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## Introduction

We know that the market didn't work. That's why we are here.<sup>1</sup>

### 1.1 AIMS AND OBJECTIVES OF THE BOOK

Until the 2008 crisis, the European Union's (EU's) influence on employment relations and public services primarily took the form of horizontal market integration rather than a vertical integration of public policies under the auspices of EU authorities (Erne, 2018). The architects of the European single market and monetary union were convinced that horizontal market pressures would bring about the desired convergence of national employment and social policies. EU member states and unions agreed to coordinate their employment and social policies across borders (Erne, 2008), but the emerging multilevel EU economic governance regime was not a vertically integrated system with the EU exerting authoritative direction over national employment relations and welfare states. For most governments and business leaders, even the mere interest of EU authorities in employment relations under the banner of EU governance represented too much intervention in their affairs (Léonard et al., 2007).

After 2008 however, Europe's political and business leaders lost faith in self-governing markets when they realised that the then-existing European single market and monetary union had generated major economic imbalances that threatened to break up the EU. Without much ado, the Commission first approved bank bailouts at odds with EU treaty provisions that were intended to

<sup>1</sup> Response of the European Commission (DG ECFIN) representative to a comment about the EU's and IMF's 'failed' neoliberal, free-market ideology. International Labour Organisation/ European Commission forum: *The Governance of Policy Reform in Ireland*, Government Buildings, Dublin Castle, 7 December 2012, Roland Erne, participant observation.

prevent state aid for private corporations as well as excessive budget deficits. Subsequently, the Commission, Parliament, and Council shook off the institutional gridlocks that had hitherto prevented a vertical integration of EU policies in the social field by adopting the Six-Pack of EU laws that enabled the European Commission and Council (EU executives)<sup>2</sup> to prescribe policy changes in fields hitherto shielded from vertical EU interventions. Since then, all EU member states must participate in a yearly cycle of country-specific policy prescriptions, surveillance, and enforcement – the European Semester process. The Semester integrates into one document the country-specific prescriptions<sup>3</sup> relating to the Memoranda of Understanding (MoUs) of bailout programmes, the revised Stability and Growth Pact (SGP), the new Macroeconomic Imbalance Procedure (MIP), and the Europe 2020 strategy. Although EU member states were still able to disregard the weak Europe 2020-related recommendations (for example, those intended to ‘enhance social inclusion’), bailout programme countries risked the withdrawal of financial EU assistance; eurozone countries with excessive deficits or macroeconomic imbalances risked substantial financial fines; and *all* EU member states risked the withdrawal of EU structural funding in the event of non-compliance with MoU-, SGP-, or MIP-related new economic governance (NEG) prescriptions.<sup>4</sup> As the Parliament and the Council have defined excessive imbalances as ‘severe imbalances, including imbalances that jeopardise or risk jeopardising the *proper functioning* of economic and monetary union’ (emphasis added) (Art. 2, Regulation 1176/2011), no aspect of social policymaking is a priori excluded from its scope (Erne, 2015). Since the financial crisis of 2008, EU governance has thus undergone what former Commission President Barroso called a silent revolution (ANSA, 2010).

Despite its vertical nature however, the NEG regime should not be objectivised, as supranational socioeconomic and political systems do not predetermine the responses of actors on the ground (Burawoy, 2000).

<sup>2</sup> Within the NEG regime, EU executive power has two sources: the supranational Commission and the intergovernmental Council of finance ministers (Figure 2.1). As they must act in conjunction to be effective, we refer to them interchangeably as EU executives and as Commission and Council.

<sup>3</sup> As stated in the Glossary at the end of this book, NEG prescriptions are segments of MoUs or country-specific recommendations (CSRs) that entail a specific policy instruction. This is important, as governments and/or unions typically act not on the unitary text of MoUs or CSRs but on the specific prescriptions contained in them. Our units of analysis are thus not MoUs or CSRs per se but the shortest segments of them that make sense semantically.

<sup>4</sup> See our typology of NEG prescriptions in terms of their ‘very significant’, ‘significant’, or ‘weak’ coercive power (Table 5.1).

Barroso's silent revolution from above had indeed opened contradictory possibilities for unions and social movements across Europe. On the one hand, NEG's reliance on vertical intervention and surveillance made decisions taken in its name more tangible, offering concrete targets for contentious transnational countermovements. On the other hand however, NEG mimicked the governance structures of transnational corporations (TNCs) by using key performance indicators that put countries in competition with one another, thus constituting an obstacle to transnational collective action (Erne, 2015). The NEG regime's vertical and country-specific prescriptions also raised the threat of nationalist countermovements, thus making transnational collective action of trade unions and social movements ever more vital for the future of European integration and democracy.

This monograph seeks to understand the EU's vertical economic governance regime by engaging in three analytical moves. First, we develop a new outlook on the interplay between EU economic governance, labour politics, and EU democracy by proposing a novel analytic approach that captures not only the national but also the transnational social and economic processes at work (Stan and Erne, 2021a). Second, drawing on this novel outlook and analytic approach, we assess market-driven 'horizontal' and political 'vertical' EU integration pressures on labour and public services in different areas and sectors to uncover the interrelations between these different modes of EU integration. Then, we map the policy orientation of vertical EU interventions by EU laws and NEG prescriptions in these areas along a commodification–decommodification axis. In other words, we classify EU interventions based on whether or not they attempt to turn labour and public services into commodities to be traded on the market. Most relevant to our analysis is thus the policy prescriptions' potential to advance the commodification or decommodification of employment relations and public services. Third, we analyse the responses of trade unions and new social movements to EU executives' NEG prescriptions across different policy areas and sectors. In the final chapters of the book, we compare the patterns of NEG prescriptions and countervailing protests by unions and social movements across borders and assess their feedback effects on the EU integration process in general and on the EU's NEG regime after the outbreak of the Covid-19 pandemic in particular. In short, the book aims to help scholars as well as policymakers, trade unionists, and social movement activists get a better grasp of the arcane NEG regime, as such an understanding is important if they want to change its structure and its policy orientation.

## 1.2 RESEARCH DESIGN AND METHODOLOGY

This monograph analyses the structure and policy orientation of the EU's much more vertical, new governance regime in employment relations and public services, from its creation after the 2008 financial crisis to its (provisional) suspension in March 2020 after the outbreak of the Covid-19 pandemic. In addition, we assess the continuity and change of the post-Covid NEG regime, which the European Parliament and Council institutionalised in 2021 when they adopted the Recovery and Resilience Facility (RRF) Regulation.

Concretely, we assess EU horizontal (market) integration pressures and vertical (political) governance interventions by EU laws and NEG prescriptions in two cross-sectoral policy areas (employment relations and public services), three public services sectors (transport, water, healthcare), in four EU member states, namely, Germany (DE), Italy (IT), Ireland (IE), and Romania (RO). In addition, we document and analyse the transnational countervailing trade union and social movement actions that they triggered, based on our database of transnational socioeconomic protest events across Europe since 1993 (Erne and Nowak, 2023).

By choosing two large (DE, IT) and two small (IE, RO) states, we avoid the common fallacy of studying the EU's NEG without considering where the state receiving *country-specific* NEG prescriptions is situated within the EU's political economy. To facilitate a deeper analysis of the cases, we assess NEG prescriptions for a set of four states as opposed to all twenty-seven. Understanding the dynamics at work in NEG requires a deep knowledge of EU-level policymaking and of the affected states, policy areas, and sectors, as well as corresponding language skills. If one classifies the NEG prescriptions simply at their face value, they often appear ambiguous; but, if we take into account the EU *and* national semantic, communicative, and policy contexts in which they are situated, their policy orientation becomes much clearer.

By comparing different policy areas and sectors, we are going beyond the traditional country-by-country comparisons that still dominate comparative industrial relations, social policy, and political economy research. Although the country-specific NEG prescriptions may indeed nationalise social conflicts, NEG is still a supranational regime, as much as the corporate governance regimes of TNCs that NEG mimics.

Our multi-sited research is based on observations at EU level and in Germany, Ireland, Italy, and Romania. This allows us not only to make *country-by-country* comparisons but also to compare different *transnational*

sets of NEG prescriptions *policy-area-by-policy-area* and *sector-by-sector*. We can therefore make inferences about structural factors that favour *transnational* rather than national countervailing labour movements. By inquiring whether NEG prescriptions on employment relations and public services form similar commodification patterns across countries, we ask whether public sector unions can politicise them more easily than unions in the private manufacturing sector. Indeed, despite the latter having been exposed to horizontal EU market integration pressures for much longer, their public sector counterparts' exposure to vertical NEG prescriptions offers more concrete targets for collective action (Szabó, Golden, and Erne, 2022).

Finally, our multidisciplinary and multi-sited study relies on a great variety of primary sources gathered between 2008 and 2023, ranging from around 230 EU, German, Italian, Irish, and Romanian laws, government documents, and court cases; over 160 interviews with national and EU-level policymakers, unionists, and social movement activists; to about 60 participant observations of EU and trade union events (Online Appendix; Tables A1.1–A1.3). Given this in-depth engagement with research sites over many years, the book can be described as an outcome of a 'slow comparative research' process (Almond and Connolly, 2020).

### 1.3 PLAN OF THE BOOK

In Part I, we describe NEG and outline our theoretical contribution and research design. Chapter 2 describes the vertical NEG regime that EU leaders adopted after 2008. We pay a lot of attention to the intricate details of the regime – not to complicate things but rather to unveil its governance mechanisms. This prompts us to propose in Chapter 3 three conceptual innovations for our study. First, we shift from the classical distinction of negative and positive integration (Scharpf, 1999) to one that distinguishes horizontal and vertical integration modes (Erne, 2018). Second, we propose to go beyond the classical, state-centred (intergovernmental or supranational) paradigms of EU law and political science, as we have found that the EU's NEG regime mimics the corporate governance regime that TNCs use to steer the activities of their subsidiaries and their workforce (Erne, 2015). Finally, we pursue an analytical approach that complements existing EU politicisation studies, which assess the salience of Eurosceptic views in media debates, opinion polls, elections, and referenda, as we must study EU politicisation also at the meso level of interest politics (Zürn, 2016; Erne, 2023a). After all, the political cleavages that structure national politics have neither been created in individuals' minds

at the micro level nor were they simply an outcome of systemic macro-level changes (Bartolini, 2000).

Chapters 4 and 5 outline our research design. In Chapter 4, we review the existing literature in the field and outline its methodological limitations: (a) the flattening of the semantic links between different policy terms used in EU executives' NEG prescriptions and (b) the neglect of the power relations between different actors involved in their production. Studies of the NEG regime must indeed give more attention to the links between the policy orientation of NEG prescriptions and concrete social groups' material interests in them. This is another good reason to study NEG in conjunction with labour politics.

Given the role of commodifying interventions as triggers of countervailing social protests (Polanyi, 2001 [1944]; Szabó, Golden, and Eme, 2022; Eme and Nowak, 2023), we then explain why the commodification–decommodification axis is the most relevant nexus of EU economic governance and labour politics. Subsequently, we operationalise these concepts in relation to employment relations and public services to guide the ensuing analysis of EU executives' NEG prescriptions across those policy areas.

As EU executives deploy NEG prescriptions unevenly across countries, time, and policy areas, our research design must also take account of their hierarchical ordering in larger policy scripts. Chapter 5 shows how we do that, that is, by assessing NEG prescriptions in their semantic, communicative, and policy context. Such an assessment, however, requires not only deep knowledge of our research sites and areas but also a comparative approach that goes beyond the traditional country-by-country design of labour and social policy research.

In Parts II and III of the book, we set the above research design to work. In the empirical Chapters 6–10, we first assess the horizontal and vertical EU integration pressures on labour or public services before 2008, and then we analyse the NEG prescriptions from 2009 to 2019 in the two areas and three sectors across the four countries over eleven years. We begin in Part II with employment relations (Chapter 6) and public services (Chapter 7).

Chapter 6 shows that workers' wages and employment relations were, until the 2008 crisis, shaped by horizontal market pressures rather than direct political vertical EU interventions in the labour policy area. That changed radically after the EU's shift to NEG. We found that the EU's NEG prescriptions on wage levels, collective bargaining, and hiring and firing mechanisms followed a consistent trajectory that furthered the commodification of labour in Italy, Ireland, and Romania, but less so in Germany. Instead, Germany received decommodifying NEG prescriptions on wage policy, which were

linked to a rebalance-the-EU-economy policy rationale. Although this policy rationale was still compatible with the overarching commodifying script of NEG, the diverging policy orientation of prescriptions in this area across countries made it hard for unions to challenge NEG transnationally.

Chapter 7 shows that EU leaders had already started in the 1980s to steer the trajectory of national public services in a commodifying direction. The commodifying pressures from direct EU interventions reached a peak in 2004 with the Commission's draft Services Directive, which failed to become law due to unprecedented, transnational protest movements. After the financial crisis however, the EU's shift to NEG empowered EU executives to pursue public service commodification by new means. Our analysis reveals that the NEG prescriptions on public services for Germany, Ireland, Italy, and Romania consistently pointed in a commodifying direction, by demanding a curtailment of public resources for public services and their marketisation. Although our analysis uncovers some decommodifying prescriptions, namely, quantitative ones calling for more investment at the end of the 2010s, they were usually justified with policy rationales subordinated to NEG's primary commodifying script.

Part III assesses the NEG prescriptions across three public sectors in detail. Chapter 8 traces the EU governance of transport services from the Treaty of Rome to NEG. Initially, European public sector advocates were able to shield transport from commodification, but, over time, the Commission gradually advanced a commodification agenda one transport modality after another. Sometimes, however, the Commission's draft liberalisation laws encountered enduring resistance and recurrent transnational protests by transport workers, leading the European Parliament and Council to curb the commodification bent of the Commission's draft directives. After 2008 however, NEG provided EU executives with new means to circumvent resistance. Despite their country-specific methodology, *all* qualitative NEG prescriptions on transport services issued to Germany, Italy, Ireland, and Romania pointed towards commodification. But the more the Commission succeeded in commodifying transport services, the more the nature of counter-mobilisations changed. Accordingly, the European Transport Workers' Federation's (ETF) failed Fair Transport European Citizens' Initiative (ECI) no longer targeted vertical EU interventions but rather the social dumping pressures created by the free movement of services and fellow transport workers. This target made joint transnational collective action more difficult.

Chapter 9 analyses the EU governance of water and the countervailing mobilisations against its commodification. Initially, European law decommodified water services through the harmonisation of quality standards that took



them out of regulatory competition between member states. However, from the 1990s onwards, the Commission repeatedly attempted to commodify water through liberalising EU laws. When these attempts failed, EU executives tried to advance commodification by new means, namely, through the EU's NEG prescriptions. Our analysis revealed that all qualitative prescriptions on water services issued from 2009 to 2019 to Germany, Ireland, Italy, and Romania called for their marketisation, despite recent calls to increase public investment. Like preceding attempts by draft EU directives, however, the NEG's consistent commodification script triggered transnational protests by unions and social movements that defended water as a human right and as a public service, namely, the successful Right2Water ECI.

Chapter 10 traces the EU governance of health services and its discontents. The first European interventions in the health sector facilitated mobile workers' access to health services in their host countries. This decommodified cross-border care, albeit by recourse to solidaristic mechanisms situated at national rather than EU level. Since the 1990s however, horizontal market pressures and public deficit criteria have led governments to curtail healthcare spending and to introduce marketising reforms. Thereafter, healthcare became a target of EU competition and free movement of services law. In 2006, transnational social protest movements moved EU legislators to drop healthcare from the scope of the draft EU Services Directive but, after the financial crisis, EU executives pursued commodification of healthcare through new means, as shown by our analysis of their NEG prescriptions for Germany, Italy, Ireland, and Romania. Even when commodifying prescriptions were on occasion accompanied by decommodifying ones, the latter remained subordinated to the former. Although their country-specific methodology hampered transnational protests, the overarching commodification script of NEG prescriptions led not only to transnational protests by the European Public Service Union (EPSU) but also to the formation of the European Network against the Privatisation and Commercialisation of Health and Social Protection, which unites unionists and social movement activists.

In Part IV, we compare the findings of the preceding chapters, analyse the substantial change to NEG that EU leaders adopted after the outbreak of the pandemic, and assess the policy orientation of the post-Covid NEG regime. We conclude by outlining the prospects for EU governance and labour politics. The comparisons of NEG prescriptions in Chapter 11 reveal that almost all *qualitative* prescriptions across all countries, areas, and sectors pointed in a commodifying direction, tasking governments to marketise employment relations and public services. Most *quantitative* prescriptions tasked governments to curtail wages and public expenditures too, but, over

time, they not only became less coercive but also increasingly pointed in a decommodifying policy direction, tasking governments to invest more. It would, however, still be wrong to speak of a socialisation of NEG, not just given the decommodifying prescriptions' weak coercive power (Jordan, Maccarrone, and Erne, 2021) but also because of their explicit links to policy rationales that are compatible with NEG's overarching commodification script. Moreover, Chapter 11 shows that EU executives' NEG prescriptions tasked governments to channel more public resources into the allegedly more productive sectors (transport and water services) rather than into essential social services like healthcare.

Most importantly however, the NEG regime shifted the frontiers of the battle against the commodification of public services. This means that union strategies based only on fighting spending cuts would be misguided, as public services have themselves become a site of capitalist accumulation – an insight acquired by many union and social movement activists themselves. Given NEG's country-specific methodology, it is not surprising that there have been only a few instances of transnational action on specific NEG prescriptions. By contrast, the share of transnational labour protests targeting EU interventions broadly defined increased after 2008, namely, in the healthcare sector. This suggests that NEG has been altering protest landscapes, prompting unions and social movements to broaden the scope of their demands, not just at EU level (Erne and Nowak, 2023) but also locally (Naughton, 2023). This insight is all the more important given EU leaders' response to the Covid crisis, which not only led to a temporary suspension of austerity but also renewed calls for marketising reforms in public services sectors.

In Chapter 12, we show that the Covid-19 emergency and the ensuing suspension of the SGP and its sanctioning mechanisms in 2020 led to crucial changes in the NEG regime. For example, the transnational distribution of EU funds, institutionalised by the EU's RRF Regulation in 2021, meant that the post-Covid NEG regime no longer mimicked the divisive beggar-thy-neighbour tools that TNCs use to steer their subsidiaries and workforce. Even so, EU executives continue to direct the post-Covid NEG regime without much participation by national and European parliaments or unions and social movements. Instead of the financial sanctions of the suspended SGP, EU executives use the policy conditionalities attached to RRF funding to reach their objectives.

In Chapter 13, we provide a preliminary analysis of the policy orientation of the post-Covid NEG regime, to give policymakers, unionists, and social movement activists an idea about possible future trajectories of EU governance of employment relations and public services. We do that on the basis of

not only the recently adopted EU laws in these two policy areas, such as the decommodifying Minimum Wage Directive, but also EU executives' post-Covid NEG prescriptions in two areas, three sectors, and four countries. Vertical NEG interventions in national wage policies paradoxically cleared the way for the decommodifying EU Minimum Wage Directive by effectively making wage policy an EU policymaking issue, but, in the area of public services, we see an accentuation of the trend of NEG prescriptions in recent years: more public investments but also much more private sector involvement in the delivery of public services.

Chapter 14 concludes the book by highlighting its major insights both for the study of European integration and labour politics and for the prospects of egalitarian democracy in Europe.

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