

How Legitimate is the Open Method of Co-ordination?*

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Abstract

This article argues that the OMC's legitimacy can be improved only by strengthening parliamentary channels of input-legitimacy since output-legitimacy alone is inappropriate and cannot be achieved without input-legitimacy. In addition, concepts and practices of direct 'stakeholder' participation currently applied within the OMC are insufficient in strengthening input-legitimacy.

Introduction

In November 2007, the open method of co-ordination (OMC) celebrated its tenth anniversary.¹ When it was initially established, the OMC was predominantly regarded as an innovative governance method at the European Union (EU) level facilitating bottom-up policy learning and strengthening the EU's social dimension through the regular exchange of information, deliberation, policy evaluation and 'naming and shaming' between the Member States. Academic interest in this phenomenon has been considerable and theoretical

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¹ A significant component of the OMC, the European Employment Strategy, was launched at the Luxembourg summit in November 1997.

1 articles, as well as empirical evaluations of various OMC aspects, are numer-
2 ous (for general overviews, see Büchs, 2007; Zeitlin *et al.*, 2005).

3 Recently, the interest in legitimacy issues regarding the OMC has also
4 increased, which is evident in the writings of Benz (2007), Borrás and
5 Conzelmann (2007), Duina and Raunio (2007), Hatzopoulos (2007), Kröger
6 (2007), Papadopoulos (2007), Radulova (2007), Wincott (2006) and Tsaka-
7 tika (2007). Early OMC literature was relatively optimistic regarding both its
8 legitimacy and potential to increase the European Union's democratic quality
9 (e.g. Eberlein and Kerwer, 2004; Gerstenberg and Sabel, 2002; Jacobsson
10 and Vifell, 2002). However, a number of more sceptical assessments of
11 the OMC's legitimacy have since been published, in particular those of
12 Hatzopoulos (2007), Kröger (2007) and Tsakatika (2007).

13 This article charts the debate regarding the OMC's legitimacy and demo-
14 cratic quality by applying the criteria of output- and input-legitimacy. This
15 distinction was developed by Scharpf during the 1970s (Scharpf, 1999, p. 6)
16 and is utilized here as it is generally a useful distinction for analysing issues
17 of legitimacy. It also had a significant impact on discussions regarding the
18 EU's democracy deficit. However, this article employs a critical reading of
19 this distinction and argues that output-legitimacy alone is neither appropriate
20 nor can it be achieved without input-legitimacy. An analysis of input-
21 legitimacy within the OMC demonstrates that it primarily rests upon a model
22 of stakeholder participation. As this model and practice is problematic from
23 the perspective of representative-parliamentarian democracy, the article con-
24 cludes that the OMC's legitimacy can only be strengthened by improving
25 parliamentary channels of input-legitimacy. The conclusion briefly discusses
26 a range of reform options.

27 28 **I. Why Worry About the OMC's Legitimacy?**

29 Firstly, one must establish why one should be concerned with the OMC's
30 legitimacy and democratic quality. The OMC objectives are adopted by the
31 Council of the European Union or the European Council whilst parliaments at
32 the EU and national levels play a merely marginal role in the process. From
33 a 'formalistic' or 'legalistic' perspective, one might argue that the OMC does
34 not raise any legitimacy issues. This position emphasizes that the OMC is
35 coherent with the EU's principle of subsidiarity, which allows the EU to adopt
36 policies only if an issue cannot be adequately tackled at the Member State
37 level. This perspective states that the OMC objectives and recommendations
38 are not legally binding, and consequently, the EU does not interfere with
39 the Member States' authority in the area of social policy (Borrás and

1 Conzelmann, 2007, p. 533). According to this logic, a national policy reform
2 informed by the OMC must be perceived as a voluntary, and therefore legiti-
3 mate, act (Amitsis *et al.*, 2003, p. 91). In addition, this position argues that
4 important branches of the OMC, such as the European Employment Strategy
5 and processes of economic policy co-ordination, are legitimized through
6 Articles 99 and 125–30 of the Treaty establishing the European Communities.²

7 A number of difficulties are inherent within this ‘formalistic’ approach,
8 however. The OMC does not merely comprise minor or uncontroversial
9 ‘technical details’, but promotes social policy approaches associated with
10 fundamental values and interests (Borrás and Conzelmann, 2007, p. 532;
11 Kröger, 2007, p. 579). Although numerous authors agree that the OMC is
12 unlikely to affect national policy-making *directly*, it is becoming increasingly
13 accepted that it may have long-term effects upon Member States’ social
14 policies through framing the perception and definition of problems, as well as
15 related policy responses (e.g. Hatzopoulos, 2007; López-Santana, 2006).
16 Whilst national parliaments still formally adopt social policies, the OMC
17 restricts their role as agenda-setters and strengthens executives’ influence
18 upon agenda-setting and policy-design. In addition, the European Social Fund
19 has been more closely linked to the OMC in recent years.³ Therefore, the
20 OMC has a potential impact upon the European Social Fund’s implementa-
21 tion and thus upon redistributive policies. Furthermore, some authors have
22 argued that the European Court of Justice is potentially able to refer to OMC
23 objectives in its decisions (Hatzopoulos, 2007, p. 335). These are indicators
24 that the OMC possibly exerts an influence upon fundamental social policy
25 decisions and hence requires legitimacy.

26 27 II. Why Apply Output- and Input-Legitimacy?

28 Any debate surrounding the democratic quality and legitimacy of certain
29 governance instruments must clarify its evaluation criteria. This article
30 applies those of output- and input-legitimacy, developed by Scharpf in the late
31 1970s (Scharpf, 1999, p. 6). These criteria are employed within this article as
32 they identify two interrelated, but analytically distinct, criteria of democratic
33 legitimacy which had a significant impact upon the debate regarding the EU’s
34 legitimacy. However, as this discussion will demonstrate, the distinction
35 between output- and input-legitimacy has been applied in a problematic way
36

37 ² Currently, the OMC in areas such as social inclusion, social protection and health has no treaty basis
38 which could be criticized by the ‘formalist’ position. If the new reform treaty is ratified, this situation will
39 be rectified (see the text of the Draft Reform Treaty on <<http://consilium.europa.eu>>).

40 ³ See the new regulation on the European Social fund (EP/Council, 2006), preamble paragraphs 7, 13, 15,
41 Article 4.1, 4.4 and 4.5.

1 within the debate surrounding the EU's legitimacy, as well as, to a certain
2 degree, that of the OMC.

3 According to Scharpf (1999), policies are output-legitimate when they
4 produce outcomes serving the *interests* of the citizens, that is they are legiti-
5 mate because they are effective ('politics *for* the people'). Policies are input-
6 legitimate when they reflect the citizens' *will* that is usually provided for by
7 procedural arrangements related to majority rule ('politics *by* the people')
8 (Scharpf, 1999, p. 6). Scharpf maintains that input-legitimacy requires citi-
9 zens to possess a common political identity in order for input-legitimate
10 processes to generate the required trust that policy outputs are related not
11 merely to the aggregation of self-interested preferences but pursue a
12 'common good' (Scharpf, 1999, p. 7). In contrast, output-legitimacy can be
13 generated without such common political identity, as political decisions must
14 effectively solve problems and thereby fulfil the citizens' interests. Scharpf
15 states that output- and input-legitimacy usually co-depend on one another at
16 the *national* level; effective national policies can be legitimate only when they
17 are based upon input-legitimate policy processes whilst input-legitimate
18 policies need to be effective to be fully legitimate (Scharpf, 1999, p. 26).

19 The concepts of 'output' and 'input-legitimacy' have also been applied to
20 discussions regarding the EU's legitimacy and democratic quality. Within this
21 field, one influential perspective argues that the EU's legitimacy must prima-
22 rily rely upon output-legitimacy since it is neither possible, necessary nor
23 desirable to generate input-legitimacy.

24 Scharpf, for instance, maintains that it is impossible to promote input-
25 legitimacy at the EU level, for example, through a powerful role for the
26 European Parliament in EU policy-making, EU party politics and the election
27 of an EU government, as a common political identity among EU citizens is
28 lacking. Scharpf thus argues that EU policies must be restricted to uncontro-
29 versial policy areas so that a political consensus fulfilling EU citizens' inter-
30 ests can be reached and, consequently, no input-legitimate policy-making
31 processes are required (Scharpf, 1999, p. 22).

32 Authors such as Majone and Moravcsik also support the view that EU
33 policies should rely upon output-legitimacy (Majone, 1998; Moravcsik,
34 2002). They argue that input-legitimate institutions within the EU are *unnec-*
35 *essary* as the EU is primarily engaged with regulatory policies without redi-
36 tributive effects (Majone, 1998) and that the EU's institutional system already
37 provides for accountable, transparent and median-voter-oriented policies
38 (Moravcsik, 2002). Furthermore, both Majone and Moravcsik believe that
39 input-legitimacy at the EU level is *undesirable* since a parliamentarization –
40 and politicization – of the EU would result in ineffective policy processes and
41 suboptimal policy outcomes (Follesdal and Hix, 2005, p. 7).

1 This approach has been applied to the OMC by authors such as Telò
2 (2003), who argues that the OMC could be legitimized through its effective-
3 ness. To evaluate this claim, the following section briefly examines the
4 OMC's effectiveness to investigate whether it has the *potential* to generate
5 output-legitimacy. Subsequently, the discussion will surpass questions
6 regarding the OMC's effectiveness to scrutinize the *appropriateness* of
7 assumptions that it could be legitimized solely on the basis of its outcomes.
8 This will finally lead to an examination of the OMC's input-legitimacy.

9 10 **III. The OMC's Output-Legitimacy**

11 *How Effective is the OMC?*

12 To date, no clear consensus exists regarding the OMC's effectiveness. This is
13 partly due to a lack of consistent evidence concerning the OMC's influence
14 upon national policy-making, and partly related to disagreement surrounding
15 the definition of the OMC's goals. Thus far, the majority of authors concede
16 that whilst a *direct* influence of the OMC upon national policy-making is
17 unlikely, it has the potential to 'frame' national policy-making *indirectly* and
18 generate long-term effects on policies through cross-national learning
19 (López-Santana, 2006; Trubek and Trubek, 2005; Zeitlin, 2005). Authors
20 believing that the OMC's primary aim lies in facilitating the exchange of
21 information and providing an opportunity for informal policy-learning may
22 therefore conclude that this objective is fulfilled and the OMC consequently
23 passes the effectiveness test.

24 However, if the OMC's effectiveness is evaluated against more ambitious
25 targets, the outcome may be less positive. This is likely to be the case if the
26 OMC is measured against its policy objectives and quantitative targets as well
27 as expectations that it has the potential to strengthen the EU's social dimen-
28 sion and balance 'negative' and 'positive' integration (De la Porte and Pochet,
29 2002a, p. 11; European Council, 2000, para 15; Ferrera and Rhodes, 2000,
30 p. 278).

31 With an employment rate of 64.7 per cent for the EU-25 in 2006, signifi-
32 cant progress still has to be achieved if a target of 70 per cent is to be reached
33 by 2010.⁴ The 'at-risk-of-poverty-rate' in the EU-25, reflecting the proportion
34 of the population living on an income below 60 per cent of the median after

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40 ⁴ At first glance, the employment rate of 57.3 per cent for women in 2006 appears close to the goal of 60 per cent, which is to be achieved by 2010. However, the full-time equivalent rate for female employment only reached 48.5 per cent in 2006. The employment rate for older workers was 43.6 per cent in 2006, making the achievement of the goal of 50 per cent by 2010 unlikely, see Eurostat <<http://epp.eurostat.ec.europa.eu>>.

1 social transfers, has stagnated at 16 per cent since the year 2000. Social
2 inequality, measured by the ratio of the income received by the top quintile to
3 the bottom quintile of the EU-25 population, has risen from 4.5 in 2000 to 4.9
4 in 2005. The Gini-coefficient, used as an indicator of income inequality
5 within the EU-25, has also increased from 29 to 30 between 2000 and 2005.⁵
6 This statistical evidence demonstrates that the OMC fails to achieve many of
7 its objectives, particularly those of 'combating poverty and social exclusion'
8 (European Council, 2000, para 20). The mid-term review of the Lisbon
9 Strategy in 2005 also conceded that the OMC's targets had not been
10 fully achieved, urging to overcome the 'implementation deficit' by 2010
11 (Commission, 2005, p. 13).

12 It has also become clear that the OMC has not changed the relationship
13 between 'negative' and 'positive' integration (Ferrera and Rhodes, 2000, p.
14 278; Scharpf, 1999, p. 45) as it did not affect the interpretation of how social
15 policy competencies are distributed between the EU and the Member States.
16 The EU's social policy competencies remain constrained through strict appli-
17 cation of the subsidiarity principle. In addition, the OMC is embedded within
18 a framework of legally binding 'negative integration' policies as well as the
19 stability and growth pact which, although often criticized for being overly soft
20 and ineffective, continues to play a more significant role within national
21 policy debates and policy-making than the social policy OMC (De la Porte
22 and Pochet, 2002b, p. 51). The negative votes within the Dutch and French
23 referendums on the EU's Constitutional Treaty also demonstrated that some
24 EU citizens tend to perceive the EU as a propellant for market liberalization
25 and potential threat to national social standards (Kenner, 2005, p. 542). This
26 evidence indicates that the OMC has not sufficiently contributed to strength-
27 ening the social dimension of the European Union. It is therefore questionable
28 whether the OMC possesses the ability to generate output-legitimacy, as it
29 lacks the required conditions.

30 *Legitimizing the OMC Through its Effectiveness?*

31
32 On a more fundamental level, one must discuss whether it would be *appro-*
33 *priate* to legitimize the OMC on the basis of its effectiveness. This section
34 considers significant theoretical concerns in relation to the perspective that
35 EU policies, and the OMC more specifically, can be predominantly legiti-
36 mized through outcomes. The latter position relies upon several precondi-
37 tions, including the existence of consensual policy solutions (Scharpf, 1999,
38 p. 22) rendering political debate and contestation unnecessary. If consensus
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40 ⁵ All data are sourced from the latest Eurostat figures, <<http://epp.eurostat.ec.europa.eu>>.

1 exists *prior* to public discussion, policies can be defined by ‘agents’ such as
2 the European Commission or expert committees. A second precondition for
3 the legitimacy of delegating policy-making to non-democratic institutions is
4 that policy outcomes must have pareto-optimal effects, meaning that they
5 must benefit at least one person without disadvantaging any other individual
6 (Lord and Beetham, 2001). In other words, policies based upon output-
7 legitimacy must not have redistributive effects. If one scrutinizes the OMC
8 with regards to these two preconditions, it appears that both are far from being
9 fulfilled.

10 As previously mentioned, the OMC objectives, guidelines and recommen-
11 dations rely upon fundamental values and decisions regarding the direction
12 that European social policy should take (Borrás and Conzelmann, 2007). The
13 OMC objectives promote an agenda of market-enhancing financial sustain-
14 ability and welfare-to-work policies (Ashiagbor, 2005; Büchs, 2007). It
15 cannot be assumed that this policy approach is uncontroversial amongst EU
16 citizens and it is therefore not legitimate if decisions regarding these pro-
17 grammatic orientations are adopted in policy processes decoupled from open
18 parliamentary debate.

19 The position assuming that experts or politicians in non-democratic insti-
20 tutions are able to define social problems and corresponding policy solutions
21 fulfilling citizens’ long-term interests also disregards an important function of
22 democratic policy-making processes. For example, authors such as Habermas
23 (2001 [1998]) and Eriksen and Fossum (2000) argue that citizens’ interests do
24 not exist independently of public political discussion and cannot be objec-
25 tively identified by experts or political elites. They conversely assume that
26 citizens’ interests are formed only through public political deliberation,
27 which therefore emerges as a crucial element of any democratic policy-
28 making process. This appears to be an extremely valid argument, demonstrat-
29 ing the requirement for input-legitimacy in order to *identify* citizens’ interests.
30 Consequently, output-legitimacy alone is not only insufficient, but it *cannot*
31 *be achieved* without input-legitimacy.

32 In addition, the second precondition that the OMC can be based upon
33 output-legitimacy if its results are pareto-optimal, or have no redistributive
34 effects, does not appear to be fulfilled. As stated above, the OMC promotes
35 fundamental social policy concepts which, if influencing national policy-
36 making, affect the majority of the population. These policies will also barely
37 be pareto-optimal. For example, the European Employment Strategy and
38 OMC for social inclusion promote policies reducing ‘welfare dependency’ by
39 cutting benefits and imposing stricter conditionality upon the receipt of ben-
40 efits. Whilst such policies may have a positive effect upon overall employ-
41 ment rates, they may have a negative impact upon the well-being of benefit

1 claimants and do not appear to contribute to greater social equality or poverty
2 reduction. This argument becomes even more relevant if one considers that
3 the OMC, and the European Employment Strategy in particular, has been
4 linked to the European Social Fund much more closely during recent years.⁶
5 Therefore, the EES potentially possesses concrete financial and (re)-
6 distributive effects. On a more abstract level, authors such as Lord and
7 Beetham (2001, p. 449) have argued that even if policies are pareto-optimal,
8 policy-makers must often choose between different pareto-optimal solutions
9 and consequently consensus upon the basis of this choice may not exist.
10 Furthermore, it is possible for the benefits of a specific pareto-optimal solu-
11 tion to be unevenly distributed (Schäfer, 2006, p. 194).

12 Two conclusions can be drawn from the debate regarding the OMC's
13 effectiveness. Firstly, from experience of the initial ten years it is evident that
14 the OMC has not been effective in generating output-legitimacy as it has not
15 successfully strengthened the European Union's social dimension. Secondly,
16 this article argues that even if it were effective, the OMC's legitimacy cannot
17 solely rely upon output-legitimacy as this would be inappropriate. In addition,
18 output-legitimacy cannot be *achieved* without input-legitimacy since it is
19 impossible to identify citizens' interests in isolation of input-legitimate
20 policy-making processes. The OMC therefore also requires input-legitimacy.
21 This dimension will be explored in the following section.

22 23 **IV. The OMC's Input-Legitimacy**

24 Recently, various authors have highlighted a need for greater attention to be
25 attributed to the OMC's input-legitimacy (Benz, 2007; Borrás and Conzel-
26 mann, 2007; Duina and Raunio, 2007; Hatzopoulos, 2007; Kröger, 2007;
27 Papadopoulos, 2007; Radulova, 2007; Tsakatika, 2007; Wincott, 2006).
28 Within this literature, however, different understandings of input-legitimacy
29 are employed (Borrás and Conzelmann, 2007; De la Porte and Nanz, 2004;
30 Kröger, 2007). I therefore propose contrasting representative-parliamentarian
31 and stakeholder-participation models of input-legitimacy. The representative-
32 parliamentary model of input-legitimacy is orientated towards Scharpf's
33 original notion of this term. According to this, input-legitimacy is generated
34 if the 'will of the people' is authentically expressed and directed into the
35 policy-making process, primarily through majoritarian parliamentary deci-
36 sions (Scharpf 1999, pp. 6 and 9). A second understanding of input-
37 legitimacy, employed in the OMC literature, assumes that political interests
38 are ideally directed into the policy-making process via a broad participatory
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40 ⁶ See footnote 3 above.

1 model including not only citizens but also a variety of ‘stakeholders’ (Borrás
2 and Conzelmann, 2007, p. 542; De la Porte and Nanz, 2004, p. 272). This type
3 of participation can complement, and sometimes also replace, parliamentary
4 democracy.

5 First I argue that the EU provides for a stakeholder-participation model of
6 input-legitimacy within the OMC. I will subsequently explain the way in
7 which this model has been theoretically promoted by the concept of directly-
8 deliberative polyarchy (Cohen and Sabel, 1997; Dorf and Sabel, 1998; Eber-
9 lein and Kerwer, 2004; Gerstenberg and Sabel, 2002; Sabel and Zeitlin, 2007;
10 Smismans, 2005). In addition, I will examine the participatory practices
11 within the OMC to investigate whether standards set by the EU are achieved.
12 Finally, I will discuss the appropriateness of directly-deliberative polyarchy
13 in legitimizing the OMC.

14 *Stakeholder Participation Within the OMC*

15
16 The EU has presented the OMC as a governance tool open for broad direct
17 participation of stakeholders such as interest groups, NGOs, regional and
18 local authorities and experts (see Commission, 2001, pp. 10 and 22; European
19 Council, 1997, para 14). According to the EU Commission and the Council,
20 national governments should consult these stakeholders and local or regional
21 authorities before OMC guidelines or objectives are adopted and, most sig-
22 nificantly, in drafting their ‘National Reform Programmes’ and ‘National
23 Strategic Reports’. In contrast to direct stakeholder participation, parliaments
24 at the EU and national levels play only a minor role within OMC processes
25 (Duina and Raunio, 2007; Tsakatika, 2007; Zeitlin, 2005, p. 460).⁷

26 However, the model of stakeholder participation has clearly been per-
27 ceived as a positive feature of the OMC and as ‘one dimension of the whole
28 issue of accountability, democratization and legitimacy of the new mode of
29 governance’ (Radaelli, 2003, p. 59). Direct stakeholder participation has also
30 been strongly supported by proponents of a new democracy model referred to
31 as directly-deliberative polyarchy (Cohen and Sabel, 1997; Dorf and Sabel,
32 1998; Gerstenberg and Sabel, 2002; Sabel and Zeitlin, 2007).

33 Proponents of directly-deliberative polyarchy emphasize the OMC’s
34 potential to provide a blueprint for a new model of EU democracy and are
35 therefore optimistic that the OMC could contribute to an enhanced quality of
36

37 ⁷ Duina and Rauino (2007) promote a more balanced view of the relationship between the OMC and
38 national parliaments, arguing that the OMC provides an official tool for policy learning within national
39 parliaments. This view can be criticized from two perspectives, however. Firstly, it favours output-
40 legitimacy over input-legitimacy, and secondly it overlooks the fact that explicit discussion of the OMC in
41 national parliaments, which currently does not take place, would be a pre-condition for transparent and
42 politicized ‘policy learning’.

1 democracy within the EU. Directly-deliberative polyarchy is perceived as an
2 alternative to representative and constitutional democracy (Cohen and Sabel,
3 1997; Dorf and Sabel, 1998; Gerstenberg and Sabel, 2002, p. 294). It essen-
4 tially argues that representative and constitutional democracy is no longer a
5 desirable and feasible model due to society's increasing diversity and vola-
6 tility. Directly-deliberative polyarchy therefore proposes that decision-
7 making and implementation should be undertaken by local political units
8 whilst central administration, parliament and courts provide only the frame-
9 work for such decentralized decision-making and monitoring (Cohen and
10 Sabel, 1997; Dorf and Sabel, 1998; Gerstenberg and Sabel, 2002, p. 294). In
11 return for greater policy-making authority, local units must provide central
12 and higher level units with information regarding their solutions, experiences
13 and performance, which can then be disseminated and publicized to other
14 local units. Local policy-making is *directly-deliberative*, as a wide range of
15 political actors participate in local-decision-making through deliberation, or
16 the exchange of arguments mutually acknowledged as rational (Cohen and
17 Sabel, 1997, p. 320).

18 Directly-deliberative polyarchy assumes that policy solutions must be
19 found *during* the problem-solving process since the creation and implemen-
20 tation of regulations needs to be more flexible and responsive to rapidly
21 changing social contexts (Sabel and Zeitlin, 2007, p. 37). Consequently,
22 rule-makers and rule-takers can no longer be clearly distinguished but mutu-
23 ally depend upon one another. Therefore, a strict separation of powers is not
24 feasible according to directly-deliberative polyarchy; decision-making and
25 implementation are merged within local units in which citizens, interest
26 groups as well as both private and voluntary organizations participate.

27 Directly-deliberative polyarchy also provides an alternative model of
28 accountability within the OMC. For instance, Sabel and Zeitlin (2007) argue
29 that whilst the OMC does not fulfil traditional criteria of hierarchical
30 principal-agent accountability, it does provide for horizontal 'dynamic
31 accountability' through peer review. The concept of horizontal, dynamic
32 accountability is based upon the notion that in situations where 'actors [. . .]
33 learn what problem they are solving, and what solution they are seeking,
34 through the very process of problem solving' (Sabel and Zeitlin, 2007, p. 37),
35 accountability is not about compliance by the agent to the principle's rules but
36 lies in the mutual and deliberative control between actors in networks (see
37 also Tsakatika, 2007, p. 555).

38 From this review of EU standards regarding OMC participation, as well as
39 the model of directly-deliberative polyarchy, one must firstly question
40 whether these standards are fulfilled and how the model of participation
41 within the OMC can be assessed. Secondly, one must discuss whether

1 directly-deliberative polyarchy is an appropriate model for legitimizing
2 the OMC.

3
4 *Assessing Participation and Directly-Deliberative Polyarchy*

5 In order to assess the appropriateness of the stakeholder-participation model
6 of input-legitimacy in legitimizing the OMC, I will firstly review the available
7 evidence regarding the current practice of participation in OMC processes.

8 At the European level, 'stakeholder' participation differs between the
9 European Employment Strategy (EES) and the OMC in social inclusion and
10 protection. Article 128 of the Treaty of the European Communities requires
11 the Council to consult the Economic and Social Committee and the Commit-
12 tee of the Regions before the employment guidelines are adopted. More
13 informally, the European social partner organizations, such as the European
14 Trade Union Confederation and the *Union des Industries de la Communauté*
15 *Européenne* (UNICE), are also consulted in EES matters and some authors
16 maintain that their right to consultation can be derived from Article 130 of the
17 Treaty (De la Porte and Pochet, 2005, p. 363). For the OMC in social
18 inclusion and protection, no such treaty provisions exist regarding the con-
19 sultation of stakeholders. However, several European organizations in the
20 area of anti-poverty policy, such as the European Anti-Poverty Network, are
21 informally consulted and issue opinions regarding the OMC. No clear rules
22 exist regarding which European non-governmental organizations (NGOs)
23 should be consulted and the risk that some may be sidelined in this process
24 prevails (De la Porte and Pochet, 2005, p. 376). In addition, the Employment
25 and Social Protection Committees, which play an important role in formu-
26 lating OMC objectives and developing quantitative indicators, regularly invite
27 experts and other actors for consultation (De la Porte and Pochet, 2005,
28 p. 375). However, the actors that are consulted as well as the exact role that
29 they play remain opaque (Berghman and Okma, 2002).

30 At the national level, an increasing amount of empirical data regarding the
31 participation of stakeholders within the OMC exists, although it remains
32 incomplete. A number of general conclusions have been drawn within pub-
33 lications by authors such as de la Porte and Pochet (2005), Zeitlin (2005) and
34 Friedrich (2006). They concur that overall, stakeholder participation within
35 the OMC has increased. Within the OMC for social inclusion and protection,
36 NGOs possess a more significant role than social partners, whilst the opposite
37 is true for the European Employment Strategy (De la Porte and Pochet, 2005).
38 This is predominantly explained by the fact that as employment policy is
39 dominated by the social partners, both governments and they themselves
40 oppose closer participation by NGOs in that area. In addition, the OMC for

1 social inclusion and protection only partially overlaps with social partners'
2 remits, resulting in insufficient incentives to participate in these branches of
3 the OMC. Authors such as de la Porte and Pochet (2005, p. 382) and Casey
4 (2005) have noted that the overall level of participation by social partners
5 remains less significant than expected. One explanation for this phenomenon
6 is that social partners are intrinsically ambivalent regarding the European
7 Employment Strategy, since it does not fully support their political interests
8 (De la Porte and Pochet, 2005, p. 369). In contrast, NGOs are generally less
9 established policy actors at the national level. The OMC therefore provides a
10 potential channel through which to express their views (De la Porte and
11 Pochet, 2005, p. 383). In some countries, new consultation forums have been
12 developed with regards to the OMC, strengthening communication between
13 the government and NGOs and/or social partners (Zeitlin, 2005, p. 462). In a
14 number of countries, regional and local authorities are also increasingly
15 consulted regarding OMC processes. Zeitlin (2005, p. 469), for instance,
16 assumes that they have pressed for the possibility of participation in countries
17 where their autonomy is more contested, whilst they have been more sceptical
18 regarding the OMC in countries in which they possess entrenched authorities.

19 Overall, stakeholder participation in national OMC processes has not fully
20 fulfilled initial expectations and remains uneven between countries. The latter
21 applies both to the level of participation as well as the ways in which
22 stakeholders are allowed to influence OMC processes.⁸ The level and type of
23 actor participation has also changed considerably over time in certain coun-
24 tries, leading to an inability to identify regular patterns (Kröger, 2007).
25 Several authors also report incidences of governments rejecting requests by
26 certain stakeholders to participate (De la Porte and Pochet, 2005; Jacobsson,
27 2005, p. 117; Kröger, 2007).

28 A significant criticism of the current model of OMC participation refers to
29 the marginalization of parliaments at the EU and national levels in the
30 process. According to Article 128 of the Treaty of the European Communi-
31 ties, the European Parliament must be consulted regarding the guidelines of
32 the European Employment Strategy, whilst no such rules exist in relation to
33 other social policy strands of the OMC. However, a study by Tsakatika (2007,
34 p. 553) concludes that the involvement of the European Parliament in OMC
35 processes has increased over the years, particularly since the mid-term review
36 of the Lisbon Strategy in 2005 in which the Commission called for more
37 active input by the European Parliament to the Commission's annual strategic
38 report (Tsakatika, 2007, p. 552). In November 2004, a group comprised of 33
39

40 ⁸ For example, in some countries social partners and/or regional authorities draft sections of the National
41 Reform Programmes, in others they are merely consulted.

1 members of the European Parliament covering all standing groups was estab-
2 lished to review issues related to the Lisbon Strategy (Tsakatika, 2007,
3 p. 553). This group drafts an annual resolution on the Lisbon Agenda which
4 is debated and adopted by the plenary and within joint parliamentary meet-
5 ings between members from the European and national parliaments before
6 being sent to the Spring Council (Tsakatika, 2007, p. 553). Although this
7 development represents a stronger role for the European Parliament in the
8 *Lisbon Strategy*, more empirical analysis is required in order to examine
9 whether the *social policy OMCs* are as significant within the European Par-
10 liament's discussion and resolution as the internal market aspects of the
11 Lisbon Strategy and how Member State representatives respond to the reso-
12 lution's social policy aspects at the Spring Summits.

13 Many authors also conclude from the empirical evidence that national
14 parliaments remain marginalized within national OMC processes since only
15 few countries involve them in the creation of National Reform Programmes
16 (De la Porte and Pochet, 2005; Duina and Raunio, 2007; Friedrich, 2006;
17 Kröger, 2007; Tsakatika, 2007). Tsakatika (2007, p. 552) concludes from a
18 comparative analysis of Member States' parliamentary involvement within
19 OMC processes that in 2006, the Lisbon Strategy was debated in national
20 parliaments' plenaries or committees in only two Member States, the United
21 Kingdom and Belgium. In all other Member States, parliamentary input into
22 the Lisbon process was rated at a very low level and in nine of all 25 Member
23 States, national parliaments were not even involved at committee level
24 (Tsakatika, 2007, p. 553).

25 This evidence demonstrates that participation within OMC processes is
26 based upon an input-legitimacy model of stakeholder participation rather
27 than a representative-parliamentarian model. From the perspective of
28 representative-parliamentarian input-legitimacy, a number of problems exist
29 with the current model of OMC participation. Firstly, no clear criteria are
30 established at the EU level regarding which actors should participate in the
31 development of OMC objectives or national reform programmes. Guidelines
32 regarding the rights and responsibilities of stakeholders participating in OMC
33 processes are also absent from this process.

34 One can therefore argue that current arrangements for stakeholder partici-
35 pation within the OMC are detrimental to the OMC's transparency and
36 accountability. In general, Member State citizens are not well informed
37 regarding OMC processes or the roles played by different institutions and
38 actors at the EU and national levels within the OMC. The majority of EU
39 citizens are furthermore unaware that the OMC and Lisbon strategy even exist
40 (European Commission, 2006, p. 14). A significant illustration of the OMC's
41 opaqueness at the EU level is evident within participation in the Employment

1 and Social Protection Committees. Both are crucial in developing quantitative
2 indicators as well as discussing proposals for guidelines and objectives. The
3 Committees may consult experts, interest groups and voluntary organizations.
4 However, no clear rules exist to govern these consultations and meeting
5 minutes are not publicly available. Therefore, stakeholder and experts' influ-
6 ence upon OMC indicators and objectives remains unclear.

7 The OMC is not only opaque in terms of stakeholder participation but also
8 at a more general level concerning the role of national governments in OMC
9 negotiations. As the minutes of Council discussions are not publicly available,
10 no transparency exists with regards to the positions taken by government
11 representatives. National citizens are therefore unable to reveal the role that
12 their, and other Member State, governments have played in OMC decisions.
13 This weakens the accountability of national governments to their parliaments
14 and electorates. This accountability is further weakened by the fact that there
15 is very little media and parliamentary debate regarding the OMC. Potentially,
16 executives are able to employ the OMC in order to pressure for unpopular
17 policy change at the national level,⁹ whilst the role played by governments in
18 EU level OMC negotiations remains opaque to national electorates (Büchs,
19 2008).

20 Furthermore, it remains questionable exactly how *input*-legitimacy orien-
21 tated the stakeholder participation model is, as one of its aims appears to be
22 the development of more *effective* policies. For example, the logic behind this
23 model becomes evident within the Commission's White Paper on Govern-
24 nance, according to which stakeholder participation shall enhance the pros-
25 pects for 'effective' policies (Commission, 2001, p. 10). The underlying
26 logic implies that policies will be more effectively implemented if stake-
27 holder interests are acknowledged in the early stages of the policy-making
28 process.

29 Generally, direct participation of stakeholders and local or regional
30 authorities within policy-making does not increase representative-
31 parliamentary input-legitimacy as these actors do not represent the 'will' of
32 the electorate but specific, partially 'private' interests. Furthermore, direct
33 stakeholder participation is likely to privilege actors able to organize them-
34 selves and express a shared interest, as well as those important to policy
35 implementation. This may, however, occur at the expense of third parties who
36 are affected by the policies but are not directly responsible for their
37 implementation. Direct participation of selected civil society actors can,
38

39 ⁹ Whilst this might not be the default mode of OMC usage at the domestic level, there is evidence that some
40 governments use the OMC in this way, for instance in Germany (Büchs, 2008), the Netherlands (Visser,
41 2005, p. 199) and France (Erhel *et al.*, 2005, p. 217).

1 therefore, even impede the enhancement of representative-parliamentarian
2 input-legitimacy.

3 However, some authors have argued that a representative-parliamentarian
4 model of democracy is no longer feasible, promoting the notion that the OMC
5 could instead be legitimized by the alternative model of directly-deliberative
6 polyarchy. Some proponents of directly-deliberative polyarchy have stated
7 that the OMC has thus far been unable to achieve this ideal (Smismans, 2005).
8 Nonetheless, assuming that this model has the potential to be realized, one
9 must discuss whether it would be an appropriate model for legitimizing
10 the OMC.

11 The model of directly-deliberative polyarchy certainly addresses some
12 important concerns regarding the viability of representative-parliamentarian
13 democracy. However, a number of weaknesses are inherent within this
14 model, leading one to conclude that it is inadequate to legitimize the
15 OMC.¹⁰ Firstly, directly-deliberative polyarchy appears to underestimate
16 power-asymmetries between citizens and various societal groups regarding
17 participation in local policy-making. The model suggests that citizens, inter-
18 est groups, private and voluntary organizations and NGOs possess equal
19 influence upon local policy-making. The underlying assumption of this
20 model perceives different actors as dependent upon one another in such a
21 way that all participants are essentially equal, resulting in policies that
22 equally serve the interests and needs of *all* participants (Gerstenberg and
23 Sabel, 2002, p. 293). However, this is an idealistic belief, since it is highly
24 likely that local actors are diversely dependent upon one another, possessing
25 differing capabilities and abilities to organize themselves and influence
26 policies, and that power asymmetries between local actors therefore inevi-
27 tably exist. This is particularly the case in the area of social policy, which
28 has potentially redistributive consequences.

29 Furthermore, it is highly questionable whether the traditional model of the
30 separation of powers should be replaced by a model of horizontal or 'dynamic
31 accountability' (Sabel and Zeitlin, 2007). Even if it can probably never be
32 fully realized, the principle of the separation of powers in parliamentary
33 democracies is crucial. It serves the inhibition of authoritarianism and
34 monopolization of power by preventing rule-makers from creating self-
35 serving rules unresponsive to requirements of the 'common good' or will of
36 citizens. 'Hierarchical' accountability of governments to parliaments and
37 parliaments to the general electorate based upon the principle of separation of
38 powers still appears to be the most convincing and effective method of
39 preventing the misuse of political power by powerful groups in society.
40

41 ¹⁰ See also Scheuermann (2004) for a critical debate of directly-deliberative polyarchy.

1 Finally, directly-deliberative polyarchy promotes the localization of policy-
2 making and implementation, maintaining that it is the most effective way of
3 generating locally tailored solutions through the direct involvement of local
4 actors affected by the adopted policies. However, certain problems require
5 national or supranational policies in order to avoid negative effects of policies
6 in one local unit upon another or a 'race-to-the-bottom'. Social and environ-
7 mental standards provide good examples of this issue. In addition, localiza-
8 tion of social policies potentially contrasts with equal rights deriving from
9 social citizenship if it produces a diversification of available policies and
10 access to services. Regional inequalities are particularly likely to increase if
11 local units endure the full financial responsibilities of their policies and if the
12 national or supranational level does not provide for redistribution between
13 poorer and richer regions.

14 Overall, it therefore appears that the model of directly-deliberative
15 polyarchy does not provide a convincing model for conceptualizing the
16 OMC's input-legitimacy.

17 18 **Conclusion**

19 This article argued that the OMC's legitimacy and democratic quality are
20 deficient in terms of both output- and input-legitimacy. Upon initial assess-
21 ment, the OMC does not appear to possess the ability to generate output-
22 legitimacy since it is not sufficiently effective. In particular, its broader goals
23 of strengthening the EU's social dimension, combating poverty and social
24 exclusion and balancing 'negative' and 'positive' integration have not been
25 achieved. However, even if the OMC were more effective, a number of
26 criticisms regarding claims that it could be legitimized solely on the basis of
27 its outputs would remain. These concerns primarily surround the fact that its
28 objectives are not consensual and may have (re)distributive effects. Contro-
29 versial policies with (re)distributive effects must also have their basis in
30 input-legitimacy; output-legitimacy alone remains insufficient. In addition,
31 input-legitimacy is required in order to *achieve* output-legitimacy, as citizens'
32 interests cannot be defined in isolation of input-legitimate policy-making
33 processes.

34 It is therefore necessary to also analyse the OMC's input-legitimacy. This
35 examination demonstrated that a model of direct stakeholder participation is
36 currently in use as opposed to provisions for representative-parliamentarian
37 input-legitimacy. Several problems were identified with this approach. Stake-
38 holder participation remains inconsistent and creates problems in terms of
39 both transparency and accountability.

1 An underlying difficulty is also evident in the absence of clear rules
2 regarding the level and type of stakeholder participation. One may also
3 conclude that the model of directly-deliberative polyarchy fails to provide a
4 convincing alternative that could legitimize the stakeholder-participation
5 model of input-legitimacy within the OMC.

6 This article therefore argues that the current stakeholder model of partici-
7 pation not only marginalizes parliaments at the EU and national levels but is
8 also detrimental to *national* parliamentary democracy more generally as it
9 strengthens executives whilst weakening parliamentary power in national
10 policy-making processes. It is thus crucial to strengthen representative-
11 parliamentary input-legitimacy both within the OMC and at the national
12 level. It is consequently imperative to examine whether, and if so, how, this
13 could be achieved.

14 One radical proposal is the abolishment of the OMC, as it is not suffi-
15 ciently effective in strengthening a social Europe whilst it informally influ-
16 ences national policy-making and therefore raises legitimacy concerns. One
17 alternative would be to leave responsibility for social policy with the Member
18 States and 're-parliamentarize' them. However, this is not a preferable option
19 since social policies must be co-ordinated at the EU level to strengthen the
20 social dimension of the common market.

21 Another radical reform option that has been discussed, originally by
22 Scharpf (2002), is to adopt a set of general but legally binding OMC objec-
23 tives through the co-decision procedure of the Council and European Parlia-
24 ment. Member State governments would be obliged to implement these
25 'framework directives' whilst retaining reasonable discretion regarding the
26 concrete measures adopted. Whilst this proposal promises to be the most
27 effective and legitimate option if it were workable, it is currently the least
28 probable scenario since it is highly unlikely that the 27 Member State gov-
29 ernments would be able to agree consensually upon any binding framework
30 directives.

31 A range of further proposals can alternatively be made to improve the
32 OMC's transparency, accountability and input-legitimacy. For instance, even
33 if OMC objectives are adopted as non-binding guidelines, the European
34 Parliament could have the right of co-decision in the decision-making
35 process. In the joint parliamentary sessions between the European and
36 national parliaments, coverage of the social policy OMCs should be ensured
37 so that both levels have an input upon OMC objectives. These measures
38 would enhance the OMC's publicity and enable open political discussion of
39 its objectives.

40 Much more detailed information should be made available of Council
41 discussions preceding the adoption of OMC objectives, ideally in form of

1 discussion transcripts similar to those of second chamber parliamentary dis-
2 cussions at the national level, in order to strengthen the transparency and
3 accountability of national ministers to their parliaments and electorates. This
4 should also apply to discussions of the Social Protection and Employment
5 Committees, as they undertake crucial decisions concerning quantitative indi-
6 cators and targets within the OMC.

7 Moreover, whilst the current situation provides no political consensus for
8 rendering OMC objectives legally binding, much clearer and potentially
9 legally binding rules should exist regarding the *decision-making procedures*
10 of OMC objectives at the EU, as well as national levels. For example, national
11 governments could be required to consult with national parliaments before
12 the objectives and guidelines are adopted at the EU level. National govern-
13 ments could also be required to establish clear rules, according to national
14 traditions, regarding the consultation with actors such as social partners,
15 NGOs, sub-national authorities and citizen forums. Furthermore, they should
16 be obliged to provide detailed and publicly accessible information concerning
17 the level and scope of stakeholder involvement. This may include information
18 regarding whether stakeholders were consulted or allowed to contribute to the
19 national reports or programmes and the ways in which governments are
20 obliged to respond to their proposals.

21 Another possibility for raising awareness of the OMC and making the
22 association between EU and national social policy-making more transparent
23 may be obliging national parliaments to discuss whether, and if so, how, these
24 objectives could be linked to national policy-making. This would provide a
25 basis for a public and transparent discussion regarding the connection
26 between EU social policies and national policy-making. The obligation for
27 this discussion does not imply that national parliaments must adopt the
28 objectives, as they could still be rejected once justifications are provided. This
29 process would limit the current dominance of executives in the OMC process
30 and also strengthen the legislative branch of policy-making.

31 These proposed reform options remain inconclusive and are primarily
32 intended to instigate discussion. Solutions must be found that strengthen the
33 required representative-parliamentarian channel of OMC input-legitimacy
34 and prevent it being replaced by a stakeholder-participation model. This
35 would also serve to strengthen parliamentary democracy at the *national*
36 level.

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