

## EU Governance of Transport Services and Its Discontents

### 8.1 INTRODUCTION

The question of transport was central to the original design of European economic integration. However, the inclusion of a specific Transport Title in the Treaty of Rome generated fierce debate on state–market relations. A fundamental source of conflict, which has not fully abated, had to do with the primacy of public services with clear social goals over economic freedoms and competition. Other sources of conflict stem from the existence of different modalities – road, rail, air, and sea. Over the decades, each modality has developed its own technology, management, and operating procedures in a bid to increase its competitiveness and gain market share, usually at the expense of other modalities. Hence, the liberalisation of one modality, be it at national or at EU level, directly impacts the functioning of another (Héritier, 1997). Today, the EU governance of transport can be characterised as ‘recent, gradual, uneven, complex and crisis-driven’ (Kaeding, 2007: 35).

This chapter examines the extent to which EU governance interventions have been prescribing a commodification of (public) transport services. First, we assess the EU governance of the transport sector prior to the onset of the 2008 financial crisis. In this period, the adoption of a growing number of EU laws, through the ordinary legislative procedure, led to the gradual commodification of transport services, even though the Treaty establishing the European Economic Community (EEC) exempted transport services from its free movement of services provisions (Art. 61(1) TEEC, now Art. 58 TFEU) and emphasised the relevance of the ‘concept of a public service’ in the transport sector (Art. 77 TEEC, now Art. 93 TFEU). Despite this, the EU has over time succeeded in commodifying many transport services, particularly in road haulage, aviation, and shipping (Héritier, 1997; Stevens, 2004; Kaeding, 2007; Kassim and Stevens, 2010). In the port, rail, and local public

transport sector however, several commodification attempts by the Commission did not fully succeed because of mobilisations by European transport workers and their unions that found allies in the European Parliament and the Council of transport ministers. In a second step, we analyse the prescriptions issued under the new economic governance (NEG) regime (Chapter 2). Analysing the country-specific prescriptions for Germany, Ireland, Italy, and Romania in their semantic, communicative, and policy contexts (Chapters 4 and 5), we are able to show that the commodification of transport services, having stalled in the 2000s, was targeted afresh under the aegis of the NEG regime. Thirdly, we address the extent to which European transport workers' unions were able to oppose the commodifying governance pressures exerted by ordinary EU laws, the enhanced horizontal market pressures that they in turn triggered, and the EU's NEG interventions.

## 8.2 EU GOVERNANCE OF TRANSPORT SERVICES BEFORE THE SHIFT TO NEG

After 1945, most policymakers thought that European reconstruction could not be left entirely to the market and that public utilities should remain in public ownership (Millward, 2005). Thus, the drafters of the EEC Treaty gave transport special treatment.

### *Protecting Transport from the EEC Treaty's Liberalisation Bent*

In the 1950s, the transport sector accounted for a fifth of the combined gross national product of the six original EEC countries and employed 16 per cent of the workers in the industrial sector (Lindberg and Scheingold, 1970: 142). Because of this and explicit political commitments to social and regional cohesion, the question of transport was bedevilled by fierce debates between governments, their transport ministries, and the European Conference of Ministers of Transport (ECMT), established in 1953, whose 'opinions counted as authoritative' (Schot and Schipper, 2011: 283). A clear division emerged over whether transport should be treated as any other economic sector or whether its peculiarities, such as the public service aspect, should be addressed by emphasising cooperation over competition. Already there were concerns 'that only a European authority would be able to close unprofitable railway lines because it alone could operate free from national public service considerations' (Henrich-Franke, 2008: 67). The ECMT, on the other hand, 'feared that transport integration would be misused for a political purpose, and

that supranational European integration could lead to wasteful or ruinous competition' (Patel and Schot, 2011: 399).

The extent of these concerns was so grave and progress so slow that its drafters 'faced the choice to delay the Treaties or to exclude transport' (Schot and Schipper, 2011: 274). Neither option was considered acceptable. Thus, a separate Transport Title was included in the EEC Treaty that envisaged a common transport policy; however, there was 'a great deal of disagreement over how such a policy would be constructed' (Aspinwall, 1995: 480). Provisions were put in place to safeguard isolated inland modes of transport from its overall liberalising bent, and aviation was excluded altogether on national security grounds.<sup>1</sup>

Additional safeguards included the permissibility of state aid insofar as such subventions were for the 'co-ordination of transport or if they represent reimbursement for the discharge of certain obligations *inherent in the concept of a public service*' (emphasis added) (Art. 77 TEEC). Also, unanimity was required where transport was 'liable to have a serious effect on the standard of living and on employment in certain areas and on the operation of transport facilities' (Art. 75(3) TEEC). This provision protected the interests of transport users and workers in the sector and remained in force until the Lisbon Treaty. According to most member states, the separate Transport Title in the EEC Treaty protected the transport sector from the application of other Treaty articles governing such matters 'as competition, state aids and the freedom to provide services' (Stevens, 2004: 44). Despite the Commission's enthusiasm for creating a common transport market (Commission, Memorandum, COM (61) 50 final; Tindemans, 1976), the Council staunchly defended decommo-dified transport services. In the 1970s, the Council exempted, for instance, the question of transport from the first wave of procurement directives. Whereas EEC policymakers reached 'almost magical compromises' in the agricultural sector, which was also governed by a specific Treaty Title, there was an 'almost total deadlock' in the transport sector (Lindberg and Scheingold, 1970: 163).

### *Towards the Commodification of Transport Services by EU Law*

Following the first EU enlargement in 1973, liberalising transport became again a political issue. UK governments, along with Dutch ones, spearheaded

<sup>1</sup> Art. 84(2) TEEC treated air and sea transport separately from road, rail, and inland waterways. Although the Article empowered the Council to adopt European laws on shipping and aviation if unanimously agreed, bilateral intergovernmental agreements remained the *modus operandi* there until the mid-1980s.

the deregulatory drive but, with unanimity voting prevailing in the Council, their efforts were initially readily prevaricated. The application of neoliberal paradigms to transport, however, was also assisted by developments that originated outside Europe, namely, the deregulation of US aviation in the late 1970s (Kassim and Stevens, 2010). Following this, the Commission, in the first half of the 1980s, published three reports on inland (1983), maritime (1984), and air (1985) transport with the objective of launching ‘an irreversible liberalisation process’ that ‘was intended to work like a snowball getting both larger and faster as it rolled down hill’ (Stevens, 2004: 57).

For the reasons cited, civil aviation and maritime transport were excluded from the EEC Treaty (and therefore fatefully also from the protections of its Transport Title) and were instead regulated by intergovernmental agreements. In an important European Court of Justice (ECJ) case, known as *Nouvelles Frontières*,<sup>2</sup> inter-airline agreements were found to be illegal ‘in the absence of any Community regulation exempting them from the normal application of Treaty competition rules’ (Stevens, 2004: 58). This case was a ‘turning point for EU aviation’ (Kaeding, 2007: 47), which received a further boost when the European Parliament, along with the Dutch government, brought the Council before the ECJ, which ruled that the Council had infringed the Treaty by failing to ensure freedom to provide services in the sphere of international transport.<sup>3</sup> Constituting a ‘watershed for supranational transport policy’ (Kerwer and Teutsch, 2001: 29), this ruling meant that the Council could no longer insist on harmonisation as a precondition to liberalisation (Erdmenger, 1983; Héritier, 1997). This emboldened the pro-commodification advocates reorganising themselves at European level (Jensen and Richardson, 2004).

In 1985, the Commission (White Paper, COM (85) 310: 27) once again emphasised that transport was ‘of prime importance’ for the internal market and framed it as a normal economic activity without mentioning its role as a public service. That said, the rail sector was spared and considered as being ‘not of direct relevance to the internal market’ (White Paper, COM (85) 310: 30). Under the Single European Act, qualified majority voting was extended to many areas including aviation and maritime. This change ‘made it harder to resist the neoliberal agenda embedded in the Treaties’ (Stevens, 2004: 246), but not impossible. The successful adoption of three liberalisation packages between 1987 and 1992 created the single European aviation market. Buoyed by this, the EU turned its liberalisation sights on road haulage, rail, and other

<sup>2</sup> C-209-213/84 *Ministère Public v. Asjes* [1986] ECR 01425.

<sup>3</sup> C-13/83 *European Parliament v. Council of the European Communities* [1985] ECR 01513.

network industries (Chapter 7). The liberalisation of road haulage was contentious on the question of cabotage (the operation of non-resident hauliers in foreign markets); however, on account of the ‘weakened position of the anti-liberalization actors’ (Héritier, 1997: 541), agreement on a liberalisation package between member states was possible, formally at least (Schmidt, 2002). Several member states, including Italy and Germany, regulated road haulage to protect their railways from intermodal competition. The latter proposed a road toll for trucks from other member states to protect its railways and contribute to road-building costs. This, at the behest of the Commission, was deemed illegal by the ECJ. Hence, railways were to be susceptible to competition from road haulage, thereby contributing to its liberalisation.

Regarding the question of rail liberalisation, Directive 91/440/EEC ‘is the most important Community measure to improve the competitiveness of rail transport’ and required the organisational separation of railway operations and infrastructure management (Commission, Communication (1998) 202/final). This separation is also important in the context of monetary union, a point we return to below. In the 1990s, EU rail legislation (e.g., the Directives 95/18/EC on licensing of railway undertakings or 95/19/EC on railway infrastructure capacity) constituted a false start, as it focused on ‘less demanding’ reforms (Knill and Lehmkuhl, 2002: 272) and was characterised by a high degree of ambiguity, which mirrored the resistance by governments, such as the French (Kerwer and Teutsch, 2001: 46), and by the state-owned railway companies, represented by the Community of European Railway and Infrastructure Companies (CER). To overcome that resistance, the Commission (White Paper, COM (96) 421) first favoured a ‘big bang’ liberalisation; but, once the Commission realised that support from the Council was not forthcoming, it adopted a more gradual approach (Dyrhaug, 2013: 56). Hence, rail liberalisation really began in earnest only in the 2000s. By then however, the Amsterdam Treaty had enhanced the status of the European Parliament in EU transport policymaking. Subsequently, the Parliament became a co-legislator with the Council; this also meant becoming a target for both pro- and anti-commodification groups (see section 8.4).

Under their Lisbon growth agenda for the 2000s, EU leaders envisaged greater service liberalisation as well as the curbing of state aid (European Council, 2000: 20). The conservative Spanish EU Transport Commissioner Loyola de Palacio spearheaded this endeavour and sought to liberalise the rail sector, public transport, and port services, with mixed results. All three legislative attempts triggered countermovements by unions and other public sector advocates. Regarding railways, three packages of EU railway laws were agreed, between 2001 and 2007, with the emphasis placed first on rail freight given its

role in the movement of goods and its lesser political standing in terms of public salience. The first package envisaged competition on Trans European Rail Freight Network routes from 2003 and for all international rail freight from 2008. The second package, adopted in 2004, accelerated the liberalisation of rail freight services by fully opening the rail freight market to competition as of January 2007. The third package, adopted in 2007, aimed to open international passenger transport to market mechanisms by 2010. We return to the rail *acquis* below, but first let us consider one of the most overlooked pieces of EU legislation for public transport (Finger and Messulam, 2015: 4).

Public services obligations (PSOs) have been central to the state's provision of public transport services and 'can best be described as an activity carried out in the public interest, either directly by the authorities or by private undertakings under the control or supervision of the public authorities' (Degli Abbatì, 1987: 21). Questions pertaining to state aid and competition come under the remit of the Commission's DG Competition, which by the 2000s was no longer 'a sleepy, ineffectual backwater of Community administration' (Wilks and McGowan, 1996: 225).<sup>4</sup> Building on both the 2001 transport White Paper (COM (2001) 370) and the 2004 White Paper on services of general economic interest (COM (2004) 374), the Commission proposed a new Regulation that sought to streamline rules governing state aid by introducing compulsory competitive tendering in public transport. A protracted process ensued, involving three attempts by the Commission to have the regulation adopted. Following a landmark case<sup>5</sup> on state aid in the public transport sector, the ECJ ruled that 'where subsidies are regarded as compensation for the services provided by the recipient undertakings in order to discharge public service obligations, *they do not constitute state aids*' (emphasis added) (Bovis, 2005: 572). This *Altmark* ruling, along with amendments introduced by the European Parliament and the Council, meant that PSO Regulation 1370/2007 allowed for the possibility both of direct award and of competitive tendering, that is, member-state discretion in the awarding of public contracts prevails. This was welcomed by pro-public services advocates, such as the European Transport Workers' Federation (ETF) and several member states, as the adopted regulation differed from the Commission's original market-oriented proposal (ETF, 2010).

<sup>4</sup> The Barroso II Commission transferred the responsibility for state aid for transport services from its Directorate General (DG) for Transport to DG Competition.

<sup>5</sup> C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg v. Nahverkehrsgesellschaft Altmark GmbH, and Oberbundesanwalt beim Bundesverwaltungsgericht* [2003] ECR I-07747.

Rail liberalisation followed the same logic as other network industry liberalisations, such as telecommunications and electricity (Chapter 7). This logic centres on privatisation, regulatory independence, unbundling, and competition (Florio, 2013). EU legislators are limited by Art. 345 TFEU regarding privatisation (Akkermans and Ramaekers, 2010), but the dividing of services from infrastructure, that is, unbundling and fostering competition, overseen by an independent regulator, remain paramount to EU liberalisation, which can indirectly, but not unintentionally (Clifton, Comín, and Diaz Fuentes, 2003), put pressure on governments to pursue (partial) privatisation. This gradual approach seeks to foster competition by establishing a regulatory framework that ensures that national governments stay at arm's length. Here, the Commission, in relation to unbundling, has a clear and long-standing preference for vertical separation 'as a more effective means to alleviate the infrastructure monopoly problem, ensure neutrality and allow new entrants on the market of train operations' (van de Velde, 2015: 53). However, alternative governance structures also exist (Dyrhaug, 2013: 42–50).

The three rail liberalisation packages sought to restrict state interference by promoting vertical separation, which concretely involves (1) splitting up the state-owned railway company into separate passenger and freight units; (2) establishing an infrastructure manager to oversee non-discriminatory charging and the granting of access to the rail network, based on an economic rationale rather than social needs; and (3) creating an independent rail regulator 'to whom applicants can appeal if they consider that the rules have not been applied fairly' (Stevens, 2004: 99). The Commission depends on disgruntled private enterprises taking anti-competition cases (Kelemen, 2011) to ensure liberalisation. However, cases taken by private rail companies challenging state-owned rail companies' (alleged) abuse of position have not materialised.

Following the Swedish and British national liberalisation processes, the Commission pushed for vertical separation. Each of its three legislative liberalisation packages ended in conciliation between the European Parliament and Council (Dyrhaug, 2013: 88). In the legislative process, vertical separation was resisted by key member states, notably Germany and Italy, ensuring a degree of heterogeneity. In 2010, the Commission nonetheless filed actions against thirteen member states, including Germany<sup>6</sup> and Italy,<sup>7</sup> for having allegedly breached the first railway package. Most member states undertook only a minimum separation, thereby allowing the preservation of national rail holding groups, such as Deutsche Bahn. The Commission argued that the rail

<sup>6</sup> C-556/10 *Commission v. Germany* [2013] ECLI 116.

<sup>7</sup> C-369/11 *Commission v. Italy* [2013] ECLI 636.

*acquis* means that the infrastructure manager, such as Deutsche Bahn Netz, cannot form part of a holding company that also comprises the railway undertakings. In other words, holding companies, such as Deutsche Bahn, were problematic. In addition, the Commission was critical of the fact that the German and the Italian infrastructure operator's independence was not supervised by an independent agency. Following the opinion of Advocate General Niilo Jääskinen, the Court of Justice of the EU (CJEU) rejected the Commission's complaint regarding Germany and Italy. Moreover, the Court noted that the rail *acquis* requires only legal and accounting separation, which are present in the holding company model (*Rail Gazette*, 7 September 2012). Despite evidence to the contrary (van de Velde, 2015), the neoliberal Estonian EU Transport Commissioner Siim Kallas said after the ruling that the Commission 'remains convinced that a more effective separation between an infrastructure manager and other rail operations is essential to ensure non-discriminatory access for all operators to the rail tracks' (emphasis added) (*Politico.eu*, 28 February 2013).

Another key development in EU transport governance is the Lisbon Treaty (Schweitzer, 2011: 52), which abolished the unanimity requirement in the Council for transport sector-specific laws that 'might seriously affect the standard of living and level of employment in certain regions' (Art. 75(3) TEEC). When adopting EU laws in the field, EU legislators are henceforth tasked only to consider the following: '*account shall be taken* of cases where their application might seriously affect the standard of living and level of employment in certain regions, and the operation of transport facilities' (emphasis added) (Art. 91(2) TFEU). In other words, a significant institutional safeguard that protected the initial social purpose of European transport service governance was finally removed. Whereas the Commission's (MEMO/09/531) corresponding explanatory memo simply failed to mention it, trade unionists overlooked this change in the Lisbon Treaty debates (Béthoux, Erne, and Golden, 2018). This modification was still very much welcomed by pro-commodification advocates, as it facilitated the adoption of new EU laws in the field, which we assess at the end of the post-financial crisis developments section below. Before turning to the EU's response to the 2008 crisis and its implications for public transport services, we must assess a precursor to the NEG regime that is bound up in economic and monetary union (EMU). We briefly consider this next.

### *EMU and the Commodification of Public Transport Services*

The EMU accession criteria involved a forensic surveillance process resulting in a strong conditioning effect on state–market relations, especially on public



transport infrastructure (Savage, 2005). To join the eurozone, national governments had, among other things, to have a public deficit of less than 3 per cent of GDP. Albeit indirect, pressures arising from the EMU criteria were particularly relevant for the rail sector, which 'had become a growing burden on the public finances' (Finger and Messulam, 2015: 1). In addition to liberalisation, EU rail legislation accordingly sought 'to reduce railway debt to a level that does not impede sound financial management' (Commission, COM (1998) 202 final: 2). Here, member states devised novel ways to manage public debt, which included reforming the transport sector. For some member states, reforms constituted a significant reversal of the entire post-World War II policy paradigm (Clifton, Comín, and Diaz Fuentes, 2003). Italy, for example, topped the OECD privatisation ranking between 1995 and 1999 (Savage, 2005: 129). These initiatives, all in the name of meeting the EMU criteria, were complemented by a hiring freeze, hospital closures (see Chapter 10), and reduced rail subsidies.

In this context, the Commission promoted three interrelated measures of immediate relevance for public transport services and their gradual commodification. The first has already been mentioned above in terms of establishing an environment for competition, namely, the separation of infrastructure managers from incumbent rail companies so as 'to prevent state subsidies for public service obligations being used to finance commercial activities' (Dyrhaug, 2013: 85–86). Secondly, there was the creation of independent regulatory agencies, and once again there was a fiscal aspect. For instance, in the rail sector, regulatory agencies were envisaged as operating not only to 'prevent conflict of interests' and enhance competition but equally importantly 'to reduce its reliance on public financing' (Dyrhaug, 2013: 54). Thirdly, there was the question of EU cohesion funds, which went towards the construction of infrastructural projects. Although often portrayed as a side-payment to the EU's periphery in exchange for EMU (Hooghe and Marks, 2001), the cohesion funds were 'anything but a value-free pursuit' (Nanetti, 1996: 60). Rather, they were a vehicle for 'stimulating the mobilisation of domestic private capital and attracting private capital from outside the country' (1996: 66). This was achieved by public–private partnership (PPP), which can 'dramatically improve the deficit position of member states' (Savage, 2005: 140).

The question of excessive deficits never really went away; however, EU executives lacked the teeth to deal with member states in troubled fiscal waters in the first half of the 2000s (Heipertz and Verdun, 2010). Following the 2008 crisis, EU leaders remedied this weakness through the adoption of the NEG regime (Chapter 2). From the above, it is clear that the liberalisation of rail and local public transport has faced numerous obstacles, including diverging

member-state preferences and counter-mobilisations (see section 8.4). On rail liberalisation, Helene Dyrhaug (2013: 160) writes that ‘EU railway market opening is not a highspeed train which is quickly reaching its destination . . . instead it is a slow regional train stopping at all stations’. Such ‘stations’ include a general transposition deficit (Kaeding, 2007), a lack of infringement proceedings by private litigants against incumbents, failed infringement proceedings by the Commission, and consequently persistent regulatory heterogeneity regarding both the degree of independence of the regulator and the degree of vertical separation. Might the NEG regime provide the Commission and national finance ministries with a new avenue whereby awkward national transport ministries, the European Parliament, a not always reliable CJEU, and recalcitrant transport unions can be circumvented?

### 8.3 GOVERNING THE TRANSPORT SECTOR THROUGH COMMODYING NEG PRESCRIPTIONS

In this section, we assess the extent to which the EU’s NEG regime allowed the Commission to circumvent the strong anti-commodification contingent that it inevitably faces in the more democratic governance mechanisms of the EU’s ordinary legislative procedure. Here, we analyse the policy orientation of NEG prescriptions relevant for transport. Hundreds of country-specific recommendations (CSRs) have been issued by the EU but, rather than attempting to analyse all NEG prescriptions contained in CSRs for all countries from 2009 to 2019 without regard to their context-specific meaning (see Chapters 4 and 5), our focus is on Germany, Ireland, Italy, and Romania, which we know very well and are in different positions in the EU’s integrated but also uneven political economy. The objective is to determine whether the prescriptions further a commodification agenda across countries, whilst taking into consideration prescriptions’ coercive power, which relates to the position of a country within NEG’s enforcement regime at a given time (Chapter 5). Doing so enables us to go beyond broad-brush, macro-theories of neoliberalism and commodification (Bruff, 2014; Baccaro and Howell, 2017; Hermann, 2021) and offers a more nuanced understanding of the mechanisms underpinning the Commission’s transport-related policies across space and time.

Following the analytical framework outlined in Chapters 4 and 5, we first identified the NEG prescriptions on the provision of public transport services and people’s access to them, identifying common themes (i.e., common formulations of semantically similar prescriptions). In contrast to the water (Chapter 9) and the healthcare (Chapter 10) sectors, EU executives issued no prescriptions relating to people’s access to transport services. We therefore assessed the transport-related NEG prescriptions in terms only of the remaining three

categories of our analytical framework, pertaining to (a) resource levels and the (b) sector- and (c) provider-level governance mechanisms for the provision of public transport services. Whereas the resources category has a quantitative dimension, the sector- and provider-level mechanisms categories have a qualitative dimension. Together, these dimensions can shed light on whether we can speak of a transnational commodification script informing the EU's NEG prescriptions in transport and, if so, along what dimensions it has been applied.

Table 8.1 presents the themes of all transport-related NEG prescriptions for Germany, Ireland, Italy, and Romania from 2009 to 2019. We assess not only the prescriptions that mention transport services explicitly but also those for network industries and local public transport services where there is a semantic link to transport, typically in CSRs' recitals.

Table 8.2 represents all transport-related NEG prescriptions across our four countries and time, based on the categories to which they belong, their policy direction, and their coercive power.

A simple glance at Tables 8.1 and 8.2 reveals that *all* qualitative NEG prescriptions on sector- or provider-level governance mechanisms point in a commodifying policy direction. It is equally noteworthy that Germany, Italy, and Romania received commodifying prescriptions. Regardless of the countries' unequal locations in the EU's political economy, the Commission and the Council of finance ministers clearly tasked all governments to foster the marketisation of the public transport sector but, whereas the constraining power of the NEG prescriptions for Germany was weak, those for Romania and Italy were much more constraining, as indicated by the respective black and grey colours of the symbols in Table 8.2 (see Chapter 2).

Contrariwise, most quantitative, resource-level-related prescriptions point in a decommodifying direction. By contrast to the commodifying prescriptions mentioned above, the coercive power of the decommodifying ones has always been weak, with two exceptions. We must reiterate that transport services were also affected by the intersectoral prescriptions on employment relations and public services in general, discussed in Chapters 6 and 7. This is significant, as most NEG prescriptions on the curtailment of spending on public services were intersectoral. This was also relevant in the Irish case.

Table 8.2 indicates that EU executives issued only decommodifying NEG prescriptions for Ireland. This, however, does not indicate a lack of commodifying policy interventions in Irish transport services. Sure, Ireland's island location reduced the relevance of its domestic transport networks for the European single market. Because of this, Ireland had already received a derogation from the liberalising EU rail *acquis* before the financial crisis. More important for the single market, however, were Ireland's ferry and air links to the United Kingdom and the continent. As successive Irish governments had already commodified

TABLE 8.1 *Themes of NEG prescriptions on transport services (2009–2019)*

Categories		Policy Orientation	
		<i>Decommodifying</i>	<i>Commodifying</i>
<b>Provision of public services</b>	<b>Resource levels</b>	Increase public investment (RO/DE) Improve infrastructure capacity (IT) Prioritise public investment (IE) Focus investment in infrastructure quality (IT)	Close railway lines (RO)
	<b>Sector-level mechanisms</b>		Restructure Transport Ministry and regulatory agency (RO) Strengthen regulator's independence (RO/DE) Lease railway lines (RO) Increase efficiency of rail passenger services (RO) Increase efficiency in railway planning (RO) Reform rail sector to make it more attractive for cargo (RO) Promote competition in the transport sector (RO/IT/DE) Implement performance management scheme (RO) Promote competition in the local transport sector (RO/IT/DE) Set-up regulatory authority (IT) Operationalise regulatory authority (IT)
	<b>Provider-level mechanisms</b>		Privatise state-owned company (RO) Reduce payment arrears of state-owned rail company (RO) Restructure state-owned enterprises (RO/IT) Restructure local public services (IT)
<b>Access to public services</b>	<b>Cost-coverage mechanisms</b> <b>Coverage levels</b>		

*Source:* Council Recommendations on National Reform Programmes; Memoranda of Understanding. See Online Appendix, Tables A8.1–A8.4.  
Country code: DE = Germany; IE = Ireland; IT = Italy; RO = Romania.

TABLE 8.2 Categories of NEG prescriptions on transport services by coercive power

Decommodifying					Commodifying				
	DE	IE	IT	RO	DE	IE	IT	RO	
2009								● <sup>4</sup>	2009
2010								● <sup>2</sup> ■	2010
2011					○ <sup>2</sup>			▲ ● <sup>18</sup> ■ <sup>2</sup>	2011
2012			▲		○		●	▲ ● <sup>12</sup> ■ <sup>2</sup>	2012
2013			△		○		○ <sup>3</sup>	● <sup>6</sup> ■ <sup>6</sup>	2013
2014					○		● <sup>3</sup>	○ □	2014
2015					○		● <sup>2</sup>	□	2015
2016	△	△		△			● ■	○ □	2016
2017		△					● <sup>2</sup>		2017
2018		△		△			● ■		2018
2019	△	△	▲	△			● <sup>2</sup>	□	2019

Source: Council Recommendations on National Reform Programmes; Memoranda of Understanding. See Online Appendix, Tables A8.1–A8.4.

Thematic area: △ = resources; ○ = sector-level governance; □ = provider-level governance.

Country code: DE = Germany; IE = Ireland; IT = Italy; RO = Romania.

Coercive power: ●▲■ = very significant; ●▲■ = significant; ○△□ = weak.

Superscript number equals number of relevant prescriptions.

aviation and ferry services (Sweeney, 2004: 35; Mercille and Murphy, 2016: 697), there was no need for corresponding NEG prescriptions. Irish governments had also increased the role of private operators in local public transport services, 'not by head-on confrontation with the unions, but by ensuring that the existing state companies only play a limited role in new services' (Wickham and Latniak, 2010: 163). In 2004, for example, the government increased the competitive pressures on Dublin Bus by conceding the operation of Dublin's new light rail service to the French transnational corporation Veolia. For the same reason, Irish governments also supported Aer Lingus' low-cost competitor, Ryanair, at crucial moments of its history (Allen, 2007: 226–227; Golden and Erne, 2022).

After the financial crisis, the commodification of Irish public transport services gained even more traction, even before the arrival of the Troika in Ireland in December 2010. In 2009, Irish legislators had already transferred the task of public transport governance from both the national transport ministry and the Dublin Transportation Office to an independent National Transport Authority (NTA). In July 2010, the Irish finance minister tasked a Review Group on State Assets and Liabilities (2011: 1) to propose a list of measures 'to de-leverage the state balance sheet through asset realisations'. In 2011, the Group recommended 'that the *Aer Lingus* shares' (2011: 87) and state-owned 'bus businesses competing directly with private operators should be disposed of' (2011: 99). Furthermore, the government should seek 'to limit the level of public subsidy' for public transport providers and the amount of 'capital to be invested in further transport projects' and envisage 'the privatisation of all or part of *Dublin Bus*' (2011). In turn, the NTA conceded 10 per cent of Dublin's bus routes to private operators (Mercille and Murphy, 2016: 697), but Irish governments curtailed public transport expenditure so radically that even EU executives felt obliged to issue countervailing NEG prescriptions after 2016, as we shall see below.

Hence, the absence of commodifying NEG prescriptions for Ireland does not indicate EU support for decommodified public transport services but rather overzealous spending cuts and marketising reforms by Irish governments that made such NEG prescriptions needless. This once more shows that the meaning of NEG prescriptions can only be understood in their specific semantic, communicative, and policy context. To make better sense of the NEG regime's quantitative and qualitative dimensions in the transport sector across all our four countries, we now assess the orientation of all transport-related NEG prescriptions in more detail category-by-category.

### *Prescriptions on the Provision of Services*

**Resource levels:** This section speaks to NEG's quantitative dimension and to the question of commodification and decommodification. From Table 8.2 we

can see that on the right, commodification side of it there is a singular, but repeated, resource-level-related commodifying prescription, which tasked the Romanian government to ‘identify and close ... lowest cost recovery segments of the railway lines’ (P-MoU, Romania, 29 June 2011: 12). Subsequently, around 1,200 km of line were closed or leased out (European Commission, 2013: 51). The upshot of this was to restrict users’ access to (rural) transport services either because of cessation of the service or via an increase in prices, which were implemented (European Commission, 2014a: 17). In essence, their closure put important public services and goods beyond even commodification, all in the name of cost reduction. In 2015, the Commission nevertheless lamented that some ‘unsustainable railway lines are still not closed’ (Commission, Country Report Romania SWD (2015) 42: 27). Hence, Romania’s line closures represent ‘a real cautionary showcase’ (*Global Railway Review*, 24 September 2015) that unwittingly contradicted the enhanced role for rail laid out in the EU’s 2011 White Paper on transport.

After the 2008 financial crisis, the Irish Government also cut its capital expenditure on public transport, from €900m in 2008 to a low point of €254m in 2012, and its current expenditures from €343m in 2008 to a low point of €236m in 2015 (Hynes and Malone, 2020). These cuts, however, were triggered not by explicit, transport-related NEG prescriptions but by the intersectoral NEG prescriptions on public expenditure cuts and the Irish government’s turn to austerity that predated the arrival of the Troika (see Chapter 7). The Italian and German governments equally curtailed their public spending on transport to such an extent that EU executives in turn felt obliged to later issue countervailing prescriptions.

Looking at the left side of Table 8.2, we see that all countries under study also received prescriptions on resource levels that pointed in a decommodifying direction. Between 2012 and 2019, EU executives repeatedly tasked governments to increase or prioritise public investment in transport. For instance, the German government received an NEG prescription to ‘achieve a sustained upward trend in public investment, especially in infrastructure’ (Council Recommendation Germany 2016/C299/05) on account of Germany’s ‘sound fiscal position overall’ (Commission, SWD (2014) 406 final: 3). Despite federal spending on transport infrastructure having increased from an average of around €10bn annually over the period 2010–2014 to €12.3bn in 2016, EU executives stated that this ‘still falls short to meet the additional annual public investment requirement’ (Commission, Country Report Germany SWD (2016) 75: 46). Here, it needs to be borne in mind that Germany’s enduring underinvestment in transport preceded the debt break, enacted in its federal constitution in 2009, and German finance ministers’ proclaimed goal of a *Schwarze Null*: ‘black zero’. Consequently,

‘spending on public infrastructure has been on a downward trend for a long time’ (emphasis added) (Commission, SWD (2014) 406 final: 7), with ‘transport infrastructure’ being ‘affected in particular’ (2014: 9). The upward investment is seen as necessary to ‘maintain and modernise Germany’s public infrastructure’ (2014: 9), which is ‘crumbling’ (*Economist*, 17 June 2017).

Ireland too received transport-related decommodifying prescriptions on an annual basis between 2016 and 2019, but the gist of these prescriptions differed from those issued to Germany. The NEG prescriptions issued to the Irish government were: ‘Enhance the quality of expenditure ... by *prioritising* ... public infrastructure, in particular transport’ (emphasis added) (Council Recommendation Ireland 2016/C 299/16) and better ‘target government expenditure, by *prioritising* public investment in transport’ (emphasis added) (Council Recommendation Ireland 2016/C 299/16; Council Recommendation Germany 2017/C 261/07). As these decommodifying prescriptions tasked the government to divert public money away from other public sectors towards maintaining and upgrading public transport infrastructure however, they were still speaking to the austerity doctrine of doing more with less (Hermann, 2021). After the continued deterioration in the financial positions of Ireland’s transport providers triggered waves of strike action in 2016 and 2017 at Luas, Bus Éireann, and Iarnród Éireann, respectively (Palcic and Reeves, 2018; Maccarrone, Eme, and Regan, 2019), the government at last increased its spending on public transport once again. Since then, capital investment rose to €496m and current spending to €302m in 2019 (Hynes and Malone, 2020).

In 2019, all four countries received a transport-oriented decommodifying prescription. These came in the wake of the Italian Morandi Bridge disaster in August 2018, which killed 43 people and left 600 people homeless. A symbol of Italy’s *miracolo economico*, the Morandi bridge had been privatised in the late 1990s along with 4,000 miles of toll roads in the context of satisfying the Maastricht public deficit criteria (*New York Times*, 5 March 2019). The prescription urged the Italian government to focus on ‘the quality of infrastructure’ (Council Recommendation Italy 2019/C 301/12). Consequently, EU executives granted Italy an allowance of €1bn to secure its infrastructure, as the ‘state of repair is a clear source of concern’ (Commission, Country Report Italy SDW (2019) 1011: 52). The ailing state of transport infrastructure also informed the corresponding prescriptions for the other three countries. Furthermore, the 2019 prescriptions on public investments in transport infrastructure were linked semantically to another emerging policy script, namely, the looming climate emergency and the transition to a greener economy (von der Leyen, 2019). As seen above however, these concerns had hardly been a priority in the preceding years.

**Sector-level governance mechanisms:** Prescriptions under this category are the most prevalent, recurring in tranches across Germany, Italy, and Romania.



This prevalence arises because EU public sector liberalisation occurred primarily at sectoral level (Héritier, 1997; Schmidt, 2002; Smith, 2005; Leiren, 2015). At the same time, liberalisation attempts were limited, as EU legislators were able to prescribe only new regulatory frameworks that sought to foster competitive dynamics by gradually removing the exclusive rights of public operators (Florio, 2013). Thus far however, the power of the supranational, regulatory governance agencies that have emerged in the transport sector is very limited.<sup>8</sup> Hence, the governance of the sector, namely, in rail and local public transport, still resides predominately with member states. This has produced mixed results with regard to the independence of transport governance from partisan, democratic governments – hence, the focus of NEG prescriptions on public transport governance across three of the four countries under study.

Romania received numerous prescriptions on the sectoral governance of rail. For instance, EU executives tasked the Romanian government to ‘pursue the restructuring of the Ministry of Transport’ (MoU, Romania, 23 June 2009: 5), with similar prescriptions returning in follow-up (supplementary) agreements (MoU, Romania, 1st addendum, 22 February 2010; MoU, Romania, 2nd addendum, 20 July 2010: 8; P-MoU, Romania, 29 June 2011: 12). Additionally, ‘a strong and independent regulatory body for the railway sector’ (P-MoU, Romania, 29 June 2011: 12) was envisaged. Another prescription insists that ‘the regulator has the necessary powers to request data and to take independent decisions on infrastructure charges’ (MoU, Romania, 2nd supplemental, 22 June 2012: 32).

Similarly, EU executives tasked the Italian government to set up ‘the Transport Authority *as a priority*’ (emphasis added) (Council Recommendation Italy 2013/C 217/11, see also Council Recommendation Italy 2014/C 247/11). Following these prescriptions, national legislators established new transport authorities in Italy (Autorità di Regolazione dei Trasporti) and Romania (Autoritatea pentru Reformă Feroviară), which became operational in 2016. By contrast, the NTA set up by Irish legislators in 2009 had begun operating in 2011; this explains the absence of corresponding NEG prescriptions for Ireland.

The primary objective of these agencies is to ensure competitive neutrality in the transport sector and to bring about organisational change and cost-cutting in state-owned operators so that they behave like private companies. Increasing the power of the infrastructure manager must also be seen as part of

<sup>8</sup> The European Aviation and Safety Agency (EASA) or the European Railway Agency (ERA) deal with technical issues, such as vehicle authorisation and safety certifications, rather than broader economic governance issues (van de Velde, 2015). In December 2017 however, the EASA nonetheless made EU industrial relations history; namely, when Ryanair pilots leveraged the staff shortages caused by an EASA decision to enforce the EU flight time limitations regulation also in Ireland to threaten transnational strike action. This transnational collective action by Ryanair pilots incidentally forced Ryanair to recognise trade unions (Golden and Erne, 2022).

the vertical separation between the state-owned rail company and the management of the state-owned infrastructure. Interestingly, the objective was to 'end political interference in tariff setting and to allow the rail infrastructure company (CFR Infrastructura) to independently determine rail track access charges' (European Commission, 2013: 51). A euphemism for preventing practices of corruption, the prescription implies that fully liberalised sectors are free of such meddlesome sins, but as Helene Dyrhaug (2013: 111–112) showed, such processes can be 'precarious ... even when there is no state-owned incumbent' (see also Crouch, 2016).

Despite the existence of a regulatory agency for network industries, EU executives told the German authorities to 'strengthen the supervisory role of the Federal Network Agency in the rail sector' (Council Recommendation Germany 2011/C 212/03). For some time, the EU had been deeply suspicious of the German integrated governance structure in the rail sector and the power of the German incumbent, Deutsche Bahn, to thwart competition and maintain its almost 90 per cent market share in passenger services and almost 80 per cent of the freight market (Dyrhaug, 2013: 45–50). In 2013, 2014, and 2015, NEG prescriptions thus tasked the German government to 'take further measures to eliminate the remaining barriers to competition in the railway markets' (Council Recommendations Germany 2013/C 217/09; 2014/C 247/05) generally, and in 'long-distance rail passenger transport' in particular (Council Recommendation Germany 2015/C 271/01).

There were also several prescriptions on the subject of PSOs and competitive tendering. The prescriptions that targeted Romania urged its government to 'continue competitive tendering in the public service obligation contract' (P-MoU, Romania, 29 June 2011: 12) and to 'improve the efficiency of public procurement' (Council Recommendation Romania 2019/C 301/23). The prescriptions for Italy directed its government to promote competition in local public transport services through 'the use of public procurement ... instead of direct concessions' (Council Recommendation Italy 2013/C 217/11). Uncoincidentally, most of the public transport service contracts between the incumbent state-owned operator (Ferrovie dello Stato) and Italy's regional governments expired at the end of the following year. Similar prescriptions were repeatedly issued to the Italian government in 2015 and 2016. The latter was more explicit and stated: 'take further action to increase competition in ... transport ... and ... the system of concessions' (Council Recommendation Italy 2016/C 299/01). In 2011, an Italian law that imposed compulsory competitive tendering for all local utilities was repealed through a popular abrogative referendum initiated by the Italian water movement, unions, and other public sector advocates (see Chapter 9). Even so, the EU continued to push its commodifying agenda in the field by repeatedly advocating the

adoption of a controversial, national competition law (2015, 2017, 2018, 2019). As most Italian legislators remained confident that EU executives would not dare fine Italy for non-compliance, they resisted implementing the prescription. On 2 August 2022 however, the Italian Parliament adopted the Annual Law No. 118/2022 on Market and Competition as requested, after the EU made its post-Covid resilience and recovery funding conditional upon the execution of its NEG prescriptions, as discussed in Chapter 13.

On the surface, some sector-level governance prescriptions seemed rather innocuous, but on closer inspection a different story emerged. For instance, the Romanian government was urged to adopt ‘a comprehensive long-term transport plan’ and ‘implement’ it (MoU, Romania, 2012: 32; Council Recommendation Romania 2016/C 299/18). Although this might appear to be a perfectly understandable request, it was private capital that benefitted immediately, with US consulting company AECOM, ‘the world’s premier infrastructure firm’, being awarded the €2.2m contract to develop the master-plan (*Railway Gazette*, 20 April 2012). More ominously however, the adoption of the master plan was ‘an ex-ante conditionality for EU funding of transport infrastructure in Romania during the 2014–20 EU funds programming period’ (European Commission, 2015b: 33). Hence, EU executives used the cohesion funds as a carrot to further a commodification agenda according to Common Provisions Regulation 1303/2013 (Chapter 2) – prefiguring the conditionalities attached to the EU’s post-Covid resilience and recovery funding (Chapter 12). It was by no means a coincidence that such enticement came at a time when the degree of coercion of NEG prescriptions for Romania had significantly diminished, as Romania was no longer involved in any very significant or significant NEG enforcement procedure. Hence, EU executives deployed other mechanisms to ensure compliance, using Romania’s dependence on EU structural and investment funding.

**Provider-level governance mechanisms:** The clearest form of commodification in the provider-level governance mechanisms category is privatisation. To this end, the MoU of 2010 tasked the Romanian government to take concrete steps towards the privatisation of CFR Marfă (MoU, Romania, 2nd addendum, 20 July 2010: 8), the state-owned rail freight company. The Romanian government in turn put up CFR Marfă for sale, but its privatisation collapsed in 2013 after the winning bidder, Grup Feroviar Roman, pulled out of the deal. EU executives nonetheless largely succeeded in turning freight transport into a private affair, as the opening of the sector to competition from private rail and road operators reduced CFR Marfă’s market share to less than 20 per cent (ADZ.ro, 7 July 2021).

As documented in Chapter 7, EU executives tasked Italy to ‘swiftly and thoroughly implement the privatisation programme’ (Council Recommendation

Italy 2015/C 272/16). Although this prescription did not mention Trenitalia's parent company, Ferrovie dello Stato, explicitly, the intended target became clear shortly afterwards when the Italian government announced its plan to sell up to 40 per cent of the company (*Financial Times*, 18 November 2015). This proposal, however, provoked mayhem, not only within its workforce but also within its senior management, and led to the resignation of the entire company board, as its members could not agree on how to privatise the railway, thereby stalling the government's privatisation plans. This, however, did not prevent Italy's state-owned railway company – like its German (DB) and French (SNCF) counterparts – from buying up privatised rail companies elsewhere in the EU (Gevaers et al., 2015).

Other than privatisations, NEG prescriptions promoted the corporatisation of state-owned rail operators. EU executives tasked the Romanian railway management company, CFR Infrastructura, 'to complete the present business plan with market-oriented information' (MoU, Romania, MoU, 2nd supplemental, 22 June 2012: 32; P-MoU, Romania, 29 June 2011: 12). The following year, 2013, they tasked the Romanian government to continue their 'corporate governance reform of state-owned enterprises' in the 'transport sector' (Council Recommendation Romania 2013/C 217/17). With progress being too slow and 'insufficient' (European Commission, 2014b: 4), EU executives urged the government yet again to accelerate the corporate governance reform of state-owned enterprises in the 'transport sectors and increase their efficiency' (Council Recommendation Romania 2014/C 247/21). As outlined above, increasing efficiency meant reducing costs through either labour shedding or line closures, both of which negatively affected the quality of public services. Even so, the NEG prescriptions echoed this approach in 2016 and 2019.

The 2016 prescription for the Italian government tasked it to implement 'all necessary legislative decrees', namely, those 'reforming publicly-owned enterprises' local public services' (Council Recommendation Italy 2016/C 299/01). The latter included local public transport companies, whose 'inefficiency' was identified as being 'particularly critical' (European Commission, 2015a: 57). Unsurprisingly, publicly-owned (local) enterprises were targeted again by NEG prescriptions in 2019. In response, the Italian government introduced a new legislative framework that 'aims to regulate systematically state-owned enterprises in line with the principles of efficient management, protection of competition and the need to reduce public expenditure' (Commission, Country Report Italy SWD (2016) 81: 66). Furthermore, the government of Prime Minister Renzi announced that the number of publicly owned *enti locali* would be significantly reduced from 8,000 to 1,000 (*Il Foglio*,

13 January 2016). As the national government tasked its regions with the regulation of its local public transport and water services, different regional governance patterns emerged (Di Giulio and Galanti, 2015). Nonetheless, even the centre-left government of Tuscany, once a heartland of Italian communism, awarded the operation of all public transportation services in the region in a single bundle to the French RATP Group ‘with subsidies amounting to €4bn’ (2015: 9). This put Tuscany’s municipal public transport providers (e.g., the Azienda Trasporti dell’Area Fiorentina: ATAF) out of business.

### *Prescriptions on Users’ Access to Services*

As outlined above, several NEG prescriptions explicitly targeted the provisions of transport services. By contrast to those on water (Chapter 9) or healthcare services (Chapter 10), EU executives did not issue any NEG prescription that targeted primarily users’ access to public transport services, either on cost-coverage mechanisms (user charges) or on coverage levels (scope) of public services. That said, the constraints caused by the general NEG prescriptions on the curtailment of public spending (Chapter 7) or on the closure of unprofitable lines (discussed above) did affect users’ access to public transport services, albeit indirectly. Take Ireland for example. The Irish government radically reduced its subsidies for public transport providers. In the case of Dublin Bus, its public service obligation subsidy decreased from an already comparatively low figure of 29 per cent in 2009 to 20 per cent in 2015 (Unite, 2016), resulting in substantial ticket price increases (*Irish Times*, 19 October 2018).

### *NEG: Commodifying Public Transport Services by New Means*

In sum, the transport sector was the subject of numerous NEG prescriptions. Most of them were qualitative in character and all of those went in a commodifying policy direction. By contrast, there was a dearth of quantitative prescriptions on the curtailment of spending on public transport services, save that issued in the singular to Romania in 2011/2. This finding is hardly surprising however, as the curtailment of public expenditure usually occurs at intersectoral level (Chapter 7). The exception here is healthcare, which constitutes a significant chunk of government expenditure (Chapter 10). There were also some quantitative prescriptions relating to resources, which pointed in a decommodifying direction. This suggests that some prescriptions were motivated by an alternative policy rationale, which does not fit the

dominant commodification policy script that informs all qualitative NEG prescriptions on transport services issued across all countries from 2009 to 2019. We come back to this in this chapter's conclusion. Before that, however, we discuss EU executives' qualitative NEG prescriptions on transport services, which are striking as they repeatedly went beyond the *acquis* of EU law in the field, most explicitly by pushing a privatisation agenda.

Sector-level governance as a category featured most regularly, and these prescriptions chimed with the evolving rail *acquis*, which has been slow and tortuous. In a sector bedevilled by transposition deficits, regulatory heterogeneity, and (unsuccessful) infringement proceedings (section 8.2), the shift to the NEG regime provided EU executives with an opportunity to put the creation of the European rail market back on track. Sector-level prescriptions included enhanced independence for the regulator and the infrastructure manager from the publicly owned rail company and the national government; this technocratic fix is synonymous with ending political interference. For it to succeed, partisan, democratic decision making must be portrayed 'as slow, corrupt, and ultimately irrational' (Radaelli, 1999: 47).

For the Commission, the German rail market is critical with regard to creating the single European rail market, as this 'has an impact on the whole European railway system, given Germany's central geographical position' (Council Recommendation Germany 2012/C 219/10: Recital 15). However, the Commission remained frustrated with the lack of competition in German rail and rather suspicious of its governance structure, not least regarding financial transparency and cross-subsidisation. Deutsche Bahn has an integrated governance structure, which the Commission considered an obstacle to competition. Pursuing a parallel two-pronged approach vis-à-vis Germany, EU executives repeatedly issued prescriptions for the elimination of barriers to rail competition, with the Commission on a constant basis lamenting the lack of 'progress in removing the remaining barriers to competition in the railway markets' and identifying the 'existing legal framework' as 'impeding competition' (Commission, Country Report Germany SWD (2017) 71: 48). The Commission's regular misgivings reflect the weak coercive power that the German NEG prescriptions were having. For this reason, the Commission was obliged also to continue making use of its traditional governance powers by law and through court proceedings, as outlined in the next subsection. Even so, the clearly commodifying bent of the NEG prescriptions issued to Germany on the provision of transport services is remarkable, as it confirms the existence of an overcharging

commodifying policy agenda targeting all countries, irrespective of their location in NEG's policy enforcement regime.

Romania and Italy, on the other hand, not only received prescriptions that went deeper than sectoral level governance but were also obliged to take them much more seriously. Both countries created independent transport authorities with substantial regulatory powers to further the liberalisation process. Ireland would have been obliged to take such prescriptions seriously, given its location in NEG's policy enforcement regime. However, there was no need for them as Irish legislators had already set up the NTA in 2009.

EU executives also tasked the Romanian government to enhance the regulatory powers of the independent infrastructure agency in relation to its charges to railway, metro, or tram companies for their use of the rail network. Infrastructure charges are one resource, along with state subsidies, to finance rail infrastructure but have been 'the subject of serious political and economic debates and decisions *since the very origin of railways*' (emphasis added) (Messulam and Finger, 2015: 323). More importantly, they remain 'one of the main barriers' to implementing commodifying rail reforms in Europe (2015: 325). The drafters of Directives 95/19/EC and 2001/14/EC tried to resolve the rail access charge issue, but the final directives 'failed to deliver' (2015: 325). To this end, the EU's shift to the NEG regime provided EU pro-market actors with an opportunity to resolve this question in their favour. Whereas the European Parliament and the Council of transport ministers had been able to curb the commodifying bent of the Commission's earlier universal legislative proposals in the field, typically in response to transnational strikes and demonstrations triggered by the Commission's proposals (see below), their country-specific NEG prescriptions enabled the Commission and Council of finance ministers to pursue a commodification agenda that went beyond the transport *acquis*.

In sum, the shift to the NEG regime enabled EU executives to cajole reluctant member states – particularly those subject to constraining prescriptions – into accepting the Commission's preferences, which EU legislators often watered down in the ordinary legislative procedures pertaining to transport laws. It is unequivocal that NEG prescriptions pursued the Commission's long-standing commodifying policy preferences, namely, vertical separation in rail, regulatory independence, tendering for PSOs in transport services rather than direct concessions, and increased competition between transport providers. In other words, NEG provided EU executives with a new avenue to commodify transport services. Where NEG prescriptions' coercive power was weak or began to wane however, EU executives continued to use the ordinary EU legislative procedures by law to advance their objectives.

*EU Laws on Transport Services after the Shift to NEG*

After most member states exited the corrective arms of the NEG regime, EU executives began to use another power resource to enforce their country-specific prescriptions, namely, the *ex ante* conditionality of EU cohesion funding (Chapter 2). This was the case in Romania, where EU executives used the carrot of EU cohesion payments (rather than the stick of financial sanction) to further their policy agenda in the transport sector. This enforcement power resource, however, works only for countries that depend on EU cohesion funding. Although EU executives also tasked the German government to reform the existing governance framework for public transport to increase competition, the weak constraining power of NEG prescriptions in this case meant that Germany could largely ignore them. To advance its policy objectives, the Commission therefore continued to use its ordinary legislative powers as initiators of EU laws as well as its legal powers in state aid and infringement proceedings.

In 2011, the Commission released another White Paper on transport (COM (2011) 144 final), which set the making of a true internal market for rail services as a priority. To that end, it proposed the structural separation between infrastructure management and service and the mandatory award of public service contracts under competitive tendering for public passenger transport. Already in 2010, the Commission had proposed replacing Directive 91/440/EEC with a recast directive, which sought to ‘avoid distortion of competition and preferential treatment of the incumbent’ by strengthening the independence of regulatory bodies from partisan politics and in particular the transport ministry (Dyrhaug, 2013: 86). Importantly however, the final Recast Single European Railway Directive (2012/34/EU) of the European Parliament and Council ‘did not require organisational separation, thus complete vertical separation was not necessary’ (Dyrhaug, 2013: 86). Despite this setback, the Commission continued to pursue its commodifying objectives, not only through NEG prescriptions but also by proposing a fourth package of EU railway laws.

The 2016 fourth railway package is the Commission’s most ambitious to date, as it aimed to introduce vertical separation and competition in the passenger market, including rail services under PSOs. Regarding governance structure, a blocking Council minority of national transport ministers (including Austria, Germany, Italy, and France) resisted vertical separation along with Community of European Railways (CER) and European transport workers’ unions (Scordamaglia and Katsarova, 2016). The CER (2011) argued that a one-size-fits-all model for all countries would be unrealistic given the variation



between them in structural characteristics. In addition, competition would work no better with vertical separation than with a holding company. The final package adopted by the Parliament and Council thus allowed for vertically integrated rail companies but introduced Chinese walls to restrict financial flows between the infrastructure manager and the rail operator in the overarching holding company. According to the package's Compliance Verification Clause, the Commission can prevent rail companies that are part of a vertically integrated structure from operating in other member states if fair competition in their home market is not possible.

The ETF (2014) feared that cherry-picking lucrative contracts would lead to the neglect of less profitable rail routes and argued that direct award should remain the member states' prerogative. To this end, the ETF (2014) petitioned members of the European Parliament (MEPs) and transport ministers to curb the Commission's enthusiasm for competitive tendering by respecting the freedom of choice guaranteed under the PSO Regulation (1370/2007) discussed in section 8.2. Regarding the outcome, the ETF was pleased that governments had not accepted the Commission's 'dogmatic' approach (ETF, 2015a), although concerns about social and employment conditions remained. The legislative amendments of the European Parliament and the Council of transport ministers to the fourth railway package somewhat curbed the commodification bent of the Commission's initial legislative proposal, but this prevented neither the Commission and the Council of finance ministers from issuing NEG prescriptions that went further than the EU's legal *acquis* (as discussed above), nor the Commission from using its significant powers as an enforcer of EU law to advance its aims.

In March 2011, the Commission conducted dawn raids on Deutsche Bahn offices. However, the latter brought a case to the CJEU, which deemed the Commission's actions to be illegal.<sup>9</sup> It was against this backdrop that the Commission proposed its fourth package of EU railway laws. As mentioned above however, a Franco–German alliance in the Council, coupled with European Parliament lobbying by the CER and the ETF, thwarted the Commission's push for 'radical policy change' (Dyrhaug, 2022: 866). In 2017 however, the CJEU condemned Germany for failing to take all the necessary measures to ensure the transparency of accounts between Deutsche Bahn and its subsidiaries,<sup>10</sup> some of which operate in other member states. Hence, in the German case, policy change resulted from a CJEU ruling rather than NEG prescriptions or the adoption of new EU laws.

<sup>9</sup> C-583/13 P *Deutsche Bahn v. European Commission* [2015] ECLI 404.

<sup>10</sup> C-482/14 *European Commission v. Germany* [2017] ECLI 499.

Finally, the Commission used its dual role as investigator and decision maker in EU competition law to advance its commodification agenda. This happened in the case of the privatisation of the freight train company CRF Marfà, which failed despite the MoU-related NEG prescription discussed above. In turn, the Commission brought CRF Marfà to the brink of insolvency when it ordered it to pay back the €363m of state aid that it had received, in agreement with the Council and the IMF, to facilitate its privatisation (Commission Decision 2021/69, Recital 107).<sup>11</sup>

#### 8.4 EU TRANSPORT GOVERNANCE AND TRANSNATIONAL COUNTERMOVEMENTS

From the pre- and post-2008 scenarios outlined above, it is clear that the commodification of transport services has been a long-standing policy preference of the Commission. However, the more there was a public service aspect, the more commodification became contentious; this explains why Mario Monti (2010) described the slow pace of EU service liberalisation as a ‘persistent irritant’. This reflects the resistance by anti-commodification forces, including transport workers’ unions and social movements (Turnbull, 2000, 2010; Gentile and Tarrow, 2009; Hilal, 2009; Fox-Hodess, 2017). Understanding this resistance and the form it takes is important, as ‘the extent to which non-capitalist space is incorporated also depends on the level of resistance against this expansion’ (Bieler and Morton, 2018: 41). In this section, we discuss transport workers’ resistance to EU prescriptions and their consequences.

Most European transport workers are represented at EU level by the ETF, especially in the public railway sector (Traxler and Adam, 2008). The ETF’s *raison d’être*, since 1999, is, simply put, to add the argument of force to the force of argument (Turnbull, 2010). This is done by combining outsider strategies (European demonstrations and transnational strike actions) with insider strategies (lobbying MEPs and European transport ministers) that seek

<sup>11</sup> Tellingly, the Commission admitted that a successful privatisation would have ‘alleviated’ its state-aid concerns (Commission Decision 2021/69; Recital 263). After all, the Commission agreed to state aid for the Greek state company TrainOSE (Commission Decision 2018/1040), as its acquisition by Trenitalia ‘definitely cut the links between [Greece’s] rail infrastructure manager and its rail operator’ (Commission Decision 2021/69; Recital 333). Hence, the Commission used its competition policy powers to enforce NEG prescriptions, as also shown by the following newswire ‘Without the sale’ for €45m to Trenitalia, TrainOSE ‘would have had to return more than 700 million euros in state aid to the European Union, forcing it to shut’ (Reuters, 14 July 2016).

to protect transport workers' interests and to prevent a further commodification of transport services. To date, transnational protest actions by European transport workers have made a difference, albeit to varying degrees, depending on the transport modality in question.

Table 8.3 presents a list of transnational transport-related social and economic protests politicising the EU governance of transport services (Erne and Nowak, 2023). The list documents the capacity of the ETF, the International Transport Workers' Federation (its global sister organisation), and transnational grassroots alliances of European dockworkers to orchestrate transnational strikes and days of action against commodifying EU interventions. The apogee is undoubtedly 'the war on Europe's waterfront' where docker strikes were 'timed to coincide with Council deliberations on the [Port Services] Directive' (Turnbull, 2010: 341), but other transport modalities have also been defended against EU liberalisation attempts, albeit to a lesser degree (Hilal, 2009; Crochemore, 2014; Harvey and Turnbull, 2015; Golden and Erne, 2022; Szabó, Golden, and Erne, 2022). This can be explained not only by the Commission's unwavering bent for the commodification of the sector but also by its incremental liberalisation strategy, which targeted each modality one by one (Héritier, 1997; Szabó, Golden, and Erne, 2022). Whereas the transnational strikes of dockers (Fox-Hodess, 2017) – and to some extent also railway workers (Hilal, 2009; Crochemore, 2014) – were quite effective, other transnational union campaigns were less successful, including those politicising the EU public procurement directives in the 2000s, as 'the organisation of strikes [or demonstrations] was [either] not considered [or failed to materialise]' (Bieler, 2011: 175).

As EU executives pursued the commodification of transport generally, and rail in particular, through a combination of manifold approaches including new EU laws, such as the fourth railway package, infringement proceedings, and, as demonstrated above, NEG prescriptions, it proved difficult to mount resistance, albeit to different degrees across these different modes of EU governance. Additionally, there is the horizontal market pressure aspect that intensified significantly following the EU's Eastern enlargements, thereby increasing intramodal competition between the rail and the road haulage sector, through the establishment of letterbox companies in countries with lower labour standards and the subsequent posting of drivers from those countries to countries with higher labour standards (ETF, 2012). As we shall see, the politicisation of such developments can prove challenging.

Different modes of EU integration differently affect organised labour's capacity to politicise them. Vertical integration through direct EU interventions unintentionally also offers targets for countervailing social movements.

TABLE 8.3 *Transnational protests politicising the EU governance of transport services (1993–2019)*

Date	Location	Action Type	Topic	Coordinators
7 March 1994	Multi-sited	Strike	Against deregulation of the European air transport sector	ETF
19 November 1996	Brussels, Italy	Strike, demonstration	Against white book on transport	ETF
9 June 1997	Multi-sited	Strike	International Day of Action in road transport	ETF/ITF
18 June 1998	Luxembourg	Demonstration	Against white book on transport	ETF
8 September 1998	Multi-sited	Strike	International Day of Action in road transport	ETF/ITF
23 November 1998	Multi-sited	Strike, demonstration	Against EU plans for rail privatisation	ETF
5 May 1999	Multi-sited	Strike	International Day of Action in road transport	ETF/ITF
29 March 2000	Multi-sited	Demonstration	Against first rail package	ETF
1 October 2000	Luxembourg	Demonstration	Against Working Time Directive for road transport	ITF/ETF
29 March 2001	Multi-sited	Demonstration	International Day of Action in support of rail safety	ITF/ETF
25 September 2001	Multi-sited	Strike	Against proposed port package	ETF
15 October 2001	Multi-sited	Demonstration	International Day of Action on road transport	ETF/ITF
6 November 2001	Multi-sited	Strike	Against proposed port package	IDC
26 March 2002	Brussels	Demonstration	International Day of Action of railway workers	ETF/ITF
14 June 2002	Strasbourg, multi-sited	Strike	Against port package	IDC
19 June 2002	Multi-sited	Strike	Air traffic controllers against a single European airspace	ETF
17 January 2003	Multi-sited	Strike	Against port package	ETF
17 February 2003	Brussels	Demonstration	Against port package	ETF
10 March 2003	Strasbourg, multi-sited	Strike, demonstration	Against port package	ETF/ IDC
14 March 2003	Multi-sited	Demonstration	International Day of Action of railway workers	ETF/ITF

18 March 2003	Multi-sited	Strike	Against EU plans towards privatisation of rail freight transport	Various
8–12 and 29 September 2003	Multi-sited	Strike	Against port package	ETF
13 October 2003	Multi-sited	Strike, demonstration	International day of road transport	ETF/ITF
19 November 2003	Multi-sited	Strike	Against port package	ETF/IDC
31 March 2004	Lille	Demonstration	European Day of Action against the liberalisation of railways	ETF
21 November 2005	Multi-sited	Strike	Against port package	ETF
11–12 January 2006	Multi-sited	Strike	Against port package	ETF
16 January 2006	Strasbourg	Demonstration	Against port package	ETF
2 March 2006	Multi-sited	Strike	European railway strike against meeting of EU traffic ministers	ETF
13 November 2008	Paris	Demonstration	Against rail privatisation	ETF
5 October 2009	Multi-sited	Demonstration	Against (weak) EU safety regulations	ETF/ECA
13 April 2010	Lille	Demonstration	Against liberalisation and privatisation of railways	ETF
24 May 2011	Brussels	Demonstration	European Day of Action against Recast Directive on railways	ETF
8 November 2011	Multi-sited	Strike, demonstration	European Day of Action against liberalisation of railways	ETF
9–13 January 2012	Lisbon, multi-sited	Strike, demonstration	Solidarity with Portuguese dockworkers	ETF/IDC
24 September 2012	Brussels	Demonstration	Against social dumping in the road transport sector <sup>a</sup>	ETF
9 October 2012	Brussels	Demonstration	Against social dumping in the road transport sector <sup>a</sup>	ETF

(continued)

TABLE 8.3 (continued)

Date	Location	Action Type	Topic	Coordinators
5 November 2012	Multi-sited	Demonstration	Against airport package	ETF
29 November 2012	Lisbon	Demonstration	Against plans by the Portuguese government to change labour rules	IDC
22 January 2013	Multi-sited	Demonstration	Against (weak) EU safety regulations	ETF/ECA
12 June 2013	Multi-sited	Strike	Against a single European airspace	ETF
9 October 2013	Multi-sited	Demonstration	Railway workers against fourth railway package	ETF
10 October 2013	Brussels, multi-sited	Demonstration	ETF Road Transport Section against social dumping	ETF
14 October 2013	Brussels	Demonstration	Against package on Single European Sky	ETF
29–30 January 2014	Multi-sited	Strike	Against package on Single European Sky	ETF/ ATCEUC
4 February 2014	Multi-sited	Strike	Solidarity with Portuguese dockworkers	ETF/IDC
25 February 2014	Strasbourg	Demonstration	Against fourth railway package	ETF
3 May 2014	Multi-sited	Demonstration	European protest day of truck drivers <sup>a</sup>	Various
8 October 2014	Luxembourg	Demonstration	Against fourth railway package	ETF
14 September 2014–14 September 2015	Online	ECI	Fair Transport Europe – equal treatment for all transport workers	ETF
5–11 October 2015	Multi-sited	Demonstration	Global rail and road action week, including opposition to the EU's planned fourth railway package	ITF/ETF
13–14 January 2016	Sines	Demonstration	Precarious labour in the port of Sines	IDC
7 July 2016	Multi-sited	Strike	Global day of docker action <sup>a</sup>	IDC/ITF/ ETF
5 December 2016	Brussels	Demonstration	Against fourth railway package	ETF
12 December 2016	Strasbourg	Demonstration	Against fourth railway package	ETF

10 March 2017	Multi-sited	Strike	Solidarity with Spanish dockworkers	IDC, ITF
26 April 2017	Brussels	Demonstration	End social dumping in road haulage	ETF
17 May 2017	Strasbourg	Demonstration	Campaign for a social Road Initiative	ETF
8 June 2017	Luxembourg	Demonstration	Against road package	ETF
9–11, 19, and 29 June 2017	Multi-sited	Strike	Solidarity with Spanish dockworkers	IDC
20–24 November 2017	Multi-sited	Demonstration	Action on Posting of Workers Directive	ETF
29 May 2018	Strasbourg	Demonstration	Against mobility package	ETF
2 October 2018	Multi-sited	Demonstration	Working conditions at airports	ETF
3 December 2018	Brussels	Demonstration	Working conditions for drivers	ETF
7–9 January 2019	Multi-sited	Demonstration	Action for fair mobility package	ETF
26–27 March 2019	Brussels	Demonstration	Action week for Fair Transport	ETF

*Source:* Transnational Socioeconomic Protest Database (Erne and Nowak, 2023).

The table documents protest events targeting political authorities in relation to transport services, using the database's political level category, excluding actions at company and systemic level. These events also include protests on EU laws regarding the private sector, e.g., truck drivers. In addition, <sup>a</sup> indicates transnational events that targeted employers at the sectoral level.

The more socioeconomic decisions are taken by tangible political and corporate elites rather than abstract market forces, the easier it might be for social movements and unions to mobilise discontent (Erne, 2012c: 124). Accordingly, European transport workers' unions were able to delay and curb the EU-law commodification of some transport modalities by combining their lobbying activities with transnational strikes and demonstrations across Europe as well as outside the European Parliament before important votes (Turnbull, 2010; Scordamaglia and Katsarova, 2016). Thus, since the mid-1990s, the impending threats caused by looming commodifying EU laws have triggered countervailing union protests across countries, as shown in Table 8.3.

The more EU laws succeed in commodifying the provision of public services however, the more difficult it becomes for unions to organise countervailing actions, as the resultant increasing horizontal market integration pressures are opaque and increase competitive tensions between workers across countries that may hamper transnational collaboration. Despite its vertical nature, the NEG regime did not lead to a notable increase in transnational protests, with the exception of transnational solidarity strikes by Northern European dockworkers in support of their Spanish and Portuguese colleagues, who were striking against the implementation of commodifying, country-specific NEG prescriptions in their countries (Table 8.3; Fox-Hodess, 2017). Although these European dockworkers understood that the country-specific NEG prescriptions had been informed by an overarching, commodifying policy script (as documented above), the ETF did not politicise the NEG regime, delegating the issue of EU economic governance to the ETUC. Instead, the ETF tried to politicise both the looming threats caused by the draft fourth package of EU railway laws (official 1, ETF rail section, 10 August 2017, telephone interview) and the social dumping caused by increased competition in the road haulage sector (official 2, ETF secretariat, 14 September 2018, Brussels). To that end, the ETF used a novel tool, the European citizens' initiative (ECI), which EU leaders introduced into the draft EU Constitution and the Lisbon Treaty in response to calls to make the EU more democratic (Szabó, Golden, and Erne, 2022).

According to Art. 11(4) TEU, any group that can collect one million signatures of EU citizens from at least seven member states within the time frame of one year can urge the Commission to address the gist of concerns outlined in their ECI. Hoping to follow the success of the Right2Water ECI launched by EPSU (see Chapter 9), the ETF launched its own Fair Transport ECI, even though the ETF is – like EPSU – an under-resourced organisation with only a small secretariat of around fifteen staff members (Müller and Platzer, 2017) and an organisation with a high degree of internal



heterogeneity (Szabó, Golden, and Erne, 2022). Different sections within the ETF supported the idea of an ECI for different reasons: either to challenge the Commission's unrelenting agenda for further commodifying EU laws or to highlight the negative effects of earlier commodifying EU laws. These concerns varied from sector to sector. With regard to road haulage, which had already been fully liberalised, the proliferation of social dumping cases has been the source of union concerns in Northern Europe. The ETF's rail section, however, aimed to curb further commodifying vertical EU laws and was much less concerned with social dumping (Erne and Blaser, 2018). Bridging these diverging views within the ETF, however, would ultimately blur the focus and meaning of the ECI and contribute to the ETF's failure to gather the required one million signatures (Szabó, Golden, and Erne, 2022).

The Fair Transport ECI was designed to complement an eponymous ETF (2015b) campaign that encompassed all modalities, including local public transport, but emphasised the problem of social dumping. With over 200 affiliates, representing over five million workers, one might be forgiven for thinking that a successful outcome for the ECI was certain, although any hard-nosed campaigner might well caution that, regarding the orchestration of campaigns from the local to the transnational, nothing is inevitable. Despite the quorum being met in Denmark, Sweden, and Belgium, the necessary criterion for an ECI to be deemed successful was not even nearly satisfied, with an estimated 200,000 signatures collected (ETF, 2016). This disappointing result stands in contrast to its campaigns against the draft Port Services Directives in the 2000s and the successful Right2Water campaign coordinated by EPSU, which was supported by a social movement united by a shared view on water as a common good (Chapter 9). In contrast to EPSU's successful Right2Water campaign, the EFT failed to align itself with social movements that might also be against the closure of railway lines and in favour of public transport services, such as the Campaign for Better Transport in the United Kingdom. Instead, by narrowly framing the campaign on 'social dumping and working conditions' (ETF, 2015b), the ECI largely failed to capture the public imagination.

In hindsight, ETF officials acknowledged this aspect (official 1, ETF rail section, 10 August 2017, telephone interview; official 2, ETF secretariat, 14 September 2018, Brussels). In a letter to affiliates seen by the authors, the ETF (2016) nevertheless claimed that the campaign had 'been successful in putting social dumping issues on the agenda in European politics' thanks to a sop by the Commission President Juncker in his state of the union address, 'that workers should get the same pay for the same work in the same place' (Juncker, 2016). This concession is a low benchmark for evaluating

success and differs from the experience of the Right2Water campaign, which measured success in terms of the exclusion of water from the scope of the commodifying Concessions Directive (2014/23/EU) (Chapter 9). Conversely, road haulage workers were excluded from the decommodifying, revised Posting of Workers Directive (2018/957), despite the ETF's involvement in its drafting (Seeliger and Wagner, 2020). Eventually however, this disappointment was reversed in the deliberation about the EU's Mobility Package laws, introduced in 2017, which sought to further commodify road haulage. Here, the ETF (2018) scored a major victory when most MEPs rejected outright the proposed weakening of European transport workers' terms and conditions: on pay for posted workers, on driving and rest time, and on cabotage. In July 2020, the European Parliament finally adopted the amended Mobility Package and paid homage to the essential transport workers who kept Europe moving during the Covid-19 pandemic.

## 8.5 CONCLUSION

Transport policy is important in fulfilling broader policy goals beyond transport itself: to supply public goods such as regional development, equal opportunities, and social cohesion, but this logic has been questioned by the rise of the neoliberal paradigm. Already in its 1996 white paper, the European Commission had argued that 'in the future the railways must behave much more like normal businesses, that endeavour to satisfy their customers' requirements in the knowledge that, if they fail to do so, someone else will and they will lose the business'. In short, transport 'should be first and foremost a business' (COM (96) 421: 10). After the EU liberalised the aviation and road haulage sectors, rail became a key target of its transport policy. Given the resistance to rail services commodification articulated by public railway companies, unions, and a blocking Council minority of transport ministers, the EU laws that were meant to commodify rail did not go as far as the Commission wanted (Dyrhaug, 2013) – hence the interest of the Commission and Council in pursuing its commodification by new means, namely, the country-specific NEG prescriptions that they began to issue after the 2008 crisis.

Our analysis shows that EU executives' NEG prescriptions were informed by a consistent commodification script, pushing privatisation, corporate restructuring, competitive tendering, and even line closures. As shown in Tables 8.1 and 8.2, all NEG prescriptions across all countries under study on the sector- or provider-level governance of public transport services pointed in a commodifying direction, thereby compromising their role in fostering

social and territorial cohesion. Another key finding is that some NEG prescriptions went further than the *acquis* of EU laws in the field, disregarding democratic norms at both national and EU level. Two examples neatly demonstrate this.

Firstly, there was scant regard for the freedom of choice principle, enshrined in PSO Regulation (and the fourth package of EU railway laws), which allows the awarding of concessions for public services in-house (Commission, SWD (2013) 53 final/2: 19). Despite this principle, EU executives regularly issued NEG prescriptions that pressured governments to amend this practice in favour of competitive tendering. In the Italian case, such NEG prescriptions ignored the will of the Italian people, as expressed in the 2011 abrogative referendum, which rescinded the law that had introduced competitive tendering for all utilities provided by municipalities. The referendum campaign focused mainly on water as a public good (Chapter 9), but the rescinding of the law limited the commodification of the local public transport sector also, until NEG prescriptions and regional laws reintroduced the commodification agenda.

Secondly, the NEG prescriptions that tasked member states to privatise public transport operators went far beyond Art. 345 TFEU, which stipulates that the EU 'shall in no way prejudice the rules in member states governing the system of property ownership'. NEG's call for privatisations over the past decade revealed a penchant for high-order commodification to 'improve public debt sustainability' (Council Recommendation Italy 2016/C 299/01, Recital 13). This echoes the privatisation wave in the late 1990s triggered by EMU convergence criteria on public debt and deficits but fails to remember a key source of deficits: the massive public bailouts of private banks during the financial crisis, which had been approved by the Commission despite Art. 107 TFEU, which in principle prohibits state aid 'favouring certain undertakings' and despite the bank bailouts' contributing to deficits well in excess of the -3 per cent benchmark deficit criterion, for example, -32.1 per cent in 2010 in the Irish case (Eurostat: GOV\_10DD\_EDPT1). By contrast, the Commission brought the Romanian public railway company, CRF Marfă, to the brink of insolvency when it ordered it in 2021 to pay back the aid it had received from its government to facilitate its privatisation, as requested by NEG prescriptions, as its privatisation failed.

Whereas all qualitative prescriptions on the governance of transport were commodifying, some quantitative prescriptions on resource levels pointed in the opposite policy direction. When analysing the latter in their semantic, communicative, and policy context however, we discovered a number of caveats that we must also address. Firstly, the latter prescriptions did not

feature prominently before 2016 and were issued consistently only to Ireland, as shown in Table 8.2. However, Ireland's post-crisis economic recovery was driven by the transnational corporation sector and foreign direct investment rather than by the austerity policy associated with NEG (Regan and Brazys, 2017). Secondly, compared with the commodifying ones, decommodifying NEG prescriptions had a much weaker coercive power. Thirdly, most decommodifying NEG prescriptions were informed by a complementary policy rationale that did not contradict the commodifying bent behind the qualitative NEG prescriptions. The prescriptions that tasked the German government to spend more on its crumbling transport infrastructure, for example, were informed by a concern about the effects of underinvestment on its competitiveness. This means that they were informed by a policy rationale that Mariana Mazzucato (2013) related to the entrepreneurial state, which drives growth through more investments in its infrastructure. This rationale also featured prominently in the justifications for the NEG prescriptions for Ireland after 2016, although the ensuing actual spending increases failed to fully reverse the government's dramatic post-2008 cuts for capital and current spending on transport of 72 and 31 per cent, respectively (Hynes and Malone, 2020). In addition, EU executives in their calls for more public investments frequently made a link between such investments and PPPs – implying commodification (Mercille and Murphy, 2017). Social or ecological concerns, however, motivated only a few NEG decommodifying prescriptions. Transition to the green economy, a cornerstone of von der Leyen's (2019a) agenda, informed the 2019 prescriptions issued to Germany and Italy; and the aim of social cohesion, an issue that gained prominence again in Juncker's (2016) declarations, informed the 2016 and 2019 prescriptions on resources for Romanian transport services. Overall however, most of the prescriptions that urged governments to spend more on transport emphasised its function in a properly functioning European economy rather than its contribution to social inclusion or the transition to a green economy.

Until the 2000s, European transport workers and the ETF were relatively effective in resisting the EU's commodification of transport services. Their resistance was most effective when opposing liberalisation attempts broached via the EU's ordinary governance-by-law approach, as in the case of the first draft Port Services Directive or the PSO Regulation. Many pieces of draft EU legislation in the sector have triggered transnational strike action (see Table 8.3) as well as intense lobbying that stemmed the commodification of transport services, notably on Europe's waterfront and, to some extent, also in rail (Dyrhauge, 2022). Protest actions proved less effective, however, in the face of more abstract horizontal market pressures that followed earlier

successful, liberalisation attempts by law (Szabó, Golden, and Erne, 2022). Paradoxically, the ETF's initial successes in delaying many EU-law commodification attempts prevented it from forging broader alliances with user movements in the defence of public services. This absence became particularly visible during the ETF's Fair Transport ECI, which failed to entice the necessary support from at least one million EU citizens, by contrast to EPSU's successful Right2Water ECI (see Chapter 9). At the same time, the different fate of the two ECIs mirrors different aims and targets. Whereas the Fair Transport ECI aimed primarily to counter the horizontal market pressures that resulted from the commodification of transport services in the road haulage sector (ETF, 2015a), the Right2Water ECI pre-empted looming vertical commodification attempts by the Commission (see Chapter 9). As horizontal market pressures put service providers and workers in competition with each other, the failure of the ETF to galvanise enough support across borders for its ECI therefore also reflects the wider spread of the commodification agenda in the transport compared with the water or healthcare sectors (Chapter 11).

Compared with their success in politicising the EU's liberalising draft laws, the ETF and its affiliates found it much more difficult to politicise the country-specific NEG prescriptions across borders, despite their overarching, commodifying policy orientation and their vertical nature. This reflects their very technocratic nature and their asynchronous implementation across different modes of transport and countries. The EU portrayed its European Semester as a tool of macroeconomic governance, although its NEG prescriptions can be, as we have seen, very sector specific. To some extent, the sectoral ETF fell prey to this portrayal, as the ETF left the questions of EU governance to the ETUC to deal with. Consequently, in the transport sector, NEG triggered only a few instances of transnational protests explicitly targeting NEG prescriptions, namely, transnational solidarity strikes with Spanish and Portuguese dockers who went on strike against the implementation of commodifying NEG prescriptions (Table 8.3). The multi-scalar alignment of the dockers' transnational protest campaigns (Fox-Hodess, 2017) suggests that the dockworkers must have understood well the overarching dynamics behind NEG's country-specific prescriptions. This is not surprising, given European dockworkers' long-standing confrontations with the Commission's port services commodification agenda. Overall, however, the increased commodification pressures triggered by EU executives' vertical NEG prescriptions, the proposals for new EU rail laws, and the increased horizontal market pressures caused by earlier EU laws led to an encompassing European trade union response, the ETF's Fair Transport campaign, which failed, however, by contrast to the parallel Right2Water ECI.