7

EU Governance of Public Services and Its Discontents

7.1 INTRODUCTION

The provision of public services was a key element of the post-World War II class compromise. Despite some national variations in their organisation, public services and utilities became an integral component of the social welfare states across Western Europe (Ruggie, 1982; Wahl, 2011; Supiot, 2013). Even after the rise of neoliberalism at the end of the 1970s, the provision of public services remained a key feature of the European social model. The relationship between European integration and public services is nevertheless complex. Since the adoption of the European Economic Community (EEC) Treaty in 1957, there was an inherent tension between the provision of public services and the rules governing the European common market. This set the scene for subsequent conflicts between political actors with different conceptions of the balance between market and state in the provision of public services. Such was their divisiveness over this matter that Mario Monti (2010) described them as a 'persistent irritant'.

This chapter analyses EU governance interventions from the EEC Treaty until the Covid-19 pandemic and the countermovements by European unions and social movements that they triggered. It is structured in three sections. First, we analyse the articulation between European integration and public services from 1957 to the 2008 crisis. In this period, we identify three phases across which *vertical* EU interventions put public services increasingly under pressure. Then, we assess the new economic governance (NEG) regime in public services, which the EU set up after the 2008 crisis. Our analysis of NEG prescriptions on public services for Germany, Ireland, Italy, and Romania between 2009 and 2019 indicates the presence of a consistent EU commodifying script across all countries. We also detect a few decommodifying predictions that indicate the presence of other rationales. However, these rationales remain subordinated to the script of public service commodification that we have detected. Finally, we assess the responses of unions and social movements to both types of vertical EU interventions in the field, namely, the universal (draft) EU laws issued in line with the ordinary legislative procedure and the country-specific prescriptions issued in line with the NEG regime.

7.2 EU GOVERNANCE OF PUBLIC SERVICES UNTIL THE 2008 FINANCIAL CRISIS

In the period before the 2008 crisis, we identify three phases in the relationship between the European integration process and public services. Initially, European integration and the making of public services at national level grew in parallel (Esping-Andersen, 1990; Crouch, 1999; Milward, 1999). After the mid-1980s, EU governance began to impinge on this policy area. This encroachment reached new heights by the 2000s and compelled unions and social movements to develop new action repertoires in response to it.

Phase One: Common Market and National Public Services

The Treaty of Rome, which created the EEC in 1957, referred to public services and public companies only marginally. Even so, the Treaty already contained the seed for the tensions between member states' capacity to provide public services and the rules governing the EU common market that would emerge later.

The drafters of the Treaty had to contend with different traditions of public services, for example, the French *service public*, the Italian *servizi pubblici*, the German *Daseinsvorsorge*[1] (Schweitzer, 2011). To avoid contentious debates, they coined a new term, *services of general economic interest* (SGEI), but failed to define it given the unequal boundaries between the public and private sectors across member states (Art. 90(2) TEEC, now Art. 106 TFEU). As the governments of West Germany and the Benelux countries feared that the widely nationalised French and Italian industries could gain unfair trade advantages, Art. 90(2) TEEC made all SGEIs subject to European competition law (Pollack, 1998). Moreover, Art. 90(3) TEEC (now Art. 106(3) TFEU) empowered the Commission to apply competition provisions of the Treaty through adopting Commission Directives without member states' approval in the Council. Even so, Art. 90(2) TEEC also stated that

[1] Literally, providing for [one's] existence.

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competition law shall not be used to prevent public services from delivering on their objectives. Hence, if there is a conflict of interpretation, competition law should be secondary to the public interest and the delivery of public services (Cremona, 2011). Finally, the Treaty acknowledged that public services could be provided by either publicly or privately owned undertakings: 'This Treaty shall in no way prejudice the system existing in Member States in respect of property' (Art. 222 TEEC, now Art. 345 TFEU).

During the first two decades of the European integration process, the inherent tension between the provision of public services and the EEC competition rules remained dormant. Neo-mercantilist views in favour of interventionist industrial policies prevailed, even within the European Commission (Buch-Hansen and Wigger, 2011; Warlouzet, 2018). The Commission adopted a permissive stance towards state aid for public and private enterprises, as greater competitive pressures might create 'intolerable social tensions' (European Commission, 1972: 12). Accordingly, European integration and national public services developed in parallel: the EEC removed the tariff barriers between member states, and national governments constructed welfare states and supported their industries, relying also on the proceeds of free trade. Nationalisations, such as the establishment of the energy supplier ENEL in Italy in the 1960s, went unchallenged (Millward, 2005: 187), as did the nationalisation of British Leyland and British Shipbuilders in the United Kingdom in the 1970s (Warlouzet, 2018: 101). This happened despite the opposition of Italian, German, and Dutch employers who lobbied the Commission in vain to prevent the ENEL nationalisation (Petrini, 2010: 20). In 1981, the Commission did not prevent the ambitious nationalisation programme of the French socialist government either, which brought eight industrial conglomerates and almost all French banks into public ownership (Gélédan, 1993: 48–49). Hence, during this phase, the notion of what was considered an SGEI expanded considerably.

Phase Two: Public Services in the Single Market and Monetary Union

The second phase in the relationship between European integration and public services is linked to the rise of neoliberalism in the 1980s, when 'rolling back the state' became a dominant mantra. Neoliberal voices also became louder within the European Commission.

In 1980, the Commission adopted Directive (80/723/EEC), which forced member states to inform the Commission about the amount of state aid that they provided to their public undertakings. Although the French, Italian, and UK governments challenged the Commission's use of Art. 90(3) TEEC as a basis for its directive, the Court of Justice of the European Union (CJEU) ruled in favour of the Commission.[2] In 1982, the Dutch centre-right Competition Commissioner Frans Andriessen saw state aid to enterprises as akin to 'woodworms eating away the carcass of the ship of integration' (cited in Buch-Hansen and Wigger, 2011: 77). Andriessen's successor, the neoliberal Irishman Peter Sutherland, adopted an even more confrontational approach to prevent member states from aiding their companies (Warlouzet, 2018: 171–174). Under his tenure, the Commission not only named and shamed member states by publishing reports on the amount of aid granted to their companies but also began using its powers to ban state aid in important individual cases (Buch-Hansen and Wigger, 2011). According to the head of the Commission's legal service at the time, 'none of the commissioners since have tried to row back on what Peter achieved, so it was a clear victory for Peter and for neoliberal thinking' (Claus Dieter Ehlermann cited in Walsh, 2019: 106).

In 1986, national governments adopted the Single European Act (SEA), which revised the EEC Treaty. The SEA enabled the implementation of the Commission's single market programme through adopting corresponding EU laws by a qualified majority of the Council. Following the SEA, the Commission and Council opened several public network industries to competition, namely, telecommunications, road haulage, railways, electricity, gas, and postal services. In the case of the telecommunications industry, the Commission used once again the provisions of Art. 90(3) TEEC to liberalise the sector unilaterally by a Commission Directive. As in the case of the Commission's Transparency of Financial Relations Directive (80/723/EEC), several governments (Spain, France, Belgium, and Italy) challenged the Commission's prerogatives to do so in the European Court of Justice but again without success.[3] Despite the Commission's victories in these court battles however, the Commission effectively lost the war given the strong political opposition encountered from governments. It therefore stopped issuing liberalising Commission directives. Instead, it used the slower, but more inclusive, legislative procedures involving the Council to pursue its liberalisation agenda in other network industries, such as energy and postal services (Schmidt, 1996; Pollack, 1998).

As a result, the process of public service liberalisation was gradual and uneven across sectors. Whereas the Commission and Council gradually

2 C-188–190/80 *France, Italy and United Kingdom* v. *Commission* [1982] ECR 02545.

3 C-202/88 France v. *Commission* [1991] ECR I-123; C-271, 281, and 289/90 *Spain, Belgium and Italy* v. *Commission* [1992] ECR I-5833.

opened one public network industry after another to competition, other public services, such as water and healthcare, remained almost untouched throughout this period (see Chapters 9 and 10). After all, the Commission acknowledged that workers and unions would oppose the commodification of public services because this would entail the 'risk of job destruction' and compromise people's 'access to essential services at affordable prices' (1999, cited in *Transfer*, 2002: 293).

In 1992, European governments signed the Treaty of Maastricht that established the EU and amended the EEC Treaty (then called Treaty establishing the European Community, TEC) to accomplish an economic and monetary union (EMU) by the end of the decade. The Treaty introduced the convergence criteria for member states to join the Euro (Art. 109(j) TEC), and its protocol on the excessive deficit procedure (EDP) established reference values that member states must respect, that is, a public debt/GDP ratio of 60 per cent and a public deficit/GDP ratio of 3 per cent. In many cases, the adjustment required to meet these criteria was substantial: Italy's deficit at the beginning of the 1990s was around 10 per cent of its GDP (Leibfried, 2015). In 1997, the Council also adopted the Stability and Growth Pact (SGP), which operationalised the use of the convergence criteria and the EDP in secondary EU law.

As public services consume a significant share of public spending, the new EU fiscal constraints motivated European governments to curtail their spending on them directly. In addition, governments tried to make savings through marketising public services reforms, which shifted the financial burden of public services from the state budget to the service users. These reforms often included the full or partial privatisation of former public undertakings too. The reason to do so was twofold. Firstly, the immediate revenues from sales could go towards reducing public debt. Secondly, the balance sheet of former state companies would be excluded from future public budgets (Bieler, 2006). Although some EU countries, for example the United Kingdom, had already begun privatising public services in the 1980s, most EU member states launched their privatisation programmes only after the ratification of the Maastricht Treaty in 1993 (Clifton, Comín, and Díaz Fuentes, 2006: 742). However, as the EU initially issued only overall debt and deficit benchmarks without linking them to concrete policy prescriptions, the ensuing public sector curtailment and marketisation processes unfolded at an uneven pace and intensity across countries and sectors.

Whereas Western European public services had been put under pressure by the EMU convergence criteria, in Central and Eastern Europe (CEE) the EU accession process fuelled the commodifying pressures on public services.

According to the European Council's Copenhagen EU accession criteria, EU candidate countries must have 'a functioning market economy as well as the capacity to cope with competitive pressures and market forces within the Union' (Presidency Conclusions Copenhagen European Council, 21–22 June 1993). The Commission monitored candidate countries' progress in meeting this criterion very closely, emphasising the need for further privatisations and liberalisations, even though CEE governments had already privatised most state-owned enterprises (SOEs) in the transition from state socialism to capitalism in the 1990s (Appel and Orenstein, 2018: 65–89).

To make public service delivery allegedly cheaper, governments in turn promoted public sector reforms, that is, the introduction of market-like new public management practices. The pressure to curtail the spending on public services in national budgets also incentivised member states to increasingly rely on public–private partnership (PPP) agreements to fund their projects (Kunzlik, 2013) and to use procurement rather than in-house provision of public services (Fischbach-Pyttel, 2017). In 1996, the Commission argued that 'buying goods and services by effective purchasing systems can make significant savings for governments …. Such considerations are all the more relevant in view of the *strong pressures* to cut budget deficits in line with the Maastricht convergence criteria' (Green Paper, COM (96 583: 4, emphasis added). In practice however, these reforms have often 'led to results almost directly opposite to neoliberalism's claims', as the substitution of public monopolies by rent-seeking private service providers with oligopoly market and significant political power allowed the latter to extract extra profits (Crouch, 2016: 156). Even so, the EMU and EU accession criteria motivated governments to adopt public sector reforms that both curtailed and marketised them, albeit in a manner that was uneven across time and space (Keune, Leschke, and Watt, 2008; Frangakis et al., 2009; Crouch, 2011, 2016). Compared with employment relations reforms however, increased horizontal market pressures played a more limited role in triggering commodifying public sector reforms (Chapter 6). After all, (public sector) markets first need to be created by vertical policy interventions before they can set in train the horizontal market pressures that will push the commodification agenda further (Szabó, Golden, and Erne, 2022).

The uneven spread of marketising reforms across countries also reflected the opposition that they faced from social forces. Furthermore, neo-mercantilist ideas did not disappear completely from the action repertoire of some governments (Buch-Hansen and Wigger, 2011). Throughout the 1990s and the 2000s, the governments of several member states intervened to protect large national companies from bankruptcy or hostile takeovers, challenging

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the EU's new restrictive approach to state aid. The French government led this approach, with the then centre-right Minister for Economics and Finance Nicolas Sarkozy arguing that 'it is not a right for the state to help industry. It is a duty' (cited in Buch-Hansen and Wigger, 2011: 193). When governments intervened to save companies, they often did so when they were under political pressure. In the Alstom case, even the European Commission's DG Competition yielded to these pressures when it approved its re-nationalisation. This did not happen merely because of Sarkozy's neo-mercantilist ideas but rather because Alstom's unions and European Works Council succeeded in politicising the Alstom case not only in France but also across Europe through transnational collective action (Erne, 2008; Chapter 9).

A few years earlier, in December 1995, France had already witnessed a major strike wave in its public transport sector, which observers and activists alike portrayed as the first 'revolt against globalisation' and the Europe of 'Maastricht' and as a trigger for Europe's alter-globalisation movement (*Le Monde*, 7 December 1995; Ancelovici, 2002; Bourdieu, 2008). This motivated the French government to seek a better status for public services in the EC Treaty. In turn, the drafters of the Amsterdam Treaty of 1997 amended the EC Treaty, recognising the 'place occupied by services of general economic interest in the *shared values* of the Union as well as their role in promoting social and territorial cohesion' (emphasis added) (Art. 16 TEC, now Art. 14 TFEU). In doing so, they responded to the concerns of public sector companies organised in the Centre Européen des Entreprises à Participation Publique (CEEP, now SGI Europe), which feared the negative effects of further public service liberalisations (Héritier, 2001). Overall however, the mitigating effect of this Treaty change was quite limited, as the recognition of public services as a 'shared value' is merely aspirational. In fact, Art. 14 TFEU states neither what public services should be provided, nor for whom, and at what service coverage levels.

Phase Three: Frontal but Unsuccessful Assaults on Public Services

Throughout the 1980s and 1990s, the Commission followed a sectoral approach to push for the liberalisation of public services (Crespy, 2016). This changed in the early 2000s, after the successful launch of the Euro in 1999 and the CJEU's growing reluctance to consistently endorse the Commission's public service commodification agenda in its rulings (Héritier, 2001). Subsequently, the Commission began to seek *cross-sectoral* vertical legislative interventions that went 'further than explicitly mentioned in the European Treaties' (Höpner and Schäfer, 2010: 352). In 2004, Frits

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Bolkestein, a neoliberal Dutch Commissioner in charge of the internal market, proposed an encompassing directive that aimed to liberalise the entire services sector, both public and private (Crespy, 2016; see also Chapter 6).

As mentioned in Chapter 6, the most contentious item in the draft Bolkestein Directive (COM (2004) 2 final/3) was the introduction of the country-of-origin principle. This radically reinterpreted the Treaty provisions on the free movement of services (Höpner and Schäfer, 2010) by moving the responsibility for regulating service providers from the country in which they were operating to providers' home country. By creating different sets of laws relating to access to, and exercise of, a service activity depending on the national location of the provider's headquarters, the Commission wanted to give providers from states with lower labour and consumer protection standards a competitive advantage, arguably to make the EU more competitive.

In the name of the free movement of services, the draft directive also included public services that had hitherto been excluded from EU internal market and competition policy, such as healthcare, social services, and non-mandatory education (Crespy, 2016). This time however, the Commission's bold cross-sectoral liberalisation drive managed to do what most sectoral EU vertical interventions had thus far avoided, namely, trigger a broad transnational countermovement of unions, left-wing parties, and social movements. The protest movement included major Euro-demonstrations against the draft directive held in Brussels and Strasbourg (della Porta and Caiani, 2009; Crespy, 2012, 2016; Copeland, 2014; Parks, 2015). Opposition to the Services Directive also played a significant role in French voters' rejection of the EU Constitution in 2005 (Béthoux, Erne, and Golden, 2018). On the legislative front, the fight happened mostly within the European Parliament, which was now granted co-legislative power under the ordinary legislative procedure. In the Parliament, two poles emerged: a liberal-conservative one in favour of liberalisation and a centre-left one favouring social regulation (Copeland, 2014; Crespy, 2016). The pro-liberalisation camp initially seemed to hold the majority within the EU institutions, but the arguments of the Stop Bolkestein coalition dominated the public debate (Copeland, 2014). Two years after the publication of the first draft directive, members of the European Parliament (MEPs) across the major political groups reached a compromise to secure the Parliament's adoption of a revised directive. Most MEPs went further than the Parliament's Internal Market Committee and removed the country-of-origin principle from the directive. The adopted directive (Directive 2006/123/EC) also explicitly excluded healthcare from its remit (see Chapter 10), along with other public services such as childcare. Even so, the provisions of a closed list of sectors that were exempted from the

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scope of the directive meant that other services remained amenable to liberalisation (Crespy, 2016: 44).

Shortly before launching the proposed Services Directive, the Commission had started to work on a major revision of EU legislation on public procurement. Given that public purchases constitute a sizable share of Europe's economy – in 2008, they accounted for 18 per cent of the EU's GDP (Monti, 2010: 76) – it is unsurprising that the EU focused its interventions in this area. This included several directives that aimed to coordinate and harmonise national procurement legislation (Kunzlik, 2013). In line with the development of the EU's single market, the main aim behind the legislation was to open competition for public contracts above a certain value to all firms in the EU. The Commission had already argued in 1985 that 'Community-wide liberalisation of public procurement in the field of public services is vital for the future of the Community economy' (White Paper, COM (85) 310: 23–24). Successive EU legislative interventions followed and were consolidated in two directives approved in 2004, regulating public (Directive 2004/18/EC) and utilities (Directive 2004/17/EC) contracts. These directives imposed increasing requirements on contracting authorities in terms of announcing tenders and criteria for awarding contracts (Kunzlik, 2013: 313). The 2004 procurement directives now explicitly included public services, such as healthcare, which had hitherto been relatively untouched by EU competition policy (see Chapter 10).

During the legislative process that led to the procurement directives, a broad coalition of unions and NGOs pushed for the inclusion of social and environmental criteria in the awarding guidelines (Fischbach-Pyttel, 2017). Despite the coalition's lobbying effort, the reference to the social and environmental aims of procurement was relegated to the directive's (non-binding) recital (Bieler, 2011: 171). The weak protection for social standards in EU procurement law became then evident when the CJEU issued the *Rüffert* judgment in 2008,[4] which meant that social clauses that seek to secure adequate wage rates within national or local public procurement laws can violate companies' freedom to provide services across the EU.

Other initiatives throughout the 2000s that aimed to protect public services from the realm of competition policy also failed, for example the attempt to establish an EU framework directive to define once and for all the role of SGEIs and exclude them from competition policy (Crespy, 2016). Thus, the trajectory of EU vertical interventions on public services in the 2000s remained a commodifying one, although the transnational countermovements against the Commission's draft Services Directive also showed the limits of commodifying EU interventions that

[4] C-346/06 *Rüffert* [2008] ECR I-01989.

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also require the democratic support of the European Parliament. These limitations are even more significant if one considers that the increased horizontal market pressures played a limited role in triggering commodifying public sector reforms compared with labour market reforms (Chapter 6).

7.3 NEG: PURSUING PUBLIC SERVICE COMMODIFICATION BY NEW MEANS

EU leaders used the 2008 financial crisis to establish the NEG regime that enabled vertical EU interventions in public services by new means (see Chapter 2). This happened in a two-fold way. First, as expenditure on public services constitutes a significant share of member states' budgets, the pressure to reduce the public services' bill increased significantly during the financial crisis. Second, European policymakers coupled austerity measures with interventions that were meant to increase the EU's and the member states' competitiveness. This led to renewed calls for more competition in services (public and private) to reduce prices and thus boost an export-led recovery (Wigger, 2019). The two issues were related, as the pressure to curtail public expenditure also acted as a catalyst for the further marketisation of public services (Crespy, 2016; see also Chapter 4), as shown by the subsequent analysis of the EU's NEG prescriptions on public services for Germany, Ireland, Italy, and Romania from 2009 to 2019.

Building on the analytical approach developed in Chapters 4 and 5, we analysed all prescriptions that explicitly targeted public services as part of either an EU/IMF Memorandum of Understanding (MoU) with a bailout programme country or the EU's annual country-specific recommendations (CSRs) within the European Semester process. Concretely, we looked at prescriptions on the *provision of public services*, which we analysed under the headings of resource levels as well as sector-level and provider-level governance mechanisms. We also analysed the prescriptions pertaining to people's *access to public services*, namely, under the headings of coverage levels offered by public services and cost-coverage mechanisms used to recover their costs, including co-payments by service users, as the latter may exclude poor people from accessing them. We then distinguished between prescriptions with commodifying or decommodifying policy orientations, depending on whether their aim was to turn public services more (or less) into commodities to be traded in the market (Chapter 4). We also distinguished prescriptions based on their coercive strength, which we established by looking at the prescriptions' legal base and the location of a given country in NEG's policy enforcement regime at the time (see Table 5.1).

Public services encompass a vast array of sectors and subsectors. In this chapter however, we include only prescriptions on public services *across* sectors, namely, those dealing with the entire public sector at different levels (national, regional, local) and those that targeted at least two subsectors of the public service (e.g., education and healthcare). In subsequent chapters, we analyse a meaningful set of sector-specific prescriptions, namely, those on public transport (Chapter 8), water (Chapter 9), and healthcare (Chapter 10) services.

As we focus our analysis in this chapter on prescriptions with a cross-sectoral scope, we have excluded from the analysis prescriptions on *prioritising* certain sectors over others in terms of public spending. Whereas such prescriptions may point in a decommodifying direction from the perspective of the sector targeted by the prescription, the opposite is true for other sectors that would lose funding in turn. From a cross-sectoral perspective, it is thus not possible to assign a policy direction to these policy prescriptions. (We nonetheless collected these prescriptions and, where relevant, analysed them in the sectoral chapters.) Following the same logic, we also did not include prescriptions on the absorption of EU funds. As EU funds usually require member states to co-finance an EU-funded project, a higher absorption rate implies a re-allocation of national funds from one area to another.[5]

Table 7.1 gives an overview of the themes of NEG prescriptions that emerged from our analysis and of their policy orientation. As emerges clearly from Table 7.1, commodifying prescriptions dominate the picture across all categories, except for one, coverage level. The latter category however, includes very few prescriptions. There are some decommodifying prescriptions in the resource levels category, albeit fewer than commodifying ones. Commodifying prescriptions also generally have a greater coercive power.

Table 7.2 goes a step further and summarises the NEG prescriptions on public services received by the four countries under analysis from 2009 to 2019. The different symbols represent prescriptions according to the five categories used to guide our analysis. Triangles represent prescriptions on resource levels. Circles stand for those on sector-level governance mechanisms. Squares represent prescriptions on provider-level governance mechanisms. Finally, prescriptions on coverage levels are represented by stars and those on cost-coverage mechanisms by diamonds. The coercive strength of a prescription is shown by its shade: the more significant a prescription's strength, the darker the symbol's shade. Tables containing short quotes for each prescription are available in the Online Appendix (Tables A7.1–A7.4).

[5] The promise of EU funds, for example, motivated centre-left and centre-right local councillors in Romania to invest their municipalities' limited resources in tourism infrastructure projects, such as a ski resort on Vârful Ghiţu (Argeş), despite the lack of basic local water and sanitation services.

TABLE 7.1 *Themes of NEG prescriptions on public services (2009–2019)*

		Policy Orientation	
	Categories	*Decommodifying*	*Commodifying*
Provision of public services	**Resource levels**	Increase public investment (DE) Ensure adequate investment at all levels of government (DE) Enhance social infrastructure (IE) Extend basic infrastructure (RO) Invest in public employees' skills (IT) Upgrade infrastructure capacity (IT)	Reduce public spending (IE) Reduce spending on goods and services (RO) Cut transfers to local government (RO) Reduce subsidies to public enterprises (RO) Reduce capital spending (IE/RO) Reduce goods and services spending (RO) Reduce public sector wage bill (IE/RO) Reduce new entrants' pay in public sector (IE) Establish a unified pay scale in public sector (RO) Curtail public sector wages (RO) Reduce public sector employment numbers (IE) Reduce operating expenditure of SOEs (RO) Reduce personnel expenditure of SOEs (RO) Implement enforceable spending ceilings (IE/IT/RO) Streamline number of schools and hospitals (RO)
	Sector-level governance mechanisms		More competition in network industries (IT/RO) More competition in local public services (IT) Foster competition in services (IT) Adopt and enforce annual competition law (IT) Enforce competition law (DE) Establish single contact point for external firms (RO) Fewer constraints to infrastructure investment (DE)

(*continued*)

TABLE 7.1 (*continued*)

Categories		Policy Orientation: *Decommodifying*	Policy Orientation: *Commodifying*
			Improve coordination across government layers (IT/RO) Improve spending monitoring across sectors (IT) Improve central monitoring of local authorities (RO) Strengthen public investment monitoring (RO) Strengthen monitoring of SOEs (RO) Strengthen monitoring of public–private partnerships (RO) Increase value of public contracts open to procurement (DE) Enhance the efficiency of public procurement (IT) Review public procurement procedures (RO)
	Provider-level governance mechanisms		Privatise SOEs (IE/IT/RO) Reform governance of SOEs (IT/RO) Reform local public services (IT) Reform public administrations' human resource management (IT/RO) Improve the efficiency of public administration (IT)
Access to public services	**Coverage levels**	Improve access to integrated public services (RO) Increase coverage levels of social services (RO)	
	Cost-coverage mechanisms		Increase tariffs of SOEs (RO)

Source: Council Recommendations on National Reform Programmes; Memoranda of Understanding. See Online Appendix, Tables A7.1–A7.4.
Country code: DE = Germany; IE = Ireland; IT = Italy; RO = Romania. SOE = state-owned enterprise.

TABLE 7.2 *Categories of NEG prescriptions on public services by coercive power*

	Decommodifying				Commodifying				
	DE	IE	IT	RO	DE	IE	IT	RO	
2009								▲^{8} ● ■^{2}	**2009**
2010						▲^{6} ■		▲^{8} ●^{3} ■	**2010**
2011						▲^{6} ■	△ ○^{3}	▲^{5} ●^{4} ■^{3} ◆	**2011**
2012			▲			▲^{4} ■	▲ ●^{2}	▲ ●^{2}	**2012**
2013			△		○^{2}	▲^{3} ■	△ ○^{4} □	▲^{5} ●^{4} ■^{5}	**2013**
2014	△^{2}				○	▲	▲ ●^{4} ■	○^{3} □^{2}	**2014**
2015	△^{2}					▲	●^{3} ■^{2}	□	**2015**
2016	△^{2}			△☆		△	●^{3} ■^{4}	□^{2}	**2016**
2017	△	△		☆	○		● ■^{3}	○ □	**2017**
2018	△	△					●^{2} ■^{2}	○	**2018**
2019	△		▲	☆			●^{2} ■	○ □	**2019**

Source: Council Recommendations on National Reform Programmes; Memoranda of Understanding. See Online Appendix, Tables A7.1–A7.4.
Categories: △ = resource levels; ○ = sector-level governance mechanisms; □ = provider-level governance mechanisms; ☆ = coverage levels; ◊ = cost-coverage mechanisms.
Coercive power: ▲●■◆ = very significant; ▲●■ = significant; △○□☆ = weak.
Superscript number equals number of relevant prescriptions.
Country code: DE = Germany; IE = Ireland; IT = Italy; RO = Romania.

In the early years of NEG, Ireland and Romania received the bulk of commodifying prescriptions, although Germany and Italy received some too. Commodifying prescriptions continued to be issued until 2019, targeting Italy and Romania. From 2014 however, Germany also received decommodifying prescriptions. This was also the case in our other three countries, albeit to a lesser extent. In what follows, we analyse the prescriptions more thoroughly, category-by-category, taking their specific semantic context into account.

Provision of Public Services

Resource levels: Under MoU duress, both Ireland and Romania received several NEG prescriptions to curtail resources for public services. Firstly, both countries received the prescription to cut the public sector wage bill by reducing or freezing public sector wages and/or by reducing employment numbers by partial or full recruitment bans (MoU, Ireland, 28 November 2010; MoU, Romania, 23 June 2009).

We have already analysed the impact of these measures on employment relations in Chapter 6. Here, we highlight their impact on public services. Reducing the number of public employees also reduces service quality, in terms of staff/service user ratio and so forth. This is especially the case during an economic crisis when users' need for public services usually increases. The demand to reduce the number of workers directly employed by the state might also backfire, as it can incentivise recourse to agency work, which comes with overheads and may prove more expensive than direct employment on the government payroll, as happened in the Irish health service during the Troika years (Burke et al., 2014). It is worth noting that Romania received more detailed prescriptions than Ireland on how to implement the reduction of the public sector wage bill. This mirrors the fact that, when the Troika arrived, the Irish government had already cut the public sector wage bill (see Chapter 6).

Although Italy did not receive any explicit prescription to cut the public service pay bill, it received constraining prescriptions to reduce its public expenditure between 2012 and 2014, with the stated rationale of improving 'the efficiency and quality of public expenditure' (Council Recommendation Italy 2012/C 219/14). In turn, these prescriptions motivated the Italian government to pause collective bargaining in the public sector (Bach and Bordogna, 2013). Indeed, successive Italian governments put in place a pay freeze until 2017, coupled with a partial hiring freeze, which meant that public service providers were no longer able to replace departing or retiring staff members. The pay freeze might have lasted even longer had unions not successfully challenged it in the Italian Constitutional Court. Although the government's attorneys argued that the pay freeze measure was taken 'to reduce public

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expenditure, in fulfilment of the obligations arising from membership of the European Union', the Court upheld the unions' constitutional collective bargaining rights.[6] By contrast, in some parts of the public sector, the hiring freeze regulations that reduced the replacement rate remained in place until 2019.

Beyond prescriptions to reduce the public sector pay bill, the MoU for Ireland demanded general budget cuts that impacted on the delivery of public services and that of Romania requested a cut in expenditure for goods and services. The MoU for both countries requested specific cuts on capital expenditure. Romania received also more specific requests for spending cuts. The second addendum of the 2009 MoU tasked the Romanian government to cut transfers to local governments and to 'streamline' (i.e., to reduce) the number of schools and hospitals; this in turn reduced the availability of key public services in disadvantaged rural areas (MoU, Romania, 2nd addendum, 20 July 2010; see Chapter 10). Several prescriptions for Romania targeted SOEs. The 2009 MoU asked the government to reduce subsidies to public enterprises, and the third addendum requested that SOEs cut 'operating expenditure, including personnel' (MoU, Romania, 3rd addendum, 19 January 2011).

Prescriptions on expenditure levels related to the binding ceilings on public spending that national governments had to introduce following the strengthening of the SGP by the Six-Pack and Two-Pack laws as well as the Fiscal Treaty (Chapter 2). Accordingly, not only Ireland and Romania but also Italy received a prescription to this aim (Council Recommendation Italy 2011/C 215/02). The spending ceilings in turn curtailed investment in public services further.

Commodifying prescriptions on resource levels prevailed from 2009 to 2013, but the picture started to change after 2014. After Ireland and Romania left the conditional financial assistance programme at the end of 2013, they ceased to receive prescriptions requesting direct spending cuts on public services. From 2014 onwards, Germany got prescriptions to increase public investment. Until 2019, the wording of these prescriptions for Germany became gradually more explicitly decommodifying. The 2014 prescription that asked Germany to increase public investment also urged it to make its public services more 'efficient'. In the following European Semester cycles, this specification disappeared when the German government was urged to deliver a 'sustained upward trend in public investment' (Council Recommendation Germany 2016/C 299/05). Prescriptions for Germany also requested more investments 'at all levels of governments', including the *Länder* and local level (Council Recommendation Germany 2014/C 247/05). The accompanying recitals noted a significant backlog in investment, albeit without acknowledging the role played by the opening of an EDP against Germany in 2010 (Council Decision Germany

6 Corte Costituzionale, sentenza n. 178, 23 July 2015.

2010/285/EU) and the debt brake that its government applied across all government levels to reduce the public debt and deficit.

We classified the prescriptions for more investments as decommodifying, as they have the potential to increase resources for public services (Chapters 4 and 5). Nonetheless, the prescriptions' decommodifying policy orientation could also be informed by an overarching commodifying script. Increased public spending could go towards private service providers also, namely, in a context where NEG prescriptions demand a further marketisation of public services, as we shall see below. The recital accompanying Germany's prescription for more investment in 2016 noted that 'a more efficient use of public procurement could also have a positive impact on investment' (Council Recommendation Germany 2016/C 299/05). The recital also deplored the fact that 'alternative instruments to traditional state funding of transport infrastructure, including through public-private partnerships, are used only to a limited extent' (Council Recommendation Germany 2016/C 299/05). Finally, the Commission's Country Report linked the need to increase investment with the need 'to maintain Germany's competitive advantage' (Commission, Country Report Germany SWD (2019) 1004: 47). Tables A7.1–A7.4 in the Online Appendix therefore show the semantic link to the policy rationale informing these decommodifying prescriptions.

EU executives also issued decommodifying prescriptions on resources for public services to the other three countries but in a less consistent way. In 2012 and 2013, the Italian government was asked to 'upgrade infrastructure capacity with a focus on energy interconnections, intermodal transport and high-speed broadband in telecommunications, also with a view to tackling the North-South disparities' (Council Recommendation Italy 2013/C 217/11). Similarly, in 2016 the Romanian government was urged to 'Extend basic infrastructure … in particular in rural areas' (Council Recommendation Romania 2016/C 299/18). The accompanying recitals cited transport and broadband networks as examples of lacking infrastructures that foster disparities between urban and rural areas. In 2017, a prescription urged the Irish government to 'enhance social infrastructure, including social housing and quality childcare' (Council Recommendation Ireland 2017/C 261/07). A similar prescription was present in the 2018 CSRs, but with a broader scope, including also transport and water (Chapters 8 and 9), which the Irish government planned to support through the adoption of a National Development Plan (Council Recommendation Ireland 2018/C 320/07).

As these prescriptions asked governments to increase the resources for public services, we classified them as decommodifying. Compared, however, with the earlier, opposite prescriptions issued within the MoU, their constraining power was weak. The prescriptions were also vaguer. They did not specify that increased services should be provided by *public* service providers, leaving open the question of private providers stepping in to benefit from increased investment. Neither did they acknowledge the negative effects that the previous, more coercive, NEG prescriptions on public-spending curtailment had had on the dire state of Italian, Irish, and Romanian public services. As in the case of Germany, the prescriptions on public spending levels must furthermore be assessed in their semantic context, including the enduring commodifying prescriptions on the provision of public services, as analysed below. The recitals of the 2016 CSRs for Italy, for example, ascribed the low public investment to 'uncertainty associated to the transition to the new code of public procurement and concessions' (Council Recommendation Italy 2016/C 299/01). This indicates that these notionally decommodifying prescriptions on more public spending were semantically subordinated to overarching, commodifying policy objectives.

Finally, a similar conclusion can be drawn in relation to the 2019 prescription for Italy, which urged its government to invest in the skills of public service employees (Council Recommendation Italy 2019/C 301/12). The call to invest more resources in public service employees also points in a decommodifying direction. However, the 2018 Country Report linked the issue of Italian public employees' apparently 'low skill profile' to a commodifying discourse that suggested relating wages more closely to performance evaluation (Commission, Country Report Italy SWD (2018) 210 final: 45–46).

Sector-level governance mechanisms: As discussed above, the NEG prescriptions on expenditure levels differed across time and country, reflecting countries' different locations in the EU political economy and the NEG policy enforcement regime at a given time. Nonetheless, not only Italy and Romania, but also Germany, received prescriptions that urged their governments to change the governance mechanisms for public services at sectoral level. All of them were commodifying, demanding increased competition among public service providers, as well as tightened financial monitoring and surveillance of their operations. By contrast, Ireland did not receive any general prescriptions in this category, only sector-specific ones for the healthcare sector (Chapter 10).

In Germany, the NEG prescriptions in this category focused on public procurement. To shape the institutional framework towards more competition, the 2013 and 2014 prescriptions urged the German government 'to significantly increase the value of public contracts open to procurement' (Council Recommendation Germany 2013/C 217/09) under EU procurement legislation. In its assessment of Germany's progress regarding the 2013 Council Recommendation, the Commission noted that 'further efforts are needed to identify the reasons behind the low publication rate and to open public procurement to EU-wide bidding' (Commission, Country Report Germany SWD (2014) 406 final: 23). In 2017, the call to increase public investment in

Germany was accompanied by a prescription to 'address capacity and planning constraints', which also implied the use of 'private sector know-how' and the speeding up of investment approval procedures by public authorities (Council Recommendation Germany 2017/C 261/05 and 2018/C 320/05).

Almost all MoUs and Council Recommendations for Romania issued between 2009 and 2019 demanded more effective public procurement procedures. In 2011 and 2012, Romania received another prescription aimed at fostering competition in the EU single market, namely, the request to set up a single contact point to help foreign firms to enter Romania or for cross-border provision of services, echoing provisions of the Services Directive. As in the case of prescriptions on public procurement, it is noteworthy how the Commission used NEG prescriptions here to further advance by new means its commodification agenda, which had already underpinned its legislative agenda in the Services Directive case.

Calls for increased competition in public services featured prominently in the NEG prescriptions for Italy. Between 2012 and 2016, NEG prescriptions recurrently called for more competition in the private and the public services sector. In 2014, for example, a prescription tasked Italy to 'remove remaining barriers to, and restrictions on, competition in the professional and local public services, insurance, fuel distribution, retail, and postal services sectors' (Council Recommendation Italy 2014/C 247/11). In 2013 and 2014, the government was asked to 'improve coordination between layers of government' (Council Recommendation Italy 2013/C 217/11). Although the meaning of this prescription is not immediately accessible, its commodifying policy direction becomes very clear when it is analysed in its semantic context (see Chapters 4 and 5). The 2013 Country Report noted that 'insufficient coordination between the central and local levels of government and lack of clarity on the division of responsibilities across them' (Commission, County Report Italy SWD (2013) 362 final: 32) hampered the implementation of liberalising EU law, namely, the Services Directive.

A 2013 prescription for Germany urged its government to improve the enforcement of competition law and to remove restrictions to competition (Council Recommendation Germany 2013/C 217/09). Like Romania and Germany, Italy received commodifying prescriptions concerning public procurement. A 2013 prescription focused on local public services, 'where the use of public procurement should be advanced, instead of direct concessions' (Council Recommendation Italy 2013/C 217/11), and the detailed 2014 prescription requested 'streamlining procedures including through the better use of e-procurement, rationalising the central purchasing bodies and securing the proper application of pre- and post-award rules' (Council Recommendation Italy 2014/C 247/11). Successive recommendations for Italy issued between 2015 and 2019 called for the adoption of an annual 'competition' law 'to address the remaining barriers to competition' (Council Recommendation Italy 2016/C 299/01). The lack of competition in Italian local public services was also deplored in the prescriptions issued in 2014, 2015, and 2018. Furthermore, Italian public network industries attracted the attention of EU executives, with two prescriptions issued in 2012 and 2013 mandating Italy to improve the 'market access condition' in the energy and transport sectors (Council Recommendation Italy 2013/C 217/11). Romania received a similar prescription for these two sectors in 2014 (Council Recommendation Romania 2014/C 247/21).

In this sector-level governance mechanisms category, another theme also emerged, as several NEG prescriptions called for the tightening of central control over public spending across different government levels and departments. The Italian government received prescriptions corresponding to this aim in 2011 and then in 2015–2016, and the Romanian government received them throughout the MoU period. Not only did the MoUs call for central financial control across all government levels, but also the Romanian 2011 P-MoU requested a stricter monitoring of SOEs and PPP agreements (P-MoU, Romania, 29 June 2011).

Provider-level governance mechanisms: Under this category, we identified two main types of prescriptions that all pointed in a commodifying direction: namely, calls for the privatisation or marketisation of SOEs and calls for reforms to render public service providers' governance mechanisms more market-like. Germany was the only country of the four not to receive prescriptions in this area.

As referenced in section 7.2, the EU 'Treaties shall in no way prejudice the rules in Member States governing the system of property ownership' (Art. 345 TFEU). Nevertheless, the European Commission and Council issued several prescriptions for Ireland, Italy, and Romania, which called not only for marketisation but also for privatisation of their SOEs. This is another example of how the NEG regime increased EU executives' capacity to intervene in areas in which they have no formal policymaking powers. In their MoU, both the Irish and the Romanian governments were tasked to privatise state assets to consolidate public finances. As the Irish government had already announced privatisation plans prior to the bailout (Palcic and Reeves, 2013; Mercille and Murphy, 2016), it did not receive precise indications on *which* state assets should be disposed of (MoU, Ireland, 28 November 2010). In contrast, the prescriptions for Romania were more precise. In 2010, for instance, the Romanian MoU included the prescription to take concrete steps towards the privatisation of SOEs in the energy and transport sectors (MoU, Romania, 2nd addendum, 20 July 2010). In the case of Italy, privatisations had already been part of successive government plans to reduce public debt. Between 2014 and 2017 however, Italian governments recurrently received NEG prescriptions that demanded the implementation of the plans (Council Recommendation Italy 2014/C 247/11).

In addition, governments received commodifying prescriptions urging them to render the governance mechanisms of providers that remained in public ownership more market-like. While subject to the MoU programme, in 2011 the Romanian government adopted an emergency ordinance on the governance of SOEs 'with inputs from the IMF, the World Bank and the European Commission' (European Commission, 2016a: 85). The reform entailed: '(i) the applicability of company law on SOEs, (ii) the separation between the ownership and the regulatory function of the authorities, (iii) the transparent and professional selection of board members and management, (iv) the concept of performance monitoring, and (v) the strengthened protection of minority shareholders' (European Commission, 2016a: 86). These themes also featured in subsequent NEG prescriptions; for example, in 2019, when the Romanian government was tasked to 'strengthen the corporate governance of State-owned enterprises' (Council Recommendation Romania 2019/C 301/23).

Similarly, Italy received a prescription in 2017 inviting the government to 'improve the efficiency of publicly-owned enterprises' (Council Recommendation Italy 2017/C 261/11). The accompanying recital explained what improved 'efficiency' would mean, namely, corporate governance reforms that ensure that publicly owned companies will 'operate under the same rules as privately-owned entities' (Council Recommendation Italy 2017/C 261/11).

Requests to marketise public administrations' governance mechanisms also featured consistently in the NEG prescriptions for Italy and Romania. In addition to cuts to the public sector wage bill (see Chapter 6), the 2009 MoU tasked the Romanian government to implement a reform 'aimed at increasing the effectiveness of the public administration' (MoU, Romania, 23 June 2009). The NEG prescriptions in this area included not only the demands on sector-level governance analysed above but also specific, commodifying demands for public service providers, for example, in relation to their human resource management (HRM). As in the case of their NEG prescriptions on SOEs, EU executives continued to prescribe public administration reforms in the HRM area, even after the end of Romania's MoU programme, until 2017.

From 2013, EU executives recurrently issued NEG prescriptions that tasked the Italian government to reform its public administration. In turn, the centre-left government led by Matteo Renzi (2014–2016) adopted the Madia reform

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package, which included several decree-laws on a wide range of issues, including administrative digitalisation, administrative reorganisation, and the introduction of new HRM practices. As in the case of its commodifying Jobs Act (Chapter 6), the Renzi government implemented the Madia reform to obtain greater fiscal space from EU executives in exchange, following the more 'flexible' interpretation of the SGP by the Juncker Commission and the Council. Subsequently however, the Italian Constitutional Court annulled several parts of the reform as they were unconstitutional;[7] this explains why EU executives continued to issue corresponding NEG prescriptions until 2019.

The Irish MoU did not contain any specific prescriptions on the reform of public companies or administrations, arguably because the Irish government had already started reforming them before the arrival of the Troika in December 2010. Successive governments managed to keep public services reform largely outside contentious politics (Hardiman and MacCarthaigh, 2011) – from the heydays of Irish social partnership agreements in the 2000s (Roche and Geary, 2006; Doherty and Erne, 2010) to the Croke Park public sector collective bargaining agreement of 2010 (Maccarrone, Erne, and Regan, 2019; Chapter 6). After the Troika's arrival however, the Irish government established a new government department, the Department of Public Expenditure and Reform, which privatised several public companies and pursued reforms that strengthened its control over all levels of government (MacCarthaigh, 2017). These unilateral government actions were tightly monitored by the Troika (Commission, Economic Adjustment Programme for Ireland, Spring 2012 Review), even though the policy preferences of the Troika and the Irish government were largely congruent (Dukelow, 2015). The latter thus exploited the crisis and MoU as an opportunity to implement reforms that would not have been possible in other circumstances (MacCarthaigh and Hardiman, 2020).

Users' Access to Public Services

Coverage levels: The only country that received NEG prescriptions on the coverage level of public services in general was Romania. In 2016 and 2017, Romania received decommodifying prescriptions that urged its government to 'improve [users'] access to integrated public services' (Council Recommendation Romania 2016/C 299/18). The theme of prescriptions is broad in scope and refers to the unequal access for service users living in rural areas to education, health services, and basic utilities. These prescriptions

7 Corte Costituzionale, sentenza n. 251, 25 November 2016.

were clearly decommodifying but had only weak coercive power as they were based on the merely aspirational Europe 2020 strategy. The prescriptions acknowledged users' unequal access to services but failed to mention that these inequalities resulted from earlier, much more binding NEG prescriptions that commodified public transport and health services (Chapters 8 and 10) and curtailed public spending more generally, especially throughout the period of MoU conditionality (2009–2013). A 2019 prescription nevertheless urged the Romanian government even more explicitly to 'increase the coverage and quality of social services' (Council Recommendation Romania 2019/C 301/23), after the recital for the abovementioned 2017 prescription on users' access to integrated public services deplored the fact that 'over 45% of Romania's population live in rural areas' with very limited access to 'social services' (Council Recommendation Romania 2017/C 261/22). This indicates the presence of policy rationales that are not aligned to NEG's primary, commodifying objectives.

Cost-coverage mechanisms: There is only one prescription under this category concerning cross-sectoral public services, addressed once again to Romania. In this case, the prescription had a clearly commodifying policy orientation. Among the measures indicated to reduce SOEs' arrears (discussed in the section on resource levels above), the third addendum to the 2009 MoU dated 19 January 2011 also tasked the Romanian government to instruct its SOEs to increase their tariffs for service users. This obviously limited poorer users' capacity to access public services. In addition, we must note that the prescriptions on the curtailment of resource levels for all countries, discussed above, frequently forced public service providers to compensate their losses of public funding by increasing their charges for service users.

NEG: A New Avenue to Foster Commodifying EU Interventions in Public Services

Our analysis of the EU's NEG prescriptions on public services for Germany, Ireland, Italy, and Romania issued between 2009 and 2019 has shown the broad range of issues affected by NEG. Overall, commodifying NEG prescriptions clearly dominated the picture. Over the years, EU executives also issued a few decommodifying NEG prescriptions on resource levels, especially for Germany, but to a lesser extent to the other three states. However, whereas the coercive power of commodifying prescriptions was very significant or significant, echoing the countries' location in the NEG enforcement regime at a given time, the coercive power of the decommodifying prescriptions was weak.

Hence, the shift to the NEG regime intensified the EU's commodifying pressures on public services. Our analysis uncovered a consistent pattern of commodifying NEG prescriptions, which tasked the receiving member states to curtail their public spending on public services and render the governance mechanisms at both the sectoral and the provider level for public services more market-like. This indicates the presence of a consistent policy script in favour of public sector commodification deployed through corresponding NEG prescriptions across all four countries. The presence of a common commodification script however, did not lead to the issuing of equal prescriptions for the four countries across all categories at the same time. By contrast, the NEG regime's country-specific prescriptions enabled EU executives to nudge all member states in a commodifying policy direction, while also taking their unequal public services commodification trajectories into account. The unevenness of the commodifying NEG prescriptions issued to the four countries across time thus echoed different commodification trajectories followed by them before and after the EU's shift to the NEG regime, rather than the application by EU executives of a different policy script across them.

In addition to the consistent pattern of commodifying NEG prescriptions, we identified some decommodifying ones. As we were analysing the NEG prescriptions in their specific semantic context however, we were able not only to establish their concrete commodifying or decommodifying policy orientation but also to link the detected decommodifying prescriptions to the policy narratives informing them. When analysing the decommodifying NEG prescriptions in the field, we thus detected semantic links to the following policy rationales.

First, some decommodifying prescriptions to increase public investment were semantically related to another concern, namely, to boost competitiveness and growth. This policy rationale is linked to the ailing infrastructure's negative effects on the member states and the EU's competitiveness. Several NEG prescriptions to increase public investment for Germany, Italy, Ireland, and Romania were semantically linked to this policy rationale.

A second policy rationale linked to the decommodifying prescriptions to increase public investment was a commodifying one, namely, to enhance private sector involvement in public services. This was the case for the prescriptions addressed to Germany in 2016 and 2019, which linked the need for more investment to more private sector involvement through PPP or public procurement. Also, the prescriptions addressed to Italy in 2012–2013 to upgrade infrastructure capacity were semantically linked to the need to open network industries to competition.

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Third, since 2017, few decommodifying prescriptions aimed at increasing public investment concerned the required shift to a green economy. These semantic links were visible in only a few decommodifying prescriptions that tasked the German and the Irish government to increase public investments.

Fourth, some decommodifying NEG prescriptions that urged the German government to increase public investment were linked to the policy rationale of rebalancing the EU economy, as already detected in Chapter 6. This policy rationale relates specifically to Germany's position at the core of the EU economy. As in the case of higher German wages, increased public investments would boost domestic demand in Germany. This would in turn increase its imports from other EU states and contribute to a more balanced European economy (Council Recommendation Germany 2017/C 261/05).

A fifth policy rationale that emerged from our analysis concerns the issue of increasing efficiency. This informs only one decommodifying prescription, namely, the one addressed to Italy about the need to invest in public employees' skills.

A few decommodifying prescriptions to increase public investment and the coverage of public and social services were semantically linked to concerns about social inclusion. This policy rationale concerns spatial inequalities (between regions and between urban and rural areas) and social cohesion. It informed a few prescriptions for Romania but was also visible in Irish and Italian prescriptions. Yet, compared with the policy rationales discussed above, the social inclusion rationale played a very marginal role. Indeed, the prescriptions informed by this policy rationale were so scarce and so weak that we can hardly speak of a socialisation of the European Semester (Zeitlin and Vanhercke, 2018). The prescriptions addressed to the Irish government in 2017–2018 to enhance social infrastructure, in particular childcare, relate to a sixth policy rationale, that is, to expand (female) labour's market participation.

In sum, in line with our methodological approach outlined in Chapters 4 and 5, we have classified all NEG prescriptions based on their primary policy orientation. Accordingly, we have detected a consistent pattern of commodifying NEG prescriptions. Not only were there fewer decommodifying NEG prescriptions, they were also weaker. In a second step, we assessed the semantic links between the decommodifying prescriptions and the policy rationales informing them. We detected that most decommodifying prescriptions were semantically linked to policy rationales that did not contradict the commodifying policy script informing most NEG prescriptions. Furthermore, when we analysed the decommodifying prescriptions to increase public investment in the context of the commodifying prescriptions in favour of marketising public sector reforms, the decommodifying prescriptions also became a vector of commodification, namely, when increased public money was channelled towards private coffers following marketising reforms of public services. This is indeed what we observed in our analysis. Calls for increased public investment have consistently been accompanied by commodifying prescriptions on public procurement, concessions, and PPP. By contrast, prescriptions on the coverage of public services were not semantically linked to commodifying prescriptions on the marketisation of public services, but they were residual as a share of all prescriptions.

Finally, all decommodifying prescriptions related to quantitative measures on public services resource and coverage levels, but there were no decommodifying prescriptions with a qualitative dimension, either on sector- and provider-level public service governance or on cost-coverage mechanisms that shape people's access to public services. Hence, whereas EU executives agreed to pause and even reverse some curtailment measures after the recovery from the financial crisis, NEG prescriptions continued to call for (qualitative) 'structural reforms' over the entire decade 2009–2019.

Vertical EU Interventions in Public Services after the Shift to NEG

The shift to the NEG regime enabled EU interventions in public services by new means, but it has not supplanted 'older' tools of vertical governance interventions by EU law. Between 2009 and 2019, the EU adopted several new laws that affect public services. First, the EU's *sectoral* liberalisation agenda led to the adoption of new EU directives in the postal, energy, and railway sectors (Crespy, 2016; Chapter 8). In addition to these laws targeting already broadly liberalised sectors, the Commission tried to advance its public services commodification agenda in new areas through sector-specific EU laws, for example, Directive 2011/24/EU on cross-border healthcare (Stan and Erne, 2021a; Chapter 10) or cross-sectoral EU laws, for example, Directive 2014/23/EU on the award of concession contracts and Directives 2014/24/EU and 2014/25/EU on public procurement. In 2016, the Commission proposed a Services Notification Procedure Directive (COM (2016) 821 final), which would have obliged local, regional, and national governments to ask the European Commission for prior approval before implementing any laws, regulations, or administrative provisions on public services covered by the 2006 Services Directive. The Commission's proposal failed to become law, however, because of opposition in the European Economic and Social Committee, the European Parliament, and the Council, and protest letters from municipalities, unions, and social movements (Hoedeman, 2020; Szypulewska-Porczyńska, 2020).

In this context, EU executives used their NEG prescriptions to reinforce commodifying pressures emanating from legislative interventions through the ordinary legislative procedure. Some of the areas targeted in NEG prescriptions, such as public procurement, were already part of the EU's *acquis communautaire*, but, in other areas, such as the governance of public administration and of SOEs, EU policymakers had no explicit legislative competences. Thus, EU executives used NEG to advance their agenda in areas thus far spared from EU interventions.

Moreover, as we shall see in more detail in Chapters 8–10 on sector-specific NEG interventions, NEG prescriptions have been issued not only in sectors already deeply affected by the EU's single market agenda (e.g., railways, see Chapter 8) but also in sectors that until the 2008 financial crisis had been partially shielded from direct EU interventions, such as water and healthcare (Chapters 9 and 10, respectively).

This push towards further commodification of public services did not go unchallenged however. For instance, water was excluded from the Concessions Directive thanks to the successful Right2Water European Citizens' Initiative (Szabó, Golden, and Erne, 2022; see Chapter 9). Moreover, due to the effort of unions and social movements, a binding social clause was inserted in the revised 2014 directive on public procurement. Yet, although the EU's ordinary legislative procedure still offers clear targets for transnational contestation, given that it involves the European Parliament, the NEG technocratic structure makes the emergence of transnational countermobilisation much more difficult.

7.4 PUBLIC SERVICES COMMODIFICATION AND THE COUNTERMOVEMENTS THAT IT TRIGGERED

Before 2008, commodifying EU interventions on public services often triggered social countermovements. Initially, union-led mobilisations against the commodification of public services took place mostly at local and national level, with varying success (Crespy, 2016). This is hardly surprising. Not only are European unions organised in national and local branches (Gumbrell-McCormick and Hyman, 2013) but also the effects of EU laws often become visible for a wider public only when national and local policymakers try to implement them on the ground (Kohler-Koch and Quittkat, 2013).

In the 2000s, ever more commodifying vertical EU interventions in public services triggered countermovements that politicised them in the European public sphere, namely, in the case of the EU-wide union campaign against Commissioner Bolkestein's Services Directive. His draft directive gave unions a visible supranational target, and its wide scope allowed them to build broad alliances with social movements. The coalition-building process was aided by the emergence of the alter-globalisation movement at the end of the 1990s. Combining lobbying activities in the European Parliament with national and Euro-demonstrations, organised labour was able to limit the directive's commodifying drive (see section 7.2).

Other imminent EU laws, namely, the directives on public procurement, also triggered union and social-movement alliances (Bieler, 2011). The EPSU's Coalition for Green and Social Procurement and several NGOs campaigned to insert social and environmental standards in the 2004 directives on public procurement. However, as mentioned in section 7.2, they succeeded in including them only in its recitals. This outcome echoed structural factors, namely, the relative disadvantage of labour and social interests vis-à-vis business interests, especially in the institutional context of the EU (Offe and Wiesenthal, 1980; Erne, 2020). Andreas Bieler (2011) also highlighted the limitations of the coalition's strategy, which relied mainly on direct lobbying activities and failed to trigger public contestation, which instead took place in the subsequent Services Directive case, when transnational mobilisation took place not only at cross-sectoral but also at sectoral level (Erne and Nowak, 2023; Chapters 8–10). European unions also used instruments of direct democracy to protect public services. To provide greater EU-level protection for public services, they proposed a decommodifying framework directive on public services, as mentioned in section 7.2. In November 2006, ETUC and EPSU launched a corresponding petition demanding 'high quality public services, accessible to all' (Crespy, 2016: 128). Although the petition preceded the adoption of the EU's official European Citizens' Initiative (ECI) procedure in 2012, it can be seen as a pilot ECI (Szabó, Golden, and Erne, 2022: 637) given the ETUC's and EPSU's declared target to collect one million signatures. Eventually however, the petition had been signed by only about 700,000 people (Crespy, 2016: 129), which was not enough to compel the Commission to draft a corresponding directive on public services.

As mentioned in Chapter 6, the responses of national governments and EU executives to the financial crisis triggered a wave of countervailing demonstrations and strikes. The comprehensive database of national protest events across Europe compiled by Hanspeter Kriesi and colleagues (2020) confirmed the resurgence of economic claims as the most important trigger of protests. Between 2000 and 2015, 38.1 per cent of all protests reported in national newswires across Europe were motivated by economic claims towards public institutions or private employers (Gessler and Schulte-Cloos, 2020: Table 6.1). Most anti-austerity protests occurred at local and national level in Southern Europe (Dufresne, 2015; Rone, 2020). The European trade union organisations, ETUC and EPSU, however, also coordinated transnational protest actions against the austerity cuts and the marketising public services reforms prescribed by the commodifying NEG prescriptions. This led to numerous Euro-demonstrations and coordinated action days politicising the EU governance of public services, as shown in Table 7.3.

After 2014 however, the number of ETUC-led transnational mobilisations targeting NEG fell notably, although EU executives continued to issue country-specific, commodifying NEG prescriptions. This fall is due to actor-centred and structural factors. Once the Commission agreed to consult European social partners before issuing its annual NEG prescriptions (Erne, 2015), the ETUC stopped organising transnational protests and returned to its traditional social partnership and lobbying approach (Bieling and Schulten, 2003; Hyman, 2005). In response to the rise of far-right Eurosceptic parties, the ETUC adopted a more social partnership-oriented and Europeanist stance. Before the 2014 European Parliament elections, the ETUC (2013) formulated its own alternative plan for investment, sustainable growth, and quality jobs. Ahead of the 2019 elections however, it signed a joint statement of the European social partners to defend 'democracy, sustainable economic growth and social justice' and 'the European project' (ETUC et al., 2019).

Structural factors also contributed to the fall in European trade union protests against NEG. By its nature, the NEG framework is 'a supranational regime that nationalises social conflict', as its *country-specific* and *asynchronous* character makes it very difficult for unions to politicise NEG at EU level (Erne, 2015: 355). That proved to be true, although our analysis showed that all qualitative NEG prescriptions on the governance of public services urged all member states to render their public services more market-like, regardless of their location in the uneven European economy. These findings show that the sweeping statements on the socialisation of the European Semester were standing on shaky ground (Zeitlin and Vanhercke, 2018). The ETUC nevertheless felt comforted by EU leaders' endorsement of a European Pillar of Social Rights in 2017 and the emergence of quantitative NEG prescriptions in favour of more public investments (de la Porte and Natali, 2018; Pochet, 2019; Ferrera, 2021), even though the latter were semantically linked to policy rationales that did not question NEG's commodifying policy direction (see section 7.3).

European unions' difficulties in politicising NEG are also linked to the marginal role that the European Parliament plays in the NEG regime (Erne, 2015). This makes unions' interventions much more difficult. After all, the transnational protests against the draft Services Directive were successful only

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TABLE 7.3 *Transnational protests politicising the EU governance of public services (1993–2019)*

Date	Locations	Action type	Topic	Coordinators
5 June 2004	Brussels	Demonstration	Services Directive, 'Non à la directive Bolkestein – Oui à l'Europe sociale'	ETUC, social movements, unions
24 November 2004	Brussels	Demonstration	Services Directive, 'Bolkestein Directive = Frankenstein Directive'	ETUC, social movements, unions
19 March 2005	Brussels	Demonstration	'More and better jobs – Defending social Europe – Stop Bolkestein'	ETUC, social movements, unions
21 March 2005	Brussels	Demonstration	Services Directive	European Antipoverty Network
15 October 2005	Multi-sited	Demonstration	Services Directive, European Day of Action	ETUC, social movements, unions
25 October 2005	Strasbourg	Demonstration	Services Directive	ETUC, social movements, unions
11 February 2006	Strasbourg, Berlin	Demonstration	Services Directive	DGB, ETUC, Attac
14 February 2006	Strasbourg	Demonstration	Services Directive, Euro-demonstration 'Services for the people'	ETUC
14–16 May 2009	Brussels, multi-sited	Demonstration	'Fight the crisis – Put people first' campaign, against austerity	ETUC
29 September 2010	Brussels, multi-sited	Strike, demonstration	'No to austerity – Priority for jobs and growth'	ETUC
15 December 2010	Multi-sited	Demonstration	'No to austerity for everyone and bonuses for a happy few'	ETUC, unions
24 March 2011	Brussels, multi-sited	Demonstration	'No to austerity plans in Europe'	ETUC
9 April 2011	Budapest	Demonstration	'No to austerity – For a social Europe, for fair pay and for jobs'	ETUC

(*continued*)

TABLE 7.3 (*continued*)

Date	Locations	Action type	Topic	Coordinators
21 June 2011	Luxembourg	Demonstration	'No to austerity – For a social Europe, for fair pay, investments and jobs'	ETUC
17 September 2011	Wroclaw	Demonstration	'Yes to European solidarity – Yes to jobs and workers' rights – No to austerity'	ETUC, Polish unions (OPZZ)
30 November 2011	Brussels, multi-sited	Strike, demonstration	European Day of Action against austerity measures	EPSU
29 February 2012	Multi-sited	Demonstration	European Day of Action: 'Enough is enough! – Alternatives do exist – For employment and social justice'	ETUC
19 May 2012	Frankfurt	Demonstration	Against EU's NEG regime	Blockupy
23 May 2012	Brussels	Demonstration	'Growth and investment for jobs – No to deregulation'	ETUC
14 November 2012	Brussels, multi-sited	Strike, demonstration	'For jobs and solidarity in Europe – No to austerity'	ETUC
13–14 March 2013	Brussels, multi-sited	Strike, demonstration	EU summit: 'No to austerity! Yes to jobs for young people!'	ETUC, social movements, unions
28 May 2013	Brussels	Demonstration	Demanding that EU rules on public procurement fully respect workers' rights	Belgian unions, EFFAT, UNI, ETUI, EFBWW
1–2 June 2013	Frankfurt, multi-sited	Demonstration	Against EU's NEG regime	Blockupy
7 March 2014–30 January 2015	Online	ECI	New Deal 4 Europe. For a European Special Plan for Sustainable Development and Employment	newdeal4europe
18 March 2015	Frankfurt	Demonstration	Against EU's NEG regime	Blockupy

Source: Transnational Socioeconomic Protest Database (Erne and Nowak, 2023).
The table includes transnational protest events across at least two public sectors, as recorded in the database's intersectoral and the national and local public services 'public nat/loc' categories, excluding protest events of European public servants (public EU).

because of the Parliament's role as a co-legislator that gave the protest movements a lever to change the directive (Copeland, 2014; Crespy, 2016). In the case of the new Concessions Directive (2014/23/EU) and the revised Procurement Directives (2014/24/EU, 2014/25/EU), the unions were able to shift the balance of power thanks to their allies in the Parliament, which included 'social clauses' in them (Fischbach-Pyttel, 2017: 167).

However, although the ETUC stopped contesting NEG at cross-sectoral level over time, European public service trade unions in sectors hitherto only marginally affected by commodifying EU prescriptions (e.g., water and healthcare) renewed their attempts to politicise them across borders, as we shall see in the next chapters of the book.

7.5 CONCLUSION

In this chapter, we have analysed the European governance of public services and is discontents, before and after the EU's shift to its NEG regime. Initially, European integration and the making of social welfare states with public utilities and services developed in unison. Since the launch of the European single market and monetary union however, EU integration has put public services more and more under pressure. This happened through two channels: commodifying EU laws that were part of the single market agenda and indirect pressures on public budgets related to EMU. In the 2000s however, the European Commission's public service liberalisation agenda seemed to run out of steam as a result of transnational protests and related European Parliament amendments. After 2008 however, the shift to NEG gave EU executives new opportunities to advance their agendas.

The NEG prescriptions for Germany, Ireland, Italy, and Romania from 2009 to 2019 consistently pointed in a commodifying policy direction. Across all countries and times, all NEG prescriptions on the mechanisms governing public services tasked member states to marketise them, regardless of their location in the integrated, but also uneven, EU economy. As the latter determined NEG prescriptions' unequal constraining power, their impact differed across countries. Until 2013, EU executives' NEG prescriptions tasked the Irish, Romanian, and Italian governments to curtail their public spending. That changed over time; after all, countries in our sample received a few decommodifying prescriptions for higher public investments, namely, to boost Europe's competitiveness and to rebalance its economy. Given these semantic links, even these decommodifying prescriptions remained subordinated to NEG's primary commodifying agenda. Only the Romanian government was asked to spend more for social reasons. Thus, the shift to NEG significantly augmented EU pressures on public services beyond those already directed by commodifying EU laws.

These commodifying pressures triggered countermovements by unions and social movements. Initially, most mobilisation took place at national level. After 2004 however, the Commission's draft Services Directive triggered major transnational protests, effectively curbing the Commission's ambitions. The shift to NEG also triggered widespread labour protests. Despite the consistent commodifying bent of NEG prescriptions on public services across countries, unions and social movements still found it more difficult to politicise them, given the exclusion of the European Parliament from the supranational NEG regime and NEG's country-specific and asynchronous methodology that hampered transnational union action.