentation.

Policy content and the disaggregation of the policy components as an analytical frame can be seen as a *lynchpin* in policy design studies, as it is central in the analysis of public policy. Policy documents are enacted, and they provide authority over “what governments do, why they do it, and what difference it makes” (Dye, 1976). Therefore, in any study of public policy, the policy content is important. The decomposition of the policy content based on Hall’s (1993) work allows for moving the analytical locus beyond a single dependent variable. It creates a precise analysis of policies based on the various levels of policy components. The inter-temporal nature of policies is investigated through their content, including inter-policy interaction through

studying policy mixes and how various policies interact to solve complex problems. Beyond the analytical focus, approaches and methods for the study of policy content have been developed, albeit that the “theorising and research on policy design (content) is relatively limited” (Siddiki, 2020, 3).

4 Approaches and methods for studying policy content

Policy content is studied in the policy design literature and linked to governance activities, policy outcomes, and outputs, with the aim of improving policy performance or effectiveness. The approaches have provided methodological advancement to study the nuances of policy design in an attempt to improve the policy output. For example, Siddiki (2020) developed a multi-level analytical framework in which she “systematically organised these policy design approaches according to the scope of policy that serves as the analytical basis (unit of analysis)”. Central to these approaches is studying policy content, investigating the information actually conveyed within the public policy, attempting to “ascertain whether common patterns observed in policy text are consistently associated with particular political and policy dynamics” (Siddiki & Curley, 2022, 122–123). As a result, this work (Siddiki, 2020) pulls together various waves of methodological development in this policy design orientation, focusing on linguistically oriented approaches and analyzing structural features such as statements, provisions, directives, or, collectively, textual content at various levels of analysis, which can be categorized into micro-, meso-, and macro-approaches.

Macro-level approaches: These approaches “treat whole policies as the focal unit of analysis”, which include classifying whole policies of a particular type based on design features, function, and relationship to context (Siddiki, 2020, 22). They are referred to as policy typologies, which focus on dimensions of policy that serve as the basis for generalizing different policies and linking them to different policy domains. Briefly, there are six approaches that are situated in the *typology* category. These include distinguishing between substantive and procedural policy; material or symbolic policy or as Ostrom (1962) focuses on constitutional, collective, operational authority, inducements/incentives, and so on. Or, as per Lowi (1964), classify policies as regulatory, distributive, and redistributive policies. For policy content, these approaches are important as they categorize policies fundamentally on two bases, namely, function and allocation of resources, which are tied to policy design. A crucial point to note is that without the evaluation of content, such classifications could not be made. Finally, these approaches focus on the structural features of policy design content based on generalizable features, allowing policy makers, citizens, and stakeholders to understand the functional properties and/or how the government will allocate resources among applicable policy targets.

Meso-level approaches: These approaches “focus on individual directives as a whole, or configurations of policy directives, which convey policy related meaning” (Siddiki, 2020, 25). Their attention is on particular directives embedded within policies, including statements, clauses, and provisions, which convey what specific actors must or may do under specific conditions. Among these approaches is the work of Schneider and Ingram (1997), who found elements in policy, including policy goals, targets, populations, implementation agents, policy tools, and operational rules. The second approach is that of Ostrom (2005), which focused on the formal identification of individual directives comprising public policies, and subsequent assessment of “functional properties of each and accordant classification” (Siddiki, 2020). Schneider and Ingram’s (1997) approach allows for insight into the implicit logic of reflected

in the policy design content, focusing, for example, on how certain targets' behavior through chosen instruments will result in the attainment of a policy's goal. Ostrom's (2005) work is premised on the idea that to understand governing rules, the analyst must consider how the different elements in the policy content are linked to guide the behavior of the intended target. Based on the content, these approaches require some level of organizing and distinguishing between policy elements embedded in the content, conveying distinctive information of how policies might affect governance and induce certain behaviors.

Micro-level approaches: These approaches focus on “individual policy directives as the unit of analysis [...] treating directives as constitutive of generalisable sub-elements that are also assessed as part of the analyses” (Siddiki, 2020, 28). These approaches dissect policy content and classify policy directives in generalizable categories. Chief among these are the linguistically oriented approaches developed by Crawford and Ostrom (1995), focusing on parsing the individual directives constituting governing rules in accordance with a generalizable syntax. This is the “Grammar of Institutions” with the analytical technique, namely, the Institutional Grammar Tool (Siddiki et al., 2011). The idea is that directives have common structural elements, with each element conveying certain semantic meaning relevant to understanding how directives are intended to affect behavior (see Siddiki, 2020, 28). Based on the syntactic structure of these individual policy directives, information is provided on who the policy targets are, who the people are that should implement the policy, and what the governing outcomes are, including analyzing behavior outcomes like compliance.

The use of these approaches in the study of policy content, for example, the social construction and IGT can provide a rich understanding of public policy and the stakeholders involved. The macro-level and meso-level approaches are critiqued for their lack of methodological guidance (Frantz & Siddiki, 2022). Most prominent amongst these approaches are the micro, with the Institutional Grammar Tool, and the most recent Institutional Grammar 2.0. Focusing on policy content as an abstractable unit of analysis, various research questions are studied and their linkage to governance activities as synthesized in recent meta-reviews of the IG scholarship (see Dunlop et al., 2019; Siddiki et al., 2022; Frantz & Siddiki, 2022). These insights include understanding how policy actors coordinate and compete or engage in conflict (Schlager & Cox, 2018), interactions among actors in response to rule configurations (Olivier, 2019), how institutions (policies) influence individual and collective behavior and systematic outcomes (Frantz & Siddiki, 2022, 299), and, rule legitimacy or levels of compliance/non-compliance (e.g., Angulo-Cazares, 2018). This allows for identifying specific role-players responsible for an action and the specificity of the target, both those to implement and the beneficiaries of the policy.

5 Discussion: A policy content perspective to governance

In the 1980s, governments were faced with increasing complexity, socio-economic problems, and governability, which gave rise to the proliferation of ‘governance’ as a concept (Capano, 2020; Peters & Pierre, 2008) in the ‘governance turn.’ The argument is that with the increase of complex problems that transcend traditional single-purpose departments that created fragmentation, the increase in government spending on the ability of the government to deal with these complex problems and contended with these issues through the distribution of the administrative burden of strategic and operational complexity by involving multiple role players through networks and collaboration (Agranoff & McGuire, 2003). *Governance* triggered the substantial shift in the policy studies because of the government overload and increasing social

complexity radically impacted policy making and how collective problems are defined, how to deal with them and how social expectations are met, and how policy outcomes are achieved (Capano, 2020, 14).

The various approaches to studying public policy allow for students and scholars to study the nature of the policy, to identify or classify policies based on their content and design, such as being distributive or redistributive, as Lowi (1964) did. Additionally, at the meso-level, it allows for policies to be studied based on their content to identify who the target population is, to elucidate who the people are to policy will be affecting or policy goals, tools, the implementation agent (Schneider & Ingram, 1997). Additionally, at the meso-level, Ostrom (2005) has suggested that to understand governing rules, the analyst must consider how the different elements in the policy content are linked to guide the behavior of the intended target. At the more micro-level of individual policy content, the idea is that directives have common structural elements, with each element conveying certain semantic meaning relevant to understanding how directives are intended to affect behavior (see Siddiki, 2020, 28), by dissecting policy content and classifying policy directives in generalizable categories. Focusing on policy content as an abstractable unit of analysis, various research questions are studied and their linkage to governance activities. One can study the coordination and engagement of the role players in public policy by identifying the rules of configurations, the potential conflict based on the implementation agents and their different budgets and departmental objectives, or how the policies influence the collective behavior of implementing agents. This has especially been useful in studying the compliance/non-compliance by the members involved in the policy or street-level bureaucrats. These are important insights for governance and how content links or provides insights at a granular level to these governance aspects.

To deal with complex policy problems, governments tend to create more policies to address different targets of the problem, often leading to a fragmented policy landscape in which the interaction of these policies might undermine each other or can even be counterproductive. These multiple policies and their interaction create a policy landscape (de Wee & Ramolobe, 2025) in which these policies interact. In our paper, we discuss the importance of using policy content methodologies to map the policy content and analyze it in the larger policy landscape (de Wee & Ramolobe, 2025), which is akin to the macro-causal theory of the policy (studying single policy theories in relation to each other) (Cejudo & Michel, 2017). As such, we suggest that “the policy landscape also provides an additional layer of analysis in policy designing as new policies and their content can be evaluated *ex ante* based on how they ‘interact’ with the existing policy landscape” (de Wee and Ramolobe, 2025, 16). This is an attempt to improve policy integration and coherence to decrease fragmentation.

This is important as fragmentation often leads to duplication and even contradictory policies (Weitz et al., 2017). For example, the problems of climate change emission reduction can be dealt with by various ministries, including energy, forestry, and agriculture. In another paper I used the IPA methodology to study the content of policy, based on the statements in three Nigerian policies aligned to nutrition, and I found that there are various degrees of interaction, which can be counter-productive, reinforced, causal orphans and accidental interactions (de Wee, 2025, 10). This type of analysis can help practitioners and students understand where there are conflicts between policies, and it allows for studying retrospectively where and or how conflicts emerged with the policy change or evolution. These are important insights into understanding the trade-offs often between policies and how they impact policy integration, coordination, and policy outcomes in governance.

The problem, however, is that to deal with these problems, governments tend to create more policies to regulate them without understanding or considering the various costs of fragmented policy growth. The inter-temporal nature of policies, from a policy content perspective, can help study the content and pinpoint exactly which parts of a policy have changed. This is important because often we see policy layering, or policy accumulation, which adopts an aggregate perspective on sectoral policy, which is defined as “the result of a continuous addition of new policy elements to existing policy portfolios without the compensatory reduction of already existing policy elements.” (Adam et al., 2019)

Policy growth is a concept that focuses on policy complexity, where individual policies are added to an increasingly dense network of existing policy provisions, and the potential interactions between them increase considerably (Hinterleitner et al., 2024, 647). Some of these consequences include overburdening the bureaucracy with additional policies while maintaining existing resources for implementation, thereby reducing resources for existing policies (Hinterleitner et al., 2024, 647), duplication of services to different policy targets, and conflicting interactions between different policy instruments. This is important to understand, as generally, policy growth and accumulation inevitably lead to administrative burdens and austerity in the public sector. The ability to study policy growth and accumulation through the evolution of policy content will provide valuable insights into how to better manage and decrease the possibilities of austerity because of the plethora of policies duplicating work. Studying policy content is important in these cases as it allows for analysis of administrative burdens and the changing of policy, and how they might interact. Policy content provides avenues to evaluate these, as even if policies are well-crafted or integrated initially, they degenerate through successive rounds of change, and according to Migone and Howlett (2024), better understanding how mixes are initially composed and how they evolve are key questions for analysts and practitioners alike.

This paper, like Lejano and Park (2015), makes a case for the focus on content because studies tend to neglect the fact that implementation is mediated by policy text. The idea is that implementation (or governance problems) can be derived from the nature and action of policy texts. The policy text is the intervening text that mediates action in the public sector. In policy integration, various policies and their interactions create relations between role-players in various policy subsystems and their directed actions. This idea is supported by Mettler’s (2016, 3) work on *policyscapes*, arguing that the political landscape is densely clustered with policies, and these policies define how state power is organized and how governmental operations are carried out, which establishes the context in which these officials must operate and govern. From this paper, the argument is that propositions are written to construct new situations or existing action situations, and they may correspond to an observable action situation/implementation. These observable actions or outputs serve as measurable results produced by the public policy, which links the public policy to the desired outcomes and serves as a proxy indicator for the outcome (Koontz & Thomas, 2012). This argument also draws on the work of May and Jochim (2013), who argued that governance systems are interconnected action situations where the various policies create a governance landscape that has many action situations (individual sub-systems in various ministerial jurisdictions and at various levels of government) that structure the governance arrangements. These implementation structures allow for mechanisms to address collective problems through collective action, including coordinating authorities, intergovernmental and other partnerships, networks of private and public entities, and contractual relationships (see May & Jochim, 2013, 435). Role players embedded in the text of a policy in different policy statements can also be identified, and their different actions.

6 Concluding remarks

This perspective aimed at providing a policy content perspective to the analysis of governance and possible advancements in public policy education. The paper argues that, because policy content is an important mediating factor for policy implementation, structural arrangements, and coordination in governance, amongst others, it is important to take stock of the existing knowledge on policy design-as-content and its contributions to the study of governance. The 21st century is plagued with complex problems that require multiple policies, in multiple governance arrangements and administrative jurisdictions, and the focus on policy content provides an additional and complementary approach to the study of these governance processes. Based on the review of the literature, a focus on policy content prepares for a more precise analysis and examination of policy implementation and governance, with the possibility of a more nuanced understanding of governance, through the disaggregation of policy content into components and interacting components across policies, could provide important insights for public administration scholarship and public administration and policy education.

Policy content is an important aspect in the study of policy designs in the larger policy sciences. Howlett (2014, 190) emphasizes that it is “necessary to advance our understanding of both designs themselves” and associated processes. Central in this advancement has been the taxonomy model of policy content, disaggregating policy content into different components, overcoming the dependent variable problem. This also expanded the analytical locus in policy design (content) to multiple variables and understanding the nature of these dimensions of the policies and their impact on governance activities, policy dynamics, policy outcomes, and effectiveness. This, in turn, allows for more in-depth and nuanced approaches to the study of policy integration, which is important for effective policy making (preventing policy conflict and undermining instruments and objectives) and governance.

The progression in the policy design literature indicates the evolution from the early work of Hall (1993) to the expansion by Cashore and Howlett (2007). From a policy content perspective, the model admitted important insights into policy change, now studied at the micro-dimension extensively. The introduction of policy mix research also opened important doors for the complexities of modern-day governance, where multiple policies across sectors in multi-level governance exist, developing key areas such as policy coherence, integration, and their impact on policy coordination at an agency, departmental, or organizational level.

However, beyond the policy components as variables for investigation, various methodological advancements have been made for studying policy content. Despite this, more work is needed to investigate patterns in policy content to draw generalizable insights to continue developing “valid and reliable measurements of policy design [...] as the basis for conceptual insight” (Siddiki & Curley, 2022, 122), especially in terms of policy coherence and integration and mapping policy inter-compatibility. Such methodological advancements can provide key insights into the policy mixes, their interaction, synergy, and counterproductivity, as well as the nature of integrated and coherent policies.

Finally, it is important to set an agenda to purposefully integrate the study approaches for the various levels of policy design-as-content when focusing on public administration, policy, and governance research. It should also be used in complement to other theories in the Theories of Public Policy textbooks, to focus on the policy content using the various methods of analysis, at the appropriate level, to advance possible understanding and fill gaps left by the existing dominant theories. Policies are central in sanctioning governance in the public sector, and therefore, it is our responsibility to advance our understanding and strengthen the analytical links between policy content theory and governance.

Acknowledgment

This paper is an accumulation of research the author has conducted over the past five years that has culminated in various other articles, which are summarized here. The paper can be seen as a consolidation of ideas, observations, and insights that developed over the time of research policy design.

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The Thematic Expansion of Media Regulation in the European Union

From Sectoral Oversight to the Protection of Democratic Functions

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Abstract

This paper analyses the evolution of European Union media regulation from the Television Without Frontiers Directive to the European Media Freedom Act. It shows how an initially sectoral framework focused on cross-border broadcasting and market integration has gradually expanded to address structural challenges such as platform dominance, disinformation, and algorithmic control of information flows. The study traces this shift from economic coordination toward the protection of democratic discourse and media pluralism. It examines the main objectives and mechanisms of the new framework while assessing its legal foundations and compatibility with subsidiarity and proportionality. It concludes that the European Union's expanding role in media regulation, though rooted in legitimate concerns, must be exercised with caution: without careful limits, the effort to safeguard democratic discourse could unintentionally blur the distinction between protecting the conditions of free expression and prescribing its boundaries, thereby risking the very pluralism it seeks to defend.

Keywords

Audiovisual Media Services Directive (AVMSD), European Media Freedom Act (EMFA), EU media regulation, subsidiarity, EU competences

1 Introduction

Over the past few decades, European Union (EU) media regulation has moved from a narrow, sector-specific economic project toward a far broader agenda that aspires to safeguard democratic functions. Early efforts, most notably the 1989 Television Without Frontiers (TWF) Directive and the subsequent Audiovisual Media Services Directive (AVMSD), sought primarily to harmonize rules for cross-border broadcasting within the internal market. Grounded in free-movement principles and cultural policy compromises (Micová, 2021), these instruments enabled the circulation of television services while leaving Member States room to maintain stricter domestic standards. In the past ten years, however, structural shifts (the platformization of distribution, the viral spread of disinformation, and the rise of algorithmic gatekeeping) have

exposed the limits of that sectoral model. The EU's response has been ambitious, comprising initiatives such as the European Media Freedom Act aiming explicitly the protection of editorial independence, pluralism, and fair political communication across the internal market. Yet this development also signals a more assertive EU posture in a domain long anchored in national constitutional traditions, raising questions about proportionality, subsidiarity, and the risk that protecting the conditions of discourse slides into governing its contours.

This paper offers an analysis of this thematic expansion in EU media regulation. It traces the historical trajectory from the TWF Directive to the AVMSD, showing how early EU law prioritized internal market assistance and limited, sectoral oversight of broadcasting. It then examines how contemporary challenges, such as platform dominance, the spread of disinformation, and the rise of algorithmic power, prompted a reorientation of EU media policy toward safeguarding democratic discourse. The core sections analyze the European Media Freedom Act (EMFA) and contrasts the legacy internal-market model with the emerging democracy-oriented approach in terms of scope, purpose, regulatory technique, and normative ambition. Throughout, the paper foregrounds the legal and constitutional tensions accompanying this shift: questions of treaty competence, subsidiarity, and proportionality, as well as the delicate balance between EU-level coordination and national autonomy. Methodologically, the article relies on doctrinal legal analysis of EU primary and secondary law, supported by a close reading of recitals, legislative proposals and policy strategies, and by critical engagement with the relevant academic literature. The approach is qualitative and system-oriented rather than empirical: the focus lies on identifying underlying regulatory rationales, structural tensions, and constitutional limits rather than on evaluating enforcement practice or market outcomes. The central interpretative claim of the paper is that, while the turn towards stronger EU-level safeguards for media freedom is largely explained by the cross-border character of today's information environment, the resulting regulatory expansion also marks a major shift in the understanding of EU competences. The emerging framework no longer merely supplements national media regulation through internal market coordination but increasingly enters regulatory spaces that were previously regarded as lying beyond the EU's direct constitutional remit. Nevertheless, the ensuing analysis does not consider the prior statement as its premise; rather, it is deployed as such an organizing perspective through which the successive stages of EU media regulation and the architecture of the EMFA may be examined.

2 Evolution of EU media regulation: From the TWF to the AVMS Directive

The EU's foray into media regulation began in the late 1980s with a narrow, sectoral focus on television broadcasting. The TWF Directive, adopted in 1989, was the EU's foundational legal instrument for the audiovisual sector. It was conceived as a single-market measure to enable the free circulation of broadcasting services across Member States by harmonizing national rules that might impede cross-border television transmissions (Presburger & Tyler, 1990). As such, the TWF Directive was driven primarily by economic integration motives, distinguishing it from parallel initiatives of the Council of Europe. Notably, while the Council of Europe's 1989 European Convention on Transfrontier Television was rooted in a cultural policy tradition encouraging the free flow of information, the EU's TWF Directive took a more free-market-oriented approach (Katsirea, 2014). The Directive identified and harmonized certain key areas likely to hinder the free movement of TV broadcasts, for example, European content quotas (to promote European works), limits on advertising and sponsorship, protection of minors and

public order, and rights of reply, and later added events of major importance to society in its 1997 amendment. Crucially, this harmonization was partial (covering only selected aspects of broadcasting) and minimal in nature, meaning Member States could enforce higher domestic standards so long as the basic EU rules were met. The TWF framework thus respected national diversity (e.g., countries could maintain stricter decency rules or advertising limits) while ensuring a baseline that allowed television signals and audiovisual content to flow relatively freely within the single market (Chalaby, 2025).

After incremental changes in 1997, a more sweeping overhaul of the EU's media rules occurred with the adoption of the AVMSD in 2007 (recast as Directive 2010/13/EU, and later amended in 2018). The AVMSD modernized the TWF approach to account for rapid technological developments and the converging media landscape. Its main objective was to extend EU media regulation beyond traditional television to cover new forms of audiovisual content delivery that had emerged by the early 21st century. The Directive introduced a broadened definition of audiovisual media services, encompassing not only traditional scheduled broadcasting (termed linear services) but also on-demand video services (services distributed over the internet or other networks). Under this framework, the AVMSD applied a graduated regulatory approach: it continued to modernize some rules for linear broadcast services (for instance, easing some advertising regulations to reflect market changes), while introducing basic rules for on-demand (non-linear) services. These basic rules for emerging services were relatively light-touch, covering matters such as the protection of minors, prohibition of incitement to hatred, and certain advertising standards, thereby bringing online video services into the regulatory fold albeit with less stringent obligations than traditional TV. The guiding philosophy was to adapt the regulatory framework to new media realities without stifling nascent digital services, striking a balance between consumer protection and innovation in the internal market (European Commission, 2025).

Throughout the TWF/AVMSD era, the emphasis remained on facilitating the internal market for audiovisual media while respecting national particularities (Valcke & Stevens, 2007). Content requirements, such as those of the European content quotas or advertising time limits, were justified in part by cultural objectives, but were framed within an internal market logic of removing barriers and creating a level playing field (Metzdorf, 2014). Enforcement of these directives was largely left to national authorities, coordinated to a degree by soft mechanisms. For example, independent national broadcast regulators implemented the rules, and an informal Contact Committee and later the European Regulators Group for Audiovisual Media Services (ERGA, established in 2014) served as platforms for cooperation.

The EU's role was primarily to set minimum standards and ensure that no Member State's rules unjustifiably impeded cross-border broadcasts. Importantly, these directives did not seek to regulate the press or non-audiovisual media, nor did they directly address broader issues of media freedom or pluralism. In line with the EU's limited treaty competences, regulatory attention to media pluralism or democratic discourse was, if at all, pursued, it was by indirect means or through non-binding instruments (Valcke & Stevens, 2007). In sum, by the 2010s the EU had developed a relatively cohesive sectoral oversight regime for audiovisual media, one that modernized over time, as seen with the 2018 AVMSD amendments which, for instance, imposed obligations on video-sharing platforms like YouTube to address hate speech and protect minors online. Yet this regime was still firmly rooted in internal market principles and sector-specific concerns.

3 Emerging challenges

By the late 2010s and into the 2020s, a confluence of new challenges began to expose the limits of the EU's traditional sectoral approach to media regulation. The digital transformation of the media environment created novel problems and exacerbated old ones, pressuring the EU to rethink its regulatory philosophy. Key among these challenges were: (1) the platformization of media distribution, (2) the viral spread of online disinformation, and (3) the rise of algorithmic power and informational asymmetries in the digital public sphere. These developments each highlighted the media's critical role in democracy and suggested that a purely internal-market-focused, audiovisual-only regulatory framework was insufficient for contemporary realities.

3.1 Platformization and converging media markets

The rise of large online platforms has fundamentally altered how Europeans consume news and audiovisual content (Chalaby, 2025). There is a growing tendency that citizens, especially those from younger generations, access news through social media feeds, algorithm-driven platforms, and mobile apps rather than traditional TV broadcasts or print newspapers. This is well-illustrated by recent EU surveys,¹ demonstrating that social media platforms were used more frequently than printed newspapers for accessing news, with a particularly pronounced shift among young people who often rely on whatever news appears in their platform feeds (Düvekot et al., 2024). This “platformization” means that a handful of tech companies now act as gatekeepers for media content, exercising significant influence over what information is disseminated, to whom, and under what conditions. In economic terms, the media environment has evolved into a complex two-sided market in which platforms mediate relationships between news publishers, audiences, and advertisers. Major online platforms benefit from news content, which drives user engagement on their services, even as they compete with media outlets for advertising revenues, leveraging vast troves of user data to out-compete traditional media in the digital ad market. This dynamic has disrupted the conventional media business model and upset the balance between economic and democratic values in the media sector (Eriksson & Ihlström, 2016).

From a regulatory standpoint, platformization created gaps and inconsistencies. The AVMS Directive's scope, even after its 2018 revisions, was still largely limited to audiovisual media services and certain video-platform obligations, and it did not comprehensively address social media or search engines' impact on the media ecosystem (Gosztonyi, 2022). Content appearing on platforms could often evade the content standards that apply to traditional broadcasters, and decisions by platform companies, through algorithms or content moderation policies, could materially affect media pluralism and citizens' access to diverse information. National media regulators had no jurisdiction over global online platforms' news feed algorithms or their advertising systems. This left a regulatory vacuum regarding issues like the discoverability of public-interest content, the demonetization of news, or arbitrary takedowns of journalistic material by platforms. As Wallace (2017) notes, the largest online platforms have amassed gatekeeping power over access to media content, essentially controlling visibility and monetization opportunities for news in the digital environment.

The EU responded initially with horizontal digital market rules, such as the Digital Services Act (DSA) and Digital Markets Act (DMA), which significantly updated the rules for online

¹ Eurobarometer: *Social Media Survey 2025*. Online: <https://europa.eu/eurobarometer/surveys/detail/3592>

intermediaries and gatekeepers. The DSA, adopted in 2022, imposes due diligence obligations on very large online platforms to handle illegal content and systemic risks, including risks to fundamental rights and the information environment. While not media-specific, the DSA implicitly tackles some platform issues by requiring transparency in content moderation and algorithmic accountability, and by recognizing a co-regulatory Code of Practice on Disinformation as a tool for platforms to address harmful content. Still, the need for media-specific measures remained. In particular, policymakers grew concerned about platforms' ability to remove or down-rank lawful media content (e.g., news reports) without oversight, and about the bargaining power imbalance between platforms and news publishers. These concerns directly fed into proposals like Article 18 of the EMFA, which seeks to recalibrate the platform-media relationship. In short, platformization and the changing political climate forced the EU to contemplate regulatory approaches that cut across the once-separate domains of telecom-, tech-, and media policy, integrating them in the service of protecting access to diverse, reliable information.

3.2 The disinformation phenomenon and threats to informed discourse

Alongside structural changes in the market, the EU has faced a pernicious threat to the quality of public discourse due to the viral spread of disinformation online. Disinformation, be it false or misleading information, is spread intentionally with a view to deceiving its recipients, and as a phenomenon, it has surged to the forefront of the EU agenda in the wake of events such as the 2016 U.S. elections, the Brexit referendum, and the COVID-19 infodemic (Colomina et al., 2021). Organized online disinformation campaigns, sometimes linked to foreign actors or extremist networks, have been acknowledged as a serious threat to democratic stability and political cohesion in Europe (Casero-Ripollés et al., 2023). Unlike traditional media content, which is subject to editorial checks and regulatory standards, false narratives now propagate virally across social media and messaging platforms, often targeting individuals through micro-targeted advertising or algorithmic amplification. This challenge exposed the limitations of the EU's former media rules: the TWF and AVMS directives were simply not designed to handle user-generated false content or information operations spreading across platforms (Buiten, 2022). Furthermore, under the 2000 e-Commerce Directive's framework, online intermediaries enjoyed broad liability exemptions for user content, and European law had few hard requirements for platforms to monitor false or harmful (but not illegal) information.

EU institutions gradually crafted a response that combined voluntary measures and new regulatory initiatives. In 2018, the European Commission convened a High-Level Expert Group and subsequently launched the Code of Practice on Disinformation, a self-regulatory code wherein major online platforms (Facebook, Google, Twitter, etc.) committed to steps like demonetizing disinformation sources and improving fact-checking. The Commission also reinforced cooperation among Member States on election security and promoted media literacy to strengthen societal resilience. These efforts culminated in the December 2020 European Democracy Action Plan (EDAP), which explicitly framed disinformation as a core threat to democracy requiring a stronger and more coordinated EU response. The EDAP's provisions included calling for an improved Code of Practice (which was revised in 2022 with more signatories and detailed commitments), and crucially, linking these commitments to the forthcoming Digital Services Act so that very large platforms would be legally obliged to assess and mitigate systemic risks like the spread of disinformation. In parallel, the EU proposed legislation to address specific vectors of disinformation, notably the 2021 proposal on political

advertising transparency, recognizing that opaque online political ads can be a conduit for false or manipulative messaging during elections.

The disinformation challenge thus pushed the EU toward a more assertive stance on content regulation in the digital sphere, a sensitive area given Europe's strong protections for freedom of expression. While the EU stopped short of defining or banning "disinformation" outright, acknowledging the difficulty of definition and the risks of censorship (Amriza et al., 2025), it embraced transparency and accountability measures to indirectly curb disinformation. The emerging approach treats disinformation not just as a national issue but as a cross-border phenomenon that the internal market alone cannot self-correct, thereby justifying EU-level intervention. As one analysis notes, the EU's policy on disinformation now aims to ensure a fair and open democratic process in all Member States, recognizing that fragmented national responses left gaps that malign actors could exploit (Kachelmann & Reiners, 2023). In summary, the rise of disinformation underlined the need for the EU to protect the integrity of the information space, a function adjacent to media regulation, in order to safeguard democratic debate. This represented a normative broadening of EU regulatory objectives, from merely guaranteeing market functioning to also shoring up democratic functioning.

3.3 Algorithmic power and the erosion of democratic information flows in the EU

A particularly pressing catalyst for the EU's regulatory expansion was the growing realization that control over information flows had shifted from traditional media institutions to a small number of global online platforms. The algorithmic curation and personalization systems that structure visibility and engagement on these platforms created opaque hierarchies of attention and influence, largely governed by commercial logic rather than democratic accountability. This transformation not only disrupted conventional media's business models but also affected how citizens access and interpret information, fragmenting the public sphere and amplifying the risks of manipulation (Ahmmad et al., 2025).

The problem was not merely economic but systemic: digital intermediaries such as search engines, social networks, and video-sharing services had become *de facto* gatekeepers of news, controlling the terms of public visibility and monetization. Their dominance enabled the formation of what scholars have termed "algorithmic publics", information environments shaped less by editorial judgment and more by data-driven prediction and behavioral targeting (Gandini et al., n.d.). As a result, the diversity and integrity of public communication increasingly depended on proprietary algorithms rather than journalistic norms or democratic oversight (Papp, 2023).

Existing EU instruments were poorly equipped to address this structural shift. The AVMSD, even after its 2018 revision, remained focused on audiovisual media services rather than on systemic intermediaries. Competition law, for its part, targeted market dominance but not the normative consequences of informational dominance. While the DSA and DMA began to impose transparency and fairness obligations on platforms, they did not fully capture the democratic implications of algorithmic gatekeeping for media pluralism and civic discourse. In response, policymakers and civil society began to argue that ensuring democratic access to reliable information required not only economic regulation but also safeguards for editorial independence, source diversity, and algorithmic transparency. The European Commission progressively acknowledged that unregulated algorithmic amplification and opaque ranking systems could distort the marketplace of ideas, privileging sensational or polarizing content. (Council of the European Union, 2020)

In summary, the convergence of platform dominance, disinformation, and algorithmic control over public attention exposed deep vulnerabilities in the European information environment. The EU's traditional internal market instruments proved ill-equipped to confront these structural threats to democratic communication. The challenges at stake were no longer confined to economic regulation or cultural diversity but reached the very conditions of informed citizenship and public trust. The EU thus chose to move beyond the familiar terrain of market integration, extending its regulatory reach into the sensitive domain of direct media regulation. The new phase of media regulation, therefore, appears less as a carefully calibrated act of necessity and more as a politically motivated overregulation, an attempt to restore balance by means that may themselves unsettle the delicate equilibrium between effectiveness, diversity, and subsidiarity that underpins the EU.

4 The European Media Freedom Act: A new paradigm for media independence

The European Commission in September 2022 unveiled the EMFA proposal. The regulative initiative intended to elevate media freedom and pluralism from primarily national matters to the subjects of EU-level protection. Following negotiations, the EMFA was enacted in 2024 as Regulation (EU) 2024/1083, marking a significant novelty in EU media law. The EMFA builds upon the existing AVMSD but goes much further in scope and intent, as it seeks to “enhance legal certainty in the internal market for media services” while explicitly aiming to “protect media pluralism and editorial independence.” (EMFA, 60, 65) In effect, it acknowledges that a well-functioning internal media market cannot be achieved without safeguards for the democratic roles of media. The choice of a regulation rather than a directive signals the EU's desire for uniform rules and its confidence in the legal basis of Article 114 TFEU to underpin measures that, though economic in form, serve democratic ends.

4.1 Objectives and key provisions

The EMFA introduces a comprehensive set of rules and mechanisms, unprecedented in EU law, to address various facets of media freedom and pluralism. The new framework introduces a series of interlinked safeguards aimed at strengthening media freedom and accountability across the EU. It requires Member States to respect and protect the editorial independence of media service providers, shielding newsrooms from political or commercial interference. Journalists gain reinforced protections against surveillance and threats to source confidentiality, aligning with EU fundamental rights standards. To ensure public service media remain autonomous, governments must guarantee transparent appointments and stable, adequate funding, preventing their capture by ruling parties.

Ownership transparency becomes mandatory, compelling disclosure of beneficial owners to expose hidden control and conflicts of interest. Parts of the Act also extend to the digital sphere: large online platforms must respect a form of “media privilege,” refraining from arbitrary removal of professional journalistic content, while users gain the right to customize default media selections on smart devices, promoting pluralism in access. Which, although it may be a fundamentally positive initiative, as Gosztanyi and Lendvai (2024) have pointed out, could easily become a tool for abuse. Further, Member States must conduct media pluralism assessments in major mergers, ensure transparency in audience measurement to prevent market manipulation, and allocate state advertising fairly and publicly. Finally, the establishment of the European Board for Media Services (built upon the former European Regulators Group for

Audiovisual Media Services) formalizes coordination among national regulators, offering the Commission a stronger, though consultative, role in safeguarding consistency and addressing cross-border risks to media freedom.

In addition to these core provisions, the EMFA was accompanied by a Commission Recommendation (EU) 2022/1634 on internal safeguards for editorial independence and ownership transparency. This non-binding recommendation, issued alongside the proposal, provided more detailed best practices, for example, encouraging media firms to adopt internal codes protecting journalists from editors' commercial pressures, or urging disclosure of ownership to a certain threshold. While the Recommendation itself does not create legal obligations, it accentuated the political importance of the issues and anticipated several requirements that the EMFA later made binding. Once the EMFA has entered into force, with the exception of Article 20, any overlapping parts of the Recommendation effectively became moot or were superseded by binding rules.

4.2 Implications and significance

The EMFA represents a swing in EU media policy. Substantively, it extends EU regulatory concern beyond the audiovisual sector to the media sector at large, including print and digital news outlets and even indirectly covering how platforms interact with news content. It thus establishes a common framework for media services in the EU's internal market with measures aimed explicitly at protecting media freedom and pluralism. In doing so, the EMFA acknowledges that media markets and media freedoms are interdependent, which is a significant departure from the earlier paradigm where the EU treated media largely as an economic sector and left press freedom issues to national law or the Council of Europe. This amounts to the Commission taking a supranational action to address issues like member-state media capture and fundamental rights concerns in the media sphere (Trevisan, 2025). The EMFA's aim is not modest: it seeks nothing less than to "increase the transparency, independence and accountability" of media-related actions across the EU.² In essence, it attempts to operationalize at the EU level the high-level values stated in Article 11 of the Charter of Fundamental Rights of the European Union by creating enforceable rights and obligations.

However, the EMFA's ambitious approach also raises practical and legal questions. For instance, while it provides tools to the Commission and the new Board to promote compliance, through opinions, investigations, and dialogues, it largely relies on national authorities for actual enforcement. Early analyses suggest that some tools favor willing cooperation over harsh sanctions, which may prove inadequate in cases of systemic non-compliance by a recalcitrant Member State or regulator (Trevisan, 2025). This precarious equilibrium reflects political realities: media regulation touches sensitive sovereignty issues, and the EMFA is, in many respects, minimum harmonization in disguise.

5 From sectoral oversight to democratic protection: Comparing old and novel approaches

The shift from the EU's older audiovisual regulatory framework to its new suite of media and democracy initiatives represents a transformation in both scope and purpose. It is instructive to compare the characteristics of the traditional "sectoral oversight" model, exemplified by

² <https://tinyurl.com/9xddnwwd>

TWF/AVMSD, with those of the emerging approach aimed at protecting democratic functions, exemplified by EMFA, the DSA, the political advertising regulation, and related measures. Key differences can be observed in the (1) scope of regulation, (2) the objectives and principles underlying the rules, (3) the regulatory techniques and enforcement mechanisms employed, and (4) the overall thematic coherence of the policy framework.

5.1 Scope of coverage

The former framework was narrowly focused on the audiovisual media sector, primarily television broadcasting and (eventually) on-demand video. Print media, radio, and purely online journalism were outside EU harmonization, and even online video content fell largely outside until the AVMSD's 2018 extension to video-sharing platforms. By contrast, the new approach significantly broadens the scope to encompass the media sector as a whole. The EMFA's definition of "media service provider" is not limited to traditional broadcast companies; it covers providers of news and current affairs in any format, which implicitly brings newspapers and online news sites under certain EU obligations or protections.

Moreover, the EMFA's platform-related rules (on content removal) acknowledge that platforms themselves are part of the media distribution ecosystem. The political advertising regulation similarly cuts across all media (online platforms, TV, print adverts, etc.), creating rules for any medium used to disseminate political ads. Thus, the scope has shifted from a sectoral (AV-centric) approach to a cross-sectoral approach covering a wide array of actors who participate in public communication. This expansion recognizes that in today's hybrid media environment, lines between "audiovisual" and other media are blurred and that threats to democratic discourse can originate anywhere in the information space, not just from television broadcasts.

5.2 Purpose and underlying rationale

The original TWF Directive was fundamentally an internal market instrument, seeking to eliminate barriers to free movement of broadcasting services while accommodating some cultural aims, like European content promotion. The AVMSD maintained this internal market rationale, aiming for a modern, flexible framework to foster the EU's media industries and support a single market for audiovisual content. Democratic or fundamental-rights rationales were secondary or implicit; for example, protection of minors and pluralism were included, but largely to the extent they were common minimum standards for market harmonization. In contrast, the new regulatory approach explicitly foregrounds democratic values and fundamental rights as core aims.

The EMFA's rationale is not just to remove market fragmentation but to protect freedom of the media, media pluralism, and editorial independence across the EU. It treats media freedom as both an economic and a democratic imperative. Essentially, the EU's media policy has shifted from a primarily market-driven logic to a dual market-and-rights logic. Holtz-Bacha (2024) described it as moving from "European media policy as industrial policy" to "European media policy as rule-of-law policy." The older framework certainly acknowledged media pluralism as desirable, but the new one treats the protection of democracy, through free media and fair political communication, as a guiding star. This change in purpose is reflected in political messaging: Commission officials in charge of the EMFA have cast it as part of the EU's response to authoritarian tendencies and geopolitical information threats, a far cry from the technocratic language of earlier directives.

5.3 Regulatory techniques and instruments

There is also a significant change in the regulatory techniques employed. The TWF and AVMS directives were minimum harmonization directives, giving the Member States considerable leeway in implementation and additional measures. They relied on national execution, each country's laws and regulators, and the Commission's infringement powers only if a country failed to transpose or enforce minimum requirements. By contrast, the EMFA is a regulation, directly binding in its entirety, which suggests a push for uniform application. The choice of a regulation also reduces the space for divergent national measures, theoretically ensuring more consistent standards, though, as noted, the EMFA still contains areas of flexibility.

Another new technique is the creation of European-level bodies or networks (the European Board for Media Services) to oversee and coordinate enforcement, whereas previously coordination was informal or at most advisory (ERGA). Moreover, the new approach interweaves co-regulation and self-regulation within the legislative framework: e.g., the Code of Practice on Disinformation is voluntary but gained quasi-regulatory status via the DSA; EMFA expects media to adhere to editorial standards and encourages industry codes (like the Journalism Trust Initiative) as complements. The use of transparency obligations and due diligence requirements (e.g., in political ads and EMFA's platform provisions) is a modern regulatory style distinct from the older command-and-control rules about content quotas or advertising minutes.

In essence, the toolkit has diversified: from straightforward content rules and market access provisions to more complex governance, transparency, and accountability mechanisms that involve multiple stakeholders, regulators, companies, and civil society. Enforcement, too, has a new multi-level character. The older directives left enforcement to Member States, with the Commission mostly on the sidelines, except in extreme cases. The new instruments contemplate a stronger Commission role: under EMFA, the Commission can issue opinions on national measures or directly request the Board to investigate issues, and under the DSA (complementing EMFA), the Commission has direct oversight of very large online platforms.

However, this evolving enforcement model is still being tested and defined, and as critics have pointed out, it may lack teeth if not strengthened. A telling example is that the EMFA currently does not set out an EU-level sanctioning regime; it relies on national authorities to impose penalties for breaches, which could be problematic if those authorities are the very entities compromised by political interference.

5.4 Thematic coherence and integration

Under the old paradigm, EU media regulation was somewhat siloed: focusing on audiovisual content while other relevant domains, such as electoral law, online services, competition in media markets, etc., were handled separately. The new approach is characterized by a greater thematic coherence, better suited for promoting democracy. The European Democracy Action Plan provides a strategic umbrella linking various initiatives: from anti-disinformation actions and political ad rules to media freedom measures. The EMFA itself is explicitly situated as part of a broader regulatory ecosystem, designed to integrate with instruments like the AVMSD, the DSA, the DMA, the TTPA, and competition law. For example, the EMFA amends certain provisions of the AVMSD to align them, and its recitals clarify that it does not prejudice the application of other laws like antitrust or data protection, yet it fills gaps that those laws do not cover (e.g., pluralism tests, which competition law alone would not require).

This indicates a more holistic regulatory vision: whereas the AVMSD primarily dealt with content standards and market access for TV/VOD, the new framework addresses content and conduct (e.g., disinformation, editorial independence), market structure (concentrations, ownership), and infrastructure (platform gatekeeping) in a coordinated way. The thematic thread uniting these is the preservation of an open and democratic public sphere. In terms of narrative, the EU now speaks of media policy in the same breath as it speaks of democratic resilience, rule of law, and fundamental rights. This is a clear thematic broadening. That said, one could argue there are still some fragmentation risks: the initiatives are spread across different regulations and directives, such as EMFA, DSA, Political Ads Regulation, Anti-SLAPP Directive, etc., each with its own scope and enforcement mechanisms. Ensuring these measures work together coherently is an ongoing challenge (Papp, 2024). But from an overall perspective, they do share a common *ethos* that was largely absent from the purely economic integration mindset of thirty years ago.

The comparison reveals a trajectory from a limited, industry-focused regulatory model to a wide-ranging, democracy-focused model. The EU's role has expanded from "market referee" to also being a guardian or supporter of media freedom values. However, this expansion is not absolute; it is constrained by legal competences and political sensitivities, which means the new approach must continually balance EU-wide rules with respect for national specificities. The next sections explore those very legal and constitutional constraints that shape and potentially limit the EU's newfound activism in media regulation.

6 Legal and constitutional tensions in the shift to democratic media regulation

The EU's move into the sensitive territory of media freedom and democratic safeguards has not been entirely smooth, as it raises fundamental legal and constitutional questions. Traditionally, direct regulation of media plurality or political campaigning lay outside EU competence. As a result, the recent initiatives must be carefully navigated within the bounds of the treaties' provisions and must respect principles like those of subsidiarity and proportionality. This section examines the key tensions, that is, the choice of legal basis and the limits of EU competence, the scrutiny of subsidiarity, and proportionality concerns. It also touches on specific treaty clauses like the Amsterdam Protocol on public broadcasting, and the potential for conflicts with Member States' constitutional identities and sovereignty in media matters.

6.1 EU competence and legal basis

Since the EU treaties do not provide an explicit competence for media freedom or press regulation, the European Commission has anchored the EMFA and the political advertising regulation in its internal market competence (Article 114 TFEU). Article 114 allows the EU to harmonize laws for the smooth functioning of the internal market, typically to remove barriers to free movement or distortions of competition. The Commission contends that disparate national rules (or lack thereof) on media safeguards and political advertising lead to fragmentation that impedes the internal market for media services and related goods. For instance, a media company operating in multiple countries faces different regimes on ownership disclosure or editorial independence, and an online platform dealing with political ads may confront 27 sets of rules, which justify an EU-level solution.

However, many EMFA provisions, like those on public service media governance or editorial independence, primarily pursue non-economic aims and only tenuously link to internal market concerns. Article 114 TFEU can only be used if the measures genuinely aim to improve internal market functioning, not if they are essentially about guaranteeing fundamental rights. Preamble justifications and impact assessments try to demonstrate internal market obstacles, for example, political control of media in one country could lead to unfair competition or reduce cross-border investment in the media sector, thus harming the internal market. The Commission also noted that disproportional regulation can allow cross-border influences, like propaganda outlets funded from one state operating in another, to exploit regulatory gaps (European Commission, n.d.).

While these arguments have some merit, the risk remains that if a measure's primary motivation is seen as political or cultural (beyond economic), its legal basis might be challenged (Koltay et al., 2024). A specific legal instrument illustrating competence tension is the Amsterdam Protocol on public service broadcasting (1997), which is annexed to the EU treaties. This Protocol affirms that the maintenance of public service broadcasting is primarily a task of the Member States, and that EU provisions shall not prejudice that competence, provided funding of public service media is for the common good as defined by Member States and does not distort trade unduly.

Some have argued that EMFA rules on independent functioning and funding of public service media, while noble in intent, tread into matters reserved by the Protocol to national definition (Longo, 2025). However, the counterargument is that EMFA does not prevent states from defining the public service mandate or funding it; it simply requires that whatever the mandate, the outlet's editorial decisions remain independent and that funding procedures are transparent and sufficient.

6.2 Subsidiarity concerns

According to the principle of subsidiarity, even if the EU has competence, it should act only if objectives cannot be sufficiently achieved by Member States alone, and if EU action brings added value. Media policy, being so tied to national culture and political systems, is a textbook case where subsidiarity scrutiny is intense. The Commission, in its proposal justifications, tried to preempt these concerns by documenting the transnational aspects of the media problems. It highlighted that media companies increasingly operate across borders, so divergent regulations create inefficiencies, that disinformation campaigns do not stop at national borders, so a patchwork response is inadequate, and that poor media freedom in one country can enable illicit actors to establish outlets there and then broadcast or publish into neighboring countries (OSCE, 2022). Additionally, from a values perspective, one could argue there is a "European dimension" to media freedom, as the Court of Justice held in *Centro Europa 7 s.r.l. v. Italy*, a case on broadcasting rights, as freedom of expression is a fundamental condition for the functioning of the EU internal market of ideas, not just goods. Still, subsidiarity remains a political question as much as a legal one.

During the negotiations, to satisfy subsidiarity worries, drafters made some EMFA provisions more flexible or explicitly minimum harmonizing. For example, regarding editorial independence, the Regulation allows Member States to adopt more detailed or stricter rules, a clause effectively nodding to subsidiarity by letting local best practices continue.

6.3 Proportionality and overreach

Under Article 5 of TEU, the principle of proportionality requires that EU action not exceed what is necessary to achieve the objectives. From a legal standpoint, proportionality is assessed on whether the measures are suitable and the least restrictive to achieve aims. The EMFA's measures, such as transparency obligations or cooperation structures, are generally moderate; they do not, for example, dictate media content or establish an EU censor or anything draconian. As such, they are mostly proportionate to the aim of ensuring a fair media internal market.

However, it is debatable whether a regulation was indispensable as opposed to a directive. Some argue that a directive transposed nationally could have achieved the objectives with more flexibility; hence, it would have been more proportional to diverse national contexts. Whereas a directly binding regulation is an excessive instrument (Koltay, 2025). The Commission chose a regulation likely to avoid delays and patchy transposition, which is justified by the urgency and cross-border nature, but this choice itself can be considered controversial.

Media systems in Europe are diverse. Historically, they are shaped by national culture, language, and political structures, and there can be apprehension that uniform EU rules will erode this diversity or impinge on sovereign choices. For example, countries with strong public broadcasting traditions worry that EU oversight, even indirect, could interfere with how they structure and fund these broadcasters.

In essence, while the EU's new media regulatory framework holds promises, its success is not guaranteed. The journey from law to reality is fraught with political, legal, and practical obstacles. Overcoming these will require sustained commitment, dialogue with Member States, adequate resourcing of regulatory bodies, and, perhaps most importantly, a continued normative consensus that, despite all challenges, protecting media freedom and democratic discourse is a cause worth the effort. The very expansion of EU action in this field is a testament to that emerging consensus, but it will be tested in the years to come.

7 Conclusion

The evolution of EU media regulation from the 1990s to the mid-2020s reflects a profound broadening of both vision and responsibility. What began as a narrow project to facilitate cross-border television broadcasting under internal market logic has altered into a multifaceted endeavor to safeguard the democratic fabric of European societies. The TWF Directive and the AVMS Directive laid the groundwork by removing internal market barriers in the audiovisual sector and modestly promoting cultural diversity, but they deliberately stayed within a sectoral lane, deferring to Member States on deeper questions of media freedom and pluralism. Over time, however, the rise of global digital platforms, the onslaught of disinformation, and worrying trends of media capture have made it evident that such questions can no longer be treated as a solely national preserve or as ancillary to market integration. The EU found itself compelled to extend its regulatory reach to ensure that media across the EU can fulfill their essential democratic functions: providing trustworthy information, democratic control, and enabling informed public debate.

The introduction of the EMFA marked a watershed in this regard. It signals that media policy has definitively arrived on the EU agenda not just as an economic or cultural matter, but as a pillar of the EU's democratic governance and rule-of-law architecture. The shift from the old to the new framework can be characterized as moving from sectoral oversight to the protection of democracy.

The scope has expanded from regulating television broadcasts to addressing the media ecosystem at large. The purpose has widened from ensuring market access and minimal content standards to actively safeguarding pluralism, the integrity of information, and fair political competition. Regulatory techniques have become more sophisticated, blending hard law and co-regulation, national and supranational coordination, and transparency and accountability mechanisms, all of which are tools necessary to cope with the complexity of digital-era communication.

Thematically, there is now a more coherent narrative that unites various EU actions: whether it is the DSA's platform rules, the EMFA's media safeguards, or the political ads regulation, all are justified in terms of protecting democratic processes and fundamental rights in the internal market. This represents a new integrative approach to policy-making and breaking silos between media policy and other domains. Yet, as the analysis in this paper has also demonstrated, this expansion is not without tension. The EU must constantly mitigate the subtle balance between EU intervention and national autonomy. Legal limits act as a guardrail, ensuring that EU actions remain anchored in internal market rationales and do not trespass on cultural sovereignty. Political acceptance of the new framework varies across the Member States, requiring ongoing dialogue and confidence-building. The principle of subsidiarity remains a compass: the EU should act only to the extent that objectives cannot be achieved by Member States alone.

Looking forward, the success of the EU's thematic expansion in media regulation will hinge on several factors. First, effective implementation and enforcement are paramount. The creation of the European Board for Media Services and the networks for enforcing the political ads rules provide a framework, but these bodies must be empowered, active, and seen as legitimate. The Commission will need to use its political and legal tools decisively when standards are flouted, while avoiding unnecessary intrusion where national systems are performing well.

Second, a degree of regulatory restraint will be essential. In recent years, the EU's growing intervention in media matters, though motivated by genuine democratic concerns, has shown signs of overextension. As the EU multiplies instruments, oversight mechanisms, and reporting obligations, there is a risk of regulatory fatigue and institutional overlap that could blur responsibilities and erode national ownership of media governance. To preserve legitimacy and diversity, the EU must recognize that not every perceived risk to pluralism or integrity demands a new rule or centralized supervision. Consolidating and streamlining existing frameworks, rather than continuously expanding them, may ultimately serve the cause of media freedom more effectively than constant regulatory modernization.

Third, flexibility and adaptability should be maintained. The media and tech landscape evolves rapidly; the EU may need to recalibrate its measures in response to new developments, be it novel forms of online propaganda or emerging technologies like deepfakes, which were not explicitly addressed in current laws. The thematic coherence of the approach should make it easier to plug gaps as they become apparent, since all measures share the ultimate aim of enshrining democracy.

When viewed as a whole, the EU's trajectory from the era of TWF to that of the EMFA reflects that the EU is increasingly inclined to expand its reach in the name of protecting democratic values. While this evolution is rooted in legitimate concerns about disinformation, media capture, and algorithmic power, it also raises questions about proportionality, subsidiarity, and institutional restraint. What began as an effort to safeguard the integrity of democratic discourse now risks converting into an overly interventionist framework that blurs the boundaries between regulation and governance of opinion. The ambition to secure trustworthy information and a resilient democracy is commendable, yet it carries an inherent paradox.

In seeking to guarantee truth and reliability through regulation, the EU risks positioning itself, however unintentionally, as an arbiter of legitimate public discourse. Such an approach,

even when grounded in democratic values, may blur the line between protecting media freedom and prescribing its content. The coming years will show whether this expanding regulatory vision strengthens democratic resilience or subtly erodes it by conflating freedom with conformity. The stakes remain high, and while the EU's growing role reflects a genuine commitment to democracy, it equally demands vigilance to ensure that the defense of pluralism does not become its undoing.

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