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EU Governance of Employment Relations and Its Discontents

6.1 INTRODUCTION

Most union leaders knew that the single market project and monetary union could expose workers' pay and working conditions to increased horizontal market integration pressures. Even so, European unions by and large supported the Single European Act (SEA) (1986) and the Maastricht Treaty (1993). Most European trade unionists thought that these treaties not only promised higher overall growth rates but also seemed to provide a basis for social EU laws and some protection against the most radical forms of capitalist globalisation (Bieler, 2006).

Although the idea of a European social model successively gained some traction among European policymakers, *vertical* EU interventions in the social field that improved working and living conditions remained an exception. Accordingly, a multilevel system of European employment relations emerged (Marginson and Sisson, 2004) that included some EU-level labour laws but continued to be shaped primarily by *horizontal* market integration pressures and different responses to them by governments, employers, and unions at national level. As the increased European horizontal market integration pressures would put workers and national employment relations regimes in competition with one another, French and German business leaders already predicted in 1997 that unions would 'lose their role in wage negotiations' after the introduction of the Euro (Erne, 2008: 54).

Until 2008, national social partners formally remained autonomous in the key areas of employment relations, namely, wage and collective bargaining policy. After the 2008 financial crisis however, the picture changed dramatically. The EU's new economic governance (NEG) regime

empowered the European Commission and Council to issue vertical country-specific prescriptions also in the social field to ensure a ‘proper functioning’ of the EU economy (Chapter 2). This meant that European unions were confronted not only with commodifying horizontal market integration pressures but also with vertical NEG prescriptions in employment relations (Erne, 2019).

Before the shift to NEG, unions and social movements were at times able to successfully contest commodifying draft EU directives, as in the case of the Services Directive. Transnational counter-mobilisations against NEG prescriptions, however, are more difficult, given NEG’s technocratic structure and the *country-specific* deployment of its prescriptions. NEG thus risks being a supranational regime that nationalises social conflict (Erne, 2015), unless labour realises that NEG is informed by an overarching, commodifying policy script that affects workers across countries similarly. In this chapter, we therefore assess whether NEG prescriptions on employment relations across our four countries point in a similar, commodifying policy direction, regardless of the different location of Germany, Ireland, Italy, and Romania in the EU political economy.

Before we can do so however, we must first discuss the EU’s role in employment relations prior to the 2008 financial crisis. In section 6.2, we identify three main historical phases. In each of them, horizontal market pressures and vertical EU interventions played a different role in shaping employment relations and trade union action.

Section 6.3 then turns to the changes brought by the EU’s shift to the NEG regime. First, we explain why employment relations became a primary target of NEG prescriptions. Then, our in-depth analysis of NEG prescriptions for our four countries shows how the NEG regime allowed the Commission and the Council of finance ministers (EU executives) to commodify policy areas hitherto shielded from direct, vertical EU interventions, namely, wage levels, collective bargaining mechanisms, and hiring and firing mechanisms. However, EU executives also issued some decommodifying prescriptions concerned with the rebalancing of the EU economy. The uneven orientation of NEG prescriptions, in turn, made it more difficult for European trade unions to put forward a common transnational response.

In section 6.4, we assess European unions’ responses to the shift from horizontal market integration pressures (which did not challenge the formal autonomy of national industrial relations institutions) to the much more vertical, but also country-specific, NEG regime. We also discuss the most recent directives on employment relations and their potential to cause a shift in the orientation of EU governance in this field.

6.2 EU GOVERNANCE OF EMPLOYMENT RELATIONS UNTIL THE 2008 CRISIS

Before the shift to NEG, we distinguish three phases of EU interventions in employment relations. Until the 1980s, economic EU integration and the development of national labour and social policies were mutually supportive (Phase one). Following the relaunch of European integration by the single market programme (SMP) and economic and monetary union (EMU), horizontal market integration led to ever-increasing commodifying pressures on workers, trade unions, and national industrial relations systems. These pressures were at least partially moderated by the introduction of vertical decommodifying laws aimed at strengthening the EU's social dimension (Phase two). In the 2000s, the political will to introduce decommodifying EU labour laws faded away (Phase three). Instead, the Commission proposed commodifying legislation, such as the draft Services Directive in 2004, which would have undermined the autonomy of national wage-setting and collective bargaining systems. Although the political allies of trade unions and social movements in the European Parliament were able to alter the Commission's draft EU laws, it was the Court of Justice of the EU (CJEU) that struck the blows against labour rights at national level just before the outbreak of the 2008 global financial crisis.

Phase One: The European Common Market and National Labour Systems

Until the 1970s, the scope for European interventions in employment relations was very confined. The Treaty of the European Economic Community (TEEC) of 1957 focused on the free movement of goods, capital, services, and people, and the space it devoted to labour issues was limited. Art. 118 TEEC tasked the European Commission 'to promote close collaboration between member states in the social field, particularly in matters relating to employment, labour legislation and working conditions, occupational and continuation training, social security, protection against occupational accidents and diseases, industrial hygiene, the law as to trade unions, and collective bargaining between employers and workers'.

The flimsiness of these social EEC Treaty provisions, however, did not indicate a subordination of social issues to a market logic. The EEC abolished tariffs within the common market, but its member states also built strong industrial relations systems and social welfare states that ensured the social reproduction of labour. As social progress relied also on economic growth,

produced *inter alia* by the making of the *European* common market, the EEC did not impinge on, but rather supported, the development of the social welfare state at *national* level (Milward, 1999). This virtuous cycle between European economic integration and social progress at national level supported the class compromise between organised capital and labour that shaped Western Europe after World War II (Giubboni, 2006; Ashiagbor, 2013; see Chapter 2). The EEC Treaty nevertheless also empowered the Commission to propose legislation on labour issues linked to the making of the common market, namely, to guarantee workers' freedom of movement within the EEC (Arts. 48–51 TEEC). In the following two decades, this led to the adoption of EU legislation in the social security field, as well as access to cross-border healthcare (see Chapter 10). Other labour-related articles in the EEC Treaty reflected French employers' preoccupation that the more advanced labour law provisions in their country could negatively affect their competitive position within the common market (Allais, 1960). Its Art. 119 therefore urged member states to enforce the principle of equal pay for equal work between men and women, as already enshrined in French legislation, and Art. 120 TEEC required member states to maintain 'equivalence' with respect to their regimes of paid holidays.

By the early 1970s however, the mid-twentieth century class compromise between capital and labour started to run out of steam when unemployment and inflation were on the rise and when companies' profit margins declined across advanced capitalist economies (Glynn, 2006). National governments' initial response was more state intervention at national level. After Denmark, Ireland, and the United Kingdom joined it in 1973, the EEC became more important. Within the EEC, organised labour also attempted to put forward a *supranational* social-democratic response to the crisis. In 1973, Western European trade union confederations founded the European Trade Union Confederation (ETUC), *inter alia*, to advance economic and industrial democracy in transnational corporations (TNCs). This was crucial, as TNCs had started to relocate production to lower-wage countries (Petrini, 2013). The cause of labour was also favoured by the rise in electoral support for socialist and social-democratic parties, which altered the balance of power within the Council towards labour. Accordingly, in 1972, the Council asked the Commission to propose legislation on labour protection.

In turn, organised labour obtained several decommodifying EEC laws, such as the directives that increased workers' rights in the event of collective redundancies (Directive 75/129/EEC) or the transfer of undertakings to a new employer (Directive 77/187/EEC). These issues were made even more urgent by business restructuring processes triggered by increased economic

integration within the common market (Rainone, 2018). The growing participation of women in the labour market, along with the rise of feminist movements, brought the issue of gender equality back on the European political agenda too. At long last, the Commission acted on Art. 119 of the EEC Treaty, drafting two directives on equal pay and equal treatment between men and women that the Council approved in 1975 (Directive 75/117/EEC) and 1976 (Directive 76/207/EEC). By the end of the 1970s however, the balance of power within the Council became less favourable to labour (Petrini, 2013: 159). The ideological shift towards neoliberalism, combined with the staunch opposition of business associations on both sides of the Atlantic, led to a watering down of the most ambitious proposal put forward by the ETUC, namely, a directive on workers' information, consultation, and co-determination rights within TNCs.

Phase Two: The Single Market, Monetary Union, and Social Legislation

In the mid-1980s, European integration received a new impetus under the aegis of the Commission led by the French socialist, Jacques Delors. Taking place in the context of the rise of neoliberalism, this phase of integration centred primarily on market expansion. Even so, Delors' Commission promised to add a social dimension to the European integration process, which was crucial to get trade unions' support for the SEA and the Maastricht Treaty (van Apeldoorn, 2002; Bieler, 2006; Jabko, 2006; Erne, 2008; Golden, 2015).

The SEA of 1986 kickstarted the process with its SMP. Whereas the EEC Treaty tried to eliminate non-tariff-related barriers to cross-border trade through the adoption of European product standards, the SMP pursued this aim through the mutual recognition of national standards. The latter effectively put national product standards – and by implication also national welfare states and industrial relations regimes – in competition with one another (Streeck, 1998). The SEA was followed by the signing of the Maastricht Treaty in 1992, which created the legal basis for the EMU by the end of the decade.

In the 1980s, the EEC broadened its borders further, with the accession of Greece, Portugal, and Spain. The accession treaties for these countries imposed an initial limitation on workers' freedom of movement up to seven years, but they did not foresee any restriction on the circulation of services (Comte, 2019). As the new Southern members had lower labour costs, this raised the issue of how to regulate the terms and conditions of workers sent by their employer to provide services in another member state (Comte, 2019). This issue would be addressed by a directive only in the 1990s (see below).

After the fall of the Berlin Wall in 1989, the dissolution of the USSR in 1991, and the creation of the European Union in 1993, Austria, Sweden, and Finland joined in 1995, bringing the number of EU member states to fifteen. As these were countries with strong trade unions and collective bargaining institutions, their accession raised hopes for a strengthening of the EU social dimension (Dølvik, 1995). Scandinavian unions, however, also showed scepticism towards the enhancement of binding supranational legislation in the social field, which they feared could impact on the autonomy of their collective bargaining systems.

Despite their early interest in joining the EU after the fall of the Berlin wall in 1989, the first eight Central and Eastern European (CEE) countries became EU member states, together with Malta and Cyprus, only in 2004, with Romania and Bulgaria joining in 2007 and Croatia in 2013. Before being accepted as members, they had to prove that they fulfilled the political and economic criteria for accession set out by the European Council at a summit held in Copenhagen in June 1993. The Copenhagen criteria included having a functioning market economy able to withstand competitive pressures within the single market and the state's capacity to absorb the EU's entire body of laws (*acquis communautaire*). As most EU legislation is related to the single market and its four freedoms, the Commission's pre-accession strategy was 'basically about disciplining the candidate members in terms of free market integration' (Holman, 2001: 180–181). Although CEE countries also had to transpose the EU's social *acquis* into their national laws, this did little to enhance workers' rights in the new member states because of the minimalist transposition approach taken and the lack of enforcement of the EU's social *acquis* on the ground (Meardi, 2016).

The intensification of interfirm and interstate competition in the single market and monetary union led to increased horizontal market pressures on national industrial relations institutions to become more competitive (Marginson and Sisson, 2004). Furthermore, the Maastricht Treaty introduced strict national convergence criteria on public finances, inflation, exchange, and interest rates to join the EMU. These pressures affected wage bargaining dynamics, even though national bargaining systems formally remained autonomous (Streeck, 1998).

Across several member states, governments sought to conclude bi- or tripartite corporatist arrangements to moderate wage increases. Such arrangements emerged even in countries that were thought to lack the conditions for the emergence of corporatist agreements, such as Italy and Ireland (Schmitter and Grote, 1997). In contrast to the classical neo-corporatist agreements that had emerged during the era of embedded liberalism, these competitive corporatist

agreements (Rhodes, 2000) were not meant to reconcile economic growth and social equality. Instead, these arrangements advocated wage moderation to increase the attractiveness of the country as a location for foreign capital investment – as happened, for example, in the case of the seven social partnership agreements that Irish governments, employer organisations, and unions signed from 1987 to 2007 (Roche, 2007; Erne, 2008: 71). Furthermore, governments sponsored social pacts that advocated wage moderation to secure eurozone membership in line with the low-inflation benchmarks set by the Maastricht Treaty, like in Italy after 1993 (Erne, 2008: 73; Pulignano, Carrieri, and Baccaro, 2018).

The growing transnational market integration triggered by economic Europeanisation and globalisation processes led to increased commodifying pressures on national employment relations systems. To alleviate them, Jacques Delors thought to complement the SMP and EMU, as well as the EU's future eastward enlargement, with European social flanking measures. After all, trade unions and left-wing parties still exerted some influence in EU politics that EU policymakers had to accommodate. Thus, the promise of a social dimension was instrumental in getting social democrats and trade unions on board for the relaunch of EU integration in the 1990s (van Apeldoorn, 2002; Bieler, 2006; Jabko, 2006; Erne, 2008; Golden, 2015).

The SEA had introduced qualified majority voting (QMV) in the Council on health and safety matters. The Maastricht Treaty extended QMV to other issues, namely, working conditions and workers' information and consultation rights. The social provisions of the Maastricht Treaty were based on a social policy agreement, which EU governments attached as a separate protocol to allow the conservative UK government to opt out of it. As the social policy agreement had been drafted by the ETUC and Europe's major employers' associations, it is not surprising that it also institutionalised the European social dialogue between management and labour at intersectoral or sectoral level.¹ This means that, before making any legislative proposal in the social policy field, the Commission must not only consult the European confederations of trade unions and employer associations but also give them up to nine months to negotiate their own agreements on the matter if they wish to do so (Art. 154 TFEU). If so, the European social partners could task their members

¹ At intersectoral level, the Commission recognised the ETUC, Business Europe (Europe's largest employer organisation), SME United (an association of small and medium-sized enterprises), and SGI Europe, which represents employers in the public sector, as representative organisations of labour and management.

at national level to implement the agreement autonomously or ask the Commission and Council to implement the agreement by an EU directive.

The social provisions of the SEA and the Maastricht Treaty led to the adoption of several EU directives that pointed in a decommodifying policy direction. The Council's ability to adopt EU health and safety laws by QMV meant that the Commission and the Council were able to overcome the conservative UK government's veto to adopt the Working Time Directive (93/104/EC) in 1993. The directive introduced a maximum ceiling of forty-eight working hours per week, a minimum of an eleven-hour-long rest break between two work shifts, at least four weeks of paid leave, and other provisions for night work for health and safety reasons. On the same basis, the Council adopted a directive granting basic labour rights to pregnant workers (Directive 92/85/EEC), including a protection against dismissal and at least fourteen weeks of maternity leave.

After Maastricht, the European social dialogue led to EU directives on parental leave (Directive 96/34/EC), part-time work (Directive 97/81/EC), and fixed-term work (Directive 1999/70/EC). These directives included a non-discrimination clause that gave workers holding such contracts equal labour rights while in employment. Conversely, they legitimised the use of flexible contracts as an alternative to permanent, full-time employment (Sciarra, 2003). EU policymakers also adopted labour laws according to the EU's ordinary legislative procedures, for example, when employers vetoed an equivalent social dialogue agreement. This happened, for example, in the case of the directives establishing European Works Councils (Directive 94/45/EC), on employee involvement within a company established under EU law known by its latin name of 'Societas Europaea' or SE (Directive 2001/86/EC), and on information and consultation of employees in companies at national level (Directive 2002/14/EC).

In 1996, the EU adopted the Posting of Workers Directive (96/71/EC), which is based on both the Treaty's social provisions and those on the free movement of services. The directive did not go as far as to provide equal rights to workers temporarily sent ('posted') by their employer from one member state to another to provide services there, but it granted at least a set of core labour rights guaranteed by the laws of the host country, such as a minimum wage, work and rest periods, paid annual leave, and health and safety rules.

Most importantly, however, the Maastricht Treaty did not touch key areas of national industrial relations, such as pay and collective bargaining mechanisms, despite the increasing horizontal market pressures to which the making of the EMU exposed them. The social policy agreement attached to the EC Treaty in Maastricht explicitly excluded the issues of pay, the right of

association, and the right to strike from its remit. When the British government led by Tony Blair agreed to incorporate the social policy agreement into the body of the EC Treaty at the 2007 Amsterdam summit, it also made sure that these exclusions were maintained.

Phase Three: Towards a Multilateral Surveillance of Employment Relations

After the launch of the Euro in 1999, commodifying horizontal market pressures on wages and working conditions increased further. Without the possibility of using the devaluation of national currencies, labour costs became an adjustment variable for firms and countries with lower levels of productivity to remain competitive within the EMU (Martin and Ross, 1999). The tight monetary policy regime of the European Central Bank (ECB), designed to keep inflation levels below 2 per cent, also meant that wage growth had to be contained. Furthermore, German labour policymakers were able to adopt more assertive beggar-thy-neighbour wage moderation policies, as the introduction of the Euro excluded the risk of any counterbalancing revaluation of the Deutschmark against Southern European currencies (Erne, 2008).

At the turn of the new millennium, not only conservative but also New Labour policymakers (Taylor, 1999) and their advisors (Pautz, 2008) used the horizontal market integration pressures linked to economic globalisation and Europeanisation to justify their calls for radical labour market reforms. Subsequently, German social partners agreed to moderate wages to an even greater extent (Erne, 2008: 99–103; Lehnendorff, 2015), and the *Neue Mitte* government of Gerhard Schröder pushed through its Hartz labour market reforms unilaterally despite fierce social movement and union opposition (Bruff, 2010: 416). Threats of further unilateral action by the Schröder government, combined with those of firms to relocate their production to cheaper locations also swayed unions to accept opening clauses in collective bargaining agreements, as in the 2004 Pforzheim agreement in the metal and electrical engineering industry (Bispinck and Schulten, 2010). Increased horizontal market integration pressures, however, did not have the same impact everywhere; this is not surprising given the EU's integrated but also unequal political economy (Bieler, Jordan, and Morton, 2019). In countries with very low wages, labour policymakers and social partners were not too concerned about wage moderation and continued to endorse decommodifying labour laws and practices. Despite the introduction of the Euro, Portuguese and Greek real wages broadly followed national productivity developments during the late 1990s (Erne, 2008: 64). In the EU's south-eastern periphery, Romania's social democratic government even introduced

a new Labour Code in 2003, which provided strong collective bargaining rights 'as a quid pro quo for the social peace needed to polish Romania's EU accession dossier' (Ban, 2016: 96). This code remained in place, despite the victory of a centre-right coalition in 2004 and despite Romania following a neoliberal trajectory in most fields in the run-up to 2007 EU accession (Stan and Erne, 2014; Ban, 2016).

Horizontal European market integration pressures were not strong enough to trigger major labour market reforms in countries with average labour costs either. Whereas social partners agreed to moderate wages to support Italy's accession to the Euro in 1999, its largest trade union confederation, the Confederazione Generale Italiana del Lavoro (CGIL), in 2002 staged a successful general strike against the labour market reforms proposed by the centre-right Berlusconi government that were meant to weaken the protections against unjustified dismissals granted by Art. 18 of the Italian Workers' Statute (Ferrera and Gualmini, 2004: 158).

Even so, the EMU and the EU's 2004 and 2007 eastward enlargements increased horizontal market integration pressures on employment relations, also because the impetus for introducing vertical decommodifying EU flanking measures faded away. This happened even though, by the end of the 1990s, centre-left governments held the majority in the Council. Indeed, with supply-side economics becoming popular among Third-Way social democratic parties such as Tony Blair's New Labour in the UK and Schröder's *Neue Mitte* in Germany, there was little support for decommodifying EU labour laws (Menz, 2015). Legislative activity focused on the revision of existing directives rather than on new initiatives. In the absence of a threat of legislative action by the Commission, employers' associations virtually stopped signing EU social dialogue agreements (Léonard et al., 2007). Instead, 'softer' mechanisms to coordinate EU member states' economic and employment policies gained prominence.

To better coordinate the policies of EU member states in the run-up to EMU, the Maastricht Treaty tasked the Commission and the Council of finance ministers to issue broad economic policy guidelines (BEPGs). Responding to increased horizontal market integration pressures, high unemployment figures, and protest movements by the unemployed (Balme and Chabanet, 2008), EU governments agreed at the 1997 Amsterdam summit to integrate employment policy aims into the EC Treaty (now Title IX TFEU). This led to the European employment strategy, which was meant to promote 'a skilled, trained, and adaptable workforce and labour markets responsive to economic change' (Art. 145 TFEU) and secure a 'high level of employment' (Art. 147 TFEU). At the Lisbon summit in 2001, EU executives

furthermore agreed to henceforth coordinate member state policies in other areas also, such as pensions, healthcare, and social inclusion (Armstrong, 2010; see also Chapter 10).

Following Milena Büchs (2007), we discuss these coordination tools, including the BEPGs, under the same heading: the Open Method of Coordination (OMC). This makes sense, as, since 2005, EU executives have integrated their BEPGs and EU employment strategy recommendations in one document. Although these recommendations to the member states were not legally binding, they still had practical effects (see Chapter 2). Ironically, precisely the soft-law character of OMC prescriptions enabled the Commission and the Council to gradually build up governance capabilities in areas in which they did not possess formal legislative competences, including pay and healthcare (Marginson and Sisson, 2004; Büchs, 2007; Chapter 10).

The policy orientation of OMC prescriptions echoed the shift from demand- to supply-side economic policies that increasingly shaped European labour policymaking (Büchs, 2007). OMC prescriptions stressed the need to increase workers' employability and propagated a new 'flexicurity' approach, which was meant to reconcile employers' need for a flexible workforce with workers' need to secure durable employment, even if that meant keeping wage growth below productivity developments at firm level. Nevertheless, the coercive power of OMC prescriptions was weak, as they lacked any enforcement mechanism other than peer pressure from European institutions and other countries' governments (Marginson and Sisson, 2004). Yet national executives still used OMC prescriptions to discursively legitimise commodifying labour reforms, as in the case of Schröder's Hartz reform (Büchs, 2007).

A much more decisive push for further labour commodification came from the Commission's 2004 proposal for a Services Directive (COM (2004) 2 final/3). The proposed EU law envisaged liberalising the provision of all services, public and private, across borders (see also Chapter 7). The threat for labour came from the country-of-origin principle contained in the draft law, which would have made service providers subject to the provisions of their home country, rather than those of their host country. This would have given service providers from states with lower labour and product market standards a major competitive advantage, also considering the EU's concurrent inclusion of CEE countries, which had lower wages and weaker trade unions and employment protection institutions. European trade unions therefore feared that the directive would unleash a race to the bottom in working conditions and employment relations and waged a transnational campaign with social movements (Bieler, 2007; Parks, 2015; Chapter 7) that convinced

the European Parliament and Council to remove the country-of-origin principle from the final text of the Services Directive (2006/123/EC).

The EU's first attempts to commodify labour through direct interventions in the area of employment relations failed, either because they were too weak (in the case of OMC) or because they triggered strong countermovements (in the case of the Services Directive). In the mid-2000s, some of its leading scholars thus concluded that EU industrial relations were 'evidently not a vertically integrated system, with the European supranational level exerting authoritative direction over national systems, that would facilitate top-down policymaking and implementation' (Leisink and Hyman, 2005: 280). In 2007 however, these arguments were called into question by the CJEU's four *Laval* Quartet rulings (Dølvik and Visser, 2009).²

With its rulings in the *Laval* and *Vikings* cases, the CJEU limited unions' capacity to take national and transnational strike action. In *Laval*, a Swedish union took secondary strike action to compel Laval, a Latvian construction company that had won a contract to renovate a school, to sign a Swedish collective agreement. In *Vikings*, a Finnish seafarers' union and the International Transport Workers' Federation called for strike action against the decision of the Finnish ferries company Vikings to reflag its ferries to Estonia to lower wages and labour standards. In both cases, the companies launched legal challenges in national courts against the unions' actions, which were brought to the CJEU in turn. In *Laval*, the Swedish employers' organisation Svenskt Näringsliv funded the court case, which it then used as a strategic opportunity to curb Swedish trade union rights (Woolfson and Sommers, 2006: 61). In *Vikings*, the Finnish company brought the case to a UK court, using the Federation's location in London to bypass the more labour-friendly Finnish courts. In both cases, the CJEU found that the use of the right to strike guaranteed by national labour laws and the EU's Charter of Fundamental Rights had unduly restricted the economic freedoms of firms guaranteed by EU treaties, namely, the freedom of establishment (*Vikings*) and of providing services across borders (*Laval*). The Court also interpreted the Posting of Workers Directive restrictively, as setting a ceiling of rights granted to posted workers, rather than a floor (Höpner and Schäfer, 2010: 354).

In *Rüffert*, the Court found that the social clause in the procurement law of Lower Saxony in Germany would violate companies' freedom to provide services across the EU. The clause stipulated that public contracts should be

² C-341/05 *Laval un Partneri* [2007] ECR I-11767; C-438/05 *The International Transport Workers' Federation and The Finnish Seamen's Union* [2007] ECR I-10779; C-346/06 *Rüffert* [2008] ECR I-01989; C-319/06 *Commission v. Luxembourg* [2008] ECR I-04323.

awarded only to companies that abided by the wage rates set by collective agreement. Finally, the Commission pushed ‘the new market-oriented doctrine further’ (Garben, 2017: 35), bringing Luxembourg to the CJEU as its transposition of the Posting of Workers Directive had gone too far. The Commission argued that Luxembourg was incorrectly applying the ‘public policy provisions’ provided by Art. 3(10) of the directive to give posted workers greater protections than the set of rights stated by the directive itself. In *Commission v. Luxembourg*, the CJEU upheld most of the Commission’s arguments, providing a restrictive interpretation of the public policy exception.

The shift in the CJEU’s jurisprudence in its *Laval Quartet* rulings sanctioned much more vertical, commodifying EU interventions in employment relations. Only a few months afterwards, in response to the 2008 financial crisis, the EU created its NEG regime, which complemented and overlaid the OMC’s soft multilateral policy coordination tools with new governance instruments that enabled further vertical EU policy intervention in the field.

6.3 THE EU’S NEW ECONOMIC GOVERNANCE (NEG) OF EMPLOYMENT RELATIONS

As outlined in Chapter 2, the making of the EU’s NEG regime after the 2008 crisis gave EU executives greater policy intervention powers in employment relations (Erne, 2012b, 2019). These interventions followed two logics.

First, the Commission’s DG for Economic and Financial affairs (ECFIN) and the Council of finance ministers identified growing nominal unit labour costs (ULC) as a major cause of the great macroeconomic imbalances between EU member states (Schulten and Müller, 2015). EU executives henceforth treated wage policy as a major economic governance issue. Accordingly, they added a nominal ULC indicator to the scoreboard of the macroeconomic imbalances procedure (MIP) established by the Six-Pack of EU laws, which aim to ensure the ‘proper functioning’ of the European economy (see Chapter 2). Although excessively low wage rises also cause macroeconomic imbalances, the MIP scoreboard sets a ceiling only for nominal ULC rises (+9 per cent for eurozone, +12 per cent for non-eurozone, states over three years). This suited employers from both peripheral and core EU countries, which had no interest in curbing the strategies of wage repression that they had pursued in the decade prior to the 2008 crisis (Bieler and Erne, 2014; Baccaro and Benassi, 2017; Celi et al., 2018). By contrast, governments from countries with a current account surplus, like Germany, had to accept that the MIP scoreboard’s indicator for current account imbalances would also include a floor, even if this irked their employer

organisations (Syrovatka, 2022a; see Chapter 2). Nevertheless, the corresponding MIP scoreboard thresholds still left more space for the countries in surplus (+6 per cent of GDP) than for those in deficit (−4 per cent of GDP).

The inclusion of wage policy in the MIP is striking, as the EU has no legislative powers on ‘pay’ (Art. 153(5) TFEU) and must consider ‘the diverse forms of national practices, in particular in the field of contractual relations’ and respect social partners’ ‘autonomy’ (Arts. 151 and 152 TFEU). The Commission’s DG ECFIN, however, had already outlined in 2010 how the tension between its calls for wage and labour market flexibility and the protections granted by national and EU laws to social partners’ bargaining autonomy could be overcome: ‘In most Member States, wages are formed in a collective bargaining process without formal involvement of governments. Nevertheless, policymakers can affect wage-setting processes via a number of ways, including the provision of information on wage rules, changes to wage-indexation rules and the signalling role played by public sector wages. In addition, reforms of labour markets should also contribute to making wage-setting processes more efficient’ (European Commission, 2010a: 41). As we shall see, NEG prescriptions focused extensively on these aspects.

A second rationale behind NEG that affected employment relations is the emphasis on public spending constraints related to the Stability and Growth Pact (SGP) (Syrovatka, 2022b; see Chapters 2 and 7). As the public sector wage bill constitutes a significant share of states’ budgets, public sector industrial relations were thus affected directly by policy prescriptions but also indirectly by the strengthened EU fiscal constraints (Bach and Bordogna, 2013).

Our four countries received several NEG prescriptions on employment relations in country-specific recommendations (CSRs) of the European Semester process and Memoranda of Understanding (MoUs), Precautionary MoUs (P-MoUs), corresponding addendums and updates, and economic adjustment programmes (EAP) (see Chapter 2; see also Rocca, 2022).

In this section, we assess the policy orientation of NEG prescriptions in three central areas of employment relations issued to Germany, Ireland, Italy, and Romania between 2009 and 2019 to see whether they are informed by an overarching, transnational commodifying script. This is crucial to see whether they have the potential to trigger not only national but also transnational countervailing actions by unions. We have analysed all NEG prescriptions that affect workers while in employment, focusing on three major employment relations areas: wage levels, bargaining mechanisms, and hiring and firing mechanisms. As outlined in Chapter 4, we then distinguish between commodifying and decommodifying prescriptions. Accordingly, we have classified NEG prescriptions as commodifying if they urge member states to curtail wage levels, marketise bargaining mechanisms, or marketise hiring

and firing mechanisms. Inversely, NEG prescriptions are decommodifying if they point in the opposite direction. Table 6.1 gives an overview of the categories and concrete themes of NEG prescriptions on public services that emerged from our analysis, as well as of their policy orientation.

As outlined in Chapter 4, we take the different degrees of coercive power of different NEG prescriptions into account, based on their legal basis and the status of the targeted state in NEG's enforcement regime. Accordingly, the coercive power of NEG prescriptions is 'very significant' if they are issued to countries that are subject to an MoU. The coercive power of NEG prescriptions is 'significant' if they are based on the SGP or MIP and target countries with excessive deficits or countries experiencing excessive imbalances. Finally, in all other circumstances, the coercive power of NEG prescriptions is weak.

Table 6.2 classifies all NEG prescriptions issued to the four countries under analysis between 2009 and 2019 on wage levels (triangles), bargaining

TABLE 6.1 Themes in NEG prescriptions on employment relations (2009–2019)

Categories	Policy orientation	
	Decommodifying	Commodifying
Wage levels	Sustain wage growth (DE) Reinstate national minimum wage (IE)	Reduce national minimum wage (IE) 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 wages in the public sector (RO) Establish objective criteria for minimum wage-setting (RO) Monitor impact of national minimum wage on employment (DE)
Bargaining mechanisms	Improve social dialogue (RO)	Decentralise collective bargaining from sector to firm level (IT) Reform sectoral wage-setting mechanisms (IE) Implement reforms to the wage-setting system to align wages with (company-level) productivity (RO)
Hiring and firing mechanisms	Facilitate transition from precarious to more stable employment contracts (DE)	Adopt legislation on the revision of employment contracts (IT) Ease legislation regulating dismissals for open-ended contracts (IT) Increase the use of fixed-term contracts (RO)

Source: Council Recommendations on National Reform Programmes; Memoranda of Understanding. See Online Appendix, Tables A6.1–A6.4.
Country code: DE = Germany; IE = Ireland; IT = Italy; RO = Romania.

TABLE 6.2 Categories of NEG prescriptions on employment relations by coercive power

	Decommodifying				Commodifying				
	DE	IE	IT	RO	DE	IE	IT	RO	
2009								▲ ³	2009
2010						▲ ³ ■		▲ ³	2010
2011		▲				▲ ² ■	□ ○	▲ ² ■ ●	2011
2012	△					▲ ■	■ ●	▲ ■ ●	2012
2013	△ ○					▲ ■	□ ○	▲ ³ ■ ●	2013
2014	○				△		■ ●	△	2014
2015							■ ●	△	2015
2016	○							△	2016
2017	△ ○						■ ●	△	2017
2018	△			□				△	2018
2019	△							△	2019

Source: Council Recommendations on National Reform Programmes; Memoranda of Understanding. See Online Appendix, Tables A6.1–A6.4.

Category symbol: △ = wages, □ = bargaining mechanisms, ○ = hiring and firing mechanisms.

Coercive power (see Table 5.1 and Figure 2.1): ▲■● = very significant, ▲■● = significant, △□○ = weak.

Superscript number equals number of relevant prescriptions. Country code: DE = Germany; IE = Ireland; IT = Italy; RO = Romania.

mechanisms (squares), and hiring and firing mechanisms (circles). The coercive power of a prescription is indicated by different colours: black for very significant, grey for significant, and white for weak coercive power.

Table 6.2 shows that most NEG prescriptions are concentrated on the right-hand side of the table. This visualises how NEG has pushed member states in a commodifying direction. The right-hand side of the table also contains the most coercive prescriptions. Nevertheless, the table documents also a set of prescriptions with a decommodifying policy orientation, namely, those for Germany on both wage levels and employment protection rules (on the left-hand side of the table). They have only a weak coercive power though.

Although EU executives may have used NEG to pursue other policy objectives also, such as greater social inclusion, as suggested by advocates of the socialisation hypothesis (Zeitlin and Vanhercke, 2018; see Chapter 4), Table 6.2 highlights that NEG prescriptions in employment relations hardly become more social over time. Although the number of NEG prescriptions and their constraining power diminished over time, Italy continued to receive commodifying prescriptions until 2017 and Romania until 2019. We now analyse the NEG prescriptions in depth, taking both their national and European semantic contexts into account.

NEG Prescriptions on Wage Levels

As Table 6.2 illustrates, most prescriptions under this category called for a curtailment of wages in both the public and the private sector. The two countries targeted by the prescriptions are Ireland and Romania, which were both subject to the conditionalities specified in MoUs of a bailout programme. By contrast, since 2012, Germany consistently received prescriptions to increase wage levels.

Before entering into the bailout programme, the Irish government had already implemented wage cuts as part of what the IMF itself defined as one of the most severe adjustment programmes in modern times (Whelan, 2014). The Commission praised the substantial wage cuts in the public sector in 2009, which 'helped to initiate the necessary change in labour costs' (European Commission, 2010a: 67). Hence, the first MoU signed in November 2010 did not require additional public sector wages cuts for existing employees on top of the cuts that the Irish government had already implemented unilaterally in 2009. It did, however, urge an additional 10 per cent wage cut for new entrants to the public service (MoU, Ireland, 28 November 2010); this is remarkable given the Commission's recurrent criticism of labour market segmentation (see NEG Prescriptions on Hiring and Firing Mechanisms below). The austerity measures adopted by the government depressed the Irish economy so much that it became impossible to reach the deficit/GDP targets agreed in the MoU. In 2013, the

government therefore persuaded the Irish public sector unions to agree to further wage cuts in a new national public sector agreement. This was done under the duress of the Financial Emergency Measures in the Public Interest (FEMPI) Acts, which allowed the government to cut public sector wages unilaterally, in the event of union opposition (Szabó, 2018; Maccarrone, Erne, and Regan, 2019).

The MoU also asked the Irish government to reduce the minimum wage by €1 per hour, which amounted to a 12 per cent reduction (MoU, Ireland, 28 November 2010). The Irish government implemented the cut without further delay within a month, causing widespread uproar among unions and social justice NGOs. In spring 2011, Ireland's new Fine Gael–Labour government reversed the minimum wage cut in agreement with the Commission and the IMF. To offset the effect of the reinstatement of the minimum wage on nominal ULC, the government reduced employers' social contributions accordingly (MoU, Ireland, 1st update, 28 April 2011). Between 2010 and 2012, Irish wage (and social contribution) cuts contributed to a 12.8 per cent drop in nominal ULC (Erne, 2015: 353). This is astounding, as the MIP scoreboard would have allowed a 9 per cent ULC increase over this period. Ultimately however, the NEG regime does not hinge on numerical benchmarks per se but on political ad hoc interventions that use them instrumentally (see Chapter 2; Cova, 2022; Syrovatka, 2022b).

In the case of Romania, subsequent MoU addendums urged the government to first freeze public sector salaries (MoU, Romania, 1st addendum, 22 February 2010), then to cut them altogether through a reduction in wages and bonuses (MoU, Romania, 2nd addendum, 2 August 2010). By contrast to Ireland, NEG prescriptions continued to target Romanian wage policy even after the country left the bailout programme. In 2014, the Romanian government was invited to 'establish, in consultation with social partners, clear guidelines for transparent minimum wage setting' (Council Recommendation Romania 2014/C 247/21). As the prescription refers to social dialogue with unions and employers, it might appear as socially oriented (Zeitlin and Vanhercke, 2018). However, the meaning of the prescription becomes clearer if we analyse it within its semantic context. Indeed, the Commission's 2014 Country Report emphasises that 'establishing clear guidelines, in effective consultation with social partners, *should contribute to the evolution of the minimum wage in line with the underlying cyclical conditions*' (emphasis added) (Commission, Country Report Romania SWD (2014) 424: 15). Thus, rather than being concerned with the involvement of social partners in policymaking per se, the prescription aimed to prevent the unilateral minimum wage increases planned by the new social democratic government, as demanded by Romanian employer organisations.

As Italy does not have a statutory minimum wage, unlike Ireland and Romania, it did not receive explicit NEG prescriptions on wage levels for the

private sector (Afonso, 2019). The Italian government did not receive any prescription to restrain wages in the public sector either. It did, however, receive prescriptions to curtail public spending (see Chapter 7), thereby putting public sector workers' wages under pressure (Bach and Bordogna, 2013).³

In contrast to the other three countries, from 2012, the German government received prescriptions to promote higher wage growth almost every year. In 2012, the prescription was formulated in a rather flimsy way, asking the German government to 'create the conditions for wages to grow in line with productivity' (Council Recommendation Germany 2012/C 219/10), as German wage levels were even below that. After 2013 however, the prescriptions became more clearly decommodifying, requesting Germany to 'sustain conditions that enable wage growth to support domestic demand' (Council Recommendation Germany 2013/C 217/09). Similar decommodifying prescriptions were issued between 2017 and 2019.

Although these prescriptions supported German unions' demands for higher wages (Lübker, 2019: 19), they were only partially related to a concern for enhancing social inclusion. Instead, from 2013, they were increasingly linked to Germany's core position in the European political economy and the need to rebalance the European economy. Analysing the German prescriptions on wage levels in their semantic, communicative, and policy context, we can see that they relate to the MIP's focus that also targets countries with current account surpluses, such as Germany. Accordingly, the Commission and the Council agreed that wage growth in surplus countries might have positive spill-over effects on the whole EU economy by generating demand for goods produced by other EU countries. Higher German wages would therefore contribute to a rebalancing of the eurozone and the entire EU economy (Council Recommendation Germany 2017/C 261/05; Buti and Turrini, 2017). EU executives continued to issue similar prescriptions until 2019, demanding higher German wages, indicating that the actions undertaken by German policymakers were seen to be insufficient. Given the prescriptions' weak coercive power, however, German labour policymakers were not too concerned about that.

Our comparison of all NEG prescriptions on wage levels exposed their differing policy orientations across countries. This divergence is related to countries' different position in the integrated but also uneven EU economy. On the one hand, EU executives urged Ireland and Romania to cut the public sector wage bill and national minimum wages. As both countries were subject

³ In August 2011, the then Italian prime minister, Silvio Berlusconi, received a confidential letter from the chairmen of the ECB and the Bank of Italy that urged his government to 'significantly reduc[e] the cost of public employees, by strengthening turnover rules and, if necessary, by reducing wages' (Draghi and Trichet, 2011) to meet the terms of the ECB's bond-buying programme.

to MoU conditionality, the coercive power of these prescriptions was very significant. EU executives justified their prescriptions with the countries' need to curtail public spending and wages to regain national competitiveness and to consolidate public finances. On the other hand, EU executives urged Germany to promote wage growth, to expand its internal demand, and to reduce its current account surplus with the aim of correcting the corresponding macroeconomic imbalances within the EU economy. As the coercive power of these prescriptions was weak, the German government was effectively able to ignore them. The diverging orientation of NEG prescriptions on wages across countries at the core and at the periphery of the uneven EU economy made it very difficult for European trade unions to challenge these NEG prescriptions jointly in countervailing transnational collective action.

NEG Prescriptions on Bargaining Mechanisms

Bargaining mechanisms refer to the procedures for the negotiation of terms and conditions of employment between employers and workers, often collectively represented by trade unions. All countries, except Germany, received at least one prescription under this category. All the prescriptions, bar one, had a commodifying orientation, aimed at marketising bargaining mechanisms by fostering a less solidaristic logic of bargaining.

In 2011, the prescriptions of the EU–IMF bailout programme urged Romania to 'implement reforms to the wage-setting system allowing wages to better reflect productivity developments in the medium term' (MoU, Romania, 28 June 2011). The centre-right government implemented its demands unilaterally by a new Social Dialogue Act in 2011, which it adopted as a decree-law, to prevent any labour-friendly amendments in parliament. The law led to a profound decentralisation of Romania's collective bargaining system. Whereas Romania's 2003 labour code supported multi-employer collective bargaining at national level, the 2011 Social Dialogue Act abolished the provisions supporting cross-sectoral bargaining and limited extension mechanisms for sectoral agreements (Marginson and Welz, 2015; Trif, 2016). The result was a dramatic drop in the coverage of bargaining, from 98 per cent in 2010 to 35 per cent in 2011 (Trif and Paolucci, 2018). In 2018, EU executives finally acknowledged that drop, albeit without mentioning their active role in fostering the fall. In their 2018 round of CSRs, they urged the Romanian government to 'improve the functioning of social dialogue' (Council Recommendation Romania 2018/C 320/22). The coercive power of this decommodifying request was weak however, by contrast to the commodifying prescriptions on bargaining mechanisms issued when Romania was subject to the MoU conditionalities of the bailout programme.

In 2009, Ireland's long-standing system of tripartite *national* wage bargaining known as social partnership had collapsed following the government's decision to unilaterally cut wages in the public service before it signed up to the EU-IMF bailout programme (Maccarrone, Erme, and Regan, 2019). Even so, the first MoU urged the government to review the only existing *sectoral* wage-setting mechanisms still in place, namely, the Employment Regulation Orders (ERO) and the Registered Employment Agreements (REA) (MoU, Ireland, 28 November 2010). Simultaneously, several employers challenged the ERO- and REA-systems in court. In turn, the Irish High and Supreme Courts declared the ERO- and REA-related provisions that had been in place since 1946 [*sic*] unconstitutional (Maccarrone, Erme, and Regan, 2019: 319) and declared all existing EROs and REAs invalid. Subsequently, the government nevertheless reintroduced similar provisions in labour law, but these provisions allowed companies in financial difficulties to opt out from the terms determined at sectoral level (Maccarrone, Erme, and Regan, 2019). This echoed the concerns of the Commission, which demanded that the reform must 'ensure that wages are adequately linked to productivity levels' (EAP, Ireland, Autumn 2012 Review, 25 January 2013: 37–38).

The NEG prescriptions for Italy also included demands to introduce clauses allowing opt-outs from sectoral bargaining. Since 2011, the Italian government had repeatedly been told to ensure 'that wage growth better reflects productivity developments as well as local and firm conditions, including clauses that could allow firm level bargaining to proceed in this direction' (Council Recommendation Italy 2011/C 215/02). In the summer of 2011, under pressure from both the Commission and the ECB, the Italian centre-right government pushed through an emergency decree-law that would have foreseen a disorganised decentralisation of collective bargaining from sectoral to firm level. This motivated even Italy's largest employer confederation, Confindustria, to oppose the reform, as it would have undermined its *raison d'être* as an organisation conducting collective bargaining on the employers' side (Meardi, 2014; Bulfone and Afonso, 2020). In response, unions and employers signed an autonomous agreement that reaffirmed the importance of sectoral bargaining at national level. This rendered the government's decree-law ineffective (Meardi, 2014; Bulfone and Afonso, 2020). Collective bargaining decentralisation nonetheless remained high on NEG's agenda, as NEG prescriptions continued to request a greater use of firm-level bargaining until 2017.

Germany is the only country in our sample that did not receive any NEG recommendations on collective bargaining. On the one hand, the lack of any NEG prescription on collective bargaining decentralisation is not surprising, given the opt-out clauses introduced by the pathbreaking 2004 Pforzheim

agreement in the metalworking and electrical industry and a similar agreement in the chemical sector, which unions and employers concluded in response to ever-increasing horizontal market integration pressures. After all, the Commission had already cited these agreements as virtuous examples in 2010 (European Commission, 2010b: 39, 132). On the other hand, Germany did not receive decommodifying NEG prescriptions in this field, despite the fact that the recitals accompanying the NEG prescriptions in favour of higher wages (see above) also acknowledged the fall in collective bargaining coverage.

Hence, the NEG prescriptions on bargaining mechanisms went in a commodifying direction, except for the weak 2018 prescription for Romania that called for improved social dialogue. The coercive power of the commodifying prescriptions was very significant (Ireland and Romania) or significant (Italy). The prescriptions for Ireland, Italy, and Romania demanded a further decentralisation of collective bargaining from cross-sectoral and sectoral level to firm level, to better align workers' wages and conditions to their employers' productivity levels to foster national competitiveness.

NEG Prescriptions on Hiring and Firing Mechanisms

Hiring and firing mechanisms are a key dimension of employment relations, as they define the boundaries of employment. Commodifying prescriptions under this category aimed to increase labour market 'flexibility', thus exposing workers to the vagaries of the market. Policymakers can increase labour market flexibility in two ways: either by increasing the use of more flexible (i.e., more precarious) forms of employment contracts or by making permanent contracts more flexible (i.e., less stable) by easing workers' protection against dismissals. Whereas Italy and Romania received only commodifying prescriptions in this field, Germany received some decommodifying prescriptions aimed at reducing the use of precarious contracts.

The NEG prescriptions issued to Romania emphasised the need to use more flexible employment contracts. In 2011, its government was urged to 'widen the set of cases for use of fixed-term contracts' (P-MoU, Romania, 29 June 2011). The centre-right Romanian government implemented this prescription in turn, with a radical reform of the Labour Code that greatly expanded the use of atypical employment contracts and reduced the scope for collective bargaining (Trif, 2016). The government pushed these changes through unilaterally by means of a decree-law, which enabled it to sideline social dialogue with trade unions and to preclude labour-friendly amendments by the Romanian parliament. When the subsequent social democratic Romanian government was considering reversing some of these changes

however, the EU executives and the IMF urged them to ensure ‘that any further amendment to labour legislation will be undertaken *in consultation with all stakeholders* through ordinary legislative procedures’ (emphasis added) (P-MoU, Romania, 6 November 2013) to prevent the adoption of measures that would go against employers’ interests.

In the Italian case, EU executives cited the segmentation of its labour market, created by several waves of liberalisation of precarious contracts since the end of the 1990s, as a compelling reason to reduce the protection of workers with permanent contracts against unjustified dismissals provided by the country’s Workers’ Statute (Council Recommendation Italy 2011/C 215/02). As mentioned above, in 2002, an earlier attempt by the Berlusconi government to dismantle such protections had failed as a result of strong labour opposition. In response to the corresponding 2011 NEG prescription, the former EU Commissioner Mario Monti’s technocratic government managed to weaken the protection against unjustified dismissal granted by Art. 18 of the Italian Workers’ Statute. As the Monti government depended on support from centre-left Partito Democratico (PD), which had links to the union movement, the scope of the deregulation nevertheless remained limited.

Only two years later however, EU executives threatened the opening of an excessive deficit procedure against Italy. In response, the new centre-left government led by the PD’s Matteo Renzi pushed through a new Jobs Act (and a public sector reform, see Chapter 7) to get more flexibility from EU executives under the SGP in exchange. This was possible, as the Juncker Commission agreed to interpret the SGP more flexibly if the respective member state implemented a major structural reform instead (see Chapter 2). The ensuing Jobs Act introduced a new type of open-ended employment contract with fewer protections against dismissals (Rutherford and Frangi, 2018). As in the Romanian case mentioned above, the reform was approved through an executive decree-law that prevented any labour-friendly amendments in parliament. Following its approval, the Commission argued that ‘swift implementation of the “Jobs act” should improve entry and exit flexibility, enhance labour reallocation and promote stable open-ended employment, most notably for the young’ (Commission, Country Report Italy SWD (2015) 31: 32).

As Ireland was already one of the EU states with the lowest employment protection, there was little scope for further EU intervention in that area, during the bailout programme or afterwards (Prosser, 2016). As we shall see, EU executives and the IMF nevertheless urged the Irish government to change the few sectoral wage-setting mechanisms that existed there to achieve even greater ‘labour market flexibility’ (EAP, Ireland, Autumn 2011 Review, 28 November 2011).

In contrast, from 2013, Germany received several NEG prescriptions that urged its government to ‘facilitate the transition from non-standard employment such as mini jobs into more sustainable forms of employment’ (Council Recommendation Germany 2013/C 217/09). These prescriptions point in a decommodifying direction, as they reflect a concern for the increase of in-work poverty following the growth of precarious contracts such as mini-jobs (Commission, Country Report Germany SWD (2013) 355). Mini-jobs were based on a particular type of part-time employment contract with a tax-free wage up to €450 per month but without any entitlements to unemployment and health insurance or pension payments. The widespread use of these mini-jobs was facilitated by the Hartz labour market reforms of the Schröder Government in the 2000s, mentioned above. Although the NEG prescriptions on mini-jobs addressed some of the negative effects associated with their widespread use, the Commission still welcomed the Hartz reforms that propagated them in the first place (Commission, Country Report Germany SWD (2013) 355: 19).

The NEG prescriptions on hiring and firing mechanisms point in two diverging directions, as also happened in the case of those on wage levels. The prescriptions for Italy and Romania were commodifying, as they exposed workers to greater market pressures. EU executives justified their calls for more labour market flexibility in these countries to increase companies’ competitiveness, to increase the number of people in employment, and to reduce labour market segmentation between more and less protected workers (Rubery and Piasna, 2016). The coercive power of these prescriptions was significant. Ireland did not receive any prescription in this area, as its hiring and firing mechanisms were already very lax. By contrast, NEG prescriptions urged the German government to foster the transition from precarious mini-job contracts to more stable forms of employment. As their coercive power was weak however, the German government did not feel obliged to enforce them.

NEG: Fostering Vertical Interventions on Employment Relations

The shift to the NEG regime increased the salience of EU vertical interventions in employment relations. The analysis of NEG prescriptions in their semantic context highlights the salience of a commodifying script that aims to increase companies’ and countries’ competitiveness through the curtailment of wages and the marketisation of bargaining and hiring and firing mechanisms. This script informed all commodifying prescriptions issued to Ireland, Italy, and Romania across the three categories, whether they had a merely quantitative (wage levels) or qualitative (bargaining and hiring and firing mechanisms)

dimension. By contrast, there was little need for commodifying NEG prescriptions for Germany, as German policymakers had already moderated wages and decentralised collective bargaining mechanisms in the 2000s in response to increased horizontal market integration pressures, as outlined above.

Whereas most NEG prescriptions in employment relations follow a commodification script, some of them point towards decommodification. Thanks to our analysis of NEG prescriptions in their semantic context (Chapter 5), we could also map the policy rationales that informed them (Online Appendix, Tables A6.1–A10.4). From 2012, Germany's policymakers received several prescriptions that urged them to increase wages. These decommodifying prescriptions are only partially related to a social concern though. It is instead Germany's position in the integrated but also uneven EU economy that informs most of these prescriptions. EU executives considered Germany's consistent current account balance surpluses as a problem that might threaten the proper functioning of the EU economy. The decommodifying NEG prescriptions issued therefore aimed to nudge German policymakers to increase German wages to contribute to a rebalancing of the EU economy. This policy rationale, however, does not clash with the commodifying script that we have detected above. Instead, it rather complements it, as both scripts follow a similar economic logic, which sees increased competitiveness as a function of wage levels and flexible employment contracts.

We also detected another decommodifying prescription on wage levels, which does not contradict the commodifying script either, namely, the 2012 NEG prescription that allowed the Irish government to reverse the cut to the national minimum wage that the MoU had previously mandated. This measure did not contradict the commodifying script, as it was accompanied by a concomitant reduction in employers' payroll taxes to offset its impact on ULC, according to a logic that sees a reduction in ULC as necessary to increase competitiveness.

The prescriptions that demanded the German government to increase the transition from precarious contracts to more stable forms of employment are semantically linked to concern about labour market segmentation. Neither is this script in contradiction with the commodifying script. Indeed, it mirrors the (stronger) commodifying prescriptions addressed to Italy and Romania on hiring and firing mechanisms that demanded that their employment contracts be made more precarious under the same stated rationale.

The single prescription addressed to Romania to 'improve social dialogue', which recognises the fall in (sectoral) collective bargaining coverage as problematic, is semantically linked to a policy rationale concerned with enhancing social concertation. From 2018, the prescription addressed to Germany to

increase wage growth was also semantically linked to a concern for the fall in collective bargaining coverage. Albeit related to few prescriptions, this script is relevant, as it marks the beginning of a shift in the EU executives' view on the role of social dialogue and solidaristic wage-setting institutions, which became more prominent from 2019 onwards, as we discuss in the concluding section.

The few prescriptions related to this policy rationale are also the only ones among all NEG prescriptions issued in the decade 2009–2019 that we could link to a social concern with a more equal distribution between labour income and capital profit. This is striking, as a more equal distribution of wage and capital incomes has historically been a key concern of European trade unions' wage policy (Erne, 2008). Instead, commodifying prescriptions on wage levels, bargaining mechanisms, and hiring and firing mechanisms dominated the picture, even after the most acute phase of the financial crisis.

In comparison with the previous phases of EU governance of employment relations, the establishment of the NEG regime highlights a qualitative shift. Until 2008, the process of EU integration had exercised only indirect – albeit strong – *horizontal* commodifying pressures on national industrial relations. Although the impetus for *vertical* decommodifying legislation had run out of steam at the end of the 1990s, even a sceptical observer of social Europe such as Wolfgang Streeck conceded that 'there have also been few examples, if any, of European regulation mandating deregulation of industrial relations at national level' (Streeck, 1998: 435). Throughout the 2000s, *vertical* interventions by EU executives aimed at commodifying wages and workers' rights were not successful either, either because of protests by labour and social movements (e.g., in the case of the draft Services Directive) or because commodifying EU interventions were embedded in non-binding policy coordination processes, such as the OMC.

Whereas the CJEU opened the way for *vertical* commodifying interventions on labour policy in its Laval Quartet rulings, it was the adoption of the NEG regime that allowed the EU's *executive* arms, namely, the Commission and the Council, to intervene in employment relations more directly and much more broadly. In turn, national governments often implemented NEG prescriptions through unilateral acts, such as emergency decree-laws, which limited organised labour's capacity to influence national policymakers. Although some scholars have argued that 'there is not and never will be' any coordination of wage policies in Europe (Höpner and Seeliger, 2018: 415, our translation), this coordination now exists; but as a result of the EU's NEG regime rather than transnational union action. Section 6.4 thus analyses European unions' responses to NEG interventions in employment relations and to the horizontal market pressures and vertical EU interventions that preceded them.

6.4 EUROPEAN UNIONS: FACING HORIZONTAL AND VERTICAL EU INTEGRATION PRESSURES

Historically, most unions supported the European integration process, while also demanding a more social EU (Horn, 2012). As outlined above, Delors' pledge to complement market integration with a *Social Europe* was fundamental for getting unions' support for the relaunch of the EU integration process in the 1990s. The ETUC, along with Europe's centre-left parties, supported Delors' idea of a supranational, social EU as a tool to govern market forces in a context of an increasingly globalised economy (van Apeldoorn, 2002).

Whereas the ETUC became a social partner at EU level, many of its affiliates were part of national-level corporatist agreements that aimed to make their national economies more competitive in an increasingly transnational marketplace (Rhodes, 2000), as the EU integration process did not question their formal autonomy. When EU policymakers nevertheless tried to commodify employment relations directly, for example in 2004 through the draft Services Directive, trade unions' coordinated transnational collective actions successfully challenged them (Bieler, 2007; Parks, 2015). In 2000, the ETUC tried to contain the increased transnational market pressures on national wage bargaining rounds through the adoption of a joint wage bargaining benchmark equivalent to the sum of productivity growth and inflation. This European coordination attempt, however, largely failed, because its affiliates were not implementing it in practice (Erne, 2008).

As Laura Horn (2012: 579) noted, until the 2008 financial crisis, European unions had 'been over-reliant on the institutional structures of the European Union, and concomitant hopes for a European social model'. The EU's response to the crisis led to a more confrontational approach by the ETUC. Despite having supported previous developments in European economic governance, the confederation opposed the Six-Pack laws as an attempt to force 'member states to undertake a coordinated contraction of demand' (Erne, 2015: 352). On the same grounds, the ETUC opposed the Fiscal Treaty (Béthoux, Erne, and Golden, 2018). Besides lobbying the European Parliament, the confederation promoted Euro-demonstrations and action days that targeted austerity policies and the NEG regime. This increase in the ETUC-led mobilisations and demonstrations since 2008 politicising the EU governance of employment relations is shown in Table 6.3, with data extracted from our Transnational Socioeconomic Protest Database (Erne and Nowak, 2023).

Table 6.3 includes protest events on employment relations targeting political authorities, using the database's political level category, excluding actions at company, sectoral, and systemic level.

TABLE 6.3 *Transnational protests politicising the EU governance of employment relations (1993–2019)*

Date	Locations	Action Type	Topic	Coordinators
2 April 1993	Brussels, multi-sited	Demonstration	'Together for employment and social Europe'	ETUC
28 May & 10 June 1997	Brussels, multi-sited	Strike, demonstration	'Europe must work' campaign	ETUC
14 April–14 June 1997	Multi-sited	Demonstration	'Employment is a right, we're entitled to an income'	Euromarches
16–17 June 1997	Amsterdam	Demonstration	EU summit	Social movements, unions
20 November 1997	Luxembourg	Demonstration	'For a social Europe and full employment'	ETUC
8 May 1998	Strasbourg, multi-sited	Demonstration	Action day of the unemployed	Social movements, unions
13 June 1998	Cardiff	Demonstration	No to Business Europe	Social movements, unions
24–29 May 1999	Cologne	Demonstration	Counterdemonstration EU summit	Euromarches, social movements
10–11 December 1999	Helsinki, multi-sited	Demonstration	European Day of Action against workfare and for a guaranteed income	Social movements, unions
23–24 March 2000	Lisbon	Demonstration	Counterdemonstration EU summit	Social movements, unions
9–11 June 2000	Brussels	Demonstration	Counterdemonstration European business summit	Social movements, unions
19 June 2000	Porto	Demonstration	'For full employment in Europe'	ETUC
31 October 2000	Brussels	Demonstration	European Works Council (EWC) Directive	ETUC
6–7 December 2000	Nice	Demonstration	'For employment in Europe and social rights'	ETUC, social movements, unions
15 June 2001	Gothenburg	Demonstration	'For another Europe'	Social movements, unions
16 June 2001	Multi-sited	Demonstration	'For another Europe'	Social movements, unions
21 September 2001	Liege	Demonstration	'More Europe, a more social, democratic and citizens' Europe'	ETUC

19 October 2001	Ghent	Demonstration	'For social Europe and solidarity'	ETUC, Belgian unions
13 December 2001	Brussels	Demonstration	Europe that's us! – 'The euro arrives... and employment?' campaign	ETUC
14 March 2002	Barcelona	Demonstration	'Europe that's us!'	ETUC
16 March 2002	Barcelona	Demonstration	'Against a Europe of capital, another Europe is possible'	ETUC
22 June 2002	Sevilla	Demonstration	'Against the Europe of capital and war'	Social movements, unions
21 March 2003	Brussels, multi-sited	Demonstration	'For a democratic citizens' Europe'	ETUC
20 June 2003	Thessaloniki	Demonstration	Counterdemonstration EU summit	Social movements, unions
22 June 2003	Sevilla	Demonstration	'Against the Europe of capital and war'	Social movements, unions
4 October 2003	Rome	Demonstration	'For social Europe'	ETUC
2–3 April 2004	Multi-sited	Demonstration	'Our Europe – Europe that's us!' for workers' rights	ETUC
5 June 2004	Brussels	Demonstration	'Non à la directive Bolkestein – Oui à l'Europe sociale'	ETUC, social movements, unions
24 November 2004	Brussels	Demonstration	'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	Bolkestein Directive	Social movements
15 October 2005	Multi-sited	Demonstration	Services Directive, European Day of Action	ETUC, social movements, unions
25 October 2005	Strasbourg	Demonstration	Counterdemonstration Services Directive	ETUC, social movements, unions
11 February 2006	Strasbourg, Berlin	Demonstration	Counterdemonstration Services Directive	DGB, ETUC, Attac

(continued)

TABLE 6.3 (continued)

Date	Locations	Action Type	Topic	Coordinators
14 February 2006	Strasbourg	Demonstration	Euro-demonstration: Services Directive 'Services for the people'	ETUC
20 June 2007	Brussels	Demonstration	'On the offensive with the ETUC – Defend fundamental rights, social Europe, and more and better jobs'	ETUC
5 April 2008	Ljubljana	Demonstration	'More pay – more purchasing power – more equality', protest against stagnation in salaries and rising inequality	ETUC
5 July 2008	Luxembourg	Demonstration	European trade union assembly against the rulings of the EU Court of Justice on the posting of workers	ETUC
7 October 2008	Brussels, multi-sited	Demonstration	1st World Day of Action 'For decent work and decent pay'	ITUC, ETUC
16 December 2008	Strasbourg	Demonstration	Working Time Directive: 'Priority to workers' rights, not longer working hours', against longer working hours	ETUC
14–16 May 2009	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
21 June 2011	Luxembourg	Demonstration	Euro-demonstration: 'No to austerity – For a social Europe, for fair pay, investments and jobs', and against the type of economic governance that the European Union wants to impose on workers in Europe	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	'Enough is enough! – Alternatives do exist – For employment and social justice' campaign	ETUC
14 March 2012	Luxembourg	Demonstration	Against the absence of minimum standards in terms of wages, social insurance, and pensions	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
23 January 2013	Brussels	Demonstration	Posting of Workers Directive and in favour of European social identity card	Unions
13–14 March 2013	Brussels, multi-sited	Strike, demonstration	'No to austerity! Yes to jobs for young people!'	ETUC, unions, social movements
15 May 2013	Multi-sited	Demonstration	Against weakening of Posting of Workers Directive	Unions
28 May 2013	Brussels	Demonstration	Demanding that EU rules on public procurement fully respect workers' rights	Belgian unions, UNI, ETUC, EFFAT, EFBWW
1–2 June 2013	Multi-sited	Demonstration	Against EU's NEG regime	Unions, social movements
3 July 2013	Berlin	Demonstration	Youth employment	DGB, ETUC
4 April 2014	Brussels	Demonstration	Against unemployment	ETUC
7 March 2014–30 January 2015	Online	European Citizens' Initiative	New Deal 4 Europe. For a European special plan for sustainable development and employment	newdeal4europe
11 February 2015	Multi-sited	Demonstration	Change Greece – Change Europe	Unions, social movements
18 March 2015	Frankfurt	Demonstration	Against EU's NEG regime	Blockupy

(continued)

TABLE 6.3 (continued)

Date	Locations	Action Type	Topic	Coordinators
21 June 2015	Multi-sited	Demonstration	Solidarity with Greece	Unions, social movements
15 October 2015	Multi-sited	Demonstration	EU summit	Euromarches
22 May 2016–22 May 2017	Online	European Citizens' Initiative	Let us reduce the wage and economic differences that tear the EU apart	Jobbik
16 June 2016	Luxembourg	Demonstration	Posting of Workers Directive	EFBWW
23 June 2017	Multi-sited	Demonstration	'Public sector workers need a pay rise'	EPSU, ETUCE
26 April 2019	Brussels	Demonstration	'A fairer Europe for workers'	ETUC

Source: Transnational Socioeconomic Protest Database (Erne and Nowak, 2023). For its methodology see Erne and Nowak (2022).

In November 2012, following a motion presented by the Spanish trade union confederations at the 2011 ETUC congress, the ETUC promoted a European strike and action day against the EU's austerity measures. This led to simultaneous general strikes in four countries (Greece, Italy, Portugal, and Spain), and demonstrations and symbolic actions took place in other member states (Dufresne and Pernot, 2013).

Nevertheless, this heterogeneity in the forms of mobilisation highlights how difficult it was to transnationally coordinate national union movements against commodifying NEG prescriptions in employment relations (Bieler and Erme, 2014). Traditional obstacles to transnational union action include national trade unions' different ideological orientation and attitude towards mobilisation, as well as their power resources, which were all relevant in this case. It was, however, the diverging orientations of NEG prescriptions on employment relations highlighted in section 6.3, as well as the fact that national governments implemented similar commodifying labour market reforms at different times, that played a crucial role in reducing the incentive for a timely coordinated labour action at European level.

Despite these difficulties in coordinating transnational action, the ETUC's increased role in Euro-mobilisations led some scholars to wonder whether it had shifted its approach to a more confrontational one (Hom, 2012). In 2014 however, the ETUC had already participated in a review by the Commission of its NEG instruments and agreed to become involved in the new architecture of European economic governance (Erme, 2015). The ETUC also proposed changes, such as greater fiscal flexibility under the SGP, greater involvement of social partners, and a rebalancing of some of the MIP scoreboards. Yet, as Erme (2015: 356) notes, 'it is very unlikely that technical discussions about indicators will increase European unions' capacity to inspire transnational social mobilizations'.

During the tenure of the Juncker Commission (2014–2019), which promoted a rhetorical shift away from austerity and attempted to increase the 'ownership' of NEG prescriptions by national governments and social partners, the ETUC increased its efforts to promote a better involvement of trade unions *within* the European Semester rather than leading a more confrontational approach vis-à-vis commodifying NEG labour-policy prescriptions. This is also shown in our database of protest events, which reveals a drop in ETUC-led mobilisations politicising the EU governance of employment relations since 2014 (Table 6.3). In autumn 2015, Jean-Claude Juncker launched the idea of a European Pillar of Social Rights in turn, first in the European Parliament and then at the ETUC congress in Paris, in which the EU would reaffirm its social principles and values. In 2017, the EU institutions adopted the Social Pillar at their social summit in Göteborg.

At the subsequent ETUC congress in Vienna in 2019, delegates therefore gave Juncker a very warm welcome. The ETUC congress also noted NEG's persistent 'market bias' (ETUC, 2019: 45) but hoped that this could be corrected by a greater involvement of social partners in it (Golden, 2019). The ETUC congress' action programme only tasked its affiliates to seek 'an adequate level of dialogue with their governments and improve their influence on the drafting and implementation of national reform programmes, stability/convergence programmes and CSRs' (ETUC, 2019: 48), even though it was quite unlikely that the force of argument without the argument of force would tilt the balance of power within the NEG framework in favour of labour and its decommodifying objectives (Bieler, Jordan, and Morton, 2019).

Simultaneously, however, the ETUC urged EU policymakers to reaffirm their social commitments through directives adopted via the EU's ordinary legislative procedure, which involves the more labour-friendly European Parliament. This strategy bore more results. They included a revision of the Posting of Workers Directive, which had been undermined by the Laval Quartet of CJEU judgments (see section 6.2). The revision process happened in two steps: first, through an Enforcement Directive (2014/67/EU), which aimed to prevent a circumvention of the posting rules, and then a revision of the entire directive, which was finalised in 2018 (Directive 2018/957).⁴ The revised directive extended the core of employment rights granted to posted workers from a minimum wage to all aspects of remuneration. Although governments from CEE states opposed the revision in the interest of CEE employers, unions from CEE countries supported it in line with the ETUC's position (Furåker and Larsson, 2020).

EU policymakers also revised older EU directives on employment rights of precarious workers and women in pregnancy, leading, respectively, to the Transparent and Predictable Working Conditions Directive (2019/1152) and the Work–Life Balance for Parents and Carers Directive (2019/1158). These interventions followed the proclamation of the European Pillar of Social Rights mentioned above, which aimed to reaffirm the EU's existing social principles and values. Accordingly, these acts did not seek to enlarge the scope of workers' rights at EU level. The Work–Life Balance Directive, for example, added only ten days of paid paternity leave to the existing four months of unpaid leave. Eventually, however, the shift to NEG unintentionally helped the adoption of EU directives in new areas also, namely, the

⁴ Labour's standing in this process was also strengthened by the *Elektrobudowa* and *Regiopost* cases, which the CJEU used to readjust its Laval Quartet judgments (Garben, 2017).

2022 Directive on Adequate Minimum Wages, as we discuss in the conclusion to this chapter.

6.5 CONCLUSION

This chapter has described the evolution of the EU governance of employment relations. Until the 2008 financial crisis, EU influence on member states' employment relations was felt mostly as the result of horizontal market pressures triggered by the relaunch of the integration process at the end of the 1980s. Although the SEA and the Maastricht Treaty enlarged the scope for decommodifying EU directives in the field of labour and social policymaking, EU legislators did not intervene in key employment relations areas such as pay, collective bargaining, and the right to strike, which are outside the fields outlined in Art. 153 (1) TFEU. In any case, the impetus for introducing market-correcting EU legislation faded away throughout the 1990s, with supply-side economics becoming popular even among centre-left parties. In turn, direct commodifying EU prescriptions on employment protection legislation and wage bargaining arising from new governance mechanisms like the OMC had little coercive power. The Commission's attempts to intervene in national industrial relations via its 2004 draft Services Directive also failed as a consequence of the countervailing transnational labour protests and the subsequent legislative amendments that they triggered.

Until the 2008 crisis, only the CJEU had intervened directly in member states' collective bargaining systems, via its *Laval Quartet* judgments. The establishment of the NEG regime after 2008, however, gave EU executives greater intervention capacities in employment relations in both the private and the public sector. This chapter has shown how employment relations became a prime target of NEG prescriptions during the last decade. In our in-depth analysis of NEG prescriptions on wage levels, bargaining, and hiring and firing mechanisms for Germany, Italy, Ireland, and Romania, we have highlighted these interventions' different policy orientations, which we related to the different positions of these countries in the integrated but also uneven EU economy. Although NEG commodifying interventions in employment relations led to an increase in Euro-mobilisations, these diverging orientations limited the capacity of European trade unions to politicise and contest NEG prescriptions across borders, even at the height of the eurozone crisis. In 2014, the ETUC shifted its strategy to a classical inside lobbying approach, even though such an approach to NEG hardly promised to tilt the balance of power within the NEG framework in favour of labour.

Following the new challenges brought by the outbreak of the Covid-19 pandemic however, the European governance of employment relations might be ready for new changes. After member states agreed to set up a recovery and resilience fund to be financed through a joint bond issue, a broader revision of the SGP and the MIP might be in sight (see Chapter 12). However, the most significant developments for European employment relations might come from a new impetus for EU directives in the social field, promoted by the European Commission led by Ursula von der Leyen. At the start of her mandate in autumn 2019, von der Leyen announced the intention to introduce ‘a legal instrument to ensure that every worker in our Union has a fair minimum wage’ (von der Leyen, 2019: 9). Eventually, in 2020, the Commission decided to propose a legally binding directive (COM (2020) 682 final) to establish a framework for adequate minimum wages across member states.

As Art. 153(5) TFEU excludes pay from the remit of EU law, Business Europe questioned the legal basis for the proposed directive. Their EU competence argument nevertheless failed to gain traction in the EU policymaking process. After the CJEU, in its extensive jurisprudence on NEG (see Chapter 3), justified EU executives’ *commodifying* ad hoc interventions on wage levels through NEG prescriptions, one would find it hard to argue that EU legislators would not also possess the competence to *decommodify* EU interventions in this field. The legal services of the European Commission, Council, and Parliament thus agreed to use the EU’s right to propose directives in the field of ‘working conditions’ (Art. 153(1)(b) TFEU) as the legal basis for the proposed directive.

To overcome the objections of the member states with no statutory minimum wage (e.g., Denmark, Sweden, Austria, and Italy), the Directive on Adequate Minimum Wages (2022/2041) does not oblige all states to introduce one. Instead, it suggests a two-fold approach for granting adequate minimum wages. For countries with statutory minimum wages, the directive first defines a framework for setting adequate minimum wage levels, suggesting various procedures to do so, such as proposed reference values, timely revisions, indexation, or consultations with social partners. Secondly, as states with higher collective bargaining coverage rates tend to have fewer low-wage workers, the directive also promotes collective bargaining ‘in particular at sector or cross-industry level’ (Art. 4) and requires those member states with a collective bargaining coverage lower than 80 per cent to establish an action plan to increase such coverage.

Although the effects of the directive will depend on its implementation, even its adoption signals a paradigm shift after a decade of commodifying

NEG interventions on wages and workers' rights. Moreover, the Minimum Wage Directive is not the only new area of employment relations where the Commission has decided to intervene.

EU legislators also acted to enforce the principle of equal pay for work of equal value, as enshrined in EU legislation. In May 2023, the European Parliament and the Council adopted a directive on pay transparency (2023/970) that requires companies with more than 100 employees to provide information on the pay gap between their female and male employees. If such a gap is greater than 5 per cent, and the company cannot justify this on 'objective' reasons, the company will have to carry out an equal pay assessment with its workers' representatives to correct the gender pay gap.

With the United Kingdom's exit from the EU, labour-friendly forces might find it easier to achieve even more new EU directives in the future. Although commodifying NEG prescriptions on wages will be less likely if they go directly against the new directive on adequate minimum wages, it remains to be seen whether the new decommodifying EU laws will be able to protect wages and workers' rights better against the increased horizontal market pressures that workers have been facing since the late 1980s.