

The Hard Laws of the Market: Accounting Juridification and the Demise of Public-Private Partnerships in Europe

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Abstract: Bridging the gap between political economy and the sociology of law, this paper advances the concept of “accounting juridification” to explain the understudied, yet persistent decline of public-private partnerships (PPPs) in Europe despite, significant initiatives to promote them. Detailed examination of Eurostat’s legal prerogatives and accounting case law highlights two stages of “accounting juridification”, defined as a process of law’s expansion to the domain of national accounting. Under fragmentary accounting juridification, European accountants decisively supported the PPP market by paving the way for off-balance sheet recording. However, under extensive accounting juridification, they subsequently reduced the attractiveness of PPPs by enshrining a more stringent case law into European law. This analysis contributes to current debates on investment policies in Europe by demonstrating how accounting juridification might impact the domestic implementation of grand strategies. Accordingly, it also sheds new light on the repoliticization of European fiscal rules over the past decade.

Keywords: Accounting Juridification, Public-Private Partnerships (PPPs), Accounting Case Law, Off-Balance-Sheet Policymaking, Political Economy, Economic and Monetary Union (EMU), Eurostat.

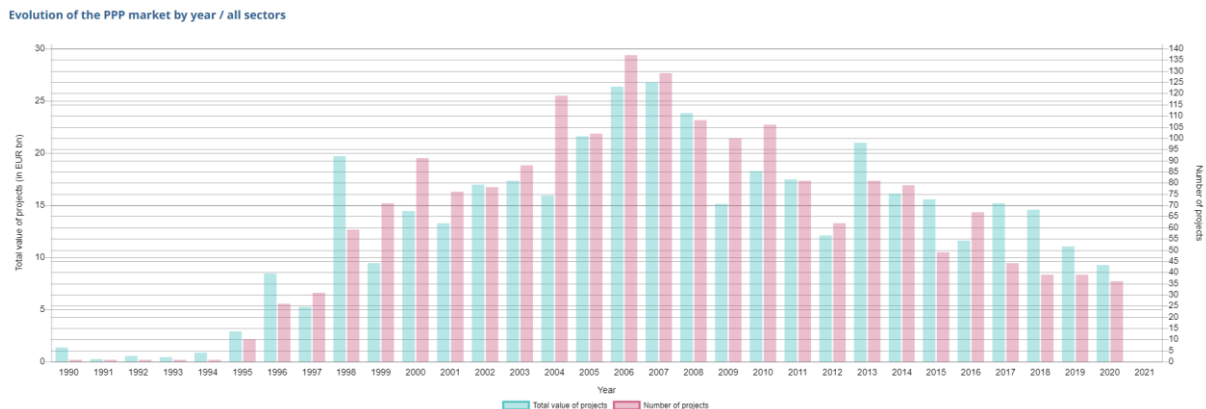
I. Introduction

Public-private partnerships (PPPs) are a global phenomenon, which has sparked abundant literature and considerable controversy in many disciplines, from public administration to public law and political economy (see for instance Osborne 2000; Flinders 2005; Hodge and Greve 2007; Custos and Reitz 2010; Whiteside 2020; Liebe and Howarth 2020). However, this concept remains “a grammar of multiple meanings” (Linder 1999), whose definition varies according to the contexts in which it is used. In the case of infrastructure financing (which is the focus of this paper), PPPs mostly take the form of a long-term contract between a public authority and a consortium of private companies over the delivery of a package of works and/or services (Greve and Hodge 2013). This type of contract has many variants (design, build, finance, operate and/or maintain), depending on the degree of involvement and risk of the private sector.

The trajectory of PPPs varied from one continent to another. In Europe, the United Kingdom (UK) catalyzed the spread of this technique (Broadbent and Laughlin 2003). From 1992, the Conservative Chancellor of the Exchequer, Norman Lamont, developed the Private Finance Initiative (PFI) to channel private funds into public infrastructure: PFIs extended the influence of the private sector in the management of public services without resorting to new waves of privatization, deemed politically risky. When Tony Blair came to power in 1997, PFIs grew spectacularly. They symbolized the collaboration between the public and private sectors promoted by the government and New Labour’s pacified relationship with the financial industry of the City of London (Hellowell 2010; Rutherford 2003).

As of today, the UK remains the undisputed leader of the PPP market in Europe. According to the European PPP Expertise Centre (EPEC), a PPP expertise network established in 2008 at the European Investment Bank (EIB), European countries (including the UK, but except Estonia and Malta) concluded over 1,800 PPP projects, worth €344 billion between 1990 and 2020. The UK accounted for 55.8% of these projects (1049) and 46.4% of their total market value (€160 billion)—well ahead of France (225 projects; €39 billion) and Spain (162 projects; €35 billion). In contrast, PPPs have remained quasi-absent in nine countries: Croatia, Czech Republic, Finland, Cyprus, Bulgaria, Lithuania, Luxembourg, Romania and Slovenia.

Figure 1. Evolution of the PPP Market in Europe (1990-2020)



Source: EPEC (<https://data.eib.org/epec/sector/all>).

The most striking feature of the European PPP market is its dual trend. As Figure 1 shows, its ascent started in the mid-1990s, reaching a peak a decade later—both in the number of projects

(137 in 2006) and total value (€26.8 billion in 2007). Since then, it has followed a downward trend, returning to levels close to the late 1990s. If this drop is partly due to the global financial crisis (GFC), its protracted nature remains puzzling considering a series of decisions adopted by European institutions throughout the 2010s to promote PPPs, such as the Investment Plan for Europe (2014) and the publication of a *Guide to the Statistical Treatment of PPPs* by Eurostat and the EIB (2016). Whereas debates in European political economy have hitherto focused on the *rise* of PPPs (Whiteside 2020; Liebe and Howarth 2020; Endrejat 2024), this paper challenges this dominant approach by addressing the converse dynamic through the following research question: How to explain the persistent *decline* of the PPP market in Europe in the 2010s, despite significant political initiatives to promote it?

To solve this puzzle, I advance the concept of “accounting juridification”. Bridging the gap between the political economy of PPPs and the sociology of law, I argue that the decline of the European PPP market is rooted in the dynamic of “law’s expansion” (Habermas 1987 [1981]; Blichner and Molander 2008) to the domain of national accounting, as a result of the harmonizing of national public finance statistics carried out by Eurostat’s agents. Two stages of “accounting juridification” are distinguished within the EMU, based on the two sides of “disciplinary power” highlighted by Foucault (1977): hierarchical surveillance and normalizing judgement. Under fragmentary accounting juridification (1995-2009), Eurostat enjoyed extensive monitoring tools, but limited sanctioning powers. In this context, its seminal decision on PPPs in 2004 decisively supported the rise of this market, by paving the way for off-balance sheet recording. Yet, the Eurozone crisis prompted extensive accounting juridification in the early 2010s: imbued with large additional prerogatives (including sanctioning powers), European accountants¹ restricted their accounting case law on PPPs and enshrined it into European law. As a result, the model of “off-balance-sheet” PPP standardized by Eurostat firmly reduced the fiscal attractiveness of this investment tool.

This analysis contributes to the emerging literature on off-balance-sheet policymaking within the EMU (Mertens and Thiemann 2019; Guter-Sandu and Murau 2022; Piron 2024; Reimer et al. 2025), by stressing the potentially crucial role played by the legal underpinnings of accounting integration on domestic investment policies. In so doing, it sheds new light on the key shifts undergone by fiscal rules over the last decade in Europe: no longer able to reinterpret fiscal rules “by stealth” (Schmidt 2016) due to Eurostat’s accounting orthodoxy (illustrated by its refusal to relax its case law on PPPs), member states have increasingly politicized the European budgetary framework itself, notably to promote public investment. These initiatives successively resulted in the “flexible” interpretation of fiscal rules by the Juncker Commission (2014-2019) (Mérand 2022), prior to their suspension to respond to the Covid-19 pandemic (Teschke 2023), combined with the adoption of an unprecedented economic recovery plan (Cabral 2021), and, lastly, their reform in 2024, with a view to taking greater account of national investment needs (Pench 2024). These findings encourage both researchers and policymakers to pay closer attention to the controversial process of translating grand economic and fiscal strategies in accounting law, and its actual consequences on domestic investment policies.

The plan is as follows. Part II presents the theoretical framework of the paper, whose research design is detailed in part III. Turning to the case study, part IV shows the influence of fragmentary accounting juridification and Eurostat’s “liberal” case law on the rise of the PPP market in Europe. By contrast, part V explains how extensive accounting juridification and Eurostat’s strengthened case law subsequently put this market in jeopardy. Part VI concludes.

¹ In this paper, this expression is used as a synonym for Eurostat agents.

II. Bridging the Gap Between Political Economy and the Sociology of Law: The Role of Accounting Juridification in Off-Balance-Sheet Policymaking in Europe

To date, European political economy has tended to focus on the *expansion* of PPPs. Comparing the emergence, sophistication, and normalization of PPPs in the UK and Australia, Whiteside (2020) argues that PPP management has not only transformed public infrastructure and services into vehicles of profit-making, but also shifted the very nature of the public sector by normalizing the PPP model through managerialism. Liebe and Howarth (2020) highlighted the instrumental role of few (mostly British) policy-entrepreneurs within the EIB in promoting PPPs in Europe. PPPs indeed lie at the heart of the EIB's strategy to increase "the investment firepower" of the EU by seeking to offset obstacles to public investment derived from fiscal rules through "state-led enabling of market-based finance" (Mertens and Thiemann 2019). Yet, this strategy also implies profound political implications, by requiring that Member States act as a mere "technocratic risk manager, whose investment policy becomes increasingly more dependent on investor consent than democratic control" (Mertens and Thiemann 2018, 187).

In this vein, an emerging body of scholarship has started to explore the politics of "off-balance-sheet policymaking" within the EMU (Mertens and Thiemann 2019; Guter-Sandu and Murau 2022; Piron 2024; Reimer et al. 2025). Whereas orthodox economics equates "off-balance-sheet" accounting practices with pathological forms of "window dressing", this branch of literature has apprehended debates over the accounting treatment of various policy instrument (such as PPPs, loans, guarantees...) as power struggles about the extent of—and possible derogations from—European fiscal discipline (Gill 1998; Blyth 2013; Streeck 2014). For instance, Endrejat (2024, 515) emphasizes the crucial role of technocratic bodies in the trajectory of PPPs and investment policies in Europe, due to the "the lack of political solutions to Europe's investment-consolidation conundrum". Consequently, experts from the EIB and Eurostat are required to find practical solutions within the existing fiscal framework.

By contrast, the abovementioned literature has barely addressed the converse issue—namely the *decline* of the PPP market in Europe since the mid-2000s, as shown by Figure 1. To explain it, this article focuses on a neglected yet crucial dimension of the political economy of PPPs and off-balance-sheet policymaking in the EMU: the legal standardization of its accounting treatment.

Many studies have already pointed to the growing "judicialization" of the EMU (Saurugger and Fontan 2019; Fabbrini 2014; Saurugger and Terpan 2019), broadly understood as "the reliance on courts and judicial means for addressing core moral predicaments, public policy questions, and political controversies" (Hirschl 2008, 119). Yet, this phenomenon does not exhaust the multiple uses of law in the conduct of macroeconomic policies. Examining law "at work" also implies looking at the recourses to legal reasoning *outside* the judicial arena—a process coined as "juridification" in the sociology of law (Blichner and Molander 2008; Habermas 1987 [1981]; Magnussen and Banasiak 2013; Teubner 1987).

Juridification is a multifaceted concept, encompassing at least five distinct dimensions (Blichner and Molander 2008)². Consequently, this paper specifically focuses on one aspect of this phenomenon, namely "juridification as law's expansion" (Blichner and Molander 2008)—a process through which "law conquers fertile ground" (*ibid.*, 42) and "comes to regulate an increasing number of different activities" (*idem*, 38-39), such as fiscal policy and accounting integration. This understanding of juridification is consistent with seminal analyses, forged in German critical legal thought. Habermas (1987 [1981], p. 357) initially defined this concept as "the tendency toward an

² These are constitutive juridification, juridification as law's expansion and differentiation, juridification as increased conflict solving by reference to law, juridification as increased judicial power and, lastly, juridification as legal framing.

increase in formal (or positive, written) law that can be observed in modern society”. The German sociologist distinguished between two dimensions of juridification: the *expansion* of law, “that is, the legal regulation of new, hitherto informally regulated social matters”, and the *density* of law, “that is, the specialized breakdown of global statements of the legally relevant facts into more detailed statements” (Habermas, 1987 [1981], p. 357). Extending the work of Habermas, Teubner (1987, 7) further refined and popularized this concept, which he similarly defined as “the extension and intensification of law”. Countering the view of juridification as “a universal historical phenomenon”, he rather stressed the importance of studying situated forms of juridification in their “proper historical context” (Teubner 1987, 12).

With regard to the EMU, a large body of literature has highlighted the use of European (quasi) constitutional law as a tool for orthodox macroeconomic policymaking oriented towards price stability, the monitoring of public finances and competition between workers (Gill 1998; Lovering 2023; Ojala 2021; Ryner 2015; Streeck 2014; Kampourakis 2021)³. For instance, the Stability and Growth Pact (SGP), adopted in 1997 and frequently modified since then, contains a regulatory arsenal for controlling national public finances, designed to legally enshrine the reduction of public deficit (Blyth 2013; Heipertz and Verdun 2010). Signed in 2012, the “fiscal compact” contained in the Treaty on Stability, Governance and Coordination (TSCG) requires the transposition into national law of a so-called “golden rule” of balanced budgets “by means of binding and permanent provisions, preferably constitutional” (Beukers et al. 2017)⁴.

The juridification of European budgetary discipline also takes place in more mundane settings. A case in point is the process of “accounting juridification” carried out by Eurostat’s agents (Savage 2005; Lemoine 2016). This concept is understood as the process of “law’s expansion” (Habermas 1987 [1981]; Blichner and Molander 2008) to the domain of national accounting, i.e. the increasing use of law and jural instruments in the process of statistical integration within the EMU. It is argued that this dynamic can be fruitfully studied through the lens of the two dimensions of disciplinary power identified by Foucault (1977): hierarchical surveillance and normalizing judgement. On the one hand, Eurostat developed multiple instruments of hierarchical surveillance *vis-à-vis* Member States. This diffuse means of disciplinary power sought to ensure that national governments internalize the power strategies to which they are subjected (i.e. fiscal and statistical monitoring) through a surveillance architecture capable of “operating transformations on individuals” (*idem*, 248). On the other hand, normalizing judgement refers to the distribution of sanctions with a corrective purpose: the aim is not so much to punish the transgressors as to transform their behavior to prevent any further deviation from the norm. This feature empirically questions the means of sanctions available to Eurostat, as well as their actual implementation and consequences on Member States.

Prior to turning to the empirical analysis of accounting juridification within the EMU, the next part describes the research design of this paper, which consists in an interpretive analysis of the paradigmatic case of Flanders (Belgium).

III. Research Design: An Interpretive Analysis of the Paradigmatic Case of Flanders (Belgium)

To examine accounting juridification within the EMU, this paper is ontologically rooted in interpretivism (Schwartz-Shea and Yanow 2012). Favoring subjective and plural understandings of phenomena, this research tradition does not focus “on discovering laws about causal relationships

³ On the topic of economic constitutionalism and its transformations in EMU, see Guillaume Grégoire’s contribution in this issue (Grégoire, 2026).

⁴ For an extensive review, see Lemoine and Piron (2023).

between variables”, but rather on “understanding (*verstehen*) the motivations that lie behind human behaviour” (Della Porta and Keating 2008, 26), by devoting close attention to meaning and contextuality. As summarized by Creswell (2007, 44), “there are no ‘right’ stories, only multiple stories”.

Empirically, it rests upon a longitudinal, qualitative study of the case of Flanders, Belgium’s largest region (Yin 1989). This situated case might be depicted as paradigmatic (Flyvbjerg 2006), due to a series of variables: pronounced political and financial autonomy, large investment competences, combination between orthodox fiscal policy and ambitious investment plans, early attention to Eurostat’s off-balance sheet criteria and subsequent revision of its PPP model. Beyond its singular features, this unit of analysis therefore offers more general insights into the decisive yet changing influence of accounting juridification and Eurostat’s case law on domestic investment policies, hence the evolution of the PPP market in Europe.

First, Belgian regions belong to the most autonomous subnational governments in Europe (Piron 2022b). Due to six constitutional reforms (1970-2012), Flanders has been endowed with significant revenues (amounting to €60.3 billion in 2025) to fund a wide array of competences, covering both ‘person-related’ matters (culture, education, health...) and ‘territory-related’ matters (such as employment, economy, energy, water, environment, housing, transport and public works). Second, throughout this federalization process, Belgian federated entities (including Flanders) have been responsible for a growing share of public investment—currently representing about half of public expenses in this domain. Third, this pronounced devolution of (investment) powers also went hand in hand with fiscal orthodoxy: in 1989, regional grants faced sharp cuts to consolidate public finance. Throughout the 1990s, budgetary consolidation remained on top of the domestic political agenda with the aim to qualifying Belgium for the Eurozone (Piron 2024). Fourth, the Flemish government supported massive investment programs in the 2000s. Concerned with its budgetary impact, it showed particular interest in the “off-balance sheet” recording criteria set by Eurostat (see section IV.C). Depicted as a “late, but committed PPP adopter” (van den Hurk, 2018, 278), Flanders adopted a framework decree on PPPs in 2003, before intensifying their institutionalizing: “DBFM” (Design, Build, Finance, Maintain) projects expanded rapidly from 2004. Fifth, after Eurostat restricted its accounting case law on PPPs, the Flemish executive engaged in protracted negotiations with European accountants to design a revised model that would meet their requirements (see section V.C).

Methodologically, documentary analysis and interviews are combined. Firstly, I carried out in-depth documentary analysis (Asdal and Reinertsen 2021) of the wide range of hard and soft law instruments relating to the accounting treatment of PPPs in Europe: EU regulations and directives, successive versions of the European System of National Accounts (ESA) and a variety of documents published by Eurostat: manuals, reports, press releases, *ex ante* advice, decisions. Secondly, in line with the strategy of “mapping for exposure and intertextuality” characterizing interpretative research (Schwartz-Shea and Yanow 2012, 84–89), I conducted thirty-four semi-structured interviews, divided into two waves. Between May 2014 and May 2016, I carried out twenty-seven interviews with senior European officials (Eurostat, EIB, cabinet of the Commissioner in charge of Eurostat, etc.) and Belgian officials (regional and federal administrations and ministerial cabinets, National Bank of Belgium, etc.). To confirm and update my findings, I conducted seven additional interviews with senior Belgian officials (April-May 2022) and a European accountant (February 2024).

Against this theoretical and methodological background, the empirical analysis is divided into two parts, which symmetrically explain the rise and persistent fall of the PPP market in Europe through three dimensions: the degree of “accounting juridification” within the EMU, Eurostat’s case law on PPPs and, finally, its influence on domestic investment policies, through the case of Flanders.

IV. Fragmentary Accounting Juridification and Eurostat's Liberal Case Law Support the Rise of the PPP Market

This part explains the impact of fragmentary accounting juridification on the rise of the PPP market in Europe from the mid-90s to the mid-2010s. Imbued with extensive monitoring powers, but limited sanctioning powers (A), Eurostat's seminal decision authorized the off-balance-sheet recording of PPPs, under conditions (B). This "liberal" accounting case law favored the domestic implementation of PPPs, as exemplified by the Flemish "participative" PPP model (C).

A. Fragmentary Accounting Juridification: Disciplining Without Punishing (1995-2009)

This section reviews the hard and soft law tools developed under the phase of fragmentary accounting juridification, resulting in a gap between Eurostat's extensive monitoring powers and its limited sanctioning powers.

European Treaties prohibit the public deficit and debt of eurozone members to exceed respectively 3% and 60% of their gross domestic product (GDP). To be effective, such strategy of "ruling by numbers" (Schmidt 2020) requires reliable and comparable budgetary data. Consequently, harmonizing national public finance statistics is a prerequisite for European monitoring of national fiscal policies. To this end, the Protocol on the Excessive Deficit Procedure (EDP) annexed to the Maastricht Treaty (1992) has defined the core concepts of European budgetary integration in reference to the ESA. The use of this national accounting standard, harmonized at European level, is generally justified by persisting divergences between national public accounting systems and the lack of an internationally-harmonized framework (Lequiller 2018, 45).

As European Treaties mandated "the Commission" to monitor national fiscal policies, Eurostat was surprisingly designated at the expense of the powerful DG ECFIN to guarantee the quality of public finance statistics in 1995. This was justified by European leaders' commitment to the image of impartiality conveyed by Eurostat and the activism of its Director General, Yves Franchet (Savage 2005, 51–52). However, given their limited human, financial, and legal resources, Eurostat executives initially applied an "assumption of trust" to the data sent by national statistical institutes (NSIs), restricting their control to "manifest errors". This was welcomed by national governments, which could barely tolerate that the Commission would challenge their budgets (*ibid.*, 103).

During the "convergence phase" prior to the launch of the EMU in 1999, Eurostat took advantage of the focus on fiscal discipline to legally consolidate its tools for monitoring national public finance statistics. It gradually abandoned historical techniques (such as estimations) in favor of more rigid, legally binding tools. This is evidenced by Council Regulation 2223/96⁵, which enshrined in European law the latest version of the ESA (ESA 95). Besides, Eurostat accountants started to publish *ad hoc* decisions—formally deprived of any legal value—to settle controversial operations carried out by Member States to reach European budgetary targets. Since 1999, this emerging accounting case law has been codified in an informal, soft law instrument⁶: the Manual on Government Debt and Deficit (MGDD).

In addition, Eurostat has relied on a dense network of expertise to perform its task of interpreting the ESA. Experts in public finance statistics appointed by the NSIs meet several times a year to sort out methodological debates. In case of disagreement, issues are referred to the domestic

⁵ Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community.

⁶ On the role of soft law within the EU, see Terpan (2015).

Directors of National Accounts. Finally, Eurostat might submit the most contentious cases to the Committee on Monetary, Financial and Balance of Payments Statistics (CMFB), which is the coordination forum of statisticians from NSIs, Eurostat, national central banks and the European Central Bank (ECB). Although not legally binding, the opinions of the CMFB are influential, as its composition grants them considerable technical legitimacy. As a consequence, Eurostat repudiated its decision only once until 2018 (Lequiller 2018, 144–45).

In stark contrast to its extensive monitoring powers, Eurostat's sanctioning powers nevertheless remained largely symbolic. In the early 2000s, European accountants refused to certify the data transmitted by several States, through footnotes and press releases—without any legal consequence though. In 2004, they even published a report accusing Greece of having falsified its fiscal data to join the euro zone (Eurostat 2004a). These events highlighted the flaws of the “assumption of trust” adopted by Eurostat towards Member States. In response, Council Regulation 2103/2005⁷ added a section on “the quality of data” into the SGP with a view to increasing Eurostat's supervisory powers. Since 2006, Eurostat agents have carried out biennial dialogue visits to NSIs to review contentious issues. They might also undertake exceptional methodological visits, “in cases where substantial risks or potential problems with the quality of the data are identified”. Finally, if the data reported by Member States fail to meet its quality standards, Eurostat received the ability to express reservations and even to amend them.

However, Eurostat did not gain the auditing powers it had requested. In practice, European accountants were therefore tasked to negotiate the implementation of ESA with national governments, which kept resorting to a series of accounting techniques to mitigate European fiscal constraints—sometimes being forced to tolerate discrepancies. The case of PPP is illustrative of the dialogical relationship between Eurostat and Member states in this process.

B. Eurostat's Accounting Case Law on PPPs: A “Liberal” Stance Enshrined in Soft Law

When the concept of PPP emerged in Europe in the early 2000s, its flexibility played a key mediating role between multiple actors: large private corporations in sectors such as public works and credit, whose growth partly hinges on public tendering; European institutions keen to stimulate growth through investment (like the EIB), while also safeguarding fiscal discipline (DG ECFIN) and the quality of public finance statistics (Eurostat); and national governments seeking to mitigate the budgetary impact of huge investment expenses. In sum, the constitutive “ambiguity” between fiscal and managerial motives has been inherent to the growth of the PPP market in Europe, as acknowledged by Philippe Maystadt, who chaired the EIB between 2000 and 2011:

“For some, it was a way of escaping consolidation, but for others—and this seems to me to be a better motivation—it was to improve the quality of the service. There has always been some ambiguity. Some were in favor of establishing rules that would make it easier to escape the budget constraint, while others wanted rules that would guarantee improvements in infrastructure quality”⁸.

The fiscal consequences of PPPs have been a major concern for eurozone countries. At stake is a possible derogation from disciplinary European fiscal rules: by admitting the off-balance-sheet treatment (or “deconsolidation”) of PPPs, Eurostat's case law could significantly impact national investment policies. Given the silence of both the International System of National Accounts (SNA

⁷ Council Regulation (EC) No 2103/2005 of 12 December 2005 amending Regulation (EC) No 3605/93 as regards the quality of statistical data in the context of the excessive deficit procedure.

⁸ Interview 25 with Philippe Maystadt, President of the EIB (2000–2011), 27 April 2016.

1993) and the ESA 95 on this topic, Eurostat drew inspiration from the only European country whose national accounting system contained specific rules on PPPs at the time, namely Great Britain. British rules therefore exercised a major influence on Eurostat's seminal decision, as explained in the following quote:

“European accountant: Many countries treated PPPs as if they were ordinary infrastructure projects, i.e. they recorded the expenditure immediately, at the time of construction. But the British did things differently: they had started to introduce special rules for PPPs into their public accounting, which are somewhat similar to the rules we introduced in 2004.

Researcher: So, the rules of 2004 were inspired by the English practice?

European accountant: Inspired by the English, indeed. By the national accounting rules that the United Kingdom had started to introduce, and which were derived from public accounting. So, we drew a lot of inspiration from them because this was the only case where they already had this risk-based approach.”⁹

After a long-lasting controversy, Her Majesty's Treasury (HMT) and the British Accounting Standards Board (ASB) had reached a compromise about the recording of PPPs in 1999. As PPPs bundle current expenditure (relating to the delivery of a service) and capital expenditure (relating to the realization of an asset) in a single contract, both institutions recommended a single accounting treatment for PPP projects, based on a case-by-case analysis. To do so, they suggested to record the contract in the accounts of the partner enjoying “economic ownership” of the asset, according to the distribution of “risks and rewards”. To assess which partner effectively supported the risk of the project, the ASB applied more restrictive criteria than HMT. Yet, it did not completely rule out “off-balance-sheet” recording either—thereby providing the UK government with sufficient flexibility to record most PPPs off-balance sheet. As a result, public accounts only displayed the annual fees paid to the private partner in return for the service, whereas “traditional” capital expenses are due to be fully booked from the outset. By spreading huge expenses over time, this advantageous accounting treatment encouraged the funding of infrastructure through PPPs (Rutherford 2003; Heald and Georgiou 2011; Hodges and Mellett 2012).

Following deliberation between statistical experts from Eurostat, the NSIs, the ECB and the EIB, Eurostat published in February 2004 a press release over the accounting treatment of PPPs (Eurostat 2004b). Like their British counterparts, European accountants built their reasoning around the “economic ownership” of the asset and conditioned the “fiscal neutrality” of PPPs (i.e. off-balance-sheet recording) on effective risks transfer to the private operator. In other words, Eurostat allowed European governments to exclude PPPs from their accounts provided that the private partner bore most of the risks. Such transfer of risk would be considered effective if the private partner bore the construction risk¹⁰ and either the availability risk¹¹ and/or demand risk¹². If not, the project must be recorded in public accounts.

Endorsed by a large majority of the CMFB (26 votes in favor and only 1 against) (CMFB 2004), this decision reflected the general “openness”¹³ towards PPPs in Europe in the early 2000s (Liebe and Howarth 2020). EU institutions actively promoted this tool: in 2003, the European

⁹ Interview 21, Eurostat, 26 February 2016.

¹⁰ The construction risk refers to situations such as exceeding deadlines or costs in the completion of the asset, failure to comply with contractual standards or possible technical failures.

¹¹ The availability risk covers service failures resulting from the responsibility of the private partner.

¹² The actual demand for services may vary from what is foreseen in the contract. If this is not (sufficiently) reflected in the payment terms, the demand risk is not transferred to the private partner.

¹³ Interview 27, European Investment Bank, 3 May 2016.

Commission published “*Guidelines for successful PPPs*”, while the European Council and the EIB placed this technique at the heart of their “*Growth Initiative*”. In 2004, two public procurement directives¹⁴ created a derogatory procedure (the so-called “competitive dialogue”) for “particularly complex contracts” such as PPPs.

Yet, Eurostat’s decision on PPPs also prompted criticism. Its legal status remained disputed: was it binding for Member States or a mere recommendation? As the first option tended to prevail in practice, the suitability of a press release as a source of legal constraint was also called into question (Vega 2013). Within the national accounting community, several actors argued that Eurostat’s case law would encourage the use of PPPs for purely accounting reasons. For instance, the International Monetary Fund (2004, 22) judged Eurostat’s “liberal” ruling as “problematic”, concerned that “the decision could open the door to PPPs that are intended mainly to circumvent the SGP”. In the *OECD Journal of Budgeting*, three US-based researchers similarly criticized the off-balance-sheet recording of PPPs whose demand risk would not be transferred to the private partner—as this type of risk would be the most difficult to anticipate (Posner et al. 2009). Two British accounting scholars also noted that the tests carried out by Eurostat were “very weak” compared with those in force in Great Britain (Heald and Georgiou 2011, 241).

In the wake of Eurostat’s seminal decision, PPPs mushroomed throughout Europe. While some countries (such as France, Germany and the Netherlands) systematically recorded PPPs in public accounts, many others (such as Portugal, Slovakia, the United Kingdom, Hungary, Ireland, Spain and Belgium) used Eurostat’s accounting case law to record PPPs off-balance sheet¹⁵. A case in point is the so-called “participative” PPP model developed in Flanders to combine off-balance-sheet recording with a significant public involvement in the management of PPPs.

C. Domestic implementation: The Flemish “Participative” PPP Model

The pioneering project “*Scholen van Morgen*” (Schools of Tomorrow) aptly illustrates the PPP strategy developed in Flanders in response to Eurostat’s decision (Willems 2014). Launched in 2004, this vast program involved the construction and renovation of more than 200 school buildings for the benefit of 165 local school authorities. With an investment volume of €1.5 billion, it is one of the most ambitious PPPs ever launched in the social domain in Europe. Eurostat’s accounting case law proved decisive in the choice of this scheme, as confirmed by an executive from the Flemish PPP Expertise Centre:

“What helped enormously was the fact that we could work ‘off-balance sheet’. In other words, the fact that we could make major investments without increasing the debt or worsening the deficit. [...] So you could carry out a major project and pass the bill to the next legislature, without increasing your debt. This is naturally fantastic from a political point of view. This actually helped”¹⁶.

While deconsolidation motivated Flemish authorities, opting for a PPP is nevertheless more expensive than direct financing. Transferring the risk of a project to the private sector (as required by Eurostat’s case law to benefit from off-balance-sheet recording) indeed implied additional

¹⁴ See Directive 2004/17/EC coordinating procedures of entities in the water, energy, transport and postal services sectors and Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

¹⁵ Comparative data on liabilities related to PPPs recorded off-balance sheet can be found on Eurostat’s website: ec.europa.eu/eurostat/databrowser/view/gov_cl_ppp/default/bar?lang=en&category=gov.gov_cl.

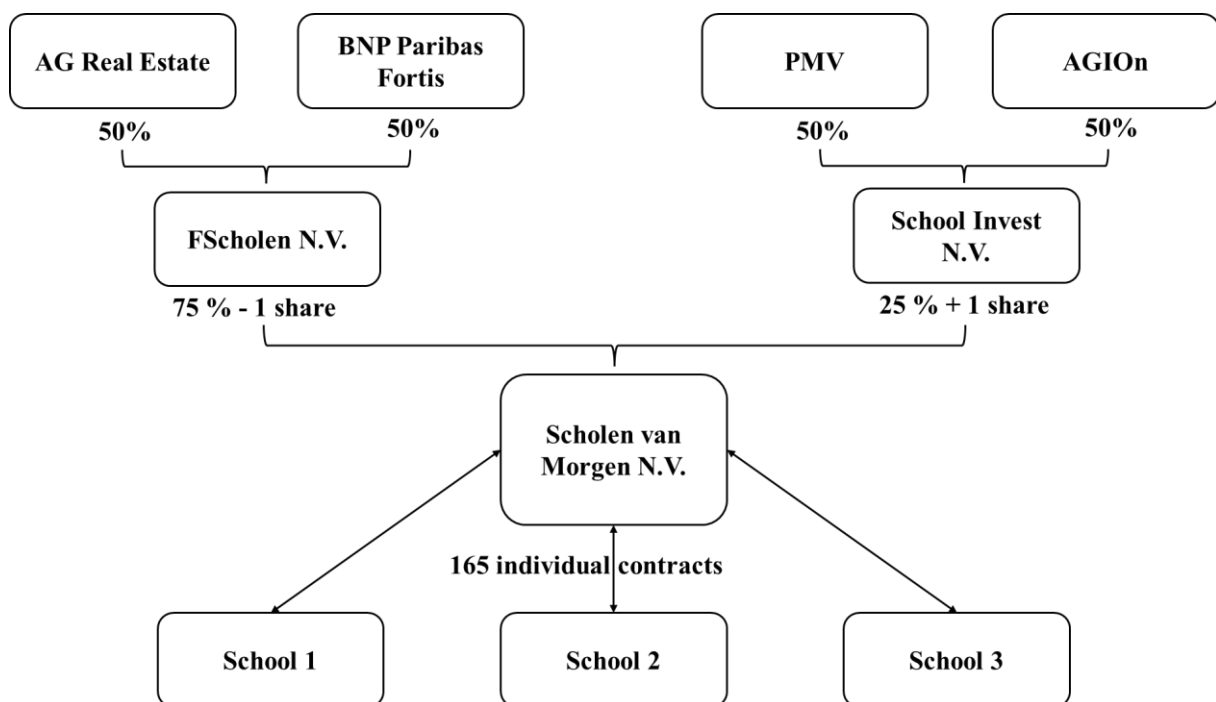
¹⁶ Interview 10, Flemish PPP Expertise Centre, 4 March 2015.

financing costs because governments generally enjoy better borrowing conditions than private companies. In addition, private operators discount the risk and a return on investment on their fees. In other words: the greater the risk transferred to the private partner, the higher the (over)cost. Financially, the Flemish authorities therefore faced the following dilemma: sufficiently transferring the risk to the private partners to secure fiscal neutrality while limiting the additional costs involved by this scheme.

In June 2010, the Flemish government signed a PPP contract with the last private consortium remaining in the negotiation process, made up of the bank BNP Paribas-Fortis and AG Real Estate (a subsidiary of AG Insurance, itself a 75% subsidiary of Ageas Insurance). Labelled “participatory PPP”, this project provided for the joint participation of both private and public shareholders within the overarching structure: the *Scholen van Morgen* limited company (Figure 2). On the one hand, *FScholen* brought together the two private companies of the consortium (AG Real Estate and BNP Paribas Fortis); on the other hand, *School Invest* was a subsidiary of two Flemish agencies: the Flemish Participation Company (PMV) and the agency in charge of school infrastructure (AGION). *School Invest* was granted a blocking minority, which enabled Flemish authorities to control key decisions of the overarching structure. Besides, the contract stated that ownership of the buildings would be transferred automatically and without compensation to the Flemish government after thirty years. In sum, this atypical PPP structure reflected the “lack of trust” of the government towards the private operator, according to a representative of AG Real Estate:

“The private partner has 75% of the shares less one share, the public partner 25% plus one share. This share is important because it represents the blocking minority. This is in fact already somewhat symbolic [...] of the trust, or rather the lack of trust, that prevailed from the outset. It could just as easily have been 10%-90% or 0%-100%”¹⁷.

Figure 2. Organizational chart of the PPP project “Schools of Tomorrow”¹⁸



¹⁷ Interview 17, AG Real Estate, 2 December 2015.

¹⁸ Source: documents provided by AG Real Estate.

For their part, the private partners insisted that the project would benefit from a public guarantee. This typical “de-risking” instrument (Gabor 2021) was set as a prerequisite for concluding the contract, in an economic environment still marked by the fallouts of the GFC:

“The school building project is structured in a very complex and atypical way. To conclude it, against the backdrop of the financial crisis, we had no choice but to grant a guarantee. So, it was a political decision: did we want to go ahead with the project or not? If we wanted to, we had to give a guarantee”¹⁹.

However, the next part shows that under the phase of extensive accounting juridification, the original features of the Flemish “participatory” PPP model would eventually lead European accountants to revise its accounting treatment in the light of their—meanwhile restricted—accounting case law.

V. Extensive Accounting Juridification and Eurostat’s Strengthened Case Law Jeopardize the PPP Market

This part explains the impact of extensive accounting juridification on the fall of the PPP market in Europe since 2010. Imbued with extensive new prerogatives amid the eurozone crisis, including sanctioning powers (A), Eurostat agents both restricted and legally enshrined their case law on PPPs (B). This standardized model of “off-balance sheet” PPPs implied the consolidation of a series of projects across Europe and firmly reduced the fiscal attractiveness of this tool (C).

A. Extensive Accounting Juridification: Eurostat as a Quasi-Financial Auditor of Public Finance Statistics (since 2010)

This section retraces the expansion of accounting juridification in Europe since 2010, illustrating how European accountants successfully problematized the “Greek statistical crisis” to obtain the extension of powers that they had been denied in 2005 (Piron 2022a).

In October 2009, Greek Finance Minister, Giórgos Papakonstantínou, revealed that his country’s deficit had soared to 12.5% of GDP. As a result, Eurostat agents called once again for genuine auditing powers. In a report, they stressed that this episode “provide[d] additional evidence that the problems are only partly of a methodological nature and would largely lie beyond the statistical sphere”—to which their supervision had been confined (Eurostat 2010c, 20). According to the *Financial Times*, this “damning report” “prompted swift downgrades of Greek debt as well as an increase in the premium demanded by financial markets to buy Greek bonds” (Barber 2010).

EU institutions promptly reacted: on 15 February 2010, the Commission submitted a proposal to grant Eurostat quasi-audit powers during (exceptional) methodological visits. Following the agreement reached by the Committee of Permanent Representatives (the body responsible for preparing the meetings of the Council), the Council adopted this regulation with no further debate on 8 June. This speedy and consensual legislative process demonstrates the broad support enjoyed by this proposal—still opposed by Member States only five years earlier. Consequently, Council

¹⁹ Interview 10, Flemish PPP Expertise Centre, 4 March 2015.

Regulation 679/2010²⁰ has allowed European accountants to access the accounts of all government entities and to be provided with detailed accounting and budgetary information during exceptional methodological visits.

A second increase in accounting juridification and Eurostat's powers occurred during the comprehensive reform of the SGP in 2011 (the so-called “six-pack”): Regulation 1173/2011²¹ created sanctions concerning the manipulation of statistics. This procedure authorizes the Council, acting on a recommendation by the Commission (namely Eurostat), to impose a fine amounting to up to 0.2% of GDP on a Member State that intentionally or by serious negligence misrepresented deficit and debt data²². Eurostat officials quickly used this exceptional prerogative: procedures against Spain and Austria would eventually lead to the first fines ever imposed under the EMU (Piron 2022a). The deterrent effect of these sanctions acted like “normalizing judgement” (Foucault 1977). Indeed, they represented a turning point in the relationship between Eurostat and Member States, according to a Eurostat accountant:

“Thanks to that, we had much, much, much, much fewer problems [...]. Everyone saw not only that we had this power—because people knew it—but also that we were using it. DG ECFIN also has the power to impose fines if States fail to comply with the SGP, but they have never done so. Everyone saw that Eurostat didn’t hesitate to do so and the situation changed drastically after that. Everyone understood (laughs). It had a dissuasive effect on all the countries”²³.

Finally, to ensure that Eurostat could fully exercise its new powers, the number of agents responsible for government finance statistics increased from fifteen to around fifty between 2010 and 2014—whereas Eurostat’s total budget and staff were being cut (Savage and Verdun 2016). Consequently, Eurostat’s monitoring and sanctioning prerogatives are now such that François Lequiller, a former Inspector General at INSEE (the French SNI), who worked at Eurostat between 2010 and 2014, equated the European control of public finance statistics with that of a quasi-“financial auditor” (Lequiller 2018, 32). Such extensive accounting juridification has clearly reinforced Eurostat’s position *vis-à-vis* Member States and decisively explains the subsequent strengthening and legal consolidation of its accounting case law on PPPs.

B. Eurostat’s Accounting Case Law on PPPs: Restricted and Legally Consolidated

Following Eurostat’s seminal decision on PPPs, European accountants regularly faced controversial cases—such as the Flemish “participative” PPP model. In addition, private operators appeared reluctant to enter large-scale projects such as PPPs after the GFC. They sought to limit their risk exposure through favorable clauses, whose impact on the distribution of risk between partners sometimes proved difficult to assess. Against this backdrop, Eurostat published in September 2010 a third edition of the MGDD, which devoted a whole section to PPPs (Eurostat 2010b). Through detailed (yet non-binding) guidelines, it aimed to put an end to perceived “abusive” interpretations of its accounting case law, as explained by one EIB executive:

²⁰ Council Regulation (EU) No 679/2010 of 26 July 2010 amending Regulation (EC) No 479/2009 as regards the quality of statistical data in the context of the excessive deficit procedure.

²¹ Regulation (EU) No 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area.

²² In addition, Council Directive 2011/85 requires Member States to publish relevant information on Government contingent liabilities and potential obligations, including off-balance PPPs. See Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States.

²³ Interview 34, Eurostat, 15 February 2024.

“[The simplicity of the 2004 rules] was both a strength and a weakness. The strength was that people understood them fairly quickly; the weakness was that it was possible to distort their spirit. And Belgium was one of the Member States that pushed the deconsolidation logic to its very limits. [...] So Eurostat got tougher. Eurostat saw that, on closer inspection, many schemes were pure deconsolidation schemes. There was no desire to transfer the risks [...]. Often, public authorities put something together, but in return gave guarantees and some comfort. So, it was a sort of classic procurement contract, but with a PPP label, with the advantage of not having to record the debt in their books. And so, there were many reclassifications. At that point, Eurostat took a harder line”²⁴.

On the grounds of clarifying Eurostat’s accounting case law, this new version of the MGDD explicitly invalidated a series of practices devised by Member States. For instance, it excluded deconsolidation when governments *de facto* took over risks through guarantees, favorable early termination clauses or insufficient penalties. In so doing, Eurostat adopted a restrictive approach to off-balance-sheet PPPs: it limited the role of public authorities to the design of the project, while leaving its implementation to the responsibility of private operators. Besides, whereas Eurostat’s accounting case law on PPPs had previously rested upon soft law instruments (such as press releases, decisions and the MGDD), this more stringent approach was formally encapsulated in the updated version of the ESA (ESA 2010), enshrined in Regulation 549/2013²⁵. This standardized interpretation is therefore binding for national governments.

In addition, ESA 2010 provided for the use of a new criterion, albeit on a subsidiary basis: the control of assets. Developed by international private and public accounting standard-setting bodies as an alternative to the “risks and rewards” approach (Heald and Georgiou 2011), it requires that public authorities must record expenses if they control the services provided with the assets and have any significant residual interest in the assets at the end of the contract. The generalization of this criterion should not be underestimated, as it would result in the consolidation of the vast majority of PPPs concluded in Europe (Moscariello and Cinque 2016). In the UK, Hodges and Mellett (2012, 245–46) demonstrated that “nearly 90% of schemes, in both number and capital value, are recognized on public sector balance sheets under IFRS²⁶, suggesting that the period in which PFI projects have been utilized as an off-balance-sheet financing mechanism is largely at an end”.

However, contrary to public and private accounting standard-setting bodies, the ESA 2010 still formally commits to the “risks and rewards” criterion. Nevertheless, its equivocality, combined with the subsidiary use of control indicators, has ultimately blurred Eurostat’s accounting case law to an extent such that European accountants themselves have questioned it. For instance, although the CMFB (2012) agreed “on a very large majority” with the proposal for amending the chapter on PPPs in the MGDD, it expressed “some concerns [...] regarding the increasing complexity of the ‘risks and rewards’ approach”, making “references [...] to international private and public sector accounting standards”. To remove possible inconsistencies, some Eurostat officials therefore call for a deliberate shift towards the control approach:

“If it were up to me [...], I’d say ‘well, it’s too complicated, let’s follow the IPSAS²⁷. Like the United States, like Australia, like the other rich countries. [...] So I’d say that if the asset is controlled by the government and if at the end of the contract, it automatically returns

²⁴ Interview 27, European Investment Bank, 3 May 2016.

²⁵ Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union.

²⁶ International Financial Reporting Standards.

²⁷ International Public Sector Accounting Standards.

to the government, for me, it should automatically be ‘on-balance sheet’—end of the story. End of the story, with all those complications. And that’s what they do in the first-world countries. And that’s what they do in public accounting in many countries, including in Europe. [...] So all these politicians who are always criticizing Eurostat’s rules... No, Eurostat’s rules are the most generous compared to all others. Either from the point of view of public accounting or from the point of view of IPSAS, IFRS...”²⁸.

In practice, prior to recording PPPs, Eurostat requires NSIs to list all criteria for and against deconsolidation. Yet, this approach raises operational questions: what to do when a single, but crucial clause is questionable or, conversely, when several minor clauses raise concern? Despite the autonomy left to NSIs, Eurostat now has the final word—as exemplified in the Flemish case.

C. Domestic implementation: Off-Balance-Sheet Recording, at any Price?

Eurostat’s stricter accounting case law on PPPs directly affected the “Schools of Tomorrow” project. In June 2010, European accountants ruled that risk was insufficiently transferred to the private partner to justify off-balance-sheet recording—among others due to the public guarantee. They also added that a new examination would occur, should the contract be amended (Eurostat 2010a, 10). After having examined no less than four versions of the contract, Eurostat eventually concluded in May 2014 (i.e. just before Regulation 549/2013 on ESA 2010 came into force) that the Flemish Government still bore the risk of financing (which is part of the construction risk), hence had to record the project on balance (Eurostat 2014). Consequently, the “participative” PPP scheme did not live up to its promise of budget neutrality and the Flemish debt increased by nearly €11 billion (to €16.6 billion) when the ESA 2010 came into force in September 2014.

Eurostat’s decisions also affected other countries (such as Poland) and regions (such as Wales and Wallonia) (Endrejat 2024). As a result, several governments—including in Belgium—expressed concerns about its accounting case law to the EIB. The launch of the Investment Plan for Europe in autumn 2014 made this issue even more pressing: given the crucial role it assigned to PPPs, the EIB and the Commission urged Eurostat to clarify its treatment of PPPs. Both institutions intended to make European accountants aware of their advice and information duties towards Member States, without formally challenging their case law or independence in the control of public finance statistics—significantly described as an “insurmountable wall”²⁹ by an advisor to then European Commissioner responsible for Eurostat, the Belgian Marianne Thyssen. An institution well-known for promoting PPPs, the EIB adopted the role of “honest and independent broker” between its public and private clients and Eurostat, as explained in the following excerpt:

“[Eurostat] is a European institution, like us, independent, like us. We can always informally share with them certain grievances about transparency, predictability, and stability of approaches. [...] We provide them with a reality check. They can do what they like with it”³⁰.

As a result, Eurostat and EPEC jointly published a *Guide on the statistical treatment of PPPs* in September 2016. In their common foreword, Marianne Thyssen and the Vice-President of the EIB, Jan Vapaavuori, hoped that this document would enable stakeholders “to plan with greater confidence, so that more investments involving the private sector are made using the opportunities offered by sound PPPs” (Eurostat and EIB 2016, 3). However, albeit offering clear *ex ante* guidance

²⁸ Interview 21, Eurostat, 26 February 2016.

²⁹ Interview 20, Advisor to the European Commissioner responsible for Eurostat (2014–2019), 18 February 2016.

³⁰ Interview 27, European Investment Bank, 3 May 2016.

to Member States, this guide did not provide a more “flexible” interpretation of Eurostat’s accounting case law on PPPs. Consequently, it failed to halt the decline of PPPs—thereby sidelining the EIB’s interests in the development of a dynamic PPP market in Europe.

On this basis, the right-wing Flemish government in office between 2014 and 2019 intended to design a new PPP model that would be compatible with Eurostat’s case law. Basically, this implied eliminating any public financing and participation in the SPV. In a letter sent to Eurostat (2016, 3) about school buildings, the Flemish government expressly committed to “a very pure DBFM-construction contract”, where “no financial interest—directly or indirectly—will be held in the SPV in terms of participation, financing, provision of guarantees, control or otherwise”. To somewhat contain costs while complying with Eurostat’s requirements, Flemish authorities moved away from “mammoth”³¹ projects such as “Schools of Tomorrow”. Instead, they put small-scale clusters on the market with a view to fostering competition between private operators. More recently, the Flemish Recovery Plan launched in the aftermath of the Covid-19 pandemic dedicated over €3 billion to renovating school buildings through off-balance-sheet PPPs, thereby confirming the role of this (meanwhile redesigned) tool in Flanders’ investment strategy (Piron 2024).

However, Eurostat’s strengthened case law on “off-balance-sheet” recording has far-reaching consequences on the design of PPPs—both financially and organizationally. Firstly, by drastically limiting the room for public intervention, it implies that private partners effectively take on the risk of financing the project. Bearing increased risk, the latter are expected to raise their return on investment, thereby leading to increased costs. On this respect, a European accountant bluntly confirmed me that “projects that follow Eurostat rules end up being more expensive than those motivated by Value for Money”³². Secondly, transferring the economic ownership of the asset to the private partner might imply major organizational effects, since it allows private operators to use it as they see fit as long as the contractual services are provided. In the case of schools (as in others), this encourages the creation of modular buildings, which can be rearranged to accommodate other activities during extra-curricular hours. As one interviewee explained:

“[The private partner] might say: ‘I’ll make the facilities available to you during school hours, so you can use them. But when you’re not teaching, the facilities no longer belong to the school’. So as a private partner, I’m able to run these schools and organize other activities, without the school having the slightest say. You must take it that far”³³.

In sum, the model of off-balance-sheet PPPs standardized through Eurostat’s accounting case law is clearly subordinated to a financialized logic (Epstein 2005; Chiapello 2017). As the funding and management of these investment projects ultimately depend on the requirements of private investors, the latter are erected as ultimate judges of their relevance. Far from an escape route from the European project of disciplining public finance through the market, this restrictive design rather appears the culmination of this fiscal architecture. The cost and complexity of this tool therefore explain why most European governments appear increasingly reluctant to use PPPs for fiscal purposes—and eventually moved away from (vain) attempts to reinterpret fiscal rules “by stealth” (Schmidt 2016) through accounting integration, favoring instead their flexible interpretation and outright reform (Mérand 2022; Pench 2024).

³¹ Interview 32, Flemish Budget Department, 18 May 2022.

³² Interview 34, Eurostat, 15 February 2024.

³³ Interview 18, PMV, 7 December 2015.

VI. Conclusion

This paper has advanced the concept of “accounting juridification” to explain the persistent decline of the PPP market in Europe since 2010s—a phenomenon hitherto neglected by the literature on the political economy of PPPs in Europe (Whiteside 2020; Liebe and Howarth 2020; Endrejat 2024) and “off-balance-sheet policymaking” within the EMU (Mertens and Thiemann 2019; Guter-Sandu and Murau 2022; Piron 2024; Reimer et al. 2025). Drawing upon seminal definitions of “juridification” in the sociology of law (Habermas 1987 [1981]; Teubner 1987; Blichner and Molander 2008), it has defined accounting juridification as a process of “law’s expansion” to the domain of national accounting within the EMU, as a result of the activism of Eurostat’s agents.

Two stages of “accounting juridification” are distinguished within the EMU, based on the examination of Eurostat’s legal prerogatives and accounting case law on PPPs through the two features of “disciplinary power” identified by Foucault (1977): hierarchical surveillance and normalizing judgement (see table 1). Under fragmentary accounting juridification (1995-2009), Eurostat enjoyed significant monitoring powers, but limited sanctioning powers. By paving the way for off-balance-sheet recording, the “liberal” stance of its seminal decision on PPPs (2004) supported the growth of this market in Europe. However, the Eurozone crisis prompted a stage of extensive accounting juridification (since 2010): imbued with significantly increased legal prerogatives (including sanctioning powers), Eurostat’s agents both restricted and legally consolidated their case law on PPPs. By implying further subordination of investment projects to the demands of private investors, the stringent type of “off-balance-sheet” PPPs standardized by European accountants has nevertheless reduced their attractiveness for national governments. This empirical conclusion also prompts questions about the future of this tool: will the return of fiscal discipline in Europe spark renewed interest for (off-balance-sheet) PPPs or confirm their persistent decline?

Table 1. The two stages of accounting juridification within the EMU

	Fragmentary accounting juridification (1995-2009)	Extensive accounting juridification (since 2010)
Monitoring powers (hierarchical surveillance)	<i>Hard law:</i> - Protocol on the EDP - Regulation 2223/96: ESA 95 - Regulation 2103/2005: dialogue and methodological visits	<i>Hard law (new):</i> - Regulation 679/2010: access to accounts - Directive 2011/85: data on contingent liabilities - Regulation 549/2013: ESA 2010
	<i>Soft law: ad hoc decisions, MGDD</i>	<i>Soft law (new): /</i>
Sanction powers (normalizing judgement)	<i>Hard law:</i> reservations; amendments (since 2005)	<i>Hard law (new):</i> regulation 1173/2011 (sanctions)
	<i>Soft law:</i> footnotes, press releases, reports	<i>Soft law (new): /</i>

In short, the examination of Eurostat’s case law on PPPs demonstrates the phenomenon of “accounting juridification” at play within the EMU and its effects on domestic investment policies against the backdrop of European fiscal discipline. It stresses the political battles at stakes in the seemingly technical translation of economic policies and the role played by mundane institutions, actors and tools (such as Eurostat, European accountants and national accounting). Accounting categories and instruments, along with their degree of legal formalization can either extend or, conversely, counteract grand political decisions—in a discrete, yet sometimes decisive way.

However, the increase of Eurostat's powers and case law under extensive accounting juridification has not deprived member states of any resistance capacity. Attempts to repoliticize European fiscal rules over the past decade can even be reinterpreted in this light. In response to Eurostat's accounting orthodoxy, national governments shifted issues previously confined to the accounting sphere (such as boosting investment through off-balance-sheet mechanisms) to other stages of the European fiscal procedure. Having unsuccessfully sought to reinterpret the rules "by stealth" (Schmidt 2016) by (re)negotiating the accounting treatment of PPPs, they attempted to—and succeeded in—convincing DG ECFIN, the EU Commission and the Council of Ministers to adopt a "flexible" interpretation of fiscal rules (Mérand 2022), prior to suspending their application during the Covid-19 pandemic (Tesche 2023), while simultaneously launching an unprecedented recovery plan (Cabral 2021), and eventually reforming the SGP in 2024 in order to better respond to national investment needs (Pench 2024).

Finally, the conclusions drawn from the case of national accounting within the EMU should not be too hastily generalized to other processes of accounting juridification. For example, Eurostat's proposal to build European Public Sector Accounting Standards (EPSAS) has remained stagnant since 2013, due to a lack of consensus on the route to be followed (Helldorff and Christiaens 2023; Mussari 2014). As for private accounting, European juridification has even led to "an unprecedented privatization of mandatory standard setting" (Chiapello and Medjad 2009), as member states subcontracted accounting standard-setting for listed companies to a private body that the EU does not control: the International Accounting Standards Board. These contrasting findings (re)emphasize the relevance of studying situated dynamics of (accounting) juridification in their "proper historical context" (Teubner 1987, 12). They also plead for renewed attention by researchers and policymakers alike to the interactions between macroeconomic and fiscal policies, their accounting implementation and legal integration within the EMU.

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