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### The End of Democracy as We Know it? The Legitimacy Deficits of Bureaucratic Social Policy Governance

Sandra Kröger<sup>a</sup>

<sup>a</sup> Humboldt University of Berlin, Berlin, Germany

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# The End of Democracy as We Know it? The Legitimacy Deficits of Bureaucratic Social Policy Governance

SANDRA KRÖGER

*Humboldt University of Berlin, Berlin, Germany*

**ABSTRACT** New modes of governance and, in particular, the Open Method of Coordination (OMC), have attracted considerable and often unduly favourable scholarly attention since 2000. Learning from best practice and increased policy effectiveness are often assumed to be the main outcome of the OMC. In contrast, this contribution seeks to assess the democratic legitimacy of the OMC by using a research design that integrates criteria both from the liberal and the deliberative theories of democracy. In analysing the OMC inclusion and its implementation in France, Germany and at the European level, it is shown that the democratic benchmarks that can be derived from either theory are not met. By way of conclusion, the potential consequences of the obvious democratic deficit of the OMC are discussed briefly.

**KEY WORDS:** Governance, legitimacy, social policy, democratic deficit, European integration

## Introduction

A key instrument of European integration has traditionally been the Community Method, key characteristics of which are the transfer of competences to supranational institutions, the possibility of enforcement and sanctioning as well as the application of similar legal standards in all member states. However, integration has varied considerably across policy fields,

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Correspondence Address: Sandra Kröger, Institut für Sozialwissenschaften, Humboldt-Universität zu Berlin, Unter den Linden 6D, 10099 Berlin, Germany. Email: sandra\_kroeger@gmx.net

leading to strong economic and financial, but comparatively weak, social integration (Scharpf 1999).

Since the 1990s, the EU has followed international organizations (OECD, WTO) in experimenting with steering instruments other than hard law. A prominent example is the European Employment Strategy (launched in 1997), which makes use of reporting systems, the setting of political goals, monitoring, indicators, peer reviews and benchmarking (Schäfer 2002). Since then, the combination of these elements has been dubbed the Open Method of Coordination (OMC) and has spread to a variety of social policy fields and beyond. The OMC's precise architecture varies from field to field, but common features are its legal non-bindingness — thus making it a political instead of a legal instrument — and its dependence on the will of national governments to 'comply' with OMC standards (Radaelli 2003).

Expectations regarding the social OMCs have generally been rather high, even though some disillusionment has started to spread. The hope shared by most was that the OMC would contribute to more legitimacy and effectiveness. More and better participation would contribute to democratic legitimacy, while learning processes in particular were expected to contribute to the effectiveness of social policy coordination. However, most studies of the OMC have focused on the effectiveness side of the coin, while neglecting the legitimacy side. Even where legitimacy was under scrutiny, it sometimes seemed to be seen as instrumental to increasing policy effectiveness instead of being attributed a value of its own. In contrast, this paper stipulates that when assessing the quality of governance mechanisms in EU social policy, one needs to address both their legitimacy and their effectiveness (Offe 1998), as both are re-enforcing and dependent on each other. In the absence of either one, citizens will not see good reasons to transfer competences to the supranational level. This paper will attempt to analyse both sides of the coin by looking at the OMC inclusion, a rather developed OMC that existed between 2000 and 2006.

When analysing soft governance processes, it is extremely important not to lose sight of their broader institutional and political environment at EU level, since the latter delimits the space in which governance instruments such as the OMC (and the social policy OMCs in particular) can and do operate. This implies taking into account the late and unequal development of European social policy, which, when compared to economic (and financial) integration, is often referred to as exemplifying the difference between negative and positive integration (Offe 1998, Scharpf 1999). Furthermore, the different degrees of hardness and softness of different policy processes, and the different political and institutional saliency of instruments such as the European Monetary Union, the Growth and Stability Pact and the Broad Economic Policy Guidelines are remarkable when compared to the social OMCs. Finally, one has to be aware of the increasing subordination of social equality to the goals of growth and competitiveness which became particularly clear in the Kok report of 2004 and the revised Lisbon Strategy of 2005 (Bernhard 2006). This paper, however, due to space constraints, cannot develop these points any further.

Instead, this contribution looks at how well the OMC inclusion performs when assessed against yardsticks of legitimacy derived both from liberal and deliberative theories of democracy. The remainder of the article proceeds as follows. In the next section, the research design will be developed, establishing legitimacy and effectiveness as the criteria against which European social policy should be assessed in principle. However, since legitimacy is the focus of this special issue, this article will concentrate exclusively on the aspect of democratic legitimacy. Next, the democratic quality of the OMC inclusion will be evaluated, both in its operation at EU level and in its preparation and implementation in France and Germany between 2001 and 2005. This restriction is due to limited research resources. After summarizing the results, the article concludes with a brief discussion of potential political effects of a perceived democratic deficit of this OMC.

### **Assessing Legitimacy in the Framework of Soft Governance**

Much of the current academic literature assesses OMCs as processes inducing learning (Zeitlin *et al.* 2005) — without, however, providing a precise definition of learning or using a variable-based framework of analysis (Citi and Rhodes 2006). With their focus on learning, scholars have by and large followed the official EU rhetoric surrounding this instrument. It is argued here that the emphasis put on learning — both by politicians and researchers — is in itself an expression of the political constraints of the coordination processes in a situation where other means are unavailable: learn we must as enforce we cannot. Still, while learning may be seen as one dimension in the evaluation of the OMC's effectiveness, it is certainly insufficient as an overall framework for assessing the normative qualities of this instrument.

A more relevant research design for the issues at stake has been developed by Scharpf (1999) and Offe (1998), who both argue that legitimacy and effectiveness should be the yardsticks against which to evaluate European public policies — even though Scharpf uses a different terminology (input and output legitimacy) and comes to the conclusion that in some cases, the EU can be conceived as legitimate solely by reference to its output (effectiveness). Why are effectiveness and legitimacy the yardsticks against which the OMC — and, more broadly, any sort of European social policy — should be evaluated? The case for effectiveness is straightforward as any policy must show that it can contribute to the solving of collective problems. With regard to democratic legitimacy, the case is just as clear: if there is EU action, and as long as the EU is made up of democracies, this action needs to be legitimate and legitimated through the consent of the peoples of the EU. The difficulty lies in assessing what is needed to establish legitimacy in general and at EU level in particular, since this depends on how one conceives of democracy, one of the most contested concepts in social sciences, and how one conceives of the EU, the political nature of which also remains highly debated.

It is possible to identify four types of democracy: economic, social, communitarian and political. While the first three are concerned primarily

with outcomes (wealth, welfare, income, status, feeling of belonging in a community and the participation therein), political democracy is defined by its procedures and institutions rather than its results. Political democracy, in turn, can be divided into different streams, distinguishing liberal, ‘thin’ concepts such as the one proposed by Dahl (1989; ‘polyarchy’) from thicker participatory (Saurugger 2004) and deliberative (Cohen and Sabel 1997) models. The main divide separating these approaches is the degree of political representation, the kind of control mechanisms and the extent of direct participation that are foreseen. With regard to the EU, standpoints additionally vary depending on whether one sees it as an entity resembling a (supra-national) state — which should therefore follow criteria of legitimacy derived from the practice of nation-states — or as a system *sui generis* to which other or at least additional mechanisms of legitimacy-building should apply (Moravcsik 1993, Eriksen 2001, Majone 2001, Kohler-Koch and Rittberger 2007).

The need for a critical discussion of democratic legitimacy also holds true for non-binding instruments such as the OMC. First, these instruments are widely discussed as holding potential for decreasing the EU’s democratic deficit due to their theoretical openness and inclusiveness — a claim that needs to be assessed critically against reality. Secondly, as pointed out by Borràs and Conzelmann (2007), even non-binding instruments such as the OMC may require strong democratic controls. Their objective is to spread ideas through learning processes and discursive competition in a mid-term to long-term perspective. Even though it is almost impossible to trace the change of policies back to a particular OMC, the condensed effect of such coordination processes may be that ideas gradually enter national debates and lead to the reorientation of a given policy. They can thus have long-term effects which may be more important and longer-lasting than those of a single piece of law.

One important question then is against which standards the legitimacy of non-binding instruments such as the OMC should be assessed. In the following steps, the article proceeds pragmatically and uses both standards derived from more traditional notions of democratic legitimacy (such as parliamentary control) and alternative criteria, such as inclusiveness and deliberative qualities, that are often at the root of positive normative assessments of governance mechanisms, such as the OMC. Holding on to the norm of political equity of all citizens, this means that legitimacy should be based on a number of features.

1. *Participation*. This means that citizens have an equal opportunity to make their opinions and interests known in different phases of a decision-making process (de la Porte and Nanz 2004). In liberal conceptions, this implies participation rights, particularly in the context of general elections through which the sovereign elects representatives who subsequently hold the executive accountable. Communitarian, deliberative and participative conceptions of democracy have accentuated the role and significance of more decentralized forms of participation through which

citizens are able to express their interests and become the real sovereigns of their lives (Cohen and Sabel 1997, Habermas 2003, Saurugger 2004). From this perspective, the possibility of directly accessing a policy-making process becomes vital, not only for elected representatives, but for all people potentially concerned by the final policy (Héritier 2003, p. 108).

2. *Representation.* Even though a close link between representation and democracy is not intrinsic and, historically speaking, a rather recent development (Pollack 2007), it is one that is made commonly nowadays. Representation refers to the question what types of societal interests participate in the political process. Commonly, in the context of political representation, three sorts of representation are differentiated (Smismans 2004). Territorial representation is based on territorially organized elections and constitutes the primary basis for political legitimacy in Western-style democracies. Functional representation acknowledges individuals as bearers of different identities and belonging to different social groups. The ensuing different identities and interests must be represented through functionally differentiated associations in the political process. Finally, scientific or technical representation has increased dramatically over the last decades to the point that Dahl (1989, p. 335) characterizes contemporary democracy by the “quasiguardianship” through scientific experts.
3. *Deliberation.* The deliberative approach is influenced strongly by social constructivism, which holds that institutions and social actors influence and constitute each other mutually, and that actors follow a ‘logic of appropriateness’. The latter implies that actors do not seek primarily to maximize and optimize their benefit in interaction, but instead act according to those prevailing and internalized norms that constitute their social environment (Berger and Luckmann 1993, Risse 2004). Here, actors search for solutions profitable to all, securing that minorities are not overruled (Scharpf 1999, Héritier 2003). Again, different types of deliberative models have been conceived. While deliberative supranationalism states that informed and consensus-seeking discussions in expert committees contribute to legitimacy in a supranational system (Joerges and Neyer 1997), Habermas (2003) stressed that deliberation should take place in a public debate and that certain fundamental values should guide this deliberation. Finally, the directly deliberative polyarchy model focuses on the direct participation and deliberation of all those concerned and sees the results of these processes as bringing about political decisions directly (Cohen and Sabel 1997). Measuring the notoriously slippery concept of deliberation is difficult. For the present purpose, and because most of the OMC inclusion happens behind closed doors, a focus on the institutional and organizational setting of participation processes and whether they allow for deliberation to happen or not is suggested. In particular, it is important to assess whether the time schedule in the context of the OMC allows for reasoned arguing and open deliberation and whether all actors concerned can have access to the deliberation process.
4. *Accountability.* It is a key feature of democracy which demands that those who exercise public power can be controlled by the people (or, respectively,

their elected representatives). It ensures that exercising public power is conditional and means that citizens have the possibility to hold the participants of a decision-making process accountable and that politicians must be responsive to critical feedback. Furthermore, accountability implies that actors must give explanations for their actions, and that there are sanctions if a political actor transgresses a rule or a political mandate (Arnold and Wincott 2002, Bovens 2007). Four aspects emerge from the concept of accountability. Transparency refers to access to information (Deckmyn 2002). It can be argued that transparency not only encompasses the citizens' right to have access to information, but also the duty of different types of actors to make information available in an adequate way. Transparency, however, is only a necessary, but an insufficient, precondition of accountability. Public debate is the second necessary ingredient, because without it there is no forum to discuss the actions and decisions taken openly and to come to a conclusion about right or wrong. Thirdly, accountability holders must be responsive to public debate and take it into account in their future actions and decisions. Finally, there has to be a possibility to sanction malpractice, so that political power remains dependent upon the approval of the sovereign and may be revoked.

The OMC's democratic legitimacy shall thus be captured by the following dimensions: participation, representation, deliberation and accountability. It is not the ambition of this contribution to develop new definitions of either of the concepts discussed. Instead, it seeks to assess what forms of participation, representation, deliberation and accountability occur in the implementation of the OMC inclusion. In particular, focus is on the drafting process of the National Action Plans (NAP)<sup>1</sup> for the OMC inclusion in the two countries observed and on the work of the Social Protection Committee (SPC) and its Indicator Sub-Group (ISG) at EU level.<sup>2</sup>

## Participation

Participation implies that citizens or, as the case may be, their representatives, have an opportunity to make their opinions and interests known in different phases of a decision-making process (de la Porte and Nanz 2004). Hence, the decisive question in the context of the OMC inclusion is whether opportunities for participation existed and, if so, to what extent and in which phases of the policy-making cycle. Both in France and Germany, venues for participation in the drafting process of the respective NAPs were rather limited. In the French case, the coordinating bureaucracy is responsible for drafting the plan. As a next step, it is sent to the cabinet of the State Secretary for the fight against poverty and social exclusion. After having obtained the consent from the cabinet, the text is presented to the *Conseil National de Lutte contre les Exclusions* (CNLE) and the *Comité National de l'Insertion par l'Activité Économique* (CNIAE).<sup>3</sup> It is at this stage that the draft NAP can be reviewed by a limited number of actors beyond those in the administrations. After a presentation and discussion in the CNLE, the text, if required,

is re-edited and completed and sent again to the respective cabinet. After its consent, the final document is made available to the parliament, the second chamber (*Sénat*) and the *Conseil Économique et Social* (CES). However, at this stage there are no further possibilities for intervention or discussion, since the NAP is sent to the European Commission at the same time. Thus, the only venues for participation, where actors other than those of the administration can participate in the process and eventually intervene, are the meetings of the CNLE and the CNIAE.

It is important to note that in practice the opportunities for participation were even more constrained. In particular, no meetings of the CNIAE relating to the drafting process of the NAP were reported by the interviewees. As regards the CNLE, zero, one and one meeting of this forum took place during the first (2001), second (2003) and third (2005) rounds of the NAP, respectively. Furthermore, while the first NAP was only “elaborated by a few heads”,<sup>4</sup> the second and third meetings happened in extreme haste, only shortly before the document was sent to the European Commission and, additionally, the third was mainly used to present another newly published French social action plan: “Thus there was hardly any consultation about the French NAPs”.<sup>5</sup> Apart from these rare possibilities for participation, the process was not opened for parliamentary debate and there was no additional attempt to consult the regions, *départements* and local authorities. NGOs tried to increase their venues for participation by asking the DGAS that a working group be created in order to prepare the NAP (2003). They did not receive an answer nor obtain the working group. Looking at the degree of consultation, it thus seems fair to conclude that it was minimal.

In Germany, venues for participation were slightly less restricted, even though consultation also only happened once, at a stage at which the draft was already quite advanced. In the first round, there was one meeting in the framework of an advisory board that resembles the CNLE in France in its composition. It differed in size (larger), in legal anchoring (none) and in the regularity of its meetings (once to twice per year as opposed to every other month in the case of the CNLE). After final adaptations and the adoption of the draft NAP by the federal cabinet, the document was sent to the *Bundestag*, the *Bundesrat* and, a couple of weeks later, to the European Commission. Parliamentary debate, however, took place only in October 2001, well after the transmission of the NAP to the EU, and was limited in the sense that it was restricted to a short hour and to one speaker per party.

In the second round in 2003, the consultation structure and procedure were seemingly somewhat improved. The federal ministry consulted the advisory board twice in order to provide more opportunities for participation. There was also the opportunity to hand in written comments on the draft NAP. During the meetings, the German *Länder* expressed concerns about a possible intrusion into their social policy competences both by the federal and the European level. Some *Länder* demanded that the process should be realized more strongly in the conference of the ministers for work and social affairs at the *Länder* level (*Arbeits- und Sozialministerkonferenz*, ASMK),<sup>6</sup> while other regional representatives remained sceptical regarding a

more intensive coordination between the regions and the federal level.<sup>7</sup> After the final adaptations, the procedure resembled that in 2001. Once more, a parliamentary debate of 45 minutes (one speaker per party) took place well after the document was sent to the European Commission. After the introduction of a set of fiscal and social security reforms in 2004 (the so-called *Agenda 2010*), there was a voluntary update of the NAP, for which the advisory board was convened once, while no parliamentary debate took place. In 2005, the situation was reversed: no consultation of stakeholders, but a parliamentary debate, this time before the document was handed over to the Commission. The course of the debate was exactly as in 2003. Apart from these general venues for participation, there have been two further participatory projects in Germany. They took place in 2005–2006, both involving opening and closing conferences. There were also three regional workshops, one co-organized by the federal ministry, one organized by NGOs and financed by the Communitarian Action Programme of this OMC. However, they were very poorly attended and, if so, mostly by the members of the federal executive already involved, so that no new synergies could be gained.

At EU level, participation is even more difficult to research since it happens behind closed doors and transparency to the outside world is minimal. However, it seems possible to distinguish three types of venue for participation and consultation: institutionalized consultation of the member states and the Commission; semi-formal consultation of external academic or statistical experts (such the OECD or the Atkinson Group, see below); and mostly informal consultations with NGOs (Friedrich 2002). Institutionalized participation happens in the framework of the SPC and its ISG. These bodies meet regularly (eight to nine times a year) and mostly over one day. They are the main driving forces of the different social OMCs and enjoy a treaty basis (Art. 144).

The significance of these formal or semi-formal venues for participation varies over time. It was high in the run-up to and during the Belgian Presidency in the second half of 2001 (and its preparation), when the former Belgian federal minister of Social Affairs and Pensions, Vandenbroucke, showed a firm interest in the development of indicators and commissioned Tony Atkinson to draw up a report. The so-called Atkinson Group<sup>8</sup> was in regular contact with the ISG and drafted the final report for the SPC. Throughout the consultation process, the Atkinson Group profited from clear rules on participation in the political process and was actively encouraged to participate by the Belgian Presidency (Friedrich 2002). During the Luxembourg Presidency (first half of 2005), renewed attention was paid to academic advice as the Presidency commissioned Eric Marlier to draft a report about the development of the statistical indicators on poverty and social exclusion that were agreed in 2001 (the so-called Laeken indicators). This work, which Marlier carried out with the same colleagues as before, was published in 2005 (Marlier *et al.* 2005). It seems, however, that since the consolidation of the Laeken indicators, consultation has involved less academic advice than was the case previously: “The first Atkinson report has strongly influenced the ISG, as the ISG only came into place then. Now, the

work of the ISG has strongly influenced the second report. The great value is that it puts on the table what the ISG is doing".<sup>9</sup> Apart from these two major reports, academic participation has occurred now and then, through the invitation of a researcher to one of the bodies or through more informal consultation.

No formal participation rules existed for NGOs. While European NGOs showed political interest in influencing the indicators, they had considerably fewer opportunities to participate than the academic experts. Apparently, some degree of access was possible upon request, but without (clear) rules of participation (Friedrich 2002). Both the *European Anti Poverty Network* (EAPN) and the *Fédération Européenne des Associations Nationales Travaillant avec les Sans-Abri* (FEANTSA) had informal access to the sub-group on indicators. In addition, FEANTSA also had formal access on several occasions.<sup>10</sup> Furthermore, both networks discussed several papers and the interim report, contributed to the debate through their own evaluations and reports and organized several round-tables. The perception of who established the contacts between the subgroup and the NGOs, either the ISG's secretariat or the NGOs, differs. Whereas official actors have stressed the role of the ISG secretariat, NGOs put a stronger emphasis on their demands for participation as the decisive factor (Friedrich 2002). No regular venues for participation existed for excluded groups. There have been, however, attempts to include a wider spectrum of societal interests through annual European Round Tables on Poverty and Social Exclusion. Yet, it remains completely unclear how far these conferences may have contributed to the discussions of the SPC and the ISG.

## Representation

The criterion of *representation* relates to the question of who actually took advantage of any existing opportunities for participation. Territorial representation was very weak in all three cases (France, Germany, EU). In France, directly elected politicians were involved only in a passive manner, while members of parliament received the NAPs but did not have any opportunity to discuss them. In Germany, members of parliament were given the opportunity to discuss the NAPs only after they had been handed over to the European Commission. In both member states, elected politicians theoretically had the chance to participate in the advisory boards, but did not take advantage of that opportunity.

Regional territorial representation was not given in France due to a lack of political initiative on the part of the central government(s) and political opposition from the regions (Legros 2005, Kröger 2006a). In Germany, the *Bundesrat* did issue a few decisions, but only in order to document its opposition to the OMC inclusion process altogether. As mentioned above, the OMC inclusion is seen widely by the *Länder* as an outside interference into regional and local competences by the federal and the European levels (Büchs and Friedrich 2005). In particular, the fact that the federal and EU levels take the decisions is criticized, while the lower levels have to pay the

costs of implementation. It should also be mentioned that regional territorial representation, as far as it existed, involved higher administrative staff exclusively. Local representation was non-existent.

Functional representation occurred to a limited extent, namely through representation of NGOs. It happened in the few meetings that were dedicated to the NAPs in the German advisory board mentioned above and through the written statements by the NGOs. However, this representation must be evaluated as very limited, as it only occurs once every two years and at a stage at which the draft NAPs are already quite advanced. Additionally, involvement of NGOs has decreased over the years after disillusionment with the method had started to spread (Kröger 2006b).

Excluded people themselves have only been mobilized very marginally, that is in some local workshops in France and in the European Round Tables on Poverty and Social Exclusion mentioned above. However, it remains totally unclear on which basis the participants were chosen, and the activities are not documented or evaluated in any public way so that their agenda and impact remains unknown. It is important to note that representatives of the social partners are (voluntarily) not represented in the process.

Bureaucratic representation was strongest compared to the other types of representation in all three cases as civil servants were those either drafting the NAPs and coordinating the drafting process at national level or providing the secretariat at European level. The degree of scientific representation remains unclear and at best took place irregularly. A few researchers could participate in the national advisory boards as regular members. However, it remains undocumented whether they used this opportunity regularly. The only clear academic contributions related to the NAP process were the two studies conducted in both countries. However, these were reports written for the Commission which were not taken into consideration while drafting or implementing the NAPs. Therefore, they cannot truly count as expert representation.

At EU level, territorial representation was ensured indirectly through the delegates to the SPC and the ISG. It has to be said, however, that this was a mix of territorial and bureaucratic representation, since the delegates were supposed to represent their national governments but, at the same time, were civil servants at the receiving end of the delegation chain. Regional and local representation was not given at EU level. Functional representation was scarce. FEANTSA is the only NGO, according to different interviewees, to have taken part in the meetings of the ISG several times (although not regularly), while delegates of the EAPN did not have the opportunity to do so. Social partners and political parties were absent completely from the process at EU level. Bureaucratic representation was ensured strongly by the European Commission, which, by providing the secretariat in both bodies, had a central role to play. Finally, technocratic or academic representation was rather strong at the beginning of the process when the expertise of Atkinson and his collaborators was used to get the process started. However, it should also be noted that the Atkinson Group was made up of researchers who did not challenge the policies and the politics of the Lisbon

Strategy fundamentally, thus not being representative of the entire research community. This representation regained a certain momentum during the Luxembourg Presidency when the same group gathered once more for another report on the indicators; still, their influence decreased as the process consolidated. A mix of technocratic and bureaucratic representation that occurred throughout the process was provided through Eurostat. Both for functional and academic representation, it should be noted that inclusion into the process was conditional upon invitation and that there were no participation rights besides those established for the member states and the European Commission.

### **Deliberation**

The criterion of *deliberation* refers to the nature of public discussion. As outlined above, the focus is on the question of whether certain formal preconditions for deliberation processes to take place were present. Both in France and Germany, local and regional authorities as well as NGOs reported that for all three rounds, the time schedules were extremely tight, leaving hardly enough time to organize an adequate reaction to the drafts of the federal/national ministries. By way of example, one can cite the drafting process of the second French NAP, during which the draft document was made available to the French NGOs on 6 June 2003, while the meeting of the CNLE in which it was ‘discussed’ took place less than two weeks later, on 18 June 2003. Since time for reading the document and for coordinating a reaction was so scarce (especially for voluntary and unpaid NGO workers), a crucial precondition for deliberation was not met. A second precondition that was apparently not met was sufficient time to allow for the exchange of reasons. Both in France and Germany, the meetings dedicated to the NAPs lasted half a working day altogether; and only part of this time could be dedicated to the NAPs since they were not the only items on the agendas. Given that these meetings happen only every two years, one to two hours are barely sufficient for considering all the topics that are dealt with in the NAPs. Finally, another precondition for deliberative processes in public policies is that all relevant actors are present. As shown above, this was hardly the case in either France or Germany, since the regional and local authorities as well as the social partners did not engage in the process sufficiently, be it due to lack of opportunities or political opposition.

At EU level, ISG meetings are held eight to nine times a year in Brussels, only some of which focus on the OMC inclusion (other issues the ISG deals with are the OMC on pensions and health, for example). These meetings last half a day to a day. Again, there are usually several items on the agenda. Particularly since enlargement, it is clear that not all issues can be addressed by each delegation: “Out of 25 member states, maybe ten speak up during a meeting”.<sup>11</sup> According to all interviewees, these tend to be particularly Luxembourg, Belgium, France, Italy and the UK. In particular, the ‘new’ EU member states are reported to be “silent”. However, this situation is not indicative of a coalition building of the ‘old’ EU-15 vs. the ten ‘new’ member

states. Whereas the indicators of this OMC were discussed continuously in 2001–2002, this was the case five times during 2003 and 2004, and four times in 2005.

### Accountability

The last criterion is *accountability*. With regard to transparency, the limited mobilization of actors corresponds to the — to put it diplomatically — limited degree of transparency mentioned above. In both member states, the first two NAPs could be found on the websites of the Ministries for Social Affairs until 2004, but were then removed from the Internet. Today, no more reference to the OMC inclusion or the streamlined OMC can be found on the respective websites. In France, the CNLE has no independent homepage at its disposal. Information concerning its status, members and chosen activities must be retrieved through the Ministry of Social Affairs. Once more, no direct mention of the OMC and NAP process is made on the ministerial web pages. The relevant activities are published only at irregular intervals, while working agendas or summaries are unavailable. With regard to the *Observatoire national de la pauvreté et de l'exclusion sociale*, only the list of its members is made public, on a web page which is also hosted by the Ministry of Social Affairs. As there are no regional and local activities related to the NAP process, it is hardly surprising that the French regional and local authorities do not publish related information on their web sites. Finally, the homepages of NGOs in France are of very varied quality. While the website of EAPN France is notoriously outdated and it is impossible to find up-to-date information and documents, the web pages of the *Union nationale interfédérale des œuvres et organismes privés sanitaires et sociaux* (UNIOPSS) are so up to date that information is saved only for a few months. More importantly, access to particular information, statements and background reports is available only to a restricted, authorized public, setting limits to transparency.

In Germany, information about meetings of the advisory board — announcements, agendas, minutes or the like — are not made available on the Internet, nor were they provided upon request. On their websites, the *Länder*, even though involved in the process through meetings in the federal ministry and through the *Bundesrat*, give no information whatsoever on the process. NGOs commonly make their statements available online and sometimes hand them out as brochures. However, it often remains unclear who authors these statements and whether there have been consultative processes in their preparation.

At EU level, transparency was also low and occurred only insofar as official documents of the SPC were published on the Commission's website. No work agendas, minutes or other documents are made available there. Unlike the SPC, whose list of members can be accessed online on the Commission's site since 2005, the members of the ISG are not made public, neither at national nor at EU level.

Public debate regarding the OMC inclusion has been non-existent in both member states. To be sure, there are permanent debates in the media and in

public with regard to social policy and, in France, also regarding anti-exclusion policies. However, they were never linked to the European dimension of the OMC inclusion which, therefore, has remained largely unknown. A research of two major daily newspapers (*Le Monde* in France and *Die Süddeutsche Zeitung* in Germany) throughout the year 2001 showed that not a single article was dedicated to this particular OMC, although issues relating to poverty in general were discussed widely in public. At EU level, a 'public' debate was held solely at the yearly conferences on social exclusion and at the two high-level conferences dedicated to the indicators under the Belgian and the Luxembourg presidencies. However, these conferences merely brought together the parties and representatives already mentioned while there was no outreach to the media, parliaments or the broader public. They can therefore hardly be called public.

Participants in the CNLE's meetings state that these events were an exercise in information rather than consultation, and that no major or new initiative emerged from these meetings. Instead, the NAP was an alignment of policies already in place. Furthermore, it is difficult to know — due to the lack of transparency — to which actors the civil servants coordinating the NAP process were responsive. It must be assumed that they were responsive mainly to the overall political guidance of the direction of their house. In Germany, and according to interviewees at *Länder* level, the federal level was not accommodating to their demand to give the regions a greater say in the process.

In both member states, responsiveness to NGOs was very limited and seems to have occurred only once during the second round (2003). While in France a formulation regarding a stronger involvement of all relevant stakeholders was included in the NAP, the German ministry responded to the NGOs' demand to put more emphasis on particularly weak persons and to acknowledge the issues of homelessness and illiteracy in the NAP. Furthermore, the document also mentioned some 'good practices' that were organized by NGOs. In both member states, NGOs asked for the establishment of a more regular working group in order to monitor the process — without success on either side of the Rhine. Both governments were responsive to the European level insofar as they more or less followed the common outlines for the NAPs, even though Germany set slightly different priorities in its second NAP.

At EU level, it is even more difficult to evaluate responsiveness since the representatives of NGOs who are often the most willing to report on the process, very rarely take part in the meetings of the SPC and the ISG. However, at least two cases of responsiveness can be identified clearly. First, as shown above, the ISG was responsive to the first report drafted by the Atkinson Group, accepting the majority of its proposed indicators as well as its proposed methodological principles. Secondly, the ISG was also accommodating to FEANTSA's demand for more focus on issues of housing and homelessness. A working group, of which the president of FEANTSA was a member, was commissioned to search for definitions and a possible measurement of homelessness throughout the EU. At the same time, the ISG was not

responsive to the request of EAPN to include a whole range of additional indicators which would reflect more strongly the multi-dimensional character of poverty and exclusion.

Finally, both at national and at European levels, an institutionalized mechanism for sanctions was unavailable. While at the time of the introduction of the OMC inclusion, it first seemed that soft pressure could occur through benchmarking processes and naming and shaming practices, member states did not allow the Commission to exert such pressure. Due to the OMC's clandestine character, the wider public was not given the chance to assess the process and possibly enforce corrections through public debate.

### Conclusion and Discussion

This article has argued that any sort of European social policy coordination should be evaluated against the standards of both effectiveness *and* legitimacy. In a second step, a variable-based research design was developed which, according to the focus of this journal issue, concentrated solely on the aspect of democratic legitimacy. The variables were then evaluated both at national and European levels with regard to the OMC inclusion. What does the empirical assessment tell us about the nature of democracy as enshrined in the OMC inclusion?

First, this OMC clearly does not live up to the demands of liberal democracy. There are no formal participation rights; instead, access to participation is conditional upon invitation and not upon democratically grounded mandates. This implies that the (political) recognition of particular actors by national governments or EU bodies becomes an admission ticket to participation. Concerning representation, it was observed that bureaucratic forms of representation clearly are dominant over political representation. Accountability is quasi non-existent due to the lack of transparency. Discussion takes place behind closed doors, thereby preventing a public debate and liberating the leading representatives from the need to take critical feedback into account. This logic is accentuated by the lack of political sanctions and judicial control. Instead, governments, despite not participating in the OMC processes directly, are merely accountable to the democratically unaccountable officials in the European Commission.

With regard to the legitimacy criteria derived from associative and deliberative conceptions of democracy, the results are not significantly more promising, a picture that emerges coherently from all the interviews conducted. The participation of all relevant stakeholders is far from becoming a reality (see also Armstrong 2005), thereby leading to the uneven representation mentioned above. Conduits for participation do not exist throughout the process, but only shortly before the NAPs are sent to the EU. This, in turn, means that the likeliness of responses to feedback is limited from the outset. In addition, it proved to be dependent upon the consent of the bureaucratic representatives. The openness of the method was not secured, neither in procedural nor in substantial terms. The potential of sanctioning through public pressure was silenced from the start, since no one

but the 'chosen few' who participated in the process could theoretically hold other actors accountable. Furthermore, as participation in the OMC is conditional upon (political) recognition of actors, it is unlikely that the actors invited will publicly engage in severe peer pressure processes. Empirically based research has come to comparable results both for the OMC inclusion in other member states<sup>12</sup> and other social OMCs,<sup>13</sup> indicating that the outcomes presented here are indicative of more general problems regarding the legitimacy of EU governance.

At least two major, more general questions with regard to democracy in the EU arise. First, even though processes such as the OMC inclusion have no direct impact on the policy process and public policies, changes concerning the discourses surrounding policies are intended in the long run. While the question as to what extent this actually happens remains a matter for future longitudinal research, it can be said safely that ideational and discursive changes triggered by the operation of OMCs are far from being subject to parliamentary control and established forms of scrutiny. Issues of public interest such as welfare provision and, more broadly, the separation between public and individual responsibilities, are not in need of fewer institutionalized safeguards — as some of the OMC literature would suggest — but of more (Kohler-Koch and Rittberger 2007). In the absence of such safeguards, eminently political issues tend to be transformed into purely technical matters that can be dominated easily by the bureaucracy.

Secondly, if participation is accorded only to those who more or less share a common interpretation of the world, while access is denied to those with more fundamentally divergent views, a likely result is that criticism is not possible within the system of the OMC. In such circumstances, criticism may well become more fundamental and perhaps even turn into constitutional critique and opposition. The range of dissatisfaction with the OMC inclusion is, in any case, widespread: For citizens, the lack of transparency and open debate is central; parliamentarians complain about not being involved more strongly; regions and local communities see an intrusion into their competences (Büchs and Friedrich 2005); civil servants get distracted by the time-consuming tasks of writing reports which, to their knowledge, have no influence on national policy making (Kröger 2006a); NGOs see their original hopes for a stronger social Europe fail (Kröger 2006b); and Commission officials are completely overloaded with work that is resisted by member states and that might weaken the preferred Community Method (Kröger 2007). Even in the event of an improvement of the procedural aspects of the social OMCs, it is likely that they do more harm to European democracy than bring opportunities to enhance it. It should therefore be clear that the introduction of governance arrangements such as the OMC cannot substitute for a more fundamental debate about the nature of democracy at EU level.

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## Notes

1. National Action Plans are instruments to translate objectives agreed at the European level into national legislation or other political initiatives. They are drawn up at the national level and are reviewed periodically at the EU level.
2. The material used for this article includes interviews with twelve French and nineteen German actors from different institutional backgrounds, as well as three officials from the European Commission, seven delegates to the Social Protection Committee and six delegates to its Indicator Sub-Group. Additionally, forty participants in peer reviews answered standardized questionnaires. The material was gathered between 2004 and 2005.
3. The CNIAE is associated to the prime minister and consists of forty-two members, ten of which are elected, while the others are co-opted. Its functions are to supervise employment and insertion policies, to dialogue with the different actors involved as well as carry out representative functions in other councils or committees such the CNLE. Its composition is dominated strongly by employment-centred actors.
4. Interview, Director, Direction Générale des Affaires Sociales (DGAS), 15 June 2004.
5. Interview NGO, member of CNLE, 26 January 2004.
6. Interview representative of a German *Land*, 4 November 2005. The ASMK convenes once a year, and its presidency rotates annually from region to region.
7. Interview Ministry of Health and Social Security, June 2005.
8. Tony Atkinson is a leading poverty expert and economist based at Nuffield College, Oxford. Other members of the group were Bea Cantillon, Eric Marlier and Brian Nolan. Their work was published one year later (Atkinson *et al.* 2002).
9. Interview secretariat ISG, 21 October 2005.
10. *Ibid.*
11. Interview with member of the ISG, 25 November 2005.
12. See Idema (2004) for the Netherlands, Sacchi (2004) for Italy and Armstrong (2005) for the UK.
13. See Casey and Gold (2005) for the European Employment Strategy and Natali (2005) for the case of the OMC Pensions.

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