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Thomas Weck

EU Competitiveness at a Crossroads: Why the Draghi Report Falls Short, and the EU Treaties Offer a Solution*

KEY MESSAGES

- The EU Treaties rely on an open market economy – the Draghi Report does not
- The EU's lag in cutting-edge tech is known, and Draghi's state-driven response is unconvincing
- EU overregulation is an issue particularly in the strategic areas identified by Draghi
- Large-scale public funding distorts markets and burdens the population
- The Draghi Report advocates reducing dependencies, but lacks global trade strategy

On September 9, 2024, Mario Draghi delivered what the President of the European Commission, Ursula von der Leyen, had asked him to do in March 2023. The “Draghi Report” (Draghi 2024) recognizes that the EU economy has grown more slowly than the US economy and in particular has failed to contribute to the “digital revolution.” The Union is weak in the economic use of advanced technologies. Given Europe's ageing population, this economic weakness is an “existential challenge.”

In its analysis, the Draghi Report holds no surprises. It should be common knowledge by now that the EU, as Draghi writes, needs to digitalize and decarbonize its economy and, given the wars surrounding it, also increase its defense capabilities. To meet the identified challenges, the Draghi Report advocates institutional and economic measures. These measures should focus on “giving Europeans the skills they need to benefit from new technologies,” using “decarbonization [as] an opportunity” to boost “competitiveness and growth,” as well as “increasing security and reducing dependencies” (Draghi 2024, 2–3). In that respect, the Draghi Report may be read as an “action plan” for the Commission.

What the Draghi Report does not do, however, is advocate for changes to the EU's legal architecture.

* The author declares that the Frankfurt Competence Centre for German and Global Regulation (FCCR) receives regular funding by companies that have been or are involved in competition proceedings at EU and/or national level, although it is independent vis-à-vis funding partners.

The existing framework, established by the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), is designed to “achieve the strengthening and the convergence” of the member states' economies and “to promote economic and social progress for their peoples.”¹ Thus, the question is: How do the recommendations in the Draghi Report compare with that framework? The short answer: the EU economy would probably gain more from fully implementing the existing Treaty framework than from following the recommendations of the Draghi Report.

SUBSTANTIAL DEVIATIONS FROM THE SINGLE MARKET CONCEPT OF THE TREATIES

Competition – From Success Factor to Obstacle

The EU Treaties mandate the establishment of an internal market characterized by “undistorted competition,” supporting a market-driven economy.² Most EU competences can be seen as reinforcing this market economy.

While the European Court of Justice (ECJ) has never strictly defined “competition,” it has clarified that “competition on the merits” benefits consumers through lower prices, better quality, and greater choice.³ Competition, as an open-ended process, guarantees all market participants – suppliers and consumers – their fair share and drives innovation as long as it remains undistorted.

According to the ECJ, competition is distorted when equality of opportunity no longer exists.⁴ The EU Treaties safeguard the internal market from two threats to competition: one threat arises from the collective or unilateral exploitation of market power by companies, which harm consumers to their own advantage (Art. 101–102 TFEU). The other threat arises from distortive measures adopted by EU member states. In that regard, the Treaties view state action to remedy market failures less critically than sovereign interventions when markets might operate better absent state intervention or when member states use

¹ Preamble of the TEU.

² Art. 3(3) sentence 1 TEU in conjunction with Protocol No. 27.

³ ECJ, Judgment of 12.05.2022, C-377/20 – *SEN*, ECLI:EU:C:2022:379, para. 85.

⁴ ECJ, Judgment of 13.12.1991 18/88 – *RTT/GB-Inno-BM*, ECLI:EU:C:1991:474, para. 25.

subsidies, so-called state aid (Art. 106, 107 ff. TFEU). Additionally, EU competition rules aim to prevent market fragmentation along state borders, thereby supporting the EU's fundamental guarantees for the free movement of goods, services, persons, and capital (Art. 34 ff. TFEU). Exceptions from all these rules exist for areas like agriculture and fisheries (TFEU, Title III).

While the Treaties promote the competitiveness of the EU industry as a whole, competition rules restrict industrial policies by member states that could lead to the creation of national champions.⁵ Moreover, Article 173(3) TFEU specifies that measures of the EU to promote competitiveness “shall not [...] lead to a distortion of competition” or infringe on rights relating to employment or taxation.

The Draghi Report highlights valid concerns that EU companies struggle to “translate innovation into commercialization” and to scale up to compete with advanced technologies. However, Draghi also notes that “EU competition enforcement [is] possibly inhibiting intra-industry cooperation.” Moreover, he criticizes that “the EU and member states have tended to view mergers in the sector negatively” (Draghi 2024, 26–27).

This suggests a shift in competition policy toward supporting suppliers and industrial policy, aligning with the agenda for the next Commission. Ursula von der Leyen made clear in her candidate speech to the European Parliament that “we need a competition policy that supports companies to scale up” (von der Leyen 2024a). This was also reflected in her Mission Letter to the designated Competition Commissioner, which includes a push for “modernizing” competition rules, particularly regarding state aid, and calls for the fast-tracking of Important Projects of Common Interest (IPCEIs).

Internal Market Regulation – Overburdening the Market Instead of Removing Barriers

In an internal market characterized by undistorted competition, consumer demand typically drives the adoption of new technologies. If this process stalls, one major reason – discussed at length by Draghi – is the interference of regulation, which may slow down market activities.

To address this potential obstacle, the EU Treaties grant the Union broad legislative powers to harmonize laws when national regulations act as market barriers (Art. 114 ff. TFEU). The Treaties also limit member state taxes that could hinder the free movement of goods and services (Art. 110 ff. TFEU). Moreover, the EU is tasked with reducing regional disparities by strengthening economic, social, and territorial cohesion between member states (TFEU, Title XVIII).

However, EU competences in environmental protection and energy are more limited (TFEU, Titles XX and XXI). Environmental policy focuses on risk and

resource management, while energy policy centers on supply security and efficiency. EU legislative powers in these areas are largely restricted to promoting energy market interconnection, savings, and renewable development – without promoting specific industrial sectors. Where competences are not conferred to the EU, they remain with the member states, which can complicate cross-border challenges such as energy supply security (Art. 5(1)–(2) TEU). Here, the Treaties distinguish between EU risk management and member-state-led economic development, both subject to EU competition rules.

Additionally, the Treaties allow the EU to develop guidelines, standards, and funding mechanisms for trans-European networks in transport, telecommunications, and energy infrastructure, complementing its internal market competencies and fostering competitive markets (TFEU, Title XVI).

The Draghi Report correctly identifies regulation as a barrier fragmenting the single market. What it does not discuss in detail is that particularly onerous EU legislation exists in the areas it deems strategically important – finance, the digital economy, and sustainability. EU laws in these areas often pursue multiple, unclear objectives, duplicating national rules (e.g., product liability), and some member states add their own rules (“gold-plating”) (Draghi 2024, 26 and 65). This regulatory overload hampers both existing businesses and new market entrants, particularly in financing.

Meanwhile, the EU Capital Markets Union, which was intended to create resilient and efficient capital markets and to facilitate operation on these markets (by way of harmonized listing and insolvency rules), remains incomplete.

Internal Market Regulation – Eurocratic Targets Instead of Open Market Development

Fostering a dynamic market and promoting innovation is challenging, given the uncertainty of future consumer demand and competitive developments. Moreover, the EU's diverse cultural and historical landscape complicates a one-size-fits-all approach.

The EU Treaties take a measured approach to education as well as research and development (R&D), acknowledging their importance for the internal market but leaving policy development largely to the member states. The EU's role is primarily to promote cooperation in education and support R&D initiatives that strengthen its scientific and technological foundations (TFEU, Title XII). In contrast, the EU has very limited competences in the area of culture. This system strikes a balance between fostering coop-



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⁵ See Art. 173(1) TFEU (re the promotion of competitiveness).

eration (EU competence) and allowing competition in knowledge development (member state competence).

The Draghi Report takes a more direct approach, highlighting shortcomings in academic excellence and the weak pipeline from innovation to commercialization. It attributes these issues to fragmented private financing and insufficiently focused public R&D spending (Draghi 2024, 24–25 and 29). Draghi specifically warns that inadequate investment in computing and connectivity could lead to bottlenecks, hindering the development of technologies like AI and foundation models (Draghi 2024, 27).

Notably, the Draghi Report emphasizes outcomes over the development of the EU’s “scientific and technological bases.” It treats academic and research output as measurable by EU institutions, paving the way for large funding programs aimed at commercialization. However, this focus on results does not guarantee future consumer demand for the products developed.

Funding – Arguing for Subsidies, Stepping Back from Calls for Necessary Reform

The EU Treaties provide for the establishment of an economic and monetary union to regulate the finances of the Union, its member states, and their economies (TFEU, Title VIII). The EU and the member states submit to obligations to coordinate their economic policies and to contribute to the establishment of the internal market (Art. 119(1), 120 TFEU). Public and private finances must be kept separate, and both the EU and member states are bound by sound budgetary policies to avoid deficits (Art. 123–126 TFEU).

The European Central Bank’s monetary policy plays a supporting role (Art. 127 TFEU). However, this framework proved incomplete during the financial and debt crises of 2007–2014. The EU lacked express competences to stabilize the financial system, and the absence of a fiscal union hindered monetary policy efforts to stabilize the euro.

The Draghi Report does not call for fiscal reform. However, it retains one of its elements in isolation and advocates “the issuance of a common safe asset.”⁶ This is meant to improve the funding of innovative projects and make the Capital Markets Union “easier to achieve and more complete” (Draghi 2024, 59–62). The common safe asset would be part of an overall funding volume of EUR 750–800 billion annually. According to Draghi, this funding would consist of public and private funding as “the private sector will need public support to finance the plan” (Draghi 2024, 59). The sheer volume of proposed funding reveals that financial measures form the centerpiece of the recommendations in the Draghi Report.

The assumption regarding the public funding component seems to be that EU institutions can ef-

fectively identify projects deserving of funding. In this context, the concerns expressed above with regard to knowledge resources apply *mutatis mutandis*.

The External Relations – EU Self-Deprecation Instead of Promoting the EU’s Attractiveness

Under the EU Treaties, the EU seeks to promote market economy principles in its international relations. To this end, the EU institutions are empowered to negotiate measures for progressive abolition of restrictions and have broad exclusive competences regarding external trade (Art. 206–207 TFEU). Restrictive measures for the protection of the EU economy should be the exception (Art. 207, 215 TFEU). In addition, the EU has competences regarding development, economic, financial, and technical cooperation with third countries and in relation to humanitarian aid (Art. 208 ff., 212–213, 214 TFEU). The EU is also competent to enter into international agreements (Art. 216 ff. TFEU).

International relations are governed by the principle of reciprocity. In view of an increasingly difficult international environment, the EU must seek to reduce dependencies, but also to strengthen its own negotiation position. In the trade context, this means that trade policy should not only prevent supply chain disruptions, but also identify economic areas where the EU is able to bring indispensable assets to the negotiation table.

The Draghi Report stresses repeatedly the necessity of “increasing security and reducing dependencies” (Draghi 2024, 3, 13 and 50). That said, it is notable that the Report does not discuss what, if anything, the EU could (and should) offer in return for an attractive trade deal.

POLICY CONCLUSIONS

At the presentation of the Draghi Report, Ursula von der Leyen said that Mario Draghi and the Commission both “shared analyses of the economic situation and [had already] started shaping solutions” (von der Leyen 2024b). This suggests that, despite the Report’s call for policy reassessment, the Commission is not seeking a broader debate on its findings. Still, it can be assumed that the Report will influence EU policymaking. As noted before, von der Leyen’s priority is currently to make European companies “scale up.”

In economic terms, however, the implementation of Draghi’s recommendations would require enormous resources, which would ultimately be passed on to the European population. While von der Leyen is pushing for a reform of the EU budget, including the creation of a European Competitiveness Fund, this approach is meant essentially to reallocate existing EU funds (von der Leyen 2024a). Member states have not shown any willingness to contribute additional resources so far. Meanwhile, the US continues to leverage private investment on a scale Europe is unprepared to match.

⁶ See critically on this Koch (2024).

Beyond financial concerns, Draghi's recommendations also highlight the need for investment in education and research – areas requiring more than just money to address. These are complex issues that demand thoughtful, sustained attention.

Legally, it is remarkable that the Draghi Report does not occupy itself a lot with the division of competences between the EU and its member states. It frames solutions from an EU-centric perspective, emphasizing the removal of obstacles, harmonization of laws, and policy coordination. The report calls for stricter application of the subsidiarity principle but fails to specify in which areas and how member states may be better placed than the EU to contribute to European competitiveness.⁷

In any event, the EU will have to choose: Does it want to create “European Champions” (like von der Leyen does) to keep up with the US and China in competition at global scale, or does it chiefly want to focus on the development of its internal market? Creating European Champions will require not only

massive subsidies but also the vigorous enforcement of EU competition rules toward the beneficiaries in order to rein in the harm to the internal market. However, strict adherence to the Treaties and confidence in the EU internal market may contribute to Europe's success in global competition as well.

Both options moreover require that the EU tackle the challenge of overregulation effectively and that it involve member states in its efforts to boost competitiveness. EU policy should mainly focus on these two issues – to boost its competitiveness and for multiple other reasons – in the coming years.

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⁷ See Draghi (2024, 64), (only) calling for an investigation why member state parliaments remain passive vis-à-vis “excessive” legislative activity by the “Commission” (i.e., EU legislative bodies).