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Commodifying Public Utilities: EU's New Governance Prescriptions for Rail and Water

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ABSTRACT

In the mid-2000s, the Single Market Program and European Monetary Union lost momentum, as public services advocates increasingly succeeded in tempering attempts to liberalize public utilities through legislative amendments and Court of Justice rulings. After the 2008 crisis, however, the EU's shift to a new economic governance (NEG) regime provided EU executives with a new tool to advance their objectives. Unlike EU directives, *country-specific* NEG prescriptions require neither the approval of the European Parliament nor their transposition into law, making it more difficult for social forces to contest them. Our analysis of NEG prescriptions for public utilities in two sectors (rail and water) and four countries (Germany, Ireland, Italy, Romania) across 10 years (2009–2019) shows that the shift to NEG provided EU executives with new extra-parliamentarian and extra-judicial tools that allowed them to revive their stalled commodification agenda; at the price of accentuating the EU's democratic and justice deficits.

1 | Introduction

The EU's flagship projects—the Single Market Program (SMP) and Economic and Monetary Union (EMU)—were designed to be mutually reinforcing (European Commission 1990), so much so that we can speak of an SMP–EMU nexus. Before the 2008 financial crisis, EU policymakers avoided “positive” EU interventions in national social policymaking but instead endorsed liberalizing “negative” interventions to create an integrated European Union (Scharpf 1999). To “compensate for a lack of power resources” (Jabko 2006, 5), the European Commission (1990, 21) argued that EU integration would be strengthened over time through “deeper liberalization” and its “policies for reducing subsidies and controlling undesirable concentrations”. EU leaders were thus deploying a playing-the-market strategy (Jabko 2006) to achieve their political goals. For

advocates of this endogenization thesis, “the introduction of the euro has been a structural reform by itself that is likely to contribute to further economic integration ... and to foster continuous development of the Single Market” (Trichet 2004). By the mid-2000s however, the SMP had slowed to a snail's pace, with existing legislation suffering from a transposition deficit (Monti 2010) as social movements, trade unions, and public services advocates within the European Parliament and Council increasingly succeeded in tempering the Commission's attempts to liberalize public services.

The 2008 financial crisis dealt another blow to the endogenization thesis. EU leaders realized that the SMP and EMU did not lead to greater economic cohesion but to threatening macroeconomic imbalances. Thus, even proponents of neo-functional EU integration theory imagined the following

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scenario: “first, the collapse of the euro; then of the EU, and, finally, of democracy in its member states” (Schmitter 2012, 41). To prevent EU disintegration, its leaders devised a new economic governance (NEG) regime, which made EU member states subject to EU surveillance procedures and *country-specific* policy prescriptions issued by the European Commission and the Council of EU finance ministers (henceforth EU executives). Although this “silent revolution” (Barroso, cited in ANSA 2010) led to a much more vertical EU governance regime, NEG does not follow the model of a federal state but rather the governance structures of transnational corporations, in which corporate HQs control their local subsidiaries through the use of coercive comparisons and ad hoc interventions (Erne 2015).

Much NEG research has focused on institutional innovation at the discursive-ideational or the institutional-polity level (Bauer and Becker 2014; Blyth 2013; Jabko 2019; Matthijs and Blyth 2018; V. Schmidt 2020; Van Esch 2014). Acknowledging the increasing scope of EU policymaking triggered by NEG (Crum 2018; Hodson 2020), a complementary strand of research focuses on specific policy areas, such as fiscal (Di Mascio et al. 2020; Gasseau and Maccarrone 2023; Haas et al. 2020), employment, and social policy. Employment relations and social policy scholars, for example, assessed whether NEG prescriptions pointed in a progressive social policy direction (Zeitlin and Vanhercke 2018) or not (Cope land 2020; Crespy and Vanheuverzwijn 2019; Jordan, Maccarrone, and Erne 2021; Stan and Erne 2024). Our research contributes to this debate by focusing on the policy orientation of NEG prescriptions in a new policy area—the governance of public utilities—and their political implications for the future of the EU integration process (Erne 2015). To this end, we focus on public utilities in two network industries—rail and water—which lie at the intersection of the SMP–EMU nexus, across four member states—Germany, Ireland, Italy, and Romania—from the first Memorandum of Understanding (MoU) in 2009 to the last NEG prescription prior to the suspension of the Stability and Growth Pact during the Covid-19 pandemic. Rather than plotting NEG prescriptions along an austerity–socialization axis, we determine whether NEG prescriptions pointed in a commodifying or a decommodifying direction, to assess whether the shift to NEG allowed EU executives to circumvent the public sector advocates in national parliaments and the European Parliament, which hitherto had effectively impeded the liberalization of many public utilities across Europe.

In Section 2, we present EU executives’ pre-2008 policy agenda for the rail and water sector, which broadly failed to be realized. Section 3 outlines how the EU’s shift to NEG provided EU executives with stronger tools to pursue their agenda. Section 4 provides the results of our detailed, semantic analysis of NEG interventions for our two sectors and four countries in their specific policy context. We find that *all* coercive NEG prescriptions pointed in a commodifying policy direction. Where decommodifying prescriptions were issued, their coercive power was weak. In Section 5, we discuss the implications of NEG for social forces and the EU’s democratic credentials. We conclude by outlining the impact of our findings on EU economic governance after the Covid pandemic.

2 | The Limitations of the Playing-The-Market Strategy

Public utilities have received increasing attention from EU executives on account of their location at the intersection of the SMP–EMU nexus. Their liberalization not only consolidates the SMP, but also reduces public expenditure, a cornerstone of EMU. Rather than liberalization, we use the term (de) commodification, which helps us to determine the nuances of the EU’s policy direction more clearly (Erne et al. 2024; Jordan, Maccarrone, and Erne 2021). We define commodification as a process advancing the provision of public utility services by market mechanisms (Erne et al. 2024, Chs. 4 and 5). Hence, commodification includes corporatization of state-owned enterprises (SOEs), marketization of public services, curtailment of public resources for public utilities, the introduction of new public management (NPM) methods, and the outright privatization of SOEs. EU commodification of network industries has been and remains a deeply political issue given their role in achieving social and territorial cohesion. Consequently, their full commodification has been curtailed on different fronts. For instance, Art. 345 TFEU precludes the EU from prescribing privatization as an explicit legislative objective (Akkermans and Ramaekers 2010). That said, under the SMP–EMU nexus, EU executives can pursue a policy paradigm (P. Hall 1993; Jabko 2006) constituting several pathways to advance their agenda regarding network industries. Three pathways are related to the SMP:

1. The adoption of EU laws that stipulate the vertical separation of public service providers and their regulators to create competition *in* the market (Dyrhaug 2013; Schmidt and Thatcher 2013).
2. The pursuit of EU Competition Policy that limits state aid to public utilities to create more competition *for* the market (Aydin 2013; Buch-Hansen and Wigger 2011).
3. The introduction of the cost-recovery principle, forcing consumers to pay more for the public services that they use through greater co-payments (D. Hall and Lobina 2007; Kaika and Page 2003).

These three pathways can also be pursued via infringement proceedings involving the European Court of Justice (ECJ). A fourth pathway that can result in commodifying pressures relates to EMU. A key EMU objective is lower public debt levels, which usually implies lower subsidies for public utilities (European Commission 1990; Savage 2005).

Together, these four pathways are central to the EU’s playing-the-market strategy in which network industries play an important role (Jabko 2006, Ch. 6). However, by the mid-2000s, this strategy, as discussed in the following section, had encountered difficulties.

2.1 | The Case of Rail and Water Services

Following the White Paper on the Internal Market, and with the prospect of EMU, the EU began questioning the *raison d’être* of

network industries, becoming increasingly suspicious of “government-ownership”, seeing it as the “enemy of competition” (Florio 2013, 11). Since the mid-1980s, EU commodification has typically evolved on a sector-by-sector basis (Dyrhaug 2013; Florio 2013; Leiren 2015; Schmidt and Thatcher 2013), with telecommunications, energy, broadcasting, and postal sectors being earmarked for commodification by EU laws and, where necessary, ECJ proceedings (see S. Schmidt 1998). In transport, the aviation, road haulage, and rail sectors were targeted, with railways proving problematic.

The commodification of rail services is not only central to the legislative SMP agenda (first pathway), but also has a bearing on countries’ budgets and thus EMU (fourth pathway). The first European Rail Directive 91/440 “challenged the traditionally held view that railways are natural monopolies” (Dyrhaug 2013, 39). The Commission’s preference for splitting the state-owned railways into separate businesses for freight and passenger services, so as to prevent cross-subsidization (Dyrhaug 2013; Florio 2013), was not realized because state-owned incumbents influenced the European Parliament and the Council of transport ministers (Dyrhaug 2013, 41). Instead, the Commission had to settle for accounting rather than company separation.

In the 2000s, further attempts were made to commodify rail services, but with mixed results, not least because they provoked transnational protests from the European Transport Workers’ Federation (Hilal 2009). Between 2001 and 2007, the European Parliament and Council nevertheless agreed three packages of EU railway laws that focused on removing regulatory barriers to rail services, creating a regulatory framework for access to infrastructure for freight and international passenger services, and removing technical barriers to entry and international passenger services. The packages “in theory” (Dyrhaug 2013, 41) implied market-opening (Kaeding 2007), but many member states did not interpret them in this way.

Directive 91/440 requires vertical separation of business accounts, but not explicitly of business operations. Whereas Romania followed the Commission’s expansive interpretation of the directive, Germany and Italy interpreted the directive literally and allowed the “independent” infrastructure manager and the incumbent rail operator to be owned by the same state-owned holding company, thus separating only their business accounts. The Commission is critical of this approach, arguing that it facilitates cross-subsidization (pathway two) and favors (state-owned) incumbents over other (privately owned) entrants (European Commission 2006). National railways continue to receive a significant amount of state aid, particularly through public service obligations (PSOs). The Commission has developed a set of guidelines regarding the types of state aid that are acceptable, but there are “several derogations” (Dyrhaug 2013, 97), some of which have been tested before the ECJ.

In a landmark case (Altmark, C-280/00), the ECJ ruled that “where subsidies are regarded as compensation for the services provided by the recipient undertakings to discharge PSOs, they do not constitute state aids” (Bovis 2005, 234). Hence, public utilities dependent on state aid to fulfill public services remain beyond the scope of EU Competition Policy. In another case, the

Commission initiated infringement proceedings against 14 member states, including Italy and Germany, for failure to implement properly the rail *acquis*. The ECJ, however, rejected this argument (Commission vs. Germany, C-556/10), enabling member states to adopt a minimalist approach to rail commodification.

The third pathway in the EU’s policy paradigm is exemplified by the question of water, which remains the epitome of a natural monopoly with no real scope for vertical separation or cross-border trade (Florio 2013). When the Maastricht Treaty established a provision for environmental EU laws, and following the doctrine of “market environmentalism” (Bakker 2014, 470), the Commission presented market-oriented solutions to tackle environmental problems in the water sector. The Water Framework Directive (WFD) (2000/60/EC) went in a commodifying direction by introducing the cost-recovery principle (Art. 9, WFD), which implied introducing a market-based pricing mechanism to deal with environmental issues, thereby increasing water charges for consumers. The EU legislation on environmental standards imposed huge costs on water authorities throughout Europe, bolstering the arguments of those favoring the privatization of urban water networks (see below). Ireland, on the other hand, and much to the Commission’s dismay (Kaika and Page 2003), was granted a derogation from the cost-recovery principle, as water charges in Ireland were not “established practice” (Art. 9.4, WFD).

EU Commissioner Frits Bolkestein, pursued an ambitious, intersectoral commodification agenda with the Services Directive, whose original draft sought the further opening of network industries to competition, including water services. This intersectoral commodification attempt failed, following transnational mobilizations by unions and social movements (Crespy 2016; Parks 2015). Subsequently, the EU’s co-legislators excluded water services from the scope of the Services Directive.

The fourth pathway relates to EMU membership and accession criteria generally. Meeting EMU’s Maastricht criteria and the EU’s Copenhagen criteria was used as a justification for the commodification of public utilities, including privatizations (Savage 2005). Examples include the high-profile privatization of Berlin’s water network because of high debts and, in Romania, the privatization of Bucharest’s water networks (D. Hall and Lobina 2007). However, once EMU (and EU) membership was achieved, the political will to enact further commodification dissipated (Savage 2005).

To mitigate against this, EU executives urged member states to curtail public deficits as stipulated by the EU’s (weak) Stability and Growth Pact and to continue with structural reforms to ensure the proper functioning of the EU economy. By issuing Broad Economic Policy Guidelines, EU executives continued to promote a commodification agenda, demanding structural reforms that would expose public utilities to greater competition and the elimination of excessive deficits (Amable, Demmou, and Ledezma 2009). These policy coordination tools lacked vertical coercive power. Furthermore, the horizontal market pressures resulting from the playing-the-market strategy did not lead to European convergence (as predicted by the supporters of the endogenization thesis), but to threatening imbalances.

In sum, the commodification of rail and water services under the SMP–EMU nexus became increasingly problematic on several fronts. Firstly, the increased co-decision powers of the European Parliament in the EU's ordinary legislative procedure facilitated the growing politicization of public service commodification by social forces. Secondly, whereas the ECJ was previously an engine of commodification, subsequent verdicts no longer unequivocally supported the Commission's commodification agenda. Thirdly, Irish derogations in water (and rail) persisted, as the water *acquis* encountered “uncomfortable political hurdles” (European Environment Agency 2013) more generally. Also, regulatory heterogeneity in the rail *acquis* persisted. Fourthly, the commodification pressures associated with EU and EMU accession criteria dissipated once membership was secured, and consequently the EMU's governance framework suffered “from inherent legal weaknesses” (Heipertz and Verdun 2010, p. 6). Hence, after the 2008 crisis, EU leaders adopted a much more vertical NEG regime, allegedly to prevent the EU's disintegration. To what extent was NEG used to address the aforementioned limitations encountered in the rail and water sectors?

3 | Analyzing NEG Prescriptions' Policy Orientation

In 2011, the European Parliament and Council adopted the Six-Pack of EU laws on economic governance to ensure the “proper functioning” of the European economy by preventing excessive macroeconomic imbalances. The definitions used in the Six-Pack laws are so encompassing that no aspect of socioeconomic policymaking, including public utilities, can be excluded from the scope of NEG prescriptions (Erne 2015). These laws empowered EU executives to issue binding country-specific policy prescriptions under the European Semester process. These bespoke prescriptions can affect various aspects of network industries, from their public service delivery and operational principles to their financing and access levels (see below). Hence, the shift to NEG empowered EU executives to do what the playing-the-market strategy had failed to achieve, by circumventing obstacles associated with the more democratic Community Method.

Concretely, we assessed the NEG prescriptions for Germany, Ireland, Italy, and Romania, as these states are located in different parts of the uneven but integrated EU economy (Ban 2016). We have also chosen these locations as they are proxies for the relative power of larger and smaller, and richer and poorer, states within the EU's political system (Jordan, Maccarrone, and Erne 2021). While acknowledging these national differences, our comparative strategy focuses on the workings of the *transnational* NEG regime across two sectors. We focus on water and rail services, as these network industries, as noted above, were already subject to commodifying EU interventions, albeit to varying degrees, but encountered difficulties. To this end, we analyzed NEG prescriptions, which are the shortest policy statements within Memoranda of Understanding (MoUs) and country-specific recommendations (CSRs) issued under the European Semester process across four countries (see Online Appendix in Supporting Information S1).

Although commodification is a multifaceted process rather than a condition per se, we operationalize this process by focusing on NEG prescriptions that advocate curtailment, on the one hand, and marketization, on the other (Erne et al. 2024). Whereas curtailment is associated with economic austerity (Blyth 2013), marketization tends to be encompassed in structural reforms (Crespy and Vanheuverzwijn 2019). Albeit analytically distinct, curtailment and marketization are two sides of the same EU commodification coin (Hermann 2021). Rather than focus on one side or the other, as some studies do, our research design caters to the broader gamut of commodifying pressures emanating from NEG. We not only capture different degrees of commodification from the corporatization of public utilities to their privatization, but also differentiate between prescriptions affecting the *provision* of rail and water services and those affecting users' *access* to them. This allows us to capture the precise policy direction of NEG prescriptions.

Prescriptions can also point in a decommodifying direction. For instance, increasing expenditure levels on, say, material infrastructure or reducing passenger rail ticket prices would be categorized as prescriptions going in a decommodifying direction. Furthermore, these can be neatly mapped onto our curtailment–marketization axis. That said, whether a prescription is commodifying or decommodifying cannot always be decided by looking at it alone (Erne et al. 2024; Copeland 2020; Haas et al. 2020). We thus determined a prescription's meaning by drawing on the MoUs or European Semester documents in their entirety, the Country Reports, and a good knowledge of the four countries and their languages (Jordan, Maccarrone, and Erne 2021; Stan and Erne 2024; Erne et al. 2024).

Among prescriptions regarding the *provision* of rail and water services, we distinguish between three types: resource levels; sector-level governance mechanisms; and provider-level governance mechanisms. Whereas resource levels speak to the curtailment side of the coin, sector- and provider-level governance mechanisms speak to the marketization side. The latter are often couched in technical language. The sector-level governance mechanism, regulatory independence, for example, might be portrayed as perfunctory, but its goal is to ensure that public utilities behave like private entities while exposed to greater competitive pressures. Conversely, provider-level governance mechanisms relate to ownership structure and SOEs' internal operations.

For prescriptions relating to the question of *access* to water and transport services, we differentiate between prescriptions that concern coverage levels and those that concern cost-coverage mechanisms (Stan and Erne 2024). Coverage levels concern the scope of services or the range of population covered by a public service. Whereas extending the coverage denotes decommodification, curtailment of coverage levels goes in a commodifying direction, as it limits access. Cost-coverage mechanisms relate to whether users must resort to out-of-pocket payments. If so, this is considered a form of commodification (Hermann 2021). Conversely, if public services are made more economical or free at the point of service, then this constitutes decommodification.

We cannot treat all NEG prescriptions equally—as assumed by those who have argued that NEG prescriptions would point over time in a more social direction (Zeitlin and Vanhercke 2018)—but must differentiate between weak, constraining, and very constraining ones. The coercive strength of NEG prescriptions depends on the country's position in the surveillance and sanctioning channels of the NEG regime. The status of our four countries within the EU's NEG policy enforcement regime across time has been documented by Jordan, Maccarrone, and Erne (2021). The strongest and most direct influence comes from the conditionality attached to bailout programs. There are also several enforcement mechanisms through which the Semester process puts pressure on member states to comply, including the excessive deficit sanctions and the macroeconomic imbalance procedures of the Six-Pack laws and the macro-conditionality clause of Regulation 1303/2013, which governs access to structural and cohesion funds. Prescriptions issued under the Europe 2020 strategy have the weakest coercion power, as non-complying member states face only the soft naming-and-shaming sanction (Jordan, Maccarrone, and Erne 2021). This research design allows us to handle the high level of detail contained in NEG documents. Our objective is to determine the extent to which EU executives used the NEG to relaunch a commodification agenda, to determine its content, and whether or not we can speak of a transnational meta-script. Our comparative analysis allows us to make meaningful inferences about the workings of NEG across countries, sectors, and time.

4 | An Overarching Commodification Script?

Using the aforementioned categories, we present NEG prescriptions for rail and water services in Germany, Italy, Ireland, and Romania from 2009 to 2019. Among the MoUs and the CSRs, we found over 110 NEG prescriptions of relevance for our four-country, two-sector analysis. Of those, 96 are categorized as commodifying and concern primarily the marketization of (public) network industries. Given that a small number of prescriptions are embedded in broader categories such as network industries or local public services (see Online Appendix) and could be of relevance for either the (local) rail or water sectors, we categorized these as being relevant to both. Before we present a more detailed assessment of the prescriptions along the provision/access distinction, we first present a broad overview to give an idea of the frequency, orientation, and content of the NEG prescriptions.

Table 1 presents the themes and categories of the NEG prescriptions, and Table 2 indicates the prescriptions' coercive power across sector, countries, and time. The symbols in Table 2 represent different categories, and their color indicates the degree of coercive power. Surprisingly, there were not many commodifying prescriptions on resources, associated with austerity (Blyth 2013). Prescriptions under this category go in a decommodifying direction. This reflects the fact that almost all prescriptions on the curtailment of resources were intersectoral and directed at the public sector generally. The latter also only became a feature of NEG once the fast-burning part of the crisis had effectively passed (Seabrooke and Tsingou 2018). Overall,

however, commodifying prescriptions dominate the picture in the categories that seek to marketize the provision of, and access to, public utilities. They are not only more frequent, but also possess greater coercive power. EU executives continued issuing commodifying prescriptions until 2019.

From Table 2 it is evident that commodification was pursued vigorously until 2015 in relation to the rail sector in Romania and the water sector in Ireland. This sectorial difference, however, does not denote different commodification agendas across sectors, but rather different levels of the agenda's attainment across countries. As stated above, the most profitable segment of the water sector in Romania (Bucharest's water networks) had already been privatized before 2008. It comes therefore as little surprise that Romania did not receive any NEG prescriptions to commodify its water sector. Similarly, Ireland has a derogation from EU railway laws, mirroring the negligible role of Irish railways in Europe given its island location. By contrast, both Italy and Germany received commodifying prescriptions for both sectors. Given Germany's better position in NEG enforcement channels however, the German prescriptions were weak, by contrast to most Irish, Italian, or Romanian ones.

Although decommodifying prescriptions appeared more often after 2015, most coercive prescriptions and most prescriptions on sector- and provider-level mechanisms for the provision of public services and cost-coverage mechanisms for users' access to them still point in a commodifying direction, regardless of NEG's apparent social turn after 2015 (Zeitlin and Vanhercke 2018). We now discuss these findings in detail category-by-category.

4.1 | Provider-Level Governance Mechanisms: Privatization and Management Reforms

We start with this category as it represents the deepest intervention in the provision of water and rail services. Given Article 345 TFEU and the neutrality principle on ownership, questions of ownership (and internal operations) were taboo during the establishment of the SMP–EMU nexus and therefore beyond EU executives' competence. Nevertheless, under NEG, both Romania and Italy received prescriptions to implement privatization plans, as NEG enables EU executives to further pursue the commodification agenda by extending it to the question of ownership and internal operations.

The Romanian MoU of 2010 prescribed “the majority (51%) privatization of the national rail freight company, CFR Marfă” (MoU, 2010; see also MoU, Second Addendum, 2 Aug. 2010). Italy also received prescriptions to privatize public services, but the terms are less specific than in the Romanian case. In 2014, the prescription to Italy simply read: “Carry out the ambitious privatization plan” (Council Recommendation, C 247/11, 8 Jul. 2014). A prescription to the same effect was issued the following year (Council Recommendation, C 272/16, 14 Jul. 2015). Subsequently, the Italian government launched its “biggest privatization in over a decade” (*Financial Times*, 11 Oct. 2015), which included the partial privatization of the state's railways (and postal services).

TABLE 1 | NEG prescriptions for rail and water for Germany, Italy, Ireland, and Romania (2009–2019).

Categories		Policy orientation	
		Decommodifying	Commodifying
Provision of public services	Resource levels	Increase public investment (W/R) Improve infrastructure capacity (R) Prioritize public investment (W/R) Focus investment in infrastructure quality (R) Extend basic infrastructure in rural areas (W/R)	Close railway lines (R)
	Sector-level mechanisms		Restructure transport ministry and regulatory agency (R) Strengthen regulator's independence (R) Lease railway lines (R) Increase efficiency of rail passenger services (R) Increase efficiency in railway planning (R) Make rail more attractive for cargo (R) Promote competition (W/R) Implement performance scheme (R) Set-up regulatory authority (R) Operationalize regulatory authority (R) Increase the value of public contracts open to procurement (W) Address planning constraints (W)
	Provider-level mechanisms		Create water utility (W) Privatize state-owned company (R) Reduce payment arrears of state-owned rail company (R) Restructure state-owned enterprises (R) Restructure local public services (W/R) Increase efficiency and quality of public enterprises (W/R)
Access to public services	Cost-coverage mechanisms		Introduce water charges (W)
	Coverage levels	Improve access to integrated public services (W)	

Source: MoUs and CSRs. See Online Appendix. R = rail services; W = water services.

Ireland's 2010 MoU demanded the corporatization of the water sector, which involved the transfer of responsibilities from local authorities to a corporate entity, Irish Water, established in 2013. The corporatization of Irish water services was directly linked to the introduction of water charges (and future privatization). Following mass mobilizations, household water charges were abolished in 2017, but Irish Water survived the popular protest. This had a commodifying impact also on water sector workers, whose contracts were to be transferred from local councils to Irish Water, meaning that workers would lose the protection and benefits provided by public sector collective agreements. This practice had already occurred in rail.

NEG has not only intervened in the legal and ownership structure of network industries in member states, but also prescribed reforms relating to how established SOEs should be

operated. In this area, the two most frequent demands are corporate governance reforms and efficiency improvements. These two goals are often interlinked and re-echo an NPM agenda that brings market mechanisms into public services without directly privatizing them (Hermann 2021).

Demands for NPM reforms of corporate governance are most frequent in the Romanian and Italian cases. Whereas the Italian prescriptions demanded measures to increase “the efficiency of publicly owned enterprises” (Council Recommendation, C 261/11, 11 Jul. 2017), those for Romania called for specific corporate governance reforms in the state-owned rail operators on an annual basis between 2009 and 2013 (see Online Appendix Supporting Information S1). This led to a restructuring of Romania's rail companies, including a 30% reduction in CFR Marfă's workforce. Other NEG prescriptions

and the corresponding implementing agencies (road and rail) with special regard to: (i) separation of tasks between the Ministry and the implementing agencies [with] clarification of responsibilities and clear accountability” (MoU, 23 Jun. 2009). Similar prescriptions with strict deadlines for implementation are present in the follow-up supplement agreements (Supplementary MoU, 25 Feb. 2010) and follow-up programs.

Railway reform also appeared in the CSRs issued to Italy and Germany. Italy received prescriptions to “set up the Transport Authority as a priority”. The *Autorità di Regolazione dei Trasporti* was established in 2015. The strengthening of the “supervisory role of the Federal Network Agency in the rail sector” was prescribed for Germany with a view to improving “competition in network industries” (Council Recommendation, C 217/42, 9 Jul. 2013). Here, context is important. Member states have different approaches regarding the regulation of rail. This is because the “EU legislation on railways is less prescriptive” (European Commission 2013, 100), leaving scope for member-state discretion when it comes to PSOs and regulatory heterogeneity. In Germany, a cross-sector authority was established in 2005: the Federal Network Agency (BNetzA), which has responsibility for electricity, gas, telecommunications, post, and railways. The Commission was critical of the German approach and tried to use NEG to coerce the German authorities to converge on its preference: the creation of an independent regulatory body solely for the rail industry.

Romania received direct recommendations to attract private entrants into the sector, thereby increasing competition with the state’s railways and enhancing the competitiveness of (freight) rail vis-à-vis other transport modalities. The Romanian government was also told to “lease lowest cost recovery segments of the railway lines” (MoU, 28 Jun. 2011), which amounts to functional privatization (Mercille and Murphy 2017), as the lines would be outsourced to a private provider. We return to this point below, as there is also a resource dimension. “Adopt a comprehensive long-term transport plan” (Council Recommendation, C 217/17, 9 Jul. 2013) and “implement” it (Council Recommendation C 299/18, 12 Jul. 2016) were prescriptions received by Romania. This objective, according to an appraisal document, “is a key step in the rationalization of transport infrastructure spending in Romania” and its adoption is “an ex ante conditionality for EU funding of transport infrastructure in Romania during the 2014–20 EU funds programming period” (European Commission 2013, p. 102). Hence, EU funds were used as a carrot to cajole cash-strapped governments into following EU prescriptions, even when Romania was no longer in a coercive enforcement procedure (see Table 2).

The limiting of state aid by introducing competitive tendering is yet another longstanding item on the Commission’s agenda since the 1990s (Aydin 2013), and NEG provided new tools to pursue it further. NEG prescriptions frequently criticized the allegedly high share of in-house awards to public providers for the delivery of public services and promoted the opening-up of these contracts to public procurement procedures. The link between market creation and the reform of public procurement is most explicit in the case of Italy and Germany (see Online Appendix). The latter received prescriptions to this effect in 2013 and 2014, whereas in Italy the more general prescriptions

of marketization were complemented by, and explicitly linked to, procurement reform every year from 2013 to 2017. Italian CSRs demanded the adoption of new laws promoting competition in network industries and local public services, despite the repealing of a corresponding national law, premised on the cost-recovery principle, following a popular referendum in 2011.

Rules on public procurement developed in tandem with state-aid regulations, and, under NEG, EU executives continued to push a similar agenda for network industries. Prescriptions urged Romania to “continue competitive tendering in the public service obligation contract” (MoU, 28 Jun. 2011). However, according to a Commission follow-up report to Romania, the “compatibility with European state-aid rules of the Romanian state involvement in SOEs is being followed closely by DG COMP” (European Commission 2016, 9). Here, state-aid rules were monitored and applied stringently, most particularly in rail (Dyrhaug 2013, 73–75). We return to this question below, but first we discuss the access aspect of transport and water services.

4.3 | Users’ Access to Public Utilities: Reducing Availability and Increasing Costs

We define access to services in terms of their affordability (cost-coverage levels) and availability (coverage levels) for users (Stan and Erne 2024). Prescriptions pertaining to cost-coverage levels were issued exclusively and repeatedly to Ireland between 2010 and 2013, inclusive. Here, the Irish government received prescriptions to introduce user water charges. Ireland finances water provision from general taxation, and households do not pay domestic water charges. The introduction of water charges would therefore have meant a further commodification of services, following the creation of Irish Water, and restricting access to them, based on ability to pay. The commitment to introduce water charges was part of the original 2010 MoU and subsequent updates, particularly the structural reforms section of these documents. The last four updates of Ireland’s MoU—from the seventh update in January 2013 to the 10th and final one in September 2013—substantially expanded the list of economic policy conditionality and provided details on water reform, including the launch of a metering program as the main technical requirement for charging and pricing (Supplementary MoU, 29 Jun. 2012). Although CSRs following the Troika’s departure in 2013 did not mention water charges, the Commission’s Country Reports continued to monitor their implementation. The introduction of water charges in Ireland over 2014–2015, however, triggered mass protests and a widespread boycott of water bills, forcing the government to suspend the charging system in 2016. No explicit NEG prescriptions demanded higher co-payments from rail users.

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

4.4 | Resource Levels: More Investment but for Whom?

As we have included only sector-specific NEG prescriptions for rail and water utilities in this analysis, Table 2 does not display the intersectoral NEG prescriptions on the curtailment of public spending in general, despite their significant impact in the rail and water sectors. We cannot report many commodifying NEG prescriptions in this category. One exception, however, relates to Romania, which was issued with an identical prescription: “close ... lowest cost recovery segments of the railway lines” (MoU, 28 Jun. 2011). Thus, 1000 kms of line were leased out, and 230 kms were closed and put beyond use (European Commission 2013). We have defined this as commodification, as users are reliant on private means rather than availing of publicly-owned rail transport.

After 2014, sector-specific prescriptions in favor of social investments started to appear on the NEG agenda, potentially entailing more resources for public services. All four states received at least one prescription urging investment in infrastructure, with Germany receiving such prescriptions on a regular basis from 2014 to 2018. We must, however, contextualize these pro-investment prescriptions. Firstly, Germany had fiscal space for more public investment. At the same time, strict budgetary discipline had, over time, had a negative impact on the state of German infrastructure, with public investment in Germany being the “second lowest in the OECD” (IMF 2014). EU executives encouraged stronger public investment, particularly regarding Germany’s aging transport infrastructure. Moreover, increasing public resources for infrastructural investment can be consistent with increased commodification. Here, Germany is a case in point. In 2017, Germany simultaneously received prescriptions to increase investment and to address capacity and planning constraints in infrastructure projects (Council Recommendation C 261/05, 11 Jul. 2017), where removing planning constraints was synonymous with increased freedom for private investors. Also, enhancing private sector involvement, typically through public–private partnerships, was prescribed. Such arrangements are considered part of a commodification process (Hermann 2021, Ch. 3).

Italy, Ireland, and Romania also received NEG prescriptions on resources, and the direction of these prescriptions was even more ambivalent than in the German case. The wording of the prescriptions for these three countries was much more cautious and, rather than calling for an overall increase in public resources, the prescriptions required governments to prioritize and focus investment in certain areas (see Online Appendix Supporting Information S1). This implied that governments might have to reduce expenditure in other parts of the public service so that overall budget targets could still be met. In this way, fiscal constraints increased competition between ministries for resources.

Italy received a prescription to focus investment on infrastructure relatively early, in 2013 (Council Recommendation, C 217/11, 9 Jul. 2013), framed in the context of addressing regional disparities. This logic also underpins the pro-investment prescription that Romania received in 2019, and the wording is similar (Council Recommendation, C 301/23, 9 Jul. 2019). Ireland, on the other hand, received a prescription that appears

to be more precise: “Better target government expenditure, by prioritizing public investment in transport, water services” (Council Recommendation, C 261/07, 11 Jul. 2017). In other words, transport and water were to be prioritized over other areas requiring public investment, of which, following almost a decade of austerity, there were many, with the most obvious being healthcare (Stan and Erne 2024).

In summation, our analysis shows that NEG enabled EU executives to relaunch their stalled commodification agendas, particularly regarding rail and water. NEG also allowed them to extend the scope of their demands to new areas by requesting commodifying reforms in relation to providers’ ownership structure and internal operation. Furthermore, NEG enabled EU executives to exert much more vertical commodifying pressures in user access to services. By contrast, the more recent NEG interventions in favor of more social investments had much weaker constraining power, as outlined in Table 2. In particular, the 2019 issuance of investment-related prescriptions must be seen in the context of crumbling infrastructure and the collapse of the Italian Morandi Bridge, resulting in fatalities.

5 | NEG: Relaunching the EU’s Stalled Commodification Agenda

The SMP is “the hard core of the EU” (Pelkmans 2016, 1095) and critical to the functioning of the common currency. EU executives expected that market-opening in network industries would undergird the SMP–EMU nexus, but would be “a lengthy process” (European Commission 1990), and, with some exceptions such as aviation and telecommunications, this proved to be the case, because supranational liberalization via the ordinary legislative procedure (pathway one) involved partisan conflicts and compromises. The underlying intention of the EMU framework was to enshrine budgetary discipline (pathway four), which, along with market discipline, the EU’s Competition Policy (pathway two), and, in the case of water, the cost-recovery mechanism (pathway three), would cajole national governments to further commodify network industries. This policy paradigm underpinned the EU’s playing-the-market strategy, which some scholars deemed successful: “By the late 1990s, the European Union’s internal market and its Economic and Monetary Union were realized or already well on track” (Jabko 2006, 179). Such were the expectations of success that the Lisbon Strategy—a comprehensive agenda of structural reforms aimed at strengthening the SMP–EMU nexus—“deprived the EU of any real power” (Jabko 2006, 183). Pro-liberalization scholars were less buoyant, with Pelkmans (2007, 5) lamenting that “the internal market is not completed: it suffers from a giant hole with respect to many [public] services”.

In his 2010 report, Monti first pointed to market integration fatigue and singled out network industries, along with local public services, as having become “persistent irritants”. Other EU executives argued that member states’ reforms had “not been far-reaching enough” (Trichet 2006). In other words, the playing-the-market strategy had run its course, concluding with functional dissonance in the SMP–EMU nexus (Niemann and Ioannou 2015); and, to this end, the Eurozone crisis presented the EU with a unique opportunity to move on from this

stalemate, as NEG gives EU executives new governance tools to enforce structural reforms, as emphasized by Monti in a *Financial Times* (19 December 2013) editorial:

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

Within NEG, “disciplinarian neoliberal views coexisted with less orthodox interpretations of governance” with the latter constituting a “significant novelty” (Jabko 2019, 494). Yet, despite a burgeoning literature, this aspect remains understudied notwithstanding the Monti quote, which underlines why the SMP aspect of NEG is crucial.

NEG works differently as it uses *vertical* governance procedures, which mimic the governance by numbers and ad hoc prescriptions used by HQs of transnational firms to control their subsidiaries (Erne 2015). In other words, NEG prescriptions are not adopted in accordance with the ordinary legislative procedure, which has become increasingly politicized, particularly where public undertakings are concerned (Crespy 2016). With the European Parliament having no co-decision powers within the NEG regime, decision making rests with the Commission and the Council of Ministers in its Economic and Financial Affairs configuration (Crum 2018), who—in contrast to transport or environment ministers—have no sectorial interest in defending the provision of public services. Furthermore, NEG not only bypasses countervailing social movements and trade unions more readily, as they can no longer rely on the Parliament’s power to block or amend commodifying EU directives, but also allows EU executives to reintroduce provisions that EU legislators deleted from draft EU laws proposed by the Commission. Take, for instance, the Fourth Railway Package, adopted in 2016, which was the subject of contestation between the Commission, on the one hand, and the Council, national incumbents, and unions, on the other (Dyrhaug 2022). Whereas the final legislation is adapted to national realities by permitting member-state discretion on the question of competitive tendering for PSOs (Dyrhaug 2022), EU executives used NEG regularly (2014, 2015, 2019) to push the Italian government to abolish in-house concessions. Likewise, the shift to NEG allowed EU executives to circumvent Art. 9.4, of the Water Framework Directive, which explicitly allowed Ireland to finance its water services through taxation rather than consumer charges. Hence, NEG permitted EU executives to reintroduce provisions that EU legislators had either dropped from the Commission’s original legislative proposals or resulted in compromise. Put differently, EU executives used NEG to reverse instances of differentiated integration explicitly recognized in EU law through their country-specific NEG prescriptions, which followed an overarching policy script of public services commodification (Erne et al. 2024).

NEG also facilitated the circumvention of longstanding provisions originating in the Rome Treaty, namely Art. 345 TFEU,

which prevents privatization as an explicit legislative objective (Akkermans and Ramaekers 2010). The Commission was inspired by British rail privatization (Dyrhaug 2013, 45); however, the neutrality principle enshrined in Art. 345 TFEU prevented such an outcome. Under NEG, EU executives were able to explicitly prescribe privatization, despite Romania’s rail freight sector being one of those more open to competition (IBM 2011).

Finally, EU executives do not have to enforce their NEG prescriptions through burdensome ECJ infringement procedures, which oblige them to respect the EU’s rule of law principles that guarantee democracy and citizens’ rights and freedoms. Instead, they can nudge reluctant member states to implement them through the stick of financial sanctions or the carrot of EU cohesion funding, whereby the granting of funds is made conditional on progress being made in the structural reform agenda.

6 | Conclusion

The anticipated zeal for reforms resulting from increasing horizontal market pressures in the single market and the EMU’s fiscal rules did not materialize to the extent predicted by the proponents of the EU’s playing-the-market strategy. Integral to this strategy were the “contradictions” that EU executives “deliberately left ... unresolved” (Jabko 2006, 184). Public services reforms are a case in point. Unions and social movements have often been successful in hampering Commission proposals, originally designed to liberalize public water and rail services, by organizing transnational protests and lobbying for European Parliament amendments (Erne et al. 2024). The ECJ also no longer routinely gravitated toward the Commission’s preference for market-opening either, as shown by rulings C-280/00 and C-556/10. After the financial crisis of 2008, EU leaders thus orchestrated a silent revolution that led to the adoption of a new economic governance (NEG) regime. Did the EU’s shift to NEG provide EU executives with an opportunity to address the shortcomings in their playing-the-market strategy? Our analysis confirms that it did; however at the price of accentuating both the EU’s democratic and its justice deficits (Kochenov et al. 2015; V. Schmidt 2020; Erne et al. 2024).

Our study shows that the EU’s shift to NEG reinforced EU executives’ capacity to prescribe commodifying reforms, as NEG allowed EU executives to bypass public sector advocates in the European Parliament. The shift to NEG also provided EU executives with a new tool to deal with national diversity. Whereas EU legislators hitherto adopted country-specific provisions in EU laws to *accommodate* national diversity, our analysis has revealed that the county-specific NEG prescriptions served the opposite end, by targeting countries that deviated most from the EU executives’ overarching commodification script. We can thus describe NEG as a case of “*reversed* differentiated integration” (Stan and Erne 2024; Erne et al. 2024, Ch. 3, emphasis added).

Once the coercive power of NEG prescriptions waned and as public finances recovered from the financial crisis, two developments occurred which would also inform the EU’s response to the Covid pandemic. Firstly, EU executives began

using EU funds as a carrot for the implementation of commodifying structural public sector reforms. Secondly, NEG prescriptions called for greater public infrastructure investment, however, most decommodifying prescriptions urged governments to invest in productive services, such as transport and water, rather than healthcare (Stan and Erne 2024) and were subordinated to NEG's overarching commodification script (Erne et al. 2024). The linking of EU funds to the implementation of structural reforms foreshadowed the “money for reform” approach of the EU's Recovery and Resilience Facility Regulation (2021/241) of 2021 (Erne et al. 2024) and the Regulation (2024/1263) “on the effective coordination of economic policies and on multilateral budgetary surveillance” of 2024. The latter reinstates the harsh fiscal rules that the EU had temporally suspended during the pandemic, but also allows member states more time to balance their budgets; but only if the targeted member state is implementing the structural reforms spelled out in “national medium-term fiscal-structural plan” drafted in accordance with the EU's NEG prescriptions (See: Ch. V, EU Regulation 2024/1263). This new development shows that our analysis of NEG is not only of academic interest.

Our study reveals a transnational policy script that provided EU executives with an opportunity to pursue the full gamut of commodification, including curtailment of resources for public services and their marketization, comprising the corporatization and even the full privatization of state-owned public utilities. The EU's shift to NEG has not only extended the scope of EU governance interventions to new policy areas, through country-specific policy prescriptions, enhanced surveillance, and increased sanctions for reluctant member states, but also enabled EU executives to circumvent the European Parliament and the ECJ; and to coerce, or even cajole, cash-strapped governments to (further) commodify their public services. Therefore, NEG should be seen not as a political alternative to the playing-the-market strategy (Jabko 2019), but rather as a tool to address the contradictions that underlie the SMP-EMU nexus. And if one considers the popular protests triggered by the commodifying NEG interventions since 2008 (Erne et al. 2024), then the NEG regime hardly provides a promising strategy for uniting Europeans.

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Data Availability Statement

The data that supports the findings of this study are available in the supplementary material of this article.

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Supporting Information

Additional supporting information can be found online in the Supporting Information section.