

## Research Paper

# *Unpacking the ideas that shape the health policy process: A genealogy of the EU's Better Regulation agenda*

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*Better Regulation – a meta-regulatory framework governing European Union (EU) policy-making, and a political determinant of health – is contested on account of the threat that it poses to health, environmental and other social objectives. This contestation stems from Better Regulation's origins in neoliberal, market-driven rationalities, and the role of corporations in its promotion. Yet, precisely how, where and in what sense neoliberalism manifests within Better Regulation, whether it is the only or dominant set of beliefs that underpin the framework, and how this might (have) change(d) over time, is under-explored. Adopting a genealogical approach, this article seeks to construct a more nuanced account of the historical context, continual (re)interpretation, and potential for contestation of the beliefs that underpin Better Regulation, and thus to inform a more concrete assessment of the threat that its neoliberal (and other) origins pose to public health. Based on an analysis of EU policy documentation the article identifies three 'roots' of Better Regulation, informed by multiple ideas and rationalities, and argues that a more nuanced understanding might support efforts to make the underlying logics of Better Regulation work for public health, rather than against it.*

## Introduction

The way in which a government or political system creates and manages the stock of regulation is a core component of health systems governance (World Health Organization 2024). It is shaped by, among other things, meta-regulation, which refers to the institutional structures that govern how policy is made, or 'the rules that govern the rules' (Morgan 2003). The example introduced in this article – that of Better Regulation, a European Union (EU) meta-regulatory framework – determines the aims that EU policy should seek to achieve, the processes by which it should be developed, and the voices that should be heard within this process (Lauber and Brooks 2023). It is this framework which requires, for instance, that expected social, environmental and economic impacts are assessed, and that patients, healthcare professionals and other stakeholders are consulted, before a new legislative proposal is made. In short, Better Regulation (and meta-regulation more widely) regulates the policy-making system and can be

considered part of the wider set of 'organisations, institutions and resources that are devoted to producing health actions' (World Health Organization 2000, p. xi).

The (critical) public health scholarship to date has identified Better Regulation as an issue of concern but has rarely put it at the centre of analysis. It was brought to the attention of the public health community in the 2010s when references to the agenda were identified within the internal documentation of transnational tobacco corporations (TTCs). This documentation revealed how specific models of impact assessment were promoted for use in the EU by coalitions of governments and companies, including British American Tobacco. TTCs, in particular, perceived these models to be in their interest because they require policymakers to consult all stakeholders (Smith et al. 2010, Smith et al. 2015, see also, Lie et al. 2018). Subsequent research, also focused on the tobacco case, shows how consultation requirements can serve to weaken, slow and prevent policy-making, and enable TTCs to bring into the policy process scientific evidence that is of lower quality in terms of independence and peer review status (Hatchard et al. 2014, Ulucanlar et al. 2014, Fabbri and Gilmore 2023). Reflecting these findings, the critical public health literature has come to understand meta-regulation as part of the 'regulatory approaches and upstream policies that enable and embed commercial sector influence [and] limit options for public-interest policy-making' (Gilmore et al. 2023, p. 1198). Meta-regulation programmes are conceptualised as both shaping and shaped by political and economic systems that prioritise privatisation, deregulation and liberalisation; they are thus linked with the neoliberal paradigm which creates regulatory settings that are amenable to maximising production and profit (De Lacy-Vawdon & Livingstone 2020, Godziewski 2020, Mialon 2020, Wood et al. 2022).

This understanding of Better Regulation is reflected in the work of health and other civil society organisations in the EU, which advocate against the agenda's pursuit of deregulation, the favouring of corporate interests over social and environmental concerns, and the 'ideological belief that markets know best' (Smokefree Partnership 2010, Corporate Europe Observatory 2020). Their campaign – exemplified by the creation of the Better Regulation Watchdog, a civil society group established in response to the EU's 2015 Better Regulation agenda – often used the language of neoliberalism and capitalism. Yet, very little public health or wider scholarship interrogates the relationship between neoliberal ideology and Better Regulation programmes that underpinned this approach. For the most part, the research assumes this relationship (either explicitly or implicitly). It is well documented that Better Regulation has its roots in the liberalising programmes that were implemented across many countries in the 1970s and 1980s (Baldwin 2006, Scott 2018), and elements of neoliberal thinking are clearly visible in instruments like regulatory impact assessment. However, as described in the political science literature, it is also associated with modernist organisational reforms, inter- and intra-institutional power struggles, and the legitimacy of political institutions, all drivers which have greater or lesser links to neoliberalism. There thus exists an opportunity to utilise insights from the political science scholarship to explore the influence of other beliefs, their changing influence over time, and (what this means for) the possibility of making the underlying logics of Better Regulation work for health, rather than against it.

This article seeks to nuance our understanding of where Better Regulation came from, with the goal of informing both analysis and advocacy. Specifically, it aims to (a) expand upon and refine our understanding of the neoliberal roots of Better Regulation in the EU, and (b) explore additional influences which have similarly shaped the development of the agenda. It adopts a genealogical approach, and argues that three 'roots' of Better Regulation can usefully be identified: the Single European Market project, the legal principle of subsidiarity, and the modernisation agenda of the European Commission. Though linked, more or less directly, to neoliberalism, each of these roots is associated with a different set of logics. By identifying the tangible set of projects and ideas that inform Better Regulation, rather than linking it only to that most abstract of structural determinants, the article concludes that efforts to reform the instruments and practices of Better Regulation might be more effectively targeted. It thus responds to calls for more nuanced accounts of neoliberalism and its implications for health (Bell & Green 2016), and for studies that highlight the contribution of political science to public health (Bekker et al. 2018, Smith 2020, Gómez et al. 2022, Lynch 2023).

## Decentering Meta-regulation

Better Regulation exemplifies meta-regulation, in that it is a ‘set of institutions and processes that embed regulatory review mechanisms into the every-day routines of governmental policy-making’. As Morgan (2003, p. 490) notes, while it is ‘mostly an affair of technical bureaucratic minutiae’,

[T]he stakes underlying meta-regulation are neither technical nor dry. In essence, meta-regulation manages the tensions between the “social” and “economic” goals of regulatory politics, tensions that enflame passionate and highly wrought political conflict over the ethical limits of global capitalism.

Better Regulation seeks to manage these tensions by establishing a framework for good governance in which neoliberal logics are evident. Ward and England (2007, p. 12-13) identify four different understandings of neoliberalism: (1) an ideological hegemonic project, focusing on the dominant groups that support it; (2) a programme, focused on the three main policies of deregulation, liberalisation and privatization; (3) a state form, orchestrated by the state itself, in which the boundaries and functions of the state are redrawn; and (4) a governmentality that creates individualised, self-responsible ‘entrepreneurial subjects’. Using this categorisation, different aspects of neoliberal influence can be identified among the different, amorphous elements of Better Regulation. In a narrow, practical sense, Better Regulation sets out the precise procedures that government officials must follow when creating or revising policies, the principles and objectives that should inform policy development, and the role of particular actors and tools at different stages of the policy process. Applying Ward and England’s conceptualisation to just two examples from the practical Better Regulation ‘toolbox’, the emphasis on risk-based approaches to policy-making, as operationalised via impact assessment, speaks to individualising neoliberal governmentalities, whilst programmes to reduce the volume of EU regulation seek to alter the reach of the EU ‘state’. In a more abstract, political sense, Better Regulation provides the normative framework for EU policy-making (Lauber & Brooks 2023, Brooks Lauber 2024). Here, the neoliberal hegemonic project is visible in, for instance, the prioritisation of economic growth as the core goal of EU policy, the assumption that the primary purpose of the EU is to facilitate the market, and the continual reformulation of Better Regulation to support these objectives (Navarro 2007, Schrecker & Bambra 2015, Godziewski 2020).

But the evolution of the agenda reflects more than just neoliberal influence, and its origins are diverse. In its own narratives, the European Commission (the EU’s executive body) generally identifies its 2001 White Paper on European Governance as the foundation, and the 2002 Action Plan as the first EU Better Regulation activity (European Commission 2019a). Academic accounts, by contrast, trace earlier roots, broadly aligning with the proliferation of neoliberal-inspired reforms in the 1970s and 1980s, and the subsequent modernising, new public management (NPM), reforms of the 1990s and early 2000s (Weatherill 2007, Radaelli & Meuwese 2009, Garben 2020). Furthermore, Better Regulation as a label emerged only in the latter period, and the package of reforms that created the contemporary agenda was adopted in 2015. Throughout this time, the leadership of the Commission has continually re-framed, revised and re-launched the framework, linking it to different priorities and projects.

Better Regulation is thus an evolving policy framework, comprised of multiple different instruments, adopted, practiced and reformed in changing socio-political contexts. Therefore, this article takes an interpretive approach and, specifically, draws on decentred theory. Among the ideas that have informed Better Regulation are those commonly captured by decentred analyses, which conceive of governance, ‘not as a particular state formation but as the various policies and outcomes emerging from the increasing salience of the ideas of neoliberalism and new institutionalism’, and pay close attention to the role of modernist social science in informing public sector reform, including the introduction of evidence-based policy-making and related instruments (Bevir 2016, Bevir & Rhodes 2016, p. 6). Decentred theory understands practices of governance as the dynamic product of contest over such

reforms, and ‘encourages social scientists to examine the ways in which patterns of rule, including institutions and policies, are created, sustained, and modified by individuals’ (Bevir & Rhodes 2016, p. 5, Rhodes 2018).

Focusing on Better Regulation’s ideational origins, the article utilises a genealogical methodology, which decentres policy by highlighting diverse elite narratives, rationalities of governance, and sites of resistance (Bevir 2010), building on the work of Nietzsche and Foucault. Nietzsche’s rejection of the notion that ideas and understandings have a single origin is reflected in a method that traces the emergence and lineage of policies, rather than identifying a single root (Mansfield 2016, p. 294). Foucault’s genealogical method holds that practices (of governance) can only be understood by examining the contexts and social-political projects from which they descend (LaFleur 2023). Importantly, as regards the implications of Better Regulation for public health, genealogy is said to have ‘the aim of *critique* – [...] of using historical analysis to denaturalize ideas with long lineages and open up a space for alternatives’ (Bevir 2008, Stone Tatum 2018, p. 351; emphasis in original). This denaturalising function ‘can point to the disgraceful origins of contemporary practices’ (Bevir & Phillips 2017, p. 711) and thus support challenges to them. In line with this approach, the article traces three, interconnected roots of Better Regulation and seeks to highlight the tangible aspects which might be targeted to promote its reform.

## Methodology

The analysis is based a large collection of policy documents written or sponsored by the European Commission. The primary dataset is comprised of 105 documents, spanning June 1985 to September 2023, which have established, reformed, elaborated and operationalised Better Regulation. The data were identified iteratively, built from an initial scoping review of the academic literature and institutional repositories, and snowballed via bibliographies and searches of the Commission website. At an institutional level, this collection of documents can be thought of as representing the Commission narrative(s) of Better Regulation.

NVivo 14 software was used to support the document analysis. The process of had two stages. In the first, each document was reviewed in full, classified by year, and mapped to visualise the chronology of Better Regulation. Text analysis began with series of exploratory queries. Some were deductive and used the NVivo functionality to examine frequently used terms, such as administrative cost and simplification. Others were inductive, based on searches for keywords drawn from the literature and the study rationale. These included, among others, deregulation, bureaucracy, red tape, burden, quantification, and self- and co-regulation. Key terms were mapped and patterns examined to understand how the language and focus of Better Regulation has evolved over time. In a second stage, a core set of 18 policy documents – the Commission’s main communications regarding Better Regulation, identified from the review in stage one – was analysed. Following the approach utilised by Bevir and Phillips (2017), this analysis focused on three questions: (1) What is the purpose or objective of Better Regulation; (2) what motivates its adoption or reform; and (3) what are the key instruments, principles, and rationalities of Better Regulation? Since the dataset was relatively small, this process was undertaken manually. Each of the 18 documents were read with these questions in mind, and relevant passages coded as relating to the purpose, drivers or content of Better Regulation. The coded material was aggregated (into three groups), and themes across each group – such as simplification as a purpose, the need for a ‘level regulatory playing field’ as a driver, and rationalities of executive control – were identified. These themes form the EU’s narrative of its Better Regulation framework and the basis of the ‘origin story’ presented below.

## Better Regulation, Public Health and the European Union

The EU Better Regulation framework aims to improve the quality of legislation by strengthening its evidence base, increasing participation in policy-making, and reducing burden upon businesses and citizens (European Commission 2002a). Operationalising these norms are a set of five core policy instruments – impact assessment, evaluation, consultation, quality control, and forward planning and validation – supplemented by a series of other tools, principles and norms, many of which bear hallmarks of neoliberal or deregulatory logics. For example, REFIT (the EU's 'regulatory fitness' programme) systematically assesses legislation with a view to simplifying and reducing (administrative) costs. This process reopens legislation to renewed challenge and has been linked to the withdrawal or weakening of various public health-relevant initiatives concerning social and employment rights (van den Abeele 2016), as well as to delays in legislation addressing workplace cancers, pesticides, chemicals, and antimicrobial resistance (Corporate Europe Observatory 2020).

Other tools pose similar challenges to public health policy. Emphasis on alternatives to regulation encourages self- and co-regulatory models of governance; the one-in-one-out principle requires that all new initiatives relieve an equivalent burden in the same policy area; the innovation principle, advocated by industry groups frustrated with the application of precautionary principle, introduces assessment of how legislation impacts upon innovation; and the 'SME Test' embeds special consultation and impact assessment process for small and medium enterprises, accompanied by potential exemption from regulation. More fundamentally, the norms and practices of Better Regulation risk 'regulatory chill' by creating an environment in which public health policy-makers perceive minimal regulation and the avoidance of regulatory burden as the dominant objectives of the EU (Brooks & Lauber 2024).

In contrast to the grey literature, which documents its impact on policy outputs, the political science scholarship generally focuses on how Better Regulation shapes the power of the Commission. Externally, Better Regulation contributes to strengthening the 'strategic actorness' of the executive and, ultimately, its power in relation to the other EU institutions (Bürgin 2018, Jankauskas & Eckhard 2019). Internally, Better Regulation increases the degree of top-down control and contributes to 'presidentialising' the Commission (Radaelli & Meuwese 2010, Alemanno 2015, Wegrich 2015, Becker et al. 2016). Crucially, the development of Better Regulation has coincided closely with initiatives to change the way in which the Commission functions. These include the organisational reforms introduced in the mid-1990s which drew on NPM approaches in an effort to modernise the EU's executive (Tholoniat 2009, Højlund 2015). The central theme of the reforms was the cutting of bureaucratic red tape and the simplification of internal systems, whilst the strengthening of the role of the Secretariat General, the creation of an impact assessment board, and the introduction of activity-based management and strategic planning, are all associated with later iterations of Better Regulation (Kassim 2004, Schön-Quinlivan 2011).

In sum, the political science literature offers some more concrete indications of how neoliberal ideas might manifest within Better Regulation norms (for instance, via NPM and new institutional economics; see Radaelli & Meuwese 2009) and thus affect (public health) policy outputs, but also indicates the relevance of political contexts, power relations and interests to the process by which policy is made. With this in mind, the following section presents an historical analysis of Better Regulation which focuses on the socio-political contexts, ideas and projects that have shaped it.

## Three Roots of Better Regulation

From the policy documents, it is possible to identify three projects or contexts that informed the early development of Better Regulation. Each is rooted in a wider set of beliefs about the EU, the role of the Commission, and the purpose of Better Regulation.

### Better Regulation and the Single European Market

Perhaps the most visible and commonly cited project that shaped Better Regulation is the Single European Market (SEM), and the market-driven rationale associated with neoliberal ideology was evident long before the term Better Regulation was adopted at the EU level. By 1985 the construction of a common market across European states had stalled, prompting the Commission to launch an ambitious new strategy to complete it. Keen to foster support from economic actors, the resulting White Paper emphasised the goals of simplification and burden reduction (European Commission 1985), and an accompanying report suggested that simplification – along with the use of non-legislative approaches such as self-regulation – was key to avoiding criticism that the Community was ‘excessively bureaucratic’ (Sutherland Report 1992).

In 1996, the Commission launched the Simpler Legislation for the Internal Market (SLIM) project to examine how best to reduce the burden on business of single market rules (Molitor Report 1995, European Commission 1996). A year later, it introduced BEST – the Business Environment Simplification Taskforce – which was set up to identify the factors acting as a legislative or administrative brake on small businesses, and emphasised employment, competitiveness, entrepreneurship and wealth creation (BEST Taskforce 1998). These projects featured in a 1998 communication titled ‘legislate less to act better’, which brought together the various initiatives to date and set out the Commission’s approach to ‘better lawmaking’, which would eventually become ‘better regulation’. At this stage, Better Regulation was a market project, led by economic policy officials, targeting commercial and economic interests, and driven by a commitment to completion of the SEM.

In the years that followed, the SEM inevitably dropped down the political agenda, but the influence of market logics, and the link between simplification and economic growth, remained evident. In the context of the Lisbon Strategy – the EU’s vision for creating ‘the most competitive and dynamic knowledge-based economy in the world’ (European Council 2000) – the role of Better Regulation was reframed to support jobs, growth and competitiveness. Simplification was identified as a pathway to creating the ‘right regulatory environment’ and thus to making Europe ‘the cheapest and easiest place to do business in the world’ (European Commission 2001a, b), whilst a subsequent communication revised the Better Regulation approach with a view to improving competitiveness (European Commission 2005c, p. 2). Later, the REFIT initiative brought previous simplification and burden reduction programmes together under one umbrella. It involved a mapping of the *acquis communautaire*, the complete body of EU law, to ‘identify burdens, gaps and inefficient or ineffective measures including possibilities for simplification or repeal’ (European Commission 2013, p. 4). The concept of simplification – a core belief underpinning REFIT and the wider Better Regulation agenda – thus emerged against a background of concern about competition and growth, orienting the revision of legislation towards the minimisation of business costs and burdens.

The early instruments and rationalities associated with the completion of the SEM were regulatory impact assessment, simplification (and mechanisms for identifying areas where this is needed), and alternatives to regulation (such as co- and self-regulation). As the narrative shifted towards growth and competitiveness, the Commission committed to updating its impact assessment guidelines, conducting a ‘more thorough’ screening of pending legislative proposals, and reinforcing the mechanisms that identify legislation for simplification (European Commission 2005a). It also advocated again for the use of alternatives to regulation as a way to ‘strik[e] the right balance between the policy agenda and the economic costs of regulation’ (European Commission 2005a, p. 4).

Crucially, the idea of the costs of regulation as a threat to competitiveness was translated into a series of initiatives relating to administrative cost. The term *administrative cost*, and the associated term *administrative burden*, had appeared only occasionally within the Better Regulation documentation prior to 2005 but, that year, at the behest of national governments, the Commission developed a Standard Cost Model for the assessment of administrative costs imposed by legislation (European Commission 2005b). To support this project, it also launched a common approach to the quantification of burden and, in

2007, an Action Plan for reducing administrative burdens, as part of efforts to create jobs and growth (European Commission 2007). Each of these instruments was designed to ensure that EU policies were constructed in a way which prioritised growth and competitiveness, responded to particular forms of (quantifiable) evidence, and accounted for the interests of commercial actors.

### ***Better Regulation and the Subsidiarity Principle***

The SEM revival project was launched alongside the ongoing negotiation of the Maastricht Treaty, which established the principle of subsidiarity within the legal framework of the EU in 1991. Governing all of EU law-making, this principle states that, where its competences are not exclusive, the EU can act 'only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States' (Article 5(3) TEU). Though the literature discusses subsidiarity less often than other elements, it is a central component of Better Regulation.

Over time, subsidiarity was increasingly institutionalised within the Better Regulation framework, primarily via the development of various templates and tests for applying the principle as part of impact assessment (European Commission 2006). Between 2018 and 2019, the Commission undertook a 'stock-taking' of Better Regulation, coinciding with the final report of the Task Force on Subsidiarity, Proportionality and Doing Less More Efficiently (TFDL), which was created by President Juncker in 2017. A subsequent Communication described subsidiarity as a 'core element of the Commission's better regulation agenda' (European Commission 2018), and it featured prominently in the findings of the stock-taking exercise (European Commission 2019b). It remains a driving rationale today; the most recent Communication on Better Regulation maintains that the framework is 'partly about acting at EU level only when, and to the extent, necessary' (European Commission 2021, p. 15).

Subsidiarity is predominantly operationalised via impact assessment and thus draws on many of the same instruments and rationalities as the SEM project. When it was made binding in the Treaty of Amsterdam, an appended Protocol outlined how it should be implemented. This contained a new requirement that compliance 'must be substantiated by qualitative or, wherever possible, quantitative indicators' (paragraph 4, now Article 5), and provided that the Commission should consult widely before proposing legislation, justify relevance in the explanatory memorandum, and 'take duly into account the need for any burden, whether financial or administrative, falling upon the Community, national governments, local authorities, economic operators and citizens' (paragraph 3, now Article 5).

However, distinct from the SEM project, subsidiarity is also closely tied to a rationality that focuses on reducing the volume of EU legislation. The annual subsidiarity reports consist of lists of legislation adopted, revised and repealed whilst, in its recommendations on how the EU might 'do less more efficiently', the TFDL repeatedly identifies the Better Regulation guidelines as a core tool for assessing compliance with the subsidiary principle, and evaluating legislation from the perspective of simplification and legislative density (Task Force on Subsidiarity 2018). This emphasis on volume or density creates a need for instruments that quantify legislation but does so with an emphasis on (cumulative) burden and the limits of EU competence, rather than cost. Differently from economic concerns about the market or growth, subsidiarity emerged in the context of national governments' concern for their own regulatory autonomy. Its origins lie in government more than Commission interests, and it is used to circumscribe the scope of EU policy with particular relevance for fields, such as public health, where EU competence is limited (Kuiper Guy 2022).

### ***Better Regulation and the Modernisation of the European Commission***

The ideas that underpin the SEM project and the subsidiarity principle remain relevant to Better Regulation, but a third project is particularly visible in the contemporary, post-2015 agenda, which emphasises the internal reform of the Commission. Like any large public administration, the Commission has engaged in repeated waves of reform targeting its organisational structure, internal management, and

policy processes. Early initiatives framed Better Regulation tools as key to the modernisation of the Commission bureaucracy. The report of the BEST Taskforce, for instance, contained a section on the culture of public administration and recommended the creation of Better Regulation Units to oversee improvements (BEST Taskforce 1998). Similarly, the Communication on minimum standards for consultation identified the use of feedback and consultation processes as supporting the Commission to become 'a modern administration' (European Commission 2002c, p. 7). This belief in modernisation of EU administration thus emerged against a background of similar reforms at national level, and influenced the creation of Better Regulation instruments inspired by models of NPM and managerialism.

The influence of internal reform on the development of Better Regulation became more explicit in 2015. The Juncker package framed Better Regulation in terms of the Commission's working practices, targeting both 'what the EU does, and how it does it' (European Commission 2015, p. 3), and changing 'the way the Commission works and sets its policies, by putting better regulation principles at the heart of its policy-making processes' (European Commission 2016, p. 2). To this end, the administration created a toolbox and accompanying set of guidelines, to steer and standardise its internal policy process. In these documents, Better Regulation was framed as a tool for implementing or pursuing the Commission's political priorities, and realising the Commission's commitment to being 'big on big things, and small on small things'. The reforms were closely linked to the objectives of the Lisbon Strategy but also driven by a sense of growing distrust and disinterest among citizens, and therefore focused on 'better solutions for better results' (European Commission 2017). The ideas driving the development of Better Regulation were thus bureaucratic and administrative, emerging not from concern about economic growth or regulatory autonomy, but rather about political control of the Commission's activity.

The instruments and rationalities associated with internal reform again mirror those described above. Impact assessment, evaluation and consultation are framed as tools of a 'modernised' administration. They are brought together, however, by a rationality focused on evidence-based policy-making, which is described as a 'cornerstone' of Better Regulation (European Commission 2021). Importantly, instruments such as activity-based management and strategic programming share a logic of controlling or reducing the volume of EU legislation, centralising decision-making, and politicising the executive. The 'political validation' tool, which is now the first resource in the Better Regulation toolbox and the first stage in the policy process, is designed to screen out initiatives that do not fit with the Commission's political priorities, guided by a motto of 'doing less' and concerned with the image of an EU that 'meddl[es] in the lives of citizens or businesses with too many and too detailed rules' (European Commission 2016, p. 2). As such, modernisation is a belief bound up in ideas about how best to steer the EU's policy activity, underpinning Better Regulation instruments designed to ensure that this activity focuses only on the priorities of the Commission leadership (among which public health rarely features).

### ***The Multiple Ideational Roots of Better Regulation***

Unpacking the origins of Better Regulation allows us to be more precise about the extent and form of neoliberal influence, and to identify other ideas which have shaped its development. Because of its vulnerability to both conceptual stretching and reduction, analyses of how neoliberalism manifests and impacts upon health require us to 'concretise and contextualise' (Lynch 2023). Whilst there is a vibrant debate about the extent to which the EU promotes, for example, the commodification of national healthcare services (Stan & Erne 2023), or the liberalisation of trade without regard for public health protections (Koivusalo et al. 2021), these particular facets of neoliberalism are not the purview of Better Regulation. So what aspects or dimensions of neoliberal ideology are relevant to Better Regulation, and how might these affect public health?

The granular analysis presented above – specifically the roots related to the SEM project and the modernisation of the Commission – speak to a Better Regulation agenda that is designed to promote economic growth via competitiveness within the market (in line with the neoliberal hegemonic project) and making the regulatory state as efficient and accountable as possible (reflecting neoliberal state forms).

Attached to these broad ideas, specific rationalities – about the necessity of burden reduction, the value of evidence-based policy-making, and the effectiveness of managerial decision-making – are operationalised via instruments designed to quantify policy impacts, solicit input from policy stakeholders, and filter out initiatives which do not contribute to current political goals. Where such instruments inadequately account for health impacts, facilitate commercial influence over policy development, and filter out health initiatives at the agenda-setting stage, for instance, pathways between the distal influence of neoliberal ideology and the proximate conduct of policy-making that undermines public health – via the practice of Better Regulation – become clearer.

The genealogical approach clarifies, however, that Better Regulation is informed by multiple other socio-political projects and ideas. Though these have inspired many of the same instruments, their logics and the interests that motivate them are different. The subsidiarity principle is underpinned by ideas about the appropriate exercise of EU powers, the protection of national regulatory autonomy, and the belief that policy decisions should be ‘taken as closely as possible to the citizens of the Union’. These are, fundamentally, concerns about how multi-level and supranational governance should be structured. They manifest in rationalities of control of the Commission by national governments, whose goal is to limit the role and influence of the EU to that strictly prescribed in the treaties (Craig 2012). These are linked closely to rationalities of reducing burden – understood as encroachment or obligation upon private and public sectors activities – and its accumulation across the body of EU laws. Here, instruments such as REFIT and the one-in-one-out approach are used to keep a check on the quantity of EU output. The result might be characterised as deregulatory or as minimising the state, particularly where it results in the reduction of EU public health activity, but the rationale is linked less to concerns about the market and competitiveness, and more to the desire for national autonomy and executive control.

Different again are the ideas underpinning much of the Commission’s modernisation agenda. Some of these are linked closely to NPM, which is itself understood as a neoliberal programme, and seeks to improve government by making the state or public sector efficient. NPM feeds into evidence-based policy rationalities that focus on assessing costs and benefits, and centralising decision-making by strengthening the role of the Secretariat General and the Commission’s leadership. Other aspects of the modernisation agenda are underpinned by ideas about the political role of the executive, and the use of Better Regulation – specifically its corporate, top-down management instruments such as strategic planning, validation and oversight – to pursue political objectives. These objectives include the substantive policy priorities of the Commission but also the wider goal of reducing the EU’s image as ‘as a bureaucracy responsible for over-regulation’ (Bürgin 2018, p. 838). This points to two pathways by which Better Regulation might impact upon public health: first, by intensifying focus on the priority projects of the Commission President (among which health has rarely featured), and second by serving as a reputation-management tool (where public health is understood as an area in which the EU should be seen to ‘do less’). Again, the result might be considered deregulatory, in that it contributes to suppressing, delaying or weakening the EU’s action on health, but it is driven by concern for presidentialism.

## Contingency and Contestation in the Better Regulation Agenda

In addition to elaborating the background against which Better Regulation emerged and the multiple ideas which underpin it, the genealogical approach highlights the contingency and contestation of Better Regulation’s development, evident in the continual re-framing, revision and re-launching of Better Regulation and its instruments by different leaders of the Commission. Romano Prodi, who entered office in 1999 following a corruption scandal and the resignation of the previous Commission, framed Better Regulation as a ‘veritable ethical requirement’ (European Commission 2002b, p. 2); good governance and transparency were emphasised as key to the growing ‘democratic conscience’ of EU citizens (Schout & Schwieter 2018, p. 6). Manuel Barroso, in post from 2004 to 2014, linked Better

Regulation explicitly to reducing burden and increasing the competitiveness of the European economy, including via review of the existing *acquis* (Kelemen 2018, p. 205). Under Jean-Claude Juncker, Better Regulation became a tool for internal reform and the achievement of political priorities (Alemanno 2015, Wegrich 2015), framed by a commitment to 'do less more efficiently' (European Commission 2015). Upon entering office in 2019, Ursula von der Leyen incorporated Better Regulation formally into the working methods of the executive, and adopted the first EU-level one-in-one-out target for regulatory burden (European Commission 2021). One-in-one-out is a particularly clear example of contingency and contestation within Better Regulation. For several years prior to its introduction by Ursula von der Leyen in 2021, the vice president responsible for Better Regulation, Frans Timmermans, had rejected pressure from national governments to adopt such a system, arguing that 'Target-based approaches tend to overlook the fact that it is legitimate and necessary to impose some costs in pursuit of important societal objectives' (European Commission 2019a, p. 11).

Motivated by changing political contexts and responding to both internal and external pressures, Commission leaders have constantly reinterpreted and redesigned the Better Regulation framework, sometimes in conflicting or divergent directions. These reforms have responded to the salience of the neoliberal project, but also to ideas about political legitimacy, regulatory autonomy and executive control. Consequently, the impact of Better Regulation on public health policy-making is multi-faceted, and shaped by both external pressures (via the interests of commercial actors and national governments) and internal pressures (within the Commission and the wider EU system).

## Conclusion

This article did not set out to unpack all of the specific pathways by which Better Regulation manifests neoliberal ideas that threaten health, and certainly not to refute that such pathways exist. Better Regulation is clearly influenced by the neoliberal project, as indicated not least by recent efforts to link it to new initiatives on competitiveness (European Commission 2023) and industrial strategy (The Antwerp Declaration 2024). Rather, its purpose, and the value of engaging a genealogical approach, is to shed light on the additional and alternative ideas that underpin Better Regulation. As the analysis demonstrates, the 'disgraceful origins' of Better Regulation are multiple, and more or less disgraceful. Alongside concern for the market and the goal of economic growth are concerns about the appropriate exercise of EU powers and the objectives of EU federalism, the effective organisation of the Commission and the purpose of the executive, and the legitimacy of the EU project as whole, in the eyes of its stakeholders and citizens.

For those seeking to reform the practice of Better Regulation, to ensure that it works to promote public health, environmental and other social values, this implies that there are multiple avenues by which the framework can be critiqued. Rather than a manifestation of an abstract, structural determinant of health (neoliberalism), Better Regulation might better be conceptualised as an institutional or political determinant (Ralston et al. 2023, Brooks et al. 2024), and disaggregated into a series of specific instruments and practices. The analysis confirms that particular tools, such as the one-in-one-out approach, can be critiqued on the basis of their market-driven logic and their quantification methodologies. But it also indicates that their roots in concerns about institutional legitimacy and the exercise of EU powers might support advocacy addressing, for instance, a reframed narrative about the social value of EU regulation. Moreover, the contingency and contestation of the agenda by individual actors leave space for effective advocacy, targeted across the full spectrum of ideas and instruments that Better Regulation entails. Given its persistence, efforts to make the underlying logics of Better Regulation work for public health, rather than against it, remain crucial.

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