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The EU's New Economic Governance prescriptions for German, Irish, Italian and Romanian public transport and water services from 2009 to 2019

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The EU's New Economic Governance prescriptions for German, Irish, Italian and Romanian public transport and water services from 2009 to 2019.

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Abstract

After the success of the single market programme, the European Commission's attempts to commodify public services had run out of steam by the mid-2000s. After 2008, however, a new economic governance (NEG) regime provided the Commission with a new policymaking tool and allowed a tight integration of the SMP with the enhanced rules of the economic and monetary union (EMU). Whereas the European Parliament was able to curb the Commission's commodifying bent through legislative amendments in the 2000s, the EU's NEG prescriptions do not require parliamentary approval. This made it more difficult for labour movements, and their allies in the European Parliament, to contest them. Our detailed analysis of the EU prescriptions on public transport and water services from 2009 to 2019 for Germany, Ireland, Italy and Romania thus shows that the shift from the EU's ordinary legislative procedures to NEG neither made EU politics more social nor more democratic.

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1. Introduction

The crisis of 2008 led to severe macroeconomic imbalances that threatened to break up the Economic and Monetary Union (EMU). To prevent that from happening, EU leaders adopted a new economic governance (NEG) regime that strengthened EU executives' surveillance and intervention powers in national policymaking. This included a Six Pack of EU laws that gave the European Commission and the Council of Finance Ministers wide-ranging policy intervention powers to counter member states' excessive budget deficits and to ensure the 'proper functioning' of the EMU (Art. 2, Regulation No 1176/2011).

It has been shown that the EU's NEG interventions led to cuts in public expenditure and profound changes in European industrial relations (Schmidt, 2020a; Jordan et al., 2021). Our analysis reveals that the European Commission and EU finance ministers also used NEG to compel member states to treat their public transport and water services more like commodities to be traded in the market. This finding is striking, as the attempts to commodify public transport and water networks through EU laws appeared to run out of steam after 2004, given the counter-movements that they triggered and the European Parliament's ensuing reluctance to approve them without amendments (Crespy, 2016). The 2008 crisis, however, provided the Commission with an opportunity to move on from this stalemate. In conjunction with the reinforcement of the EU's surveillance capacity over national budgets, EU executives obtained new governance tools to enforce structural reforms, as described by Mario Monti:

> Although [structural reforms] have come to be recognised as a top priority, more nations have succeeded in adjusting their budgets than in reform. [….] The task of government is harder when reforms directly affect the interests of well-organised groups, businesses, professionals or public service employees […] That is why I welcome the recent reorientation of EU policy – not away from fiscal policy but towards emphasis on country-specific recommendations on structural reforms (Monti, 2013).

This quote from the former EU Commissioner and Italian Prime Minister outlines why the Single Market Programme (SMP) aspect of NEG is crucial. By delivering commodifying prescriptions to member states in areas where progress had stalled, the EU sought to use the EMU-related NEG regime to advance the SMP agenda. Whereas the SMP relied on policymaking by the ordinary legislative procedure that involves partisan conflicts and compromises, NEG works differently. It led to a shift of SMP policymaking from the more democratic, legislative procedures of the so-called Community Method to the technocratic governance procedures associated with the EMU (Schmidt, 2020a; Verdun, 1998), which mimic the governance by numbers and ad-hoc prescriptions that multinational firms use to control their subsidiaries (Erne, 2015).

It has been acknowledged that NEG has enlarged the scope of the EU's policy domain (Hodson, 2020; Crum & Merlo, 2020), but the SMP aspect of NEG has so far been overlooked. Our objective is to address this lacuna. We do this by focusing on two public network industries (public transport and water services), in four states (Germany, Ireland, Italy, and Romania), from the first Memorandum of Understanding (MoU) intervention in 2009 to the last NEG prescription prior to the suspension of the fiscal rules during the Covid-19 pandemic. We reveal the policy direction of NEG prescriptions and consider their coercive power. We find that the NEG is being used as a vehicle to foster SMP integration. This is not to suggest that NEG is replacing other modes of EU policymaking; rather, it provides an additional tool that is complementary.

The following section outlines how the SMP and the EMU developed before 2008. Then we describe why the NEG regime provides new and stronger tools for the Commission to pursue its commodification agenda. Section 3 addresses the results of our detailed, semantic analysis of the NEG interventions in the two industries and four countries, which we have chosen given their different size and location in the EU's political economy. We find that *all* coercive NEG prescriptions go in a commodifying direction across our industries and countries. Where decommodifying prescriptions are issued, their coercive power is weak. Section 4 concludes, introducing an outlook on NEG and the further commodification of network industries in the context of the post-pandemic recovery.

2. One Market – One Money?

2.1 Public network industries and the single market

Pro-market actors pursued the commodification of public network industries in the EU via two channels. First, the SMP had a direct commodifying impact on network industries through market liberalisation and the hardening of state-aid rules. Second, the creation of the EMU put pressures on public resources, thereby affecting state-owned enterprises. We argue that commodification attempts through both channels had run out of steam by the mid-2000s. After 2008 however, the introduction of NEG provided an opportunity for EU executives to revive them and link them more firmly to each other.

The first channel of commodification through the SMP rested on three 'liberalisation' pillars: i) the gradual removal of exclusive rights of public undertakings; ii) the establishment of a regulatory framework that shields such undertakings from popular, political pressures; iii) the strengthening of EU competition policy including state aid (Thatcher, 2013). The first pillar refers to the removal of exclusive rights of publicly owned companies. This was done through ordinary EU laws adopted by the European Parliament and Council as well as through bold Commission decisions based on Article 106 TFEU, as happened in the case of telecommunications (Smith, 2005). The presence of exclusive rights in network industries reflected the importance of those industries as a local or national public service, but the Commission typically saw them as privileges that would undermine the SMP (Héritier, 2001).

After liberalisation, market makers typically saw a need to establish a regulatory framework independent of politics. This is the second pillar. Member states must establish regulatory authorities to ensure that stated-owned companies pursue company (rather than political) objectives and do not abuse their dominant position. Regulatory agencies must also ensure that private firms have access to the network. Regarding the design of the regulatory authority however, the corresponding EU laws of the European Parliament and Council often allow a degree of scope to member states. This is problematic for the Commission, e.g., given its goal of separating the so-called infrastructure manager of a network from the state-owned incumbent, which is not shared by all member states, including Germany (Dyrhague, 2013). Competition policy is the third pillar of the SMP. This includes the governance of state aid that comes into play when providers receive public funding for the provision of public services.

Over time however, there was a decrease in the effectiveness of the tools available for the Commission to pursue liberalisation across these three pillars. After rapid advances in the 1990s, Commission proposals for liberalising EU laws were increasingly challenged by social and political counter-movements. As the Commission's proposals were subject to the approval of the relevant Council of Ministers and the European Parliament, pressure from counter-movements often led to either body making amendments that were curbing the Commission's enthusiasm for liberalisation. The liberalisation process for public network industries has varied in terms of scope, extent, and timing, given the complex political compromises that resulted from having to counter union protests, accommodate reluctant member states, and give state-owned enterprises more time to acclimatise to a competition-oriented environment (Smith, 2005; Leiren, 2015).

This was especially the case in the rail transport and water sectors. In the 1990s, the Commission attempted a ‘big bang’ railway liberalisation, but this failed because of the opposition of trade unions and the Council. Afterwards, the Commission reverted to a salami-slicing strategy by adopting several, smaller-scale transport liberalisation packages. With the third package of EU railway laws (2007), the Commission had liberalised freight rail and international passenger services, but the implementation of the new regulatory framework remained problematic (Dyrhague, 2013). Further, attempts to liberalise the domestic passenger market were resisted, yet again, by the Council of Transport Ministers and the European Parliament, following strikes and protests coordinated by the European Transport Workers’ Federation (ETF) (Hilal, 2009). In the case of Port Services, ETF protest and lobbying activities even forced the Commission to shelve its liberalisation directives, as this pressure motivated the European Parliament to reject the directives not once but twice (Turnbull, 2010).

In the water sector, liberalising EU legislation was similarly unsuccessful. In the early 2000s, the EU Internal Market Commissioner, Bolkestein, explicitly stated his intention to include water in the comprehensive services liberalisation directive that he was drafting. The draft Services Directive, however, generated unprecedented counter-movements on a scale previously unseen by the EU. This spurred the European Parliament and Council to substantially amend the directive, leading, *inter alia*, to the exclusion of water services from its scope (Crespy, 2016; Parks, 2015).

Furthermore, the Court of Justice of the European Union (CJEU) has adopted a more cautious stance (Héritier, 2001), even if it initially backed the Commission’s commodification agenda in several infringement cases. Regardless of whether a case was taken by a private plaintiff or by the Commission, the Court’s verdicts could no longer be counted-on to favour the SMP liberalisation agenda (e.g., *Altmark*, C-280/00; *Corbeau*, C-320/91; *Commission vs. Germany*, C-556/10, *Concordia*, C-513/99). The CJEU became increasingly reluctant to give the Commission control over member states’ services of general economic interest (Hancher & Larouche, 2011). This shift, however, should not be viewed as surprising, considering how the European Parliament and Council curbed the Commission’s enthusiasm for liberalisation. The more scope liberalising EU directives leave to member states, the more difficult it becomes for plaintiffs to prove any violations of EU law in court.

2.2 Public network industries and monetary union

The creation of the EMU affected network industries less directly than the SMP, but the impact was equally significant, mostly because of the link between the Maastricht Treaty's 'convergence criteria' and the pressures on public services that they triggered. The SMP did not include the goal of privatisation, as the Treaty acknowledged (and continues to acknowledge to this day) member states' competence in drawing the boundaries between the public and the private sector within their own jurisdiction (Article 345 TFEU). That said, the convergence criteria on government debt and deficit put pressure on member states to privatise state-owned enterprises in a bid to earn extra revenue and reduce debt and deficit figures (Savage, 2005). Adhering to the Maastricht criteria could also mean a reduction in resources for public services, kicking-off a vicious circle of underfunding, declining quality of services, increasing distrust in public provision, and privatisation being offered as a solution. In Central and Eastern Europe, these processes were linked to the EU accession process, as the Copenhagen EU membership criteria required the creation of a functioning market economy (Boda & Scheiring, 2006). After the Euro was introduced and the waves of Eastern enlargement were completed, these pressures to privatise faded away, just at a time when the SMP also ran into difficulties. The Commission's coercive power was at its zenith during Stages I to III of the convergence criteria and during the accession talks with candidate countries. Once countries were inside the EMU or the EU, the sanction of denying entry disappeared overnight.

To compensate for the disappearance of this strong sanctioning mechanism and ensure the much-desired convergence of EU economies, several policy instruments were introduced, including the Excessive Deficit Procedure (EDP) within the Stability and Growth Pact (SGP) and the Broad Economic Policy Guidelines. In contrast to the latter, the EDP envisaged fines for non-compliant member states, but the enforcement of these rules proved to be problematic (Heipertz & Verdun, 2010). In a similar fashion, state-aid rules received additional legal backing with the creation of the EMU, as governments providing state aid to undertakings risked violating not only SMP, but also EMU, rules. Nevertheless, the application of state-aid rules remained contested, especially in the public transport sector. Railways receive more state aid than the other transport sectors combined (Dyrhague, 2013).

In sum, by the mid-2000s, the SMP had run out of steam. No wonder that Mario Monti lamented that 'the place of public services within the single market ha[d] be[come] a persistent irritant' (2010: 73). Popular mobilisation by unions and social movements, and subsequent legislative amendments by the Parliament and the Council, prevented further commodification of public services, including the transport and the water sector. In parallel, whereas the creation of the EMU was the main indirect driver of the privatisation of public services in the 1990s, once the Euro was introduced, the enforcement power of the EMU rules declined, leaving more autonomy for member states to adjudicate questions regarding ownership and operations.

3. New Economic Governance Prescriptions on Public Transport and Water Services

3.1 EU governance and the single market–monetary union nexus

The 2008 crisis ushered in a new phase in the commodification of network industries. The 'playing the market' strategy, which consisted of using the SMP and the EMU as political tools for uniting Europe (Jabko, 2006), was complemented by the NEG regime (Erne, 2015; Jabko, 2019). Once the banking system was saved (turning a blind eye to EU state-aid rules), EU executives not only prescribed budget cuts but also used the NEG regime to demand national policy changes. These requests regularly went beyond the demands set out in existing EU laws in the respective policy areas. The NEG regime also introduced new sanctioning mechanisms and allowed EU executives to link structural reforms to fiscal consolidation. This link was first established in the bailout programmes and then extended to all member states by the so-called Six Pack of EU laws on economic governance in 2011, which reformed the SGP and introduced greater macroeconomic surveillance through the European Semester process (Bauer & Becker, 2014; Costamagna & Miglio 2021).

The main NEG documents are the Memoranda of Understanding (MoUs) issued to a state requiring a financial bailout and the Country-Specific Recommendations (CSRs) that are issued annually to all member states in the framework of the European Semester process[1]. Three procedural aspects of the Semester enable the Commission to pursue the SMP more effectively through the NEG compared to the Community Method of sectoral liberalisation directives. Firstly, the European Parliament has no co-decision powers within the NEG regime. A corollary of this is that social movements and unions, which relied on the Parliament's power to block or amend commodifying EU directives, are also excluded from the policymaking process. During our interviews with sectorial EU-level labour representatives, their involvement in the Semester was scant, despite implications for the relevant sector. Secondly,

[1] If a member state is subject to an MoU, the CSR it receives simply states that the reform programme set out in the MoU must be implemented.

NEG prescriptions are signed-off on by the Council of Finance Ministers, who – in contrast to transport or environment ministers – have no specific interest in public sectors, such as transport and water, and their operations. Finally, in contrast to EU directives, NEG prescriptions on structural reforms do not have to be enforced by burdensome CJEU infringement procedures. Instead, the Commission and EU finance ministers can nudge reluctant member states to implement them through the stick of financial sanctions by the EU and/or the bond markets, or the carrot of EU cohesion funding whereby the granting of funds is made conditional on progress being made in the structural reform agenda (Costamagna & Miglio, 2021).

3.2 How to analyse the EU's new economic governance regime?

To assess whether EU executives used these newly acquired powers to further commodification, we analysed NEG prescriptions, which are the shortest policy statements within MoUs and CSRs. We reviewed these prescriptions for Germany, Ireland, Italy, and Romania, as this selection includes larger and smaller member states that are located in different parts of the uneven but nevertheless integrated EU political economy (Ban, 2016; Erne, 2015). We have chosen these locations as they are proxies for the relative power of larger and smaller; and richer and poorer states within the EU's political system, respectively (Jordan et al. 2021). While acknowledging these national differences, our comparative strategy is focussing on the workings of the *transnational* NEG regime across two sectors rather than the (disputed) relevance of national 'growth models' in the EU (Kohler & Stockhammer, 2021). Concretely, we analysed all NEG prescriptions targeting the public transport and the water sectors and areas that encompass them: local public services, network industries, and public utilities. We focus on water and public transport, as both sectors were subject to commodifying EU interventions, albeit at different times and to varying degrees. Both sectors also had encountered resistance, which resulted in the EU's liberalising drive losing momentum.

We define commodification as a process denoting the displacement of the public sector by market mechanisms (Hermann & Flecker, 2012). The direction of a prescription – i.e., whether it is commodifying or decommodifying – cannot always be decided by looking solely at it (Copeland, 2019; Copeland & Daly, 2018; Haas et al., 2020). We therefore determine a prescription's meaning by drawing on the MoU or CSR documents in their entirety, the Country Reports, and a good knowledge of the four countries and their languages (Almond & Connolly, 2020). The latter is important when analysing not only actual prescriptions, but also their absence. For instance, the most profitable segments of the water market in Romania had already been privatised in 2000 as part of the country's EU accession process. It is therefore hardly surprising that Romania did not receive any recommendations to privatise its water sector. This research design allows us to come to terms with the high level of detail contained within NEG documents, while our findings are still comparable across countries and over time. Our objective is to uncover a transnational meta-script and determine its content.

3.3 A common script of public service commodification

We present our findings based on a layered structure, using three levels of analysis to group NEG prescriptions. We have set general overarching categories as the first level, policy (sub-) themes as the second, and sets of concrete policy prescriptions as the third. These semantic layers are presented in Table 1.

Table 1: Layers of NEG Prescriptions for Public Transport and Water Services (2009–2019)

Overarching categories	Sub-categories	Themes and policy orientation of the EU's NEG prescriptions	
		Decommodifying	*Commodifying*
Governance of service providers	Ownership structure		Create water utility Implement privatisation plan Privatise rail freight company Lease railway lines
	Internal operation		Implement business plans and performance schemes Implement corporate governance reforms Increase efficiency and quality Provide market-making incentives to infrastructure manager Settle outstanding debts
Relations between service providers	General provisions		Foster market access Remove restrictions to competition
	Regulatory reform		Ensure independence of regulatory bodies Establish transport authority Adopt master plan for transport sector
	Public procurement		Use public procurement instead of direct concessions Promote competitive tendering Increase the value of public contracts open to procurement
User access to services	Costs for service users		Introduce water charges
	Availability of services		Close ... railway lines
Resources for service providers	Investment	Increase public investment Prioritise public investment Upgrade infrastructure capacity	

Sources: NEG Prescriptions for Public Transport and Water Services for Germany, Italy, Ireland, and Romania (2009–2019).

Table 1 indicates that most NEG prescriptions point in a commodifying direction. To be able to analyse them in the subsequent empirical section however, we must also take into account the context in which they were issued. We cannot treat all NEG prescriptions equally, as assumed by those that have argued that NEG prescriptions would point over time in a more social direction (Zeitlin & Vanhercke, 2018), but must differentiate between weak, constraining, and very constraining ones.

The coercive strength of NEG prescriptions depends on the position of the country in the surveillance and sanctioning channels of the NEG regime (Stan & Erne, 2019; Jordan et al., 2021). The strongest and most direct influence comes from the conditionality attached to a bailout programme. There are also several enforcement mechanisms through which the Semester process puts pressure on member states to comply. This includes the excessive deficit sanctions and the macroeconomic imbalance procedures of the Six Pack laws and the macro-conditionality clause of Regulation 1303/2013 that governs access to structural and cohesion funds. Prescriptions issued under the Europe 2020 strategy, however, have the weakest coercion power, as non-complying member states cannot be sanctioned by the EU. Table 2 therefore indicates when the countries under study were subject to MoUs and when they were experiencing excessive deficits or excessive macroeconomic imbalances.

Table 2: Country Positions in Surveillance and Sanctioning Channels of the EU's NEG Regime

	Germany	Ireland	Italy	Romania
2009	Excessive Deficit Procedure	Excessive Deficit Procedure	Excessive Deficit Procedure	**MoU conditionality** Excessive Deficit Procedures
2010	Excessive Deficit Procedure	**MoU conditionality** Excessive Deficit Procedure	Excessive Deficit Procedures	**MoU conditionality** Excessive Deficit Procedures
2011	Excessive Deficit Procedure	**MoU conditionality** Excessive Deficit Procedure	Excessive Deficit Procedures	**MoU & P-MoU conditionality** Excessive Deficit Procedure
2012		**MoU conditionality** Excessive Deficit Procedure	Excessive Deficit Procedure	**MoU & P-MoU conditionality** Excessive Deficit Procedure
2013		**MoU conditionality** Excessive Deficit Procedure		**MoU & P-MoU conditionality**
2014		Excessive Deficit Procedure	Excessive Macroeconomic Imbalances	**P-MoU conditionality**
2015		Excessive Deficit Procedure	Excessive Macroeconomic Imbalances	**P-MoU conditionality**
2016			Excessive Macroeconomic Imbalances	
2017			Excessive Macroeconomic Imbalances	
2018			Excessive Macroeconomic Imbalances	
2019			Excessive Macroeconomic Imbalances	

Sources: EU NEG Prescriptions for Germany, Ireland, Italy and Romania 2009-2019. Adapted from Stan and Erne (2018).

MoU & P-MoU conditionality: Member state is in a very significant surveillance and sanctioning channel

Excessive Deficit Procedure: Member state is in a significant surveillance and sanctioning channel

Excessive Macroeconomic Imbalances: Member state is in a significant surveillance and sanctioning channel

Empty boxes (Europe 2020 strategy): Member state is in a weak surveillance and sanctioning channel

Between the MoUs and the CSRs, we found 80 NEG prescriptions of relevance for our four-country, two-sector analysis in our areas of interest. Of those, 20 were directly related to transport (out of which 10 focused on rail) and 12 to water. The rest of the prescriptions were about broader categories including the two sectors, such as network industries or local public services. Table 3 summarises our findings. The different symbols represent the different overarching areas of the prescription, and the colour of the symbols stands for the degree of coercive power. To make the table more readable, we only use one symbol per year regardless of the number of NEG prescriptions for each overarching category. We indicate, however, whether the prescriptions affect the transport sector (^{t}), the water sector (^{w}) or both (*). Here, it is evident that commodification was pursued vigorously by the EU, particularly until 2015 in relation to the rail sector in Romania and the water sector in Ireland. This sectorial difference, however, does not denote different commodification agendas across sectors, but rather different levels of the agenda's attainment across countries. As stated above, in most Romanian cities the water sector had already been privatized before 2008. It comes therefore as little surprise that Romania did not receive any NEG prescriptions to commodify its water sector. Similarly, Ireland has a derogation from EU railway laws, mirroring the negligible role of Irish railways in Europe given their insular location. By contrast, both Italy and Germany received commodifying prescriptions for both sectors. Given Germany's better position in the sanctioning channels of the NEG regime, however, the prescriptions Germany received, were not as coercive as the Irish, Italian or Romanian ones. Decommodifying prescriptions appeared more often after 2015. Nevertheless, *all coercive* prescriptions still point into a commodifying direction, regardless of the apparent 'social' turn of the NEG regime in recent years (Zeitlin & Vanhercke, 2018).

Table 3: Policy Orientation of NEG Prescriptions on Public Transport and Water Services

	Decommodifying prescriptions				Commodifying prescriptions				
	DE	IT	IE	RO	DE	IT	IE	RO	
2009								●[t]	2009
2010							♦[w]	■[t]●[t]	2010
2011					○[*]		■[w]♦[w]	■[t] ●[t] ♦[t]	2011
2012					○[t]	●[*]	■[w]♦[w]	■[t] ●[t]	2012
2013		△[t]			○[*]	○[*]	■[w]♦[w]	■[t] ●[t]	2013
2014	△[*]				○[*]	●[*]■[*]		□[t]	2014
2015	△[*]				○[t]	●[*]■[*]		□[*]	2015
2016	△[*]		△[*]	◊[w]		●[*]■[*]		□[*]○[t]	2016
2017	△[*]		△[*]			●[*]■[*]			2017
2018	△[*]		△[*]	△[*]		●[*]■[*]			2018
2019	△[t]		△[*]	△[t]		●[*]■[*]		□[*]	2019

Sources: NEG Prescriptions on Public Transport and Water Services for Germany, Italy, Ireland, and Romania.

Overarching categories: □ (Governance of providers); ○ (Relations between providers); ◊ (User Access); △ (Resources for providers)

Coercive power of prescriptions: ■●♦▲ = Very significant; ■● ♦▲= Significant; □ ○ ◊ △ = Weak.

[t] Relevant for the transport sector. [w] Relevant for the water sector. [*] Relevant to both public transport and water sectors.

In the following, we present these findings in detail along the overarching categories of governance of providers, relations between providers, users' access to services, and resources for service providers.

3.4 Governance of public providers: Privatisation and management reforms

NEG prescriptions belonging to the governance category represent the deepest intervention in the provision of water and rail services. They penetrate state-owned enterprises' boundaries and intervene in questions of ownership and operation. Despite the indirect pressures to privatise in the run-up to the EMU, these areas officially constituted a taboo during the pre-NEG history of EU integration consequent to the declaration of the neutrality of ownership in Article 345 TFEU. Nevertheless, both Romania and Italy received prescriptions to implement privatisation plans.

The Romanian MoU of 2010 prescribed 'the majority (51%) privatisation of the national rail freight company, CFR Marfã' (MoU, Second Addendum, 2/8/2010). This 'material' privatisation deal, however, never transpired, following the buyer's failure to fulfil its part of the deal. The Romanian government was also told to 'lease lowest cost recovery segments of the railway lines' (MoU, 28/6/2011), which amounts to 'functional privatisation', as the lines would be outsourced to a private provider. We return to this point below, as there is also an user access dimension.

Italy also received prescriptions to privatise public services, but the terms are less specific than in the Romanian case. In 2014, the prescription to Italy simply read: '[c]arry out the ambitious privatisation plan' (Council Recommendation, C 247/11, 8/7/2014). A prescription to the same effect was issued the following year (Council Recommendation, C 272/16, 14/7/2015). Subsequently, the Italian government launched its 'biggest privatisation in over a decade', which included the partial privatisation of the state's railways (*Financial Times*, 11/10/2015).

Ireland's 2010 MoU demanded the corporatisation of the water sector, which involved the transfer of responsibilities from local authorities to a corporate entity. Irish Water was established in July 2013. The corporatisation of Irish water services was *directly* linked to the introduction of water charges. Following massive mobilisations, household water charges were abolished in 2017, but Irish Water survived popular protest. This would also have a commodifying impact on water sector workers whose contracts were set to be transferred from local councils to Irish Water by 2021. In May 2021 however, their unions announced that they would strike against this move, which would mean workers losing the protection provided by the collective bargaining agreement for the public sector.

NEG has not only intervened in the legal and ownership structure of network industries in member states, but also prescribed reforms relating to how established state-owned enterprises should be operated. In this area, the two most frequent demands were corporate governance reforms and efficiency improvements. These two goals are also often interlinked and re-echo a new public management (NPM) agenda that brings market mechanisms into public services without directly privatising them (Kahancová & Szabó, 2015).

Demands for NPM reforms of corporate governance are most frequent in the Romanian and Italian cases. The Italian prescriptions are somewhat vague and refer broadly to 'improv[ing] the efficiency of publicly owned enterprises' (Council Recommendation, C 261/11, 11/7/2017). In Romania, on the other hand, the corporate governance reforms specifically mention the state-owned rail operators, which were nominally identified on an annual basis between 2009 and 2013. The restructuring of Romania's rail companies 'is part of a broader, *if not very ambitious*, restructuring' programme (European Commission, 2014: 17, emphasis added). The programme included CFR Marfa reducing its workforce by almost 30 percent (IMF, 2015). Nevertheless, a 'further reduction in staffing' was still considered necessary (IMF, 2015: 27).

Other NEG prescriptions required Romanian public railway companies to prepare a 'realistic business plan' (MoU, 28/6/2011) with 'market-oriented information' and implementing 'performance schemes' (Supplementary MoU, 29/6/2012). Hitherto, the Commission had wanted 'to ensure long-term planning, which should enable investment and ultimately create stability in the sector, enabling competition' (Dyrhague, 2013: 86). However, as this had budgetary implications, the scope for public investment was limited. NEG prescriptions also demanded the 'corporate governance reforms of [Romanian] state-owned enterprises', including in the 'transport' sector, to 'increase their efficiency' (Council Recommendation, C 247/21, 12/7/2014). In 2019, the CSR (5) for Romania simply read: '[S]trengthen the corporate governance of State-owned enterprises' (Council Recommendation, C 301/23, 9/7/2019).

3.5 Relations between providers: Marketisation, regulatory reforms, and procurement

In contrast to privatisation, measures seeking to foster competition between different service providers were part of the SMP even before the NEG. Here, the prescriptions picked up and forward earlier issues, such as the rights of incumbents and vertical separation.

We see NEG prescriptions calling for a move towards market relationships between providers in both sectors in Italy, Germany, and Romania, over the period 2011 to 2018. The tools to achieve these goals often remained unspecified. The prescriptions instead used general terms such as 'improve competition', 'remove barriers to competition', or 'increase market access'. NEG prescriptions were issued on an annual basis for Germany's transport sector in 2011, 2013, 2014, and 2015. These prescriptions must be put in the context of the reformulated rail *acquis* (Directive 2012/34/EU), which aimed to ease market access for private railway companies.

Romania received direct recommendations to attract private entrants into the sector, thereby increasing competition with the state's railways and enhancing the competitiveness of (freight) rail vis-à-vis other transport modalities, such as road haulage. According to a follow-up report, the 'compatibility with European state-aid rules of the Romanian state involvement in SOEs is being followed closely by DG COMP' (European Commission, 2016a: 9). Here, state-aid rules were monitored and applied stringently, most particularly in rail (Dyrhauge, 2013: 73–75), which has been subjected to a prolonged (and frustrated) liberalisation drive since the 1990s.

The most frequent NEG prescription is the creation of an independent transport authority. Its role is to ensure that the providers adhere to market principles rather than political objectives, although this is contradictory given the detailed political NEG interventions in the governance of railway providers discussed above. These prescriptions reflect the Commission's longstanding preference for vertical separation between service providers and the infrastructure manager that goes back to the early stages of the SMP (Dyrhague, 2013).

The Romanian government was urged to 'pursue the restructuring of the Ministry of Transport and the corresponding implementing agencies (road and rail) with special regard to: (i) separation of tasks between the Ministry and the implementing agencies [with] clarification of responsibilities and clear accountability' (MoU, 23/6/2009). Similar prescriptions with strict deadlines for implementation are present in the follow-up supplement agreements (Supplementary MoU, 25/02/2010) and follow-up programmes.

Whereas railway reform was a feature of the various Romanian MoUs, it appeared in the CSRs issued to Italy and Germany. Italy received prescriptions to '[s]et up the Transport Authority as a priority' (Council Recommendation, C 217/42, 9/7/2013). The *Autorità di Regolazione dei Trasporti* was established in 2015. The 'strengthen[ing] of the supervisory role of the Federal Network Agency in the rail sector' was prescribed for Germany with a view to 'improv[ing] competition in network industries' (Council Recommendation, C 212/03, 12/7/2011). Here, context is important. Member states have different approaches regarding the regulation of rail. This is because the 'EU legislation on railways is less prescriptive' (European Commission, 2013a: 102), also given the counter-movements mentioned in section 2.1. In Germany, a cross-sector authority was established in 2005, the Federal Network Agency (*BNetzA*), which has responsibility for electricity, gas, telecommunications, post, and railways. This differs from Italy where there is a regulatory body specifically for the regulation of the rail market (*Ufficio per la Regolazione dei Servizi Ferroviari*). The Commission is critical of the German approach and tried to use NEG to coerce the German authorities to converge on its preference: the creation of an independent regulatory body for the rail industry.

Romania received prescriptions to '[A]dopt a comprehensive long-term transport plan' (Council Recommendation, C 217/17, 9/7/2013) and 'implement' it (Council Recommendation C 299/18, 12/7/2016). This objective, according to an appraisal document, 'is a key step in the rationalisation of transport infrastructure spending in Romania' and its adoption is 'an ex-ante conditionality for EU funding of transport infrastructure in Romania during the 2014-20 EU funds programming period' (European Commission, 2015: 33). Hence, EU funds were being used as a carrot to cajole cash-strapped governments into following EU prescriptions, even when Romania was no longer in a coercive enforcement procedure (see Table 2).

Public procurement was another area where the EU prescribed market-making policies. NEG prescriptions frequently criticised the allegedly high share of 'in-house' awards to public providers for the delivery of key public services in our four countries and promoted the opening up of these contracts to public procurement procedures. The introduction of public procurement for so-called services of general economic interest is yet another longstanding preference of the Commission (Howarth & Sadeh, 2010) that has been part of its agenda since the 1990s.

The link between market creation and the reform of public procurement is most explicit in the case of Italy and Germany. The latter received prescriptions to this effect in 2013 and 2014, whereas in Italy the more general prescriptions of marketisation were complemented by, and explicitly linked to, procurement reform every year from 2013 to 2017. Italian CSRs demanded the adoption of new laws promoting competition in network industries and local public services despite a corresponding law having been repealed by a popular referendum, which had been launched by a broad movement for the public provision of water in 2011 (Bieler 2021). The EU continued to push a similar agenda for network industries in Romania by prescribing that the country 'continue competitive tendering in the public service obligation contract' (MoU, 28/6/2011).

3.6 Access to services: Their availability and costs for users

We define access to services in terms of their costs and availability for users. Affordability also links up with the question of resources, as user charges are often introduced or raised to meet debt targets. As mentioned above, the question of access to public transport services is relevant to Romania where the government was urged to 'identify and close or lease lowest cost recovery segments of the railway lines' (MoU, 28/6/2011). The outcome of closing or leasing railway lines was to restrict access to (rural) transport services either by the cessation of the service or via an increase in prices. Two years later, the European Commission (2013b: 100) acknowledged that 1,000 line-kilometres were leased out and 230 line-kilometres closed.

In the water sector, Ireland was the receiver of prescriptions to introduce user charges. In Ireland, water provision is financed from general taxation, and private households do not pay domestic water charges. The introduction of water charges would therefore have meant a commodification of services and restricted access to them, based on ability to pay. The commitment to introduce water charges was part of the original MoU of 2010 and its subsequent updates. Water is part of the 'structural reforms' section of these documents. The last four updates of Ireland's MoU – from the seventh update in January 2013 to the tenth and final one in September 2013 – substantially expanded the list of economic policy conditionality and provided details on water reform, including the launch of a metering programme as the main technical requirement for charging (Supplementary Memorandum of Understanding, 2013). Although CSRs following the Troika's departure in 2013 did not mention water charges, the European Commission's Country Reports continued to monitor their implementation. The introduction of water charges in Ireland over 2014–2015, however, triggered mass protests and a widespread boycott of water bills, forcing the government to suspend the charging system in 2016 (Bieler, 2021). There were no explicit NEG prescriptions that demanded higher co-payments for the users of public transport services. As a result of the management reforms discussed above however, Romania's state-owned public transport operators increased their fares, and this was welcomed by the European Commission (2014: 62). In Ireland and Italy, austerity cuts to the grants for public transport providers had the same effect (Cahill, 2017; European Commission, 2016b).

The only decommodifying NEG prescription in the access to services category was issued to Romania, regarding the water sector. One of Romania's CSRs in 2016 demanded the improvement of access to integrated public services and to the extension of 'basic infrastructure … in particular in rural areas' (Council Recommendation, C 299/78, 12/7/2016). This prescription, however, was less specific and less constraining than the commodifying ones issued earlier (see above).

3.7 Resources for public service providers: Investment and prioritisation

Resources have an indirect but strong link to the commodification of public services, as a decrease in resources could lead to a deterioration in public service quality and to privatisation, as happened during the run-up to the EMU (Savage, 2005). The question of resources is therefore crucial in establishing the link between the EMU and the SMP. After 2014, social investments arguably started to play a bigger role on the NEG agenda (Zeitlin & Vanhercke, 2018), potentially entailing more resources for public services.

All four states received at least one prescription urging investment in infrastructure, with Germany receiving such prescriptions on a regular basis from 2014 to 2018. The 2014 prescription is a good example: '[u]se the available scope for increased and more efficient public investment in infrastructure' (Council Recommendation, C 247/05, 8/7/2014). We must, however, contextualise these pro-investment prescriptions. Firstly, in terms of budgetary standing, after 2012 Germany was no longer experiencing any undue budget deficits. Unlike other struggling states, there was fiscal space in Germany for more public investment. At the same time, strict budgetary discipline had had a negative impact on the state of infrastructure. Public investment in Germany was the 'second lowest in the OECD' and stronger public investment was encouraged, particularly regarding aging transport infrastructure (IMF, 2014). Moreover, increasing public resources for infrastructural investment can be consistent with increased commodification. Germany is a case in point in this respect. In 2017, Germany simultaneously received prescriptions to increase investment and to address capacity and planning constraints in infrastructure projects (Council Recommendation C 261/05, 11/07/2017), where removing planning constraints is synonymous with liberalisation. The German government created an infrastructure company, whose remit involved the seeking of new funding for motorways, including from private investors.

Italy, Ireland, and Romania also received NEG prescriptions on resources, and the direction of these prescriptions was even more ambiguous than in the German case. The wording of the prescriptions in these three countries was much more cautious and, rather than calling for an overall increase in public resources, governments were told to 'prioritise' or 'focus' investment in certain areas (see Online Appendix). This implied that expenditure might have to be reduced in other parts of the public service so that overall budget targets could still be met. In this way, fiscal constraints increased competition for resources between different ministries.

Italy received a prescription to focus investment on infrastructure relatively early on in 2013 (Council Recommendation, C 217/11, 9/7/2013), framed in the context of addressing regional disparities. This logic also underpins the pro-investment prescription that Romania received in

2019 and the wording is similar (Council Recommendation, C 301/23, 9/7/2019). Ireland, on the other hand, received a prescription that appears to be more precise: 'Better target government expenditure, by prioritising public investment in transport, water services …' (Council Recommendation, C 261/07, 11/7/2017). In other words, transport and water were to be prioritised over other areas requiring public investment, of which, following almost a decade of austerity, there were many.

4. Conclusion

In the 1990s, EU policymakers used the SMP and the EMU as a strategy for uniting Europe (Jabko, 2006). A few days before the Euro became an everyday reality however, the European Council seemed to change its tune: Although the 'basic issue should continue to be proper operation of the internal market and the single currency', it acknowledged that citizens would be 'calling for a clear, open, effective and democratically controlled Community approach' (European Council 2001: 21). Yet, the more visible liberalising legislative EU interventions became, the more social counter-movements contested the Commission's commodifying legislative SMP agenda. This motivated the European Parliament and Council to water down several EU directives, as shown in section 2. These changes also affected the CJEU, as it no longer consistently upheld the Commission's SMP agenda either. In the mid-2000s, the strategy of relaunching Europe through commodifying market reforms around the SMP and the EMU agenda therefore seemed to be exhausted.

After 2008, the credo of 'playing the market' (Jabko, 2006) as a tool of European integration seemed discredited. After all, the crisis showed that transnational market forces did not integrate Europe but triggered macroeconomic imbalances that threatened the Union. Keynesian scholars even thought that they would at long last win the argument, as there would be no free marketeers left (Erne, 2012). Our detailed documentary analysis of the NEG prescriptions for German, Irish, Italian, and Romanian public transport, and water networks in section 3, however, has shown that the shift from a market-led to a governance-led strategy for uniting Europe (Jabko, 2019) paradoxically reinforced rather than weakened the EU's commodifying policy orientation.

This development does not merely mirror a shift to the right in partisan and governmental preferences within the EU, as shown by Graziano and Hartlapp (2019). The NEG regime also included crucial institutional changes that made it more difficult for trade unions and social movements to contest commodifying EU prescriptions. The EU's ordinary legislative procedure – in which the European Parliament and the relevant Council of Ministers have the last word – is not only more transparent and democratic than the NEG regime, but also more likely to trigger transnational counter-movements. NEG has not only tightened up macroeconomic governance through enhanced surveillance and increased sanctions for excessive deficits but has also given the Commission and the Council of Finance Ministers new means to overcome parliamentary and popular resistance against a commodifying SMP agenda. The tight interlacing of structural reforms with budgetary policy makes NEG a powerful tool in the commodification of public services.

Albeit important to acknowledge these institutional changes of the EU's governance regime; this does not imply that there is no scope for politicisation of NEG by social actors (Burawoy 1991). NEG hinders but does not preclude counter-movements; as it happened in the cases of the European 'right2water'or the 'fair transport' campaigns (Bieler, 2021; Szabó, et. al. 2021). Despite NEG's tendency to nationalise social conflict (Erne, 2015), the findings of our content analysis of NEG prescriptions across the two sectors show that NEG is a *supranational* regime with a clear policy orientation. This renders transnational action vital for unions and social movements that believe in transnational democracy. In contrast to authors who claim that NEG prescriptions would point over time in a more social direction (Zeitlin & Vanhercke, 2018), our analysis of NEG prescriptions in two sectors for Germany, Ireland, Italy, and Romania has revealed an overarching commodifying policy script that is consistently present across time and space. Although in the more recent CSRs we also found calls for greater infrastructure investments, they were less binding and made in a way that did not challenge the overall parameter of the rules of fiscal governance in the EU.

This, however, may change in the future, as the Covid-19 pandemic led to the European Commission and Council suspending the SGP in March 2020. As outlined in section 3.6 however, Romania was already told in 2015 to take the commodifying NEG prescriptions on its public transport services seriously. Despite no longer experiencing any excessive deficits or macroeconomic imbalances, EU structural funding was made conditional on following NEG prescriptions. This indicates that the ongoing post-Covid shift from EU austerity prescriptions to greater EU resilience and recovery funding does not necessarily imply ending commodifying EU interventions in public services. The opposite is just as likely, because the Covid-19 pandemic has not led to 'a resurrection of the "Community Method" of decision-making' (Schmidt, 2020b: 1190). On the contrary, the Recovery and Resilience Facility Regulation

(2021/241/EU) suggests that the EU's new governance method by country-specific prescriptions outside the ordinary legislative procedures are here to stay. NEG's enforcement power may even increase. After all, the substantive EU Recovery and Resilience Facility grants and loans will be paid only to member states whose 'recovery and resilience plan contributes to effectively addressing all or a significant subset of challenges identified in the relevant country-specific recommendations' (Art. 2.2, Annex V, Regulation 2021/241).

Whereas it is too early to judge to future direction of the EU's NEG regime, our analysis of NEG interventions from 2009 to 2019 in the four countries and two public sector areas has shown that the shift from the ordinary legislative procedure of the EU's single market programme to the country specific prescriptions of the EU's new economic governance regime neither made EU politics more social nor more democratic.

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