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# The Eurozone's Crisis of Democratic Legitimacy: Can the EU Rebuild Public Trust and Support for European Economic Integration?

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European Commission

Directorate-General for Economic and Financial Affairs

# The Eurozone's Crisis of Democratic Legitimacy

## Can the EU Rebuild Public Trust and Support for European Economic Integration?

Vivien A. Schmidt

**Abstract**

In response to the Eurozone's crisis of democratic legitimacy, EU institutional actors have sought to ameliorate the Eurozone's deteriorating 'output' policy performance and to respond to citizens' increasingly volatile political 'input' by reinterpreting the 'throughput' processes focused on 'governing by the rules and ruling by the numbers' without admitting it. Such reinterpretation 'by stealth' risks generating further problems for legitimacy. After defining the three criteria of legitimacy and how they play out differently for political and technical actors through fast and slow burning phases of the crisis, the paper focuses more closely on the legitimation problems of each of the major institutional actors in turn — ECB, Council, Commission, and EP — as they responded to the crisis in coordination with other policy actors and in communication to the public. The paper also offers proposals for short and medium term remedies to Eurozone problems, with a final note on the future of EU governance.

**JEL Classification:** H10, E02.

**Keywords**: European Union, Eurozone crisis, legitimacy, input, output, throughput, ECB, Commission, Council, European Parliament.

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## Executive Summary

The EU's economic crisis has generated a crisis of democratic legitimacy, as deteriorating economics and increasingly volatile politics have combined with restrictive governance processes focused on 'governing by the rules and ruling by the numbers.' Using the systems-related terms of democratic theory, this paper first analyzes this legitimacy crisis in terms of problems with the 'output' performance of EU policies, the EU's responsiveness to European citizens' political 'input,' and the quality of the EU's 'throughput' processes. It then considers how these play out for EU institutional actors—including in turn the ECB, the Council, the Commission, and the EP. The paper's overall argument is that EU actors have sought to fix the economics and calm the politics by progressively reinterpreting the rules without admitting it in the discourse, and that such reinterpretation 'by stealth,' although perhaps beneficial for output legitimacy, risks generating further problems for input and throughput legitimacy. The paper also shows that EU institutional actors differ with regard to their avenues for legitimation and their responses to fast burning versus slow burning phases of the crisis, with the main differentiation between technical and political actors. The paper finds that both EU technical and political actors have generated mixed responses from the public and analysts alike as a result of the disconnection between what they do and what they say. The ECB is seen either as 'hero' or 'ogre,' the Council as 'dictator' or 'deliberative political body,' the Commission as 'ayatollahs of austerity' or 'ministers of moderation,' and the EP as a 'talking shop' or a potential 'equal partner.' The paper ends each of the sections on EU institutional actors with proposals in the short-term for modest remedies to the EU's legitimacy problems, even without treaty change, plus some more bold solutions for the medium and long-term. It adds a final note centered on how to rethink EU governance if Eurozone economic governance deepens. In the conclusion the paper sets the crisis into the context of globalization, capitalism and democracy, and suggests possible future developments for EU legitimacy.

For the Commission, this paper highlights the need for leadership through greater flexibility and transparency in the reinterpretation of the rules, made possible by its new EP linked input legitimacy, and its now simultaneous accountability to the EP and Council. It also recommends a transformation in the Commission's own approach to administering the rules—from community enforcer to community enhancer/advisor within a more decentralized system of supervision/support. For all the institutions, it proposes a return to the long-standing institutional balance embodied by the Community Method. Among the other EU institutional actors, the ECB is to limit its focus to Euro-related issues of monetary governance, leaving economic policy orientation to the other institutional actors, while doing all the necessary as quasi lender of last resort and bank supervisor. The Council is to become a more open and transparent arena for political debate about the rules. The EP is to be brought into all Eurozone decision-making, and better tied in with national parliaments, which will also see their role expanded. Finally, for the medium and long-term future, in addition to greater fiscal solidarity, the EU should end the unanimity rule, replaced by supermajorities with opt-outs, while treaty-based rules regarding the Eurozone are to become ordinary legislation, and therefore more readily amended. Moreover, instead of a Eurozone hard core with its own Euro-parliament the EU should be conceptualized as consisting of overlapping policy communities made up of clusters of member-states, in which all have voice but can vote only in the communities in which they are members.

# Introduction

The European Union has been in the throes not just of an economic crisis but also of a crisis of democratic legitimacy. Public trust in national and EU institutions has been falling together with support for European economic integration while citizen dissatisfaction with national governments and disaffection from the EU has been on the rise.[1] The public has come to perceive the European Union as more and more remote (read technocratic) and national governments as less and less responsive to their concerns—often as a result of EU mandates. This has translated into increasingly volatile national politics, with the electoral cycling of incumbent governments and the growth of populism, as extremist parties with anti-euro and anti-EU messages get attention, votes, and even seats in the European and national parliaments.[2]

Such toxic politics have been fueled by the EU's policies focused on austerity and structural reform along with its poor economic performance. Citizens have been split between core and periphery countries, and winners and losers, over the policies' effectiveness and/or appropriateness as well as their economic outcomes. Growth has been elusive while deflation threatens in a Europe characterized by increasing divergence between the export-rich surplus economies of Northern Europe and the rest, affected by rising poverty and inequality along with continuing high levels of unemployment, in particular of youth.

Eurozone governance processes that operationalize the stability-based policies mandating restrictive numerical targets on deficits and debt, with surveillance for countries falling short of the targets, have also contributed to political discontent. In the absence of any deeper political integration that could provide greater democratic representation and control over an ever expanding supranational governance, and in the face of major divisions among EU actors over what to do and how to do it, the EU ended up 'governing by the rules and ruling by the numbers' in the Eurozone.

At the inception of the crisis, the European Central Bank (ECB) continued to follow the 'one size fits none' rules of monetary policy that had exacerbated (rather than reduced) member-states' economic divergences.[3] The Council became dominated by 'one size fits one' rules of intergovernmental negotiation that gave one member-state (i.e., Germany) outsized influence. The EU Commission applied the 'one size fits all' rules of budgetary austerity to very different member-state economies. As for the European Parliament (EP), it had almost 'no size at all' when it came to setting policy.[4]

But as the crisis evolved from 2010 through 2014, and as EU institutional actors became increasingly concerned about continued poor economic performance and growing political volatility, they slowly began to reinterpret the rules and recalibrate the numbers, albeit mostly without admitting it in their communicative discourse to the public. Instead, they generally continued to insist that they were sticking to the rules even as, behind closed doors in their coordinative discourses of policy construction, they were debating, contesting, and compromising on rules (re)interpretation. The increasing disconnection between what EU actors have said and what they have done has also contributed to major divides in public perceptions of their actions, generally splitting Northern and Southern Europe but also, within them, the winners and the losers of European economic integration.

From 2010 through 2014, the European Central Bank (ECB) slowly moved from the 'one size fits none' rules to 'whatever it takes' (in the famous phrase of the ECB president Mario Draghi in July 2012), all the while insisting that it remained true to its Charter and pressing EU member-states to tighten their belts and reform their economies in exchange for its actions. As a result, the ECB has alternatively been cast either as the 'hero' repeatedly rescuing the euro or as an 'ogre' pushing austerity and structural reform.

Although the Council largely continued to govern by the 'one size fits one' rules, it intermittently agreed to instruments of deeper integration, to the need for growth (by 2012), and then flexibility (by 2014), even as it kept up the discourse of rules-based austerity and structural reform. Public perceptions have been equally at odds here, with the Council's increased intergovernmental rule framed either as a (German) 'dictatorship' imposing *diktats* or as a 'deliberative political body' driven in the crisis by the search for consensus.

[1] Hobolt 2015; Kriesi and Grande 2015
[2] Bosco and Verney 2012; Mair 2013; Taggart and Szczerbiak 2013
[3] Enderlein et al., 2012
[4] Schmidt 2015

Despite the fact that the EU Commission stuck to a harsh discourse of strict and uniform adherence to the 'one size fits all' rules, it gradually allowed for increasing flexibility in applying the rules and calculating the numbers. Stories about the Commission therefore switch between depicting officials as the 'ayatollahs of austerity' intent on imposing austerity and structural reform and as the 'ministers of moderation' who have navigated between the Council and ECB as they (re)interpreted the rules for better results.

Finally, even though the European Parliament (EP) continued to have almost 'no size at all', its increasing critiques along with its successful push to have the appointment of Commission President linked to the winning party in the EP elections in May 2014 ensured it an increasing presence if not yet major influence over Eurozone policy. Hopes and fears therefore hinge on whether the EP remains little more than a 'talking shop' in Eurozone governance or becomes in time more of an equal partner in a renewed and more robust Community Method for the Eurozone.

In 2015, it is too early to say much about how these differential patterns of what EU institutional actors do and say may change, along with public perceptions. But what has been clear already over the course of the crisis is that the challenge for EU institutional actors has been how to get beyond the original rules to more workable ones. This has not just been a question of overcoming the institutional logics that make formally changing the rules very difficult so long as there is significant disagreement among the member-states about what to do and how to do it;[5] the political logics that have reinforced the institutional gridlock, given diverging national perceptions of the crisis and political pressures on EU member-state leaders;[6] or the potential legal constraints that limit what they can do constitutionally.[7] It has also been a question of how to build legitimacy for reinterpreting the rules—no easy task given the complexity of EU institutional and political logics as well as the potential legal obstacles.

To analyze questions of democratic legitimacy during the Eurozone crisis, this paper turns for definitions to the systems concepts often used in the EU-focused studies of democratic theory. These include the 'output' effectiveness and performance of EU policies; the EU's 'input' responsiveness to citizens' political demands and concerns; and the 'throughput' quality of EU policymaking processes, judged by their efficacy, accountability, transparency, and inclusiveness. For the ways in which EU institutional actors employ these concepts in the dynamics of legitimation, the paper turns to the analytic framework of discursive institutionalism, which considers the substantive content of ideas and the interactive processes of discourse in institutional context.[8] Most useful is the discursive institutionalist analysis of the ways in which EU institutional actors seek to legitimate their reinterpretations through a coordinative discourse of policy construction and/or a communicative discourse of political legitimation with the public.

The first part of the paper defines the three legitimacy concepts and applies them to the Eurozone crisis. It considers not only their interaction effects, in particular how they play off one another (or not), but also how they play out in relation to other factors, including institutional and political logics, power and position. The paper finds that the main divide is between technical and political actors. In their (throughput) legitimation processes, technical actors turn first to expert communities for (output) legitimation of their policy ideas while political actors instead look first to their national constituencies for political (input) legitimation. The paper additionally hypothesizes differential outcomes in the midst of fast-burning or slow-burning phases of the crisis, with technical actors more likely to innovate in the slow-burning phase, political actors in the fast-burning one—so long as technical actors have prepared the ground.

The second part of the paper explores the pathways to legitimacy of each of the principal EU institutional actors (ECB, Council, Commission, and EP) and how, confronted by rapidly changing events, failing solutions, and constraining institutions from 2010 through 2014, each in its own way increasingly sought to retain legitimacy by reinterpreting the (throughput) rules in order to achieve better policy (output) performance and political (input) responsiveness. The paper contends that even though reinterpreting the rules without publicly admitting it—'by stealth'—may arguably have been the only feasible course of action, and did help to improve (output) policy performance, it risked undermining citizens' perceptions of political (input) responsiveness and endangered (throughput) accountability and transparency. Each of the sections in this part ends by considering ways in which EU institutional actors could seek to build greater legitimacy from 2015 on. It focuses in particular on the potential changes in the institutional balance resulting from the closer linkage of the EP to the Commission via the appointment of the leader of the winning party in EP elections as Commission President.

[5] See Scharpf 1999
[6] Laffan 2014
[7] See F. Fabbrini 2014.
[8] Schmidt 2008

The paper concludes each of the sections by indicating avenues for future legitimacy-enhancing changes in policies, politics, and processes from 2015 on. For the short-term, even without Treaty-based reform, it suggests a range of ways in which reinterpreting the rules can be more throughput legitimate in terms of transparency and accountability while improving input responsiveness and output performance. For the medium and long-term, it proposes some ideal solutions with and without Treaty-based reform that also require a basic rethink of what the EU is, in order to enable a major reset of the EU institutionally—such as doing away with the unanimity rule and finding ways that might allow for more decentralized management of the Eurozone economy. The paper ends with a note on how change in Eurozone governance could affect EU governance. The overall conclusion considers how the Eurozone crisis fits more generally into the crises of globalization, capitalism and democracy, and then suggests possible future developments for the EU and legitimacy in light of recent events and the reflections offered in the body of the paper.

# 1. Conceptualizing Democratic Legitimacy in the Eurozone Crisis

Democratic legitimacy is predicated on governments' ability to govern responsibly and effectively while responding to citizen's political preferences, policy concerns, and social values, as expressed directly through the ballot box and/or indirectly via their access to policymaking.[9]. Whether EU governance fulfills these conditions for legitimacy has long remained open to debate. While some analysts have argued that the EU is democratically legitimate,[10] others have insisted that it suffers from a democratic deficit at the EU and/or national level.[11] Following the Eurozone sovereign debt crisis, however, this division of opinion has largely disappeared.

Most analysts find a significant democratic deficit resulting from the policies, the politics, or the processes of Eurozone governance. Some critics fault the deleterious outcomes of EU policies of austerity and 'structural reform,' in particular for their impact on the political economies of peripheral member-states.[12] Others decry the lack of citizen political engagement in, let alone impact on, EU decision-making, and worry about the concomitant rise in citizen disaffection accompanied by growing political volatility.[13] Yet others blame the poor quality of EU policy processes, with the increase in supranational and intergovernmental rule to the detriment of the 'Community Method' and any significant involvement of the European Parliament (EP), let alone of national parliaments.[14]

These concerns about the impact of the Eurozone crisis on the legitimacy of EU policies, processes, and politics readily translate into concepts used by political analysts who explain the EU's democratic legitimacy in the terms of systems theory.[15] Output legitimacy depends on the extent to which policy choices provide for the common good, and is predicated on those policies' effectiveness and performance. Input legitimacy depends instead on the extent to which policy choices reflect 'the will of the people,' which is predicated on citizens' engagement in representative processes and government responsiveness to citizens' concerns and demands.[16] Throughput legitimacy sits between the input and the output, in the 'black box' of governance, and depends on the quality of the policymaking processes, including the efficacy of the policymaking, the accountability of the actors, the transparency of their actions, and their inclusiveness with regard to civil society.[17] Importantly, the interaction effects of these three legitimizing mechanisms differ. Input and output can involve a trade-off whereby better *output* performance through effective policy outcomes can make up for little *input* via citizen participation or government responsiveness, and failed output can still be legitimated by extensive citizen input. Throughput, in contrast, offers no such trade-offs. If of good quality, throughput disappears from view; if of bad quality, it may taint the output policies or skew the input politics.[18]

Prior to the Eurozone's sovereign debt crisis, the EU seemed to score reasonably well in terms of the Eurozone's democratic legitimacy. Because the Eurozone appeared to benefit from effective output and quality throughput, the minimal political input by citizens did not appear unduly problematic—as economies across the Eurozone boomed, interest rates on bonds remained low across Euro countries, and the ECB got high marks for its governance. But with the onset of the sovereign debt crisis in 2009/2010, all of this changed.[19]

Public perceptions of the Eurozone's output legitimacy plummeted as the markets pummeled one member-state after another, as EU policies pushing austerity and structural reform split the expected 'rescuers' from those

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[9] See, for example, Beetham and Lord 1998; Mair 2013. At its most basic level, however, following Max Weber's definition, democratic legitimacy depends on citizens' prior acceptance of a set of governing arrangements as morally authoritative, such that they will voluntarily comply with government acts even when these go against their own interests and desires (see e.g., Scharpf 1999; Cerutti 2011; Schmidt 2013). This kind of legitimacy was originally situated at the level of the nation-state, and linked to notions of national sovereignty. But slowly and incrementally over the course of the EU's integration process, as nation-states became member-states and sovereignty became increasingly pooled, this kind of basic legitimacy was also accepted at least in principle for the EU level by citizens in policy area after policy area and institution after institution. The customs union was followed by the Single Market, Schengen, and EMU; the ECJ gained supremacy and direct effect; the ECB was given control over money, monetary policy, and banks most recently; and the Commission increased its supranational powers of negotiation, regulation and oversight in areas such as international trade negotiation, financial markets and EMU via the European Semester (see Schmidt 2006, Ch. 1)

[10] For example, Caporaso, and Tarrow 2008; Majone 1998; Moravcsik 2002.

[11] Follesdal 2006; Mair 2006; Schmidt 2006; Hix 2008, and even Majone 2009

[12] Scharpf 2012b, 2013, 2014; Blyth 2013; Höpner, and Schäfer 2007; Baccaro, and Armingeon 2013.

[13] See, e.g., Kriesi et al. 2008; Mair 2006; Franklin, and van der Eijk 2007.

[14] Scharpf 2014; Fabbrini 2013; Schmidt 2013

[15] The systems approach is largely built on that of David Easton (1965), as updated by Scharpf 1999.

[16] Scharpf 1999, Ch. 1.

[17] Schmidt 2013; see also Zürn 2000; Benz and Papadopoulos 2006. Note that Easton (1965) uses the term throughput, but limits it to administrative processes.

[18] Schmidt 2013

[19] Schmidt 2015

needing ‘rescue,’ and as policy performance was characterized by economic slowdown and recession rather than growth. Input legitimacy has also been at risk as citizens have become increasingly disaffected from the EU, if not euro-skeptic, at the same time that many have become increasingly disenchanted with their national governments, as they find that policies made at the EU level cannot be changed via national politics, even when they vote to ‘throw the rascals out.’ Moreover, throughput legitimacy has been compromised by rescue plans lacking in efficacy as well as by governance processes focused on restrictive rules and numerical targets lacking sufficient accountability, transparency, and inclusiveness.

## 1.1 OUTPUT LEGITIMACY: EUROZONE POLICY EFFECTIVENESS AND PERFORMANCE

Output legitimacy is a performance criterion focused on policy effectiveness. Output legitimacy describes acceptance of the coercive governing powers of political authorities so long as their exercise is seen to serve the common good of the polity and is constrained by the norms of the community.[20] How such legitimacy is established and by whom, however, is contested. Although it is sometimes assumed that output legitimacy is a technical matter for experts in non-majoritarian institutions, the public is the ultimate judge of output legitimacy, which depends on resonance with their norms and values. And politicians are the ones who generally translate the technical matters into terms intelligible to the citizenry while connecting these to the normative values of the polity In the Eurozone crisis, European politicians and publics have tended to divide between Northern and Southern Europe, and winners and losers, while the experts have split between supporters of Eurozone policies, mainly in the EU institutions and some Northern European countries, and critics who variously blame the framing of the crisis, its diagnosis, the chosen remedies, and/or the attempted solutions for the problems of output legitimacy.

### 1.1.1 Defining Output Legitimacy

Output legitimacy can be defined and evaluated in two distinct ways: political and technical. Political evaluations of policies’ output legitimacy depend on the extent to which they resonate with citizen values and community norms, with judgments likely to invoke normative principles of distributive justice, fairness, or equity. Technical evaluations are instead the domain of experts whose assessments are based on their technical knowledge and philosophies, with judgments likely to invoke economic principles such as competitiveness, fiscal balance, growth, or social well-being.

Technical approaches to output legitimacy have grown in importance over the years, as technocratic authority has increasingly substituted for the governmental. This results from the shift of decision-making from the administrative state—directly under the authority of governments—to the regulatory state, in which governing authority has moved to independent bodies (under the influence of neo-liberal philosophies, in particular since the 1980s in Europe), with the EU a major force in this.[21] Technical output legitimacy is associated in particular with ‘non-majoritarian’ EU institutions[22]--whether they use supranational modes of governance in an executive role (e.g., the ECB in monetary policy and the ESM) or as delegated agencies (e.g., regulatory agencies and the EU Commission in the context of the European Semester). Performance deemed output legitimate here can be understood not just as policies that are determined to be economically beneficial but also more generally to be community enhancing in areas of societal concern.[23]

Who assesses the effectiveness of the policies emanating from non-majoritarian institutions? This tends to be the role of experts, for whom any disagreements over output legitimacy take the form of highly technical cognitive arguments, with battles for control in which the weapons are mathematical calculations, economic formulations, socio-economic impact assessments, macro-economic charts and graphs, and the like.

Such battles take place largely within the policy sphere, as part of a ‘coordinative’ discourse of policy construction and legitimation among technical actors.[24] These actors may be situated within the non-majoritarian institutions themselves as government and regulatory officials or they may be the policy actors who interact with them regularly as part of ‘discursive communities’—including in ‘epistemic communities,’

[20] Scharpf 1999.
[21] See Genschel and Jachtenfuchs 2014.
[22] See Majone 1998
[23] Menon and Weatherill 2008; Caporaso and Tarrow 2008.
[24] See Schmidt 2008.

‘advocacy coalitions’ or ‘discourse coalitions’ and other kinds of expert networks—as consultants in consulting firms, policy analysts in think-tanks, or academic economists in economics departments.[25]

Ultimately, however, output legitimacy is political. However technically legitimate to the experts, a policy’s effectiveness and performance has to be judged according to the extent to which it resonates with citizen values, builds identity, and conforms to a community’s normative principles of distributive justice, fairness, or equity. Performance as judged by technical actors is insufficient on its own for legitimization. Outcomes also require a kind of ‘Weberian’ legitimacy, meaning that they must also resonate with citizens’ substantive values and principles, and are therefore perceived as acceptable and appropriate—and not just as matching citizens’ (technically established) interests.[26] Here, the assessment of policy effectiveness depends on public perceptions of economic performance and societal impact. And such perceptions themselves owe a great deal to the communicative discourse of political actors to legitimate the policies to the public via discussion, deliberation, contestation, argumentation, and persuasion.[27] Such discourse involves not only cognitive arguments that translate the technical assessments into language accessible to the general public but also normative ones that seek to show how the policies resonate with societal values—whether long-standing or newly-emerging.[28] Here too, then, there are battles for control, but the instruments involve normative as well as cognitive arguments. Discursive legitimation itself can come through elite narratives, media discourses, public debates, social contestation, or other ‘communicative’ actions of elites and citizens in the public sphere.[29]

Political actors are naturally well versed in the communicative discourse involved in establishing such ‘political’ output legitimacy. They are used to speaking to ‘the people,’ and are naturally expected to address the media and the public to legitimate their decisions. Technical actors do better with ‘technical’ output legitimacy, which is agreed by the expert networks through which they get innovative ideas for policy construction as they seek to gain approbation for their policies (as part of throughput legitimacy—see below). But in recent years technical actors have become increasingly aware of the need to legitimate their policies externally with the more general public and not just internally to the ‘principals’ to whom they are accountable as ‘agents.’[30] As a result, they have sought to ensure that their judgments not only serve to inform political actors but that they also feed into public communications and help to influence public attitudes and debates—whether indirectly, through their use by political actors, or directly, as technical actors themselves join in the political debate.

Technical actors’ attempts to establish ‘political’ output legitimacy tend to be focused on building public understanding and trust in their work in order to reinforce their authority, to achieve ‘credible commitments,’ and to ensure that the policy is accepted by the public as appropriate and justified.[31] Technical actors have increasingly accepted that they need to engage not just in a coordinative discourse but also a communicative one, in which they need to develop communicative strategies on a daily basis, given this ‘mediatized’ age.[32] As for their arguments, in addition to the cognitive arguments that seek to ensure that the policies are comprehensible or ‘taken-for-granted’ and the normative, that they are morally acceptable and appropriate, is the pragmatic, derived from the technical, that they promote the public’s well being and benefit.[33]

### 1.1.2 Eurozone Policies’ Output Effectiveness

During the Eurozone crisis, by both technical and political measures, the EU had difficulty generating EU policies considered output legitimate by the experts or the citizens. Although there have been institutional innovations in the form of various loan-bailout mechanisms and regulatory instruments, EU leaders’ main focus in the heat of the crisis was on devising ever more elaborate rules to instill discipline through ever more restrictive numerical targets that measured adherence to the rules. They reinforced the rules originally set out in the Maastricht Treaty of 1992 and formalized by the Stability and Growth Pact (SGP) of 1999 that established numerical targets for inflation, deficits, and debt for member-states adopting the Single Currency. Beginning with the sovereign debt crisis in 2010, in addition to setting up loan bailouts for Eurozone countries in danger of

[25] See, e.g., Haas 1991; Sabatier 1993; Lehmbruch 2001; Seabrooke 2014.
[26] Cerutti 2008
[27] Schmidt 2006, Ch. 5, 2008
[28] Schmidt 2000, 2002, Ch. 5.
[29] E.g., Koopmans 2004; Eder and Trenz 2007; Habermas 2001; Bellamy and Castiglione 2003; Risse 2010, pp. 107-76.
[30] It is important to distinguish here between legitimacy via procedural accountability to internal stakeholders (as throughput legitimacy) and legitimacy to external stakeholders, involving acceptance of the effectiveness of the policies. Accountability is most often used in the internal sense (e.g., Bovens 2007). ‘Political legitimacy’ is something different from accountability (see Cashore 2002, Bernstein and Cashore 2007, and discussion in Waters 2015).
[31] Schillemans 2011; Cashore 2002; see discussion in Waters 2015.
[32] Hajer 2012; Wood 2015.
[33] Cashore 2002; Waters 2015.

default and/or at risk of contagion, EU leaders signed up in quick succession for the so-called 'Six Pack,' the 'Two Pack,' and the 'Fiscal Compact,' each more stringent with regard to the rules, more restrictive in terms of the numbers, and more punitive for member-states that failed to meet the requirements, to be determined via the 'European Semester' process.

The economic principles underpinning these agreements were largely based on the 'Brussels-Frankfurt consensus,' which has three basic tenets for Eurozone economic policy: stable money, to be guaranteed by the ECB's role in fighting inflation and ensuring price stability; sound finances, to be assured by the member-states, which were to eschew 'excessive' deficits and debt; and efficient local labor markets, to be carried out by the member-states, with each country responsible for making its own labor markets and welfare state 'competitive' in whichever way it could.[34] This consensus combines an *ordo*-liberal philosophy focused on the need to impose austerity in order to ensure stable money and sound finance via rules-based governance with a *neo*-liberal philosophy focused on 'structural reform' of labor markets and welfare states as the answer to problems of growth.[35]

Critics of the policies and their underlying philosophy generally link the EU's problems of output legitimacy to the framing of the crisis, the diagnosis of why it happened, the choice of remedies, and the lack of deep solutions. The first of the problems they identify stems from the (mis)framing of the crisis as one of public debt, which was generalized from the case of Greece. For all other countries, the problem was rather one of private debt resulting from the massive overstretch of the banks, the increasing indebtedness of households, and the mispricing of sovereign risk by the markets.[36] It was as if EU political actors had caught a major case of collective amnesia in 2009 and 2010,[37] as they painted the crisis as caused by public profligacy rather than private debt, in what Mark Blyth has called "the greatest 'bait and switch' in history."[38] The narrative that stuck, in particular in Germany, was about the profligacy of the 'lazy Greeks' versus 'Germans who save,' which was then generalized to all the countries in trouble.[39] This mis-framing of the crisis as one of public debt in the periphery helped fuel resistance to any form of 'transfer union,' in which Northern Europeans would pay for debts accrued in the South, and helped close off proposed remedies such as Eurobonds or a European Monetary Fund.[40] Significantly, EU institutional actors went back to the original story of the crisis as caused by private debt, first the ECB by 2013 (see below) and then in 2015, the President of the European Commission in an analytical note written in 'close cooperation' with the Presidents of the European Council, the Eurozone Finance Ministers, and the President of the ECB set the record straight—that the crisis had begun with private debt, which then turned into the sovereign debt crisis as a result of government need to bail out banks and stimulate their economies.[41]

The second problem identified by analysts is the (mis)diagnosis of the problem as behavioral rather than structural. The narrative that framed the problem as public debt explained it as the result of member-states' failure to follow the rules of the SGP.[42] This goes back to the early days of the SGP, when a disciplinarian view of sanctioning public deficits gave way in the face of rebellion by France and Germany in the mid 2000s to a more regulatory view focused on the long-term sustainability of public finances, to be ensured through emphasis on common national budgetary standards and procedures. But when Greece appeared to have lied about its debt, the disciplinarian theme returned—since it appeared that regulation had failed because a member-state had flouted the rules, just as the French and Germans did in 2005.[43]

The problem with the behavioral narrative, however, is that it did not fit the facts. Throughout the 2000s, member-states in the periphery like Spain and Ireland were in fact models of rule-following on deficits and debt, in contrast to core countries like Germany and France, which broke the rules in the mid 2000s—albeit for good reasons, i.e., not to cut spending in a recession).[44] The real problem according to critics has been structural, in

[34] Jones 2013.
[35] On Ordo-liberalism, see: Ptak 2009; Dullien, and Guérot 2012; Blyth 2013; Schmidt and Thatcher 2013.
[36] DeGrauwe and Ji 2012; Blyth 2013
[37] See C. Barbier 2012.
[38] Blyth 2013.
[39] Newman 2015.
[40] Schmidt 2015.
[41] Juncker 2015
[42] Jabko 2015
[43] Schelkle 2009
[44] It is interesting to consider the different ways in which these events are presented. Merkel has portrayed the breaking of the rules as the cardinal sin, by Germany as well as France, never to be repeated. Social democrats in Germany claim that this was justified, because in breaking the deficit rules Germany was able to create the political space for unpopular reforms of pensions and unemployment assistance(Hartz IV). It should be pointed out, however, that these reforms led to the dualization of the workforce in which German low paid workers now have lower wages and fewer job protections than in many Southern European countries.

which the ECB's *'one size fits none'* inflation-targeting monetary policy produced increasing divergence rather than convergence between surplus and deficit countries.[45] This problem also applies to the austerity policies. Insisting that all countries tighten their belts at the same time to become more 'competitive' ignores the interdependence of surplus and deficit countries and the moving average problem at the heart of such efforts.[46]

Some critics add that such policies in the context of the Eurozone, a non-optimal currency area that works well for the export-led, surplus-producing model of growth and competitiveness of member-states in Northern Europe, cannot work for member-states in the periphery, mainly in Southern Europe.[47] These varieties of capitalism have traditionally flourished via a domestic-spending, deficit-producing model of growth that requires periodic currency devaluation to right the balance and demands, therefore, control of its own currency. Such critics conclude therefore that without the ability to devalue because of the euro or to run deficits because of the stability rules, Southern European member-states have no alternative but to enter into a never-ending downward spiral of wage repression accompanied in the end by the suppression of social and political democracy.[48]

The third problem comes from the chosen remedies, centered on pro-cyclical policies of 'sound' money, budgetary austerity, and 'structural reform,' instead of counter-cyclical policies that could have generated growth through macroeconomic stimulus, industrial investment, and socioeconomic support.[49] This suggests a critique of the economic ideas of the 'stability paradigm' at the basis of the 'Brussels-Frankfurt consensus.' The 'stability paradigm' sees price-stability (low rates of inflation) as a precondition for growth rather than as a trade-off; an independent central bank as key to setting interest rates independently of political processes (and opportunistic politicians); and conforming wage policy (i.e., no excessive wage bargains) and fiscal policy (no excessive levels of public deficit and debt) as a further requirement.[50] To critics, this philosophical mind-set ensured that EU actors focused on the wrong factors, in particular for member-states under surveillance or in programs. Their problems have had much less to do with indebtedness (before the crisis Ireland and Spain in particular had very low deficit and debt) or lack of 'competitiveness' (all exported at decent rates while wages were 'excessive' mainly in relation to Germany's hyper-competitive wage restraint) than with the 'sudden stop' of market finance. Importantly, that sudden stop can itself be seen as more related to the uncertainty generated by EU leaders' pronouncements or (in)action with regard to deeper European economic integration rather than the health of those member-states' economies.[51]

The final problem results from the lack of adequate solutions that leave an incomplete risk pool and insurance mechanism put in place more by default than design to respond to the pressures of global financial markets and the challenges of global competition.[52] While critiques of the Eurozone as unworkable because not an Optimum Currency Area (OCA) are legion,[53] they all tend to assume by definition that the EU cannot share risk the way equally heterogeneous entities like the United States do, through fiscal federalism with balanced budget rules in the federal states.[54] But although the EU will never become a federal state like the US, there are many ways to make it more robust in terms of weathering asymmetric shocks and the pressures of the global financial markets. Analysts have identified many of these, ever since the onset of the crisis. Proposals include completing monetary union with a substantial financial union that is as much about strengthening the internal market with regard to banking and finance as it is about the Euro and the monetary policy of the Central Bank,[55] or even completing monetary union with a fiscal union. The EU requires effective shock absorbers, notably a joint tax system with EU institutions' own resources, joint public debt management,[56] some form of Eurobonds or

[45] Enderlein et al. 2012; DeGrauwe 2013; DeGrauwe and Ji 2013
[46] See, e.g., Skidelsky 2013; Matthijs and Blyth 2011; Wolf 2013.
[47] Scharpf 2012a, 2014; Hall 2012;
[48] Scharpf 2013, 2014.
[49] Scharpf 2012b, 2013, 2014; DeGrauwe 2013
[50] Heipertz and Verdun 2010
[51] Jones 2010, 2015a
[52] Schelkle 2015
[53] E.g., Eichengreen 1999, 2012; Feldstein 1997,
[54] Henning and Kessler 2012. With regard to the balanced budget rules, what makes them work well is not legal enforceability (which has rarely occurred in the US) but rather sovereigns' fear of punishment by the bond markets, i.e., by demanding higher rates. Such punishment in turn depends upon the markets having a clear sense of sovereigns' fiscal viability because of year-to-year budget balancing requirements. The EU's fiscal compact, by contrast, has legality but no clarity, since it allows balancing of budgets to work across the business cycle, i.e., running deficits in downturns, to be made up by running surpluses in periods of growth (see Kelemen and Teo 2014). This is of course necessarily so, since the Eurozone has no equivalent to the US federal budget to act as a common insurance mechanism smoothing the way for its member-states.
[55] Jones 2015
[56] Schelke 2014.

mutualization of debt,[57] plus macroeconomic stabilizers (e.g., an unemployment fund or a 'cyclical adjustment fund').[58]

### 1.1.3 Eurozone Policies' Output Performance

In addition to questions about the effectiveness of Eurozone policies are questions about their performance. The austerity policies centered on rapid deficit reduction and belt-tightening, largely through cuts in public spending, have raised questions of output legitimacy with regard to both macroeconomic and socioeconomic performance. The so-called structural reforms also remain problematic in terms of their impact.

The macroeconomic evidence for problems of output performance can be seen in the slowing of the Eurozone economy as a whole, so much so that even the most successful countries have low growth while deflation has become a serious risk. As for the program countries that have experienced the harshest austerity policies, most now have much higher debt to GDP ratios than at first, while even those that have been touted as success stories, such as Latvia or Ireland, have done so at the cost of major emigration of their populations in search of jobs (which brings down unemployment figures) and of major increases in poverty and social exclusion—all of which have negative effects on demographics. The problem for output legitimacy here is that even if EU level technical actors like the ECB and the Commission and EU political leaders in the Council judge the macro-economic policy performance as improving, national publics in program countries have been divided in their views of how successful, because of the socio-economic policy results.

The socioeconomic figures show serious consequences across Europe, including a 'humanitarian crisis' for countries in the periphery in particular. Unemployment has reached record highs (12.2 percent on average in 2013, 11.5% in July 2014, and topping 25 percent in Spain and Greece. And youth unemployment was at 20.9% in the euro area as a whole in March 2015, with over 40% in Italy (at 43.1 %) and over 50% in Spain (50.1 %) and Greece (50.1 % in January).[59]. Poverty and social exclusion have risen to new levels, with close to a quarter of the EU population at risk in 2013, while close to 10 percent of the population of the EU was severely materially deprived (9.6% exactly), with higher numbers in particular in Eastern Europe and in Greece.[60]

A Council of Europe report (2013) concluded that austerity programs in response to the crisis had undermined human rights in key areas, largely as a result of public social spending cuts, and especially in countries under international bailout programs—viz. the Troika demand that public spending in program countries not exceed 6 percent of GDP. The report in particular condemned increasing homelessness in Southern Europe, Ireland, and the UK as well as failures to provide adequate safeguards to ensure access to the minimum essential levels of food—as governments limited food subsidies—and even of water in the case of Ireland.[61] We could add that austerity policies in program countries also directly negatively affected those areas that are expected to promote growth in the medium and long-terms, as highlighted in the Europe 2020 targets, such as education. Between 2008 and 2012, while poverty and social exclusion went up, government spending on education was cut by 17% in Greece, 13% in Portugal, 10% in Ireland, 8% in Spain and 6% in Italy.[62]

For 2014, moreover, a Caritas Europe report (2015) detailed the extent of the humanitarian problem especially in Southern Europe and program countries, finding that more than 1/3 of the population in five EU Member States were at risk of poverty or social exclusion (i.e. Bulgaria 48%, Romania 40.4%, Greece 35.7%, Latvia 35.1%, and Hungary 33.5%); and one in three children or more live in poverty in 14 of the 28 EU countries.[63] Additionally, a recent EP report of seven countries (Belgium, Cyprus, Greece, Italy, Portugal and Spain) detailed the slashes in spending on education, the transfer of health costs from state to citizen, the reversal in gains in citizen health, the critical shrinking of pensions benefits, and the rise in unemployment. Notably, in these seven countries, infant mortality rose by +43% between 2008 and 2010 while waiting lists exploded, with 270,000 on the surgical waiting list in Spain, 480,000 in Ireland in 2012, and a seven month wait for a doctor's appointment in Cyprus; in Greece, pensions were cut between 20% and 40%; and there was a massive rise in unemployment across the seven countries, with 50 million jobs lost, and an increase of job seekers to 80 million. Most damning in the report is the finding that spending cuts, rather than specifically targeted at the wasteful uses of public resources, tended to 'impose horizontal and indiscriminate cuts across the policy areas they targeted, to meet financial

[57] E.g., Claessens et al. 2012.
[58] Enderlein et al., 2012; Enderlein et al., 2013
[59] Eurostat 2015
[60] Eurostat 2013
[61] Council of Europe 2013
[62] Lindner 2014
[63] Caritas 2015: http://www.caritas.eu/news/poverty-and-inequalities-on-the-rise-people-need-fair-solutions

savings that were determined in advance'.[64]

The output performance of the 'structural reforms' raises as many problems as the austerity policies. Initially in particular, they focused on cutting welfare spending while increasing labor market flexibility, on the assumption that labor market 'rigidities' had contributed to countries' lack of competitiveness and failure to recover quickly after the crisis (as opposed to the structural issues with the euro or the sudden stop in market finance discussed above). For the program countries under 'conditionality' in particular, the Troika specified major labor market reforms focused on reducing wages, easing rules on hiring and firing, and loosening worker protections. For countries under 'implicit conditionality'—Spain and Italy—which reformed under the threat that if they didn't the market pressure would force them into a program, the cuts to welfare and reforms of labor markets were also severe, although these were the decisions of governments rather than the explicit demands of the Troika, as for program countries.[65]

For the non-program countries in the European Semester, the recommendations in the Annual Growth Surveys of the Commission were not as explicit. But what was clear every year from 2011 through 2014 was that austerity, that is, fiscal consolidation, came first in the list of recommendations, with structural reforms second and growth-enhancing measures, which slowly crept in across these years, a distant third (see discussion below on the Commission). Notably, this switched in 2015, with investment listed first. But until then, it meant that member-state governments in programs or under pressure chose fiscal consolidation to the detriment not only of growth but also of social needs, as is clear from the figures noted above.

The problem with any structural reforms, as most analysts agree, is that even if they were to succeed, they would only have an effect in the medium term, and do little to alleviate the crisis. But this is not to say that structural reforms are not needed. The question is what kinds of structural reforms. Critics point out that the reforms generally proposed, focused on deregulatory and liberalizing reforms of labor markets, would not solve the main problem, which stems from the Eurozone's structural interdependence. But such reform could, ironically, reduce the very forms of labor market coordination that make for the strength of export-competitive Northern Europeans (i.e., in which well-protected highly skilled, highly paid, highly unionized workers coordinate wage bargaining with management), thereby locking the Southern-European economies up in low- and medium-technology activities in direct competition with China.[66] Moreover, structural reforms that reduce workers' wages and protections in labor markets in countries with deteriorating economies and high unemployment have two negative effects on the countries themselves: the burdens on the welfare state increase when laid off workers cannot find jobs, while the health of the economy generally declines as workers have less money in their pockets to keep up demand through consumption. What is more, high levels of labor uncertainty, coupled with unemployment and penury, also lead to political problems. Input legitimacy, and not just output legitimacy, in other words, is also at risk.

### 1.2 INPUT LEGITIMACY: EUROZONE RESPONSIVENESS TO CITIZEN POLITICS

Input legitimacy is a criterion focused on citizens' attitudes toward and engagement in a political community along with the responsiveness of governments to citizens' political demands and concerns. Input legitimacy represents the exercise of collective self-governing so as to ensure political authorities' responsiveness to peoples' preferences, as shaped through political debate in a common public space and political competition in political institutions that ensure officials' accountability via general elections.[67] During the Eurozone crisis, as the output performance of Eurozone policies has worsened while the hierarchical controls of the EU over national economic governance have tightened, citizens' attitudes towards both their national governments and EU governance have declined dramatically. This has been most evident in the increasing turnover of incumbent governments, the rise of new parties on the extremes, and a growing loss of trust in the EU as well as in national governments. It also finds expression in the two opposing poles of technocracy and populism, both of which have only one thing in common: their assault on mainstream party government.[68] But while citizens have increasingly questioned the legitimacy of the EU level on national input grounds, the EU has also come in for increasing criticism on purely EU level grounds, largely due to the Eurozone crisis. This has to do with how

[64] Study for the EP: "The Impact of the Crisis on Fundamental Rights across Member States of the EU: Comparative Analysis. Study prepared for the Committee on Civil Liberties, Justice and Home Affairs of the EP, PE 510.021 2015 See: Impact of the crisis on fundamental rights across the member states of the EU
[65] De la Porte and Heins 2015; Sacchi 2015.
[66] Storm and Naastepad 2014
[67] Scharpf 1999, 2014.
[68] Bickerton and Invernizzi 2015

different EU institutional actors have conceptualized their own input legitimacy, and the problems resulting therefrom for national politics.

### 1.2.1 Defining Input Legitimacy in the EU

Input legitimacy can be defined and evaluated in two intertwined ways: at the EU level and at the national level. At the EU level, input legitimacy is directly linked to EU institutional actors' different sources of legitimacy, some of which may be derived from other EU or national level institutions as opposed to inherent in the institutional actor itself. Thus, while the Council and the EP can claim input legitimacy derived either indirectly or directly from 'the people,' the ECB and the Commission have at best a diffuse source of input legitimacy retained from the 'shadow' of politics through institutional appointment and delegation or from their accountability to an input legitimate body.

At the national level, input legitimacy encompasses the wide range of modes of government 'by the people' as opposed to output-related government 'for the people.' Another way of conceiving of this is as political authorities engaged in 'responsive' governing (input) as opposed to 'responsible' governing (output) discussed above.[69]

At both levels, input legitimacy focuses on the EU's 'majoritarian' institutions and the representation of citizen demands primarily through elections and party government,[70] although more recently some also consider the circuits of representation of interest groups and networks.[71] But naturally, the legitimizing process also centers on the ideas and communicative processes involved in the party-based contestation of elections as well as other forms of discursive interactions with the public and civil society. These are significant for how they may contribute (or not) to the construction of a sense of collective identity and/or the formation of a collective political will in a European 'public sphere'.[72]

The problem for EU input legitimacy is that it depends on both national and EU levels but that the main source of input legitimacy remains at the national level, given the lack of an EU government directly elected by 'the people,' let alone any 'demos' or coherent sense of EU identity (as opposed to the composite national plus EU identity held by a majority of citizens). This is highly problematic for national input legitimacy, as we shall see below, in particular when citizens begin to question the output legitimacy of policies made at the EU level which they are unable to alter through national politics. But it also makes for difficulties for the input legitimacy of EU level institutional actors as well.

Of all the EU level institutional actors, the European Council has claimed for itself the greatest input legitimacy during the crisis, and has acted accordingly by increasing its intergovernmental decision-making to the detriment of the Community Method, in which the Commission and the EP would also have had substantial decision-making input. The argument articulated by Council members was that they, as the elected representatives of the citizens, could best represent their constituencies through the concentration of decision-making in the Council while also responding most rapidly to the crisis. German Chancellor Merkel, for example, explicitly commended this new "Union Method"[73] while French President Sarkozy defined a more democratic Europe as "a Europe in which its political leaders decide."[74] But in assuming the representative primacy of the Council, EU member-state leaders have failed to recognize that intergovernmental decision-making can be input legitimate only for decisions to which leaders agree for their own citizens, not those that they would impose on other member-states' citizens, let alone delegate to their agent (the Commission) to implement, given the necessarily ad hoc nature of the specific application of those rules to any given country.[75]

Equally significant is the fact that the Council is not a representative arena as such. Rather, it is more like an international treaty body, in which intergovernmental negotiation gives those leaders with the greatest bargaining power (read Germany) an undemocratic advantage in the closed door negotiating sessions of the Council. Although academic scholarship on the Council has suggested that the deliberative mode prevails over hard bargaining even where qualified majority voting occurs because of the focus on consensus,[76] in Eurozone crisis governance deliberation occurs in the shadow of Germany. That said, in the past couple of years member-state

[69] Mair 2013; Mair and Thomassen 2010.
[70] See, e.g., Mair 2006; Hix 2008
[71] E.g., Kohler-Koch 2010
[72] E.g., Zürn 2000; Risse 2010, pp. 127-57; Lucarelli et al. 2011
[73] In a speech at the College of Europe in Bruges (Nov. 2, 2010)
[74] In a speech in Toulon (Dec. 1, 2011)
[75] Scharpf 2013, pp. 138-9
[76] Novak 2010, Puetter 2012

leaders have engaged in more public discussion, debate, and contestation over the rules and numbers. This greater politicization not only makes member-state leaders in the Council appear more responsive to the concerns of their own constituencies. It may also foster the general sense that the resulting compromises provide for the greater common good of the Eurozone itself.

In contrast with the Council, the European Parliament, the most legitimate of EU institutions in theory because directly elected by the citizens, suffers in practice from the fact that it remains largely invisible or irrelevant to the majority of EU citizens—a product of its 'second-order' status in elections, in which national political concerns have dominated political debate and voting behavior.[77] This has been borne out in the increasingly high rates of abstention over time from voting in EP elections, with participation rates at a seeming all-time low in 2009 of 43% topped by the results of the May 2014 vote, at 42.54%. That said, the second-order status of EP elections may have been attenuated somewhat in the May 2014 EP elections, as European topics were more present, even if brought in mainly by candidates on the political extremes. Although national political concerns continued to dominate the vote, the debate was more centered on European issues. Moreover, there was a clear politicization of the election campaign—as EP parties ran their separate candidates for Commission President in EU-wide campaigns and held televised debates, even though the results were mixed in terms of citizen interest or awareness. For example, while a majority of voters were aware of the '*Spitzenkandidat*' in core European countries like Germany and France, most in the UK were not.

The fact that the Council finally did choose the Commission President from among the winning candidates—against initial resistance from some member-state leaders in the Council (most notably the UK's David Cameron)—takes the EU one small step closer to input legitimacy. It potentially helps to generate left/right political debates that have greater chances of spurring citizen interest and thereby to gradually to politicize the EU.[78] The one caveat is in the line of: 'be careful what you wish for.' The greatest interest in the EP elections came from the political extremes, whose voters turned out in much greater numbers than those of mainstream parties, helping to make Marine Le Pen's Front National the party with the largest number of votes in France and Nigel Farage's UKIP the winner in the UK. The question is: How legitimate is a parliament for which 56.9 percent of the electorate have not voted, and for which, among those voting, close to a third went for extremist parties that have little chance in national elections, where citizens see themselves as having a stake in the outcome? The elections have left the EP with a thinning center hemmed in by extremists of the right and left, which forces the remaining majority into a 'Grand Coalition.' Under these circumstances, the politicization of the EU, which was to give citizens a clear choice among parties on the left and right, remains an open question. In the end, therefore, such elections could politicize only to delegitimize the EP.[79]

That said, even if politicization were to succeed, any increased input legitimacy for the EP will have little impact with regard to Eurozone governance. The EP has been sidelined in Eurozone governance, with little formal legislative role in Eurozone policy formulation, which is mainly the domain of the Council, and little formal control over the Commission in the European Semester, let alone over the 'Troika.' At most, it has the right to be informed and to give advice, which are procedural rather than legislative functions. Without a legislative role, the EP cannot be the deliberative forum in which Eurozone policies are debated and contested, or even changed—as in the co-decision procedure of the Community Method. Without more formal control over the European Semester, it also can do little to provide greater political oversight—and thereby input legitimacy—to the Commission in its supranational role.[80]

But even if input legitimacy is and remains in short supply, so what? A different kind of argument, equally significant in the legitimation of Eurozone governance, is that the trade-off with output performance, as assured by the EU's supranational institutions like the ECB or the Commission, makes up for any deficiencies in input. As the basic tenets of neo-liberalism and regulation theory suggest, isolating the institutions carrying out the policies from input politics is as important for output performance as is instituting the right kinds of policies.[81] But this also assumes that a certain modicum of input legitimacy is retained for such non-majoritarian institutions because they operate in the 'shadow of politics,' as the institutional products of political actors who have the capacity not only to create them and appoint their officials but also to alter them and their decisions if they so choose.[82] As a result, such non-majoritarian institutions often see themselves as having a kind of 'input

[77] Franklin, and van der Eijk 2007; Mair 2006; Hix 2008.
[78] See Hix 2008.
[79] Schmidt 2015.
[80] See discussion in Crum 2015.
[81] See, e.g., Majone 1998; see also discussion in Schmidt and Thatcher 2013.
[82] Scharpf 2012b; Schmidt 2013.

accountability,' that is, an obligation to report and explain their actions to the majoritarian institution that appoints them and monitors their actions.

The problem for the EU is that whereas this may apply to non-majoritarian institutions at the national level, it does not as readily to ones at the EU level. Often, EU non-majoritarian institutions have significant autonomy without any significant or at least sufficient democratic control from the classic 'democratic circuit' of parliamentary oversight.[83] In the EU, there is very little of the horizontal dialogue between officials of non-majoritarian institutions and their input legitimate counterparts in government. Instead the dialogue is more vertical and hierarchical between supranational authorities and national agents, thereby ensuring that EU level officials are much more insulated from the requirements of input accountable governance than their formally independent national level counterparts.[84]
Complicating matters even further for input legitimacy of these non-majoritarian actors is that the decision rules of the EU, and in particular the unanimity rule for treaties, make the policies of EU non-majoritarian institutions almost impossible to alter once established, given the absence of any kind of political government that could force the issue.[85]

The ECB is a case in point. Although all central banks in advanced industrialized countries have over the years become increasingly insulated from input politics for the reasons stated above, the ECB is the example of this *par excellence,* given that it is by charter the most independent of central banks. The problem for the ECB is that the legitimizing logic applied to national central banks operating in the 'shadow of politics' does not work nearly as well for it. Top officials at national central banks are generally not only appointed by the legislature in combination with the executive but also have an obligation to report regularly on their actions to parliamentary oversight or monitoring committees, to respond to questions, explain their actions, and can be subject to formal sanctions. In legislative hearings, moreover, they generally seek to establish 'input accountability' by building trust, ensuring credibility, and persuading legislators of the necessity and appropriateness of their policies. According to Sir Paul Tucker, Deputy Governor of the Bank of England, "Monitoring is, therefore, about more than collecting the evidence for formal sanctions. It is about generating legitimacy through discursive accountability."[86] The ECB is much less in the shadow of input politics than the Bank of England, or any other national bank, not only because of the complexity of its multi-level appointment process but also because the most the ECB has to do formally with regard to input accountability is for the ECB president to explain ECB actions and respond to questions in the mandated five yearly meetings with the EP's Committee on Economic and Monetary Affairs. This interactive engagement certainly provides an opportunity to build 'discursive accountability'—but the ECB President need not heed EP advice. Moreover, the Council has even less to say to the ECB, since the ECB is by charter not required to take direction from member-state leaders.

So long as the ECB remains within its charter-based remit to guide monetary policy, and gains output legitimacy via effective policies that engender good output performance, the trade-off with input legitimacy can be seen to pose little problem. However, where the ECB goes beyond its charter-based remit, input legitimacy can become an issue. The ECB is on thin ice with regard to input legitimacy—or output for that matter—when it pushes more input-legitimate actors like the Council to implement policies focused on austerity and structural reform, when it joins with the IMF and the Commission as part of the 'Troika' to impose conditionality on program countries, or when it sends secret letters to government leaders demanding that they conform to ECB demands on austerity policies, structural reforms, or enter into loan bailout programs—as was done in the first two years of the crisis.[87]

The Commission, much like the ECB, does not have any input legitimacy *per se*. Commission officials themselves generally see their legitimacy as coming from their accountability to the input legitimate bodies of the EU. Increasingly over time, the Commission saw itself as primarily accountable to the European Parliament, as the EP gained increasing powers to vet candidates for Commissioner, to confirm the Commission as 'fit for purpose,' and even to reject individual candidates and/or impeach the Commission as a whole.[88] In the context of the Eurozone crisis, however, this EP-related input legitimacy has not been central to the Commission's sense of accountability. Rather, in light of the Council's increasing intergovernmental decision-making during the crisis, along with its claims to exclusive input legitimacy, the Commission shifted its focus to the Council.

[83] Héritier and Lehmkuhl 2011, pp. 138-9.
[84] See discussion in Scharpf 2012b, pp. 19-20.
[85] Scharpf 2012b; see also Schmidt 2013.
[86] Conversation with author, February 25, 2015 and follow-up correspondence with this quote from a manuscript in progress. Tucker noted that his use of the term 'discursive accountability' was to avoid using Jane Mansbridge's (2008) 'deliberative accountability', which it tied to deliberative democracy, which does not describe this interaction.
[87] Eichengreen 2013.
[88] Corbett et al, 2014. Also view expressed by a senior Commission official, September 26, 2013.

Whether it served as little more than a 'secretariat' to the Council[89] rather than in its traditional role of legislative initiator and overseer is open to debate. But there can be no doubt that at least at first the Commission narrowed its own sense of accountability—and arguably the range of its (output) policy ideas to those requested by the Council. The problem here is the ambiguity involved in who is input responsible and/or accountable for the policies, between the Council, which has set the rules but shuns political debate on the priorities, and the Commission, which carries out the policies, using its own discretion even while relying on informal understandings of the member-states' will, gained often through informal contacts with individual member-states.[90] In other words, Commission discretion occurs in the shadow of the Council—which as already noted is itself is in the shadow of Germany.

Whether the Commission's focus of accountability on the Council will change to a dual one—Council and EP—with the appointment of the leader of the majority party in the 2014 EP elections as Commission President remains an open question. And this depends in large measure not only on the Council or the Commission itself but also on the EP, and the extent to which its power and influence over Eurozone policy is enhanced either formally or informally.[91]

In the meantime, the Commission's new quasi-independent powers and discretionary authority related to Eurozone policies have had a significant impact on member-states' national input legitimacy. Its remit to enforce the various oversight functions of the macroeconomic imbalance and excessive deficit procedures in the European Semester, which include the power to vet national budgets before governments submit them to national parliaments, not only challenges national governments' sovereignty, by diminishing their autonomy with regard to budget development. It also undermines one of the main pillars of national parliaments' representative power—control over national budgets—and thereby principles of representative democracy, in which elected governments are responsible to those who elected them.

As for the governments themselves, within the limits of the agreed-upon rules, the Commission has the discretionary power to demand reforms, regardless of whether the government or its parliament is agreed. Such supranational intervention in the management of national economies flies in the face of national input legitimacy—in addition to generating poor output performance, as previously discussed.[92] The fact that the Commission can also sanction governments that do not mend their ways only adds insult to injury. It is therefore not surprising that when Belgium was pressed to further cut its budget for 2013 or face sanctions, Belgian Minister (and EU democracy scholar) Paul Magnette responded 'Who is Olli Rehn?' referring to the Finnish Commissioner for Economic and Monetary Affairs. That the Hungarian PM echoed the thought shows that the spectrum of concern goes from the left through to the (authoritarian) right.

### 1.2.2 The Problems for National Politics

In democratic polities, when economic prosperity plummets and policies go awry, we generally assume that citizens will elect new political leaders with mandates for policy change in the expectation that both the politics and the economics will improve. Not so in the European Union (EU), where citizen dissatisfaction with EU governance of the Eurozone crisis—whether expressed through protest or by voting out national governments and voting in Euroskeptic parties on the political extremes—has done little to change the policies forged at the EU level.

The problem is that the EU in the midst of the Eurozone crisis has actually unsettled the balance between the two main functions of national level political parties in their relations with their constituents. The crisis has forced parties to privilege responsibility over representation, by enhancing their governing role to the detriment of their responsiveness to national electorates.[93] This includes opposition parties that may have campaigned against the very policies that they will be expected to implement when they gain office, even against 'the will of the people.' The result is a step-change in member-states' commitment to responsible government, to the detriment of responsive government, leading to the 'politics of constrained choice.'[94] In consequence, even as national electorates clamor for more domestic input into the decisions that affect their lives, governments are forced to provide output based on decisions that emanate from the EU, which may not be in tune with domestic perceptions of output policies that would produce good and appropriate results.

[89] See, e.g., Schmidt 2015.
[90] See discussion in Crum 2015.
[91] For suggestions on how to do this, see Crum 2015.
[92] Scharpf 2012b.
[93] Mair 2013; see also discussion in Laffan 2014.
[94] Laffan 2014.

To understand fully what this means, we need to consider the fragmented nature of EU multi-level democracy taken as a whole, in which input politics remains primarily at the national level while output policy has increasingly gone to the EU level. Put another way, the national level has increasingly become characterized by 'politics without policy' as more and more policies are removed from the national arena. This has thereby emptied national politics of substance, impoverishing the national political arena, and leaving the way open to populist contestation. At this same time, the EU level consists of 'policy without politics.' Member state leaders in the Council tend to eschew the language of the left or the right when speaking of their national interests, the EU Commission uses the language of technocracy, and the EP, if not left out of the game entirely, uses the language of the public interest.[95] This makes for depoliticized EU policy debates that use primarily cognitive arguments focused on technical output legitimacy. Such technical arguments do not resonate with European citizens, who are used to the left/right divides of national debates, often worry about EU policies on left/right grounds, and expect normative arguments articulated in the terms of political output legitimacy.

Such apolitical or technocratic language and discourse enable member-state leaders to cast their nationally focused discussions of EU policies in whatever way they deem appropriate for their domestic political audiences.[96] The fact that member state leaders' references to the EU often take the form of blame-shifting ('the EU made me do it') or credit-taking (without mentioning the role of the EU) only increases problems with regard to EU legitimacy. And it feeds into populist discourse about the EU being responsible for all national problems, together with the national politicians who go along with EU demands.

Yet, and here is the rub, although the EU-level discourse may appear apolitical and technocratic, as policy without politics, the actual content of the policies is certainly political. The economic policies, in particular in response to the Eurozone crisis, although cast as TINA—there is no alternative—are in fact conservative, following, as already noted, ordo-liberal principles focused on the need for 'sound money' and 'stable finance' in the macroeconomic sphere and neo-liberal programs focused on 'structural reform' of national labour and welfare systems. Moreover, while the policies are in this sense 'political', neo-liberalism itself, in its more extreme forms, can be seen as anti-political or even anti-democratic—with technocratic rule assumed better able to solve problems through non-majoritarian institutions run by experts than political rule, populated by 'rent-seekers'.[97] Notably, whether or not policymakers buy into the anti-political philosophy of neo-liberalism when taken to its extremes, they carry it out when they impose policies decided in Brussels on national constituencies. Technical output legitimacy here trumps political output legitimacy, when citizens do not see outcomes as fitting national norms or values, as well as political input legitimacy, when citizens cannot change these policies through input legitimate national politics. This is when 'responsible' politics replaces 'responsive' politics, and when the politics of 'constrained choice' means that politicians implement policies that national parties and parliaments do not generate or debate and that the public may oppose.

One important contributing element to the crisis of mainstream national party politics, at least with regard to Eurozone governance, has come from this increasing predominance of technocracy to the detriment of national party politics. As more and more seemingly depoliticized EU level technocratic decisions have become national policy, without real debate or significant involvement of national parliaments, national party politics and indeed national democracy has weakened. Definitions of democracy based on party politics assume that political parties will provide both political mediation—by aggregating and articulating competing conceptions of the common good—and a procedural framework expressive of the constitutive values of democracy, including the principles of parliamentary deliberation, the rules of decision-making, and the recognition of the legitimacy of opposition.[98] EU level technocracy, by sidelining both national mediation and deliberation, thereby weakens national party democracy.

An even greater concern is that ever-increasing technocracy plus ever-weakening mainstream party politics have together fuelled the rise of populism. Populists' main target is mainstream party politics, which they accuse of being run by self-serving and corrupt elites that have no interest in 'the people.' The irony is that technocracy also has as its target mainstream party politics, seen as inefficient and rent-seeking (read corrupt). Technocracy and populism are very different things. But the danger of technocracy is that too much of it undermines

[95] Schmidt 2006: 21–29.
[96] Schmidt 2006; J-C Barbier 2008
[97] Gamble 2013; Schmidt and Woll 2013.
[98] See the discussion and literature review on party democracy in Bickerton and Invernizzi Accetti 2015

mainstream, party-based representative politics while increasing support for the populists.[99] And too much populism can lead to the destabilization of democracy as we know it.

### 1.2.3 Input Results: Growing Political Volatility and Euroskepticism

The end result is the increasing political volatility that comes from citizens' sense that their preferences—whether expressed through the ballot box, social concertation processes, or social activism—don't count.[100] Citizens' response to such perceived disenfranchisement has been to punish national politicians with growing frequency and intensity, leading to the increasing cycling of incumbent governments.[101] Political volatility has become the rule not only in the periphery but also in the core, with France being a case in point—President Sarkozy was only the second president in the Fifth Republic not to have won a second term; President Hollande has the lowest popularity rating of any president of the Fifth Republic (12 percent in November 2014). Governments are generally more fragile, with governing majorities often on a knife's edge, while winning mainstream parties have been having more and more difficulty forming a government—as in the case of the Italian elections of February 2013. Even more problematic for the EU is the possibility that more anti-democratic or 'illiberal' governments will also emerge, as in Hungary. There are worrying signs even short of this, however, with the rise of far right extremist parties, such as the neo-Nazi party, Golden Dawn, in Greece, with 9% of the vote in the June 2012 elections.

Increasing Euroskepticism or even anti-European—and not just anti-euro—feeling is part and parcel of the political volatility. The 'sleeping giant' of EU related party divisions and Euroskepticism, long predicted by analysts, has finally awakened.[102] This is evident not just in the growing divisions over the EU within mainstream parties but even more significantly in the rise of extremist parties. These include not only hard right extremes but also the less extreme populists on the right (e.g., the National Front in France, Geert Wilders' party in the Netherlands), the left (e.g., Syriza in Greece, Podemos in Spain), and in what we could call the less easily classified 'radical center' (e.g., the Five Star Movement in Italy, the AfD in Germany, and even UKIP in the UK). Notably, such parties can be found not only in the countries hardest hit by the crisis, in Southern and Eastern Europe, but also in those largely unaffected by the crisis economically, mainly in Northern Europe. This includes not only Scandinavia[103]--with the True Finns' breakthrough in the 2011 Finnish elections, the Sweden Democrats' in the September 2014 elections, and the Danish Peoples Party's historic gain in the June 2015 election, becoming the second largest party in the country, and precipitating the collapse of the center-left government. Even Germany, which seemed vaccinated against the extreme right, saw the meteroric rise of the AfD (Alternative for Germany) in 2014, along with an anti-immigrant extremist movement, Pegida. The results of the European Parliament elections were also a sign of the rise of Euroskepticism, in particular with the victories of the FN in France and UKIP in the UK—although Prime Minister Renzi's massive 40% victory for the social democrats of the Democratic Party (PD) in the Italian contest (a first in the postwar history of Italy) suggests that all is not so dark for centrist parties whose leaders promise to make national views heard at the EU level as well as to make national democracy work better.

Importantly, although public disenchantment with the EU in any form is mainly seen in the rise of extremist and populist parties, especially on the radical right,[104] it can also be found in the polarization of views across national European public spheres, in particular between Northern and Southern Europe.[105] Such polarization is evident in the growing differentiation in citizens' attitudes between a more cosmopolitan open idea of Europe and a more xenophobic closed view,[106] as well as in public debates that have also become increasingly politicized around EU and Euro issues. This has affected both Eurozone and non-Eurozone countries, largely pitting the South against the North, with an increase in debates focused on questions of national sovereignty, whether against 'Northern' impositions of austerity by publics in the South, or against further supra-national institutionalization and loan bail-outs by publics in the North—and this despite the fact that the arguments of political elites engaged in crisis management have focused primarily on economic and political efficiency.[107]

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[99] See the enlightening political theory discussion of the linkages between technocracy and populism in Bickerton and Invernizzi Accetti 2015.
[100] Mair 2013
[101] Bosco et al. 2012
[102] Franklin and Van der Eijk 2007.
[103] Taggart, and Szczerbiak 2013; Usherwood, and Startin 2013.
[104] Gómez-Reino and Lamazares 2013
[105] Kriesi and Grande 2015
[106] Kriesi et al. 2008
[107] Kriesi et al. 2012, Kriesi 2014.

Surveys and polls document quite clearly this public disenchantment with the EU as well as with national governments.[108] Eurobarometer polls demonstrate the massive loss of trust in both national governments and the EU over time. Trust in the EU dropped from a high of 57% in spring 2007 to a low of 31% in spring 2012, that continued unchanged in 2013 and spring 2014, while trust in national governments dropped from a high of 43% in spring 2007 to 24% in Fall 2011 and to an even lower 23% in fall 2013.[109] Such negative views of the EU are evident also in the loss of support for the European project, with the positive image of the EU down from 52% in 2007 to 30% in 2012 while negative images went up from 15% in 2007 to 29% in 2012—neck and neck with the positive responses.[110] Only in late 2014 was there an uptick in public views, with trust in the EU jumping 6 points, to 37% in fall 2014, and trust in national governments up 6 points as well, to 29% in fall 2014.[111] This may be the result of a sense that the EU is finally turning the corner economically, that politics does matter, with the greater politicization of the debates in the Council among political leaders around flexibility and in the EP with the elections, or that the policies may change, given the ECB announcement of quantitative easing and anticipation of the arrival of a new Commission promising investment and growth. That said, it could just be a blip in the opinion polls.

Moreover, although support remains strong for retaining the Euro, including 69% in Greece, 67% in Spain, 66% in Germany, 64% in Italy, and 63% in France, this suggests only that citizens do not see exit from the Euro as an option, not that they are happy with the policies.[112] Much the contrary, a September 2013 Gallup Opinion Poll showed that a majority of European citizens (51% of respondents) did not think that austerity was working, vs. a minority of 34% who thought it was working but takes time, and a very small percentage of 5% who thought it was working.[113] So how do we explain continued support? There is evidence to suggest that even as citizens continue to support the euro, their reasons have increasingly less to do with the euro's link to identity and increasingly more to do with their self-interest. A utility-based logic rather than an identity-based one is most likely to explain why, despite the crisis, support has remained strong—even though the public may be increasingly unhappy about the euro's effects.[114]

Meanwhile, the unions find that all they can do is agree to concessions while gaining nothing in return, as in the Spanish pension agreement and the Irish Croke Park deal. At the same time, the most social movements like the Spanish *indignados* have managed to do is to mobilize members for protests and demonstrations that get them nothing other than, sometimes, news coverage[115]--although in certain instances this has led to the creation of new political parties, most notably Podemos and Syriza. Repression of such movements is also an issue, however. The Council of Europe (2013) criticized EU member-state governments for sidestepping regular channels of participation and social dialogue on the pretext of national financial emergency, with harsh responses against demonstrators and infringements of freedom of expression and peaceful assembly, as well as reductions in media freedom, in particular in public outlets.

#### 1.2.4 Problems for EU and National Politics: The Rise of Populism

For the moment, things appear quiet, as the crisis has seemed to ease. But complacency would be a mistake. Extremist parties don't simply go away when times get better—as the experience of the boom years of the early and mid 2000s demonstrate. Once populism takes hold, it is not easy to dislodge. The extreme right populist parties that thrived in the 2000s on identity politics focused on anti-immigrant issues and the EU has simply added skepticism about the Euro to its list of complaints.

Populism should not be seen as a totally negative phenomenon, however, since it can have certain positive effects, such as giving voice to underrepresented groups, mobilizing and representing excluded sections of society, and increasing democratic accountability by raising issues ignored or pushed aside by the mainstream parties.[116] That said, the rise of the extremes on the right in particular have pulled center right mainstream parties closer to their positions, especially with regard to opposition to immigration and freedom of movement or minority rights. On the left, moreover, the rise of left-leaning extremism put center left parties in a quandary—to move left, thereby challenging EU level agreements, or to resist any leftward move, thereby weakening governing majorities or losing support from part of their traditional electorate. In additional, the potential victory

[108] Hobolt 2015
[109] Eurobarometer EB 82
[110] Eurobarometer EB 78, Dec. 2012.
[111] Eurobarometer EB 82, 2015)
[112] Pew Survey, May 2013
[113] Gallup poll, Sept. 2013 http://www.scribd.com/doc/172138343/Gallup-Debating-Europe-Poll-Austerity-Policies
[114] Hobolt and Wratil 2015.
[115] Armingeon and Baccaro 2013
[116] Mudde and Kaltwasser 2012

of one of the populist anti-EU parties in national elections in the next few years could be highly problematic not only for the country in question—especially if it were a coalition with an extreme right party that would seek to implement its discriminatory or anti-EU views—but also for the EU, given decision rules that give individual member-states veto power over treaties.

The only possible signs of light with regard to populist parties have been Greece's Syriza and Spain's Podemos, which look set to become those countries' new center-left parties in place of the moribund Greek Socialist party PASOK and the Spanish Socialist Workers' Party (PSOE). What has made these new parties credible to large portions of the electorate is not only that they have engaged openly with difficult questions about the distribution costs of fiscal consolidation but also the fact that their exclusion from power has put them in a good position to deliver a radical critique of the rent-seeking behavior of mainstream party, state and technocratic elites. Born from social movements and put together by political entrepreneurs who were able to capture the energies of horizontal mobilization into relatively traditional political party strategies, Syriza and Podemos have seemed to follow in the footsteps of the center-left parties in Brazil or Uruguay: a loose network of social movements, then strong opposition party using populist appeal, and finally ruling parties.[117] Rather than worrying that these new parties may prove intractable, we should recognize that they could actually be the ones to bring real renewal to their countries' politics as well as to generate citizen-friendly 'structural reforms' focused on reducing corruption, improving tax collection, and promoting social justice. But they will certainly oppose the continuation of austerity and structural reform programs in their current form. Their election may actually serve to improve EU input legitimacy while tipping the Eurozone governments toward more output-legitimate because growth-friendly strategies. It is too early to tell whether the election of the Syriza party in Greece will actually have this effect, or whether it can succeed at all. But there is no question that its election has itself been a sign that the public has had enough of austerity, and not only in Greece—witness the increasing electoral strength of Podemos in Spain, demonstrated in the May 2015 local elections, the protests against water fees in Ireland along with the growing strength of Sinn Fein, and the rumblings in Portugal….not to mention the problems Hollande has had holding on to the left wing of his party.

But to see populism as potentially returning party politics to its proper place in the EU is the optimistic view. It is one in which we could see a shifting Council majority reforming the rules for the better, promoting growth while responding to the peoples' concerns. The pessimistic view for the national level is that the decline of traditional party politics, already evident beginning in the 1990s, continues apace, and with it the increasing political volatility related to the increasing mediatisation of politics that enables populist parties to thrive.[118] And at the EU level, the pessimistic view is that gridlock takes hold, with no new consensus on how to reform, with continued differences in preferences between core and periphery. Moreover, if the extremes on the Euroskeptic right come into coalition governments in one or more member-states, all bets are off in terms of EU and Eurozone governance, with deleterious effects on throughput legitimacy as well as output.

## 1.3 Throughput Legitimacy: The Quality of Eurozone Governance Processes

The challenges arising from the Eurozone crisis involve issues related not only to the input responsiveness of EU institutional actors to citizen politics or the output effectiveness and performance of EU policies. They also relate to questions of 'throughput' legitimacy, which is a procedural criterion focused on the quality of the governance processes by which EU institutional actors formulate and implement output policies in response to input politics. In the Eurozone crisis, EU institutional actors at first seemed to assume that all they needed to do was improve the quality of the throughput processes to ensure legitimacy. Reinforcing the rules and number-based approach to governance of Eurozone was to ensure better output legitimacy, with or without national input. EU actors soon found, however, that there were no trade-offs between throughput and input or output. However one assessed the quality of the throughput processes, the policy output was not optimal while the input politics became increasingly problematic. EU institutional actors' response has been the incremental reinterpretation of the rules 'by stealth,' in particular by technical actors like the ECB and the Commission, in the absence of more positive action by political actors, including the Council and the EP. EU institutional actors' responses also varied depending on their power and position as well as the nature of the crisis itself, whether in its fast or slow-burning phase.

### 1.3.1 Defining Throughput Processes

[117] Thanks to Cornel Ban for these insights.
[118] Kriesi 2014.

Throughput' legitimacy concentrates on what goes on inside the 'black box' of EU governance, in the space between the performance-oriented legitimacy of policy output and the participation-oriented legitimacy of political input.[119] It is dependent upon the quality of the policymaking processes, including the efficacy of the decision-making, the accountability of those engaged in making the decisions, the transparency of the information, and the processes' inclusiveness and openness to consultation with the interest groups of 'civil society.'[120] Perceptions of throughput quality can in turn be seen as underpinned by another set of requirements involving primarily the 'hard' criterion of legality and the 'soft' criterion of 'trust.' The extent to which the actors act within the rules and inspire trust in those with whom they engage in and/or serve through the processes depends upon whether they are perceived to act fairly and without bias, to allow for equal and open access, and to meet expected ethical and moral standards.

Efficacy for the most part can be evaluated in terms of the many different forms of EU governance processes (e.g., intergovernmental via the European Council and Council; supranational via executive or delegated action of the ECB or the Commission; Community Method via co-decision of EP, Council, and Commission; Open Method of Coordination coordinated by the Commission, etc). It depends upon EU technical and political actors' efficiency of action as they make policy according to these different processes. Accountability is generally taken to mean that EU actors are judged on their responsiveness to participatory input demands and can be held responsible for their output decisions[121] as well as that policy-making processes meet standards of ethical governance, whether with regard to lobbyists or civil servants.[122] Transparency is often seen as a prerequisite of accountability but not as qualifying as accountability on its own because the latter also demands some form of scrutiny by a specific forum, such as EU Commissioners by the European Parliament (EP).[123] Transparency is generally taken to mean that citizens have access to information about the processes and that decisions as well as decision-making processes in formal EU institutions are public.[124] Transparency can also be linked to the final criterion of throughput legitimacy, concerning EU governance processes' inclusiveness and the openness of its various institutional bodies to 'civil society.'[125] These may be judged on the basis of their institutional qualities regarding the degree of openness, inclusiveness, and trustworthiness as well as in terms of the discursive processes. The latter may involve formal or informal deliberations that are judged in terms of the quality of the deliberative procedures that ensure that citizens' community power is adequately channeled in societal and administrative decision making, thereby also improving accountability.[126] Examples include the institutionalized deliberations of experts in comitology, of interest groups in institutional lobbying, as well as ad hoc deliberative moments like the Constitutional Convention.[127]

Theorizing these various kinds of procedural criteria in terms of 'throughput' legitimacy is a relatively new way of grouping together the wide range of ways in which policymaking processes are evaluated. But it is very useful because it enables us to separate out the processes from the policies they may produce as well as from the politics by which those policies were generated. Many theoretical approaches to input and output mix the processes in either with the policy output—in particular those focused on non-majoritarian institutions[128]—or the political input—especially those concerned with interest group intermediation.[129] Much of the literature on the processes themselves theorizes each of their different elements separately, as the subject of different kinds of studies, in particular with regard to accountability and transparency. But bringing these legitimizing processes together under one larger conceptual rubric enables us to theorize both their interaction effects within throughput and the interaction effects between throughput and input or output.

Accountability, for example, which has been the focus of increasing attention as the regulatory state and non-majoritarian institutions have gained in importance and scope, may very well clash with inclusiveness, since bringing in interest groups to decision-making can undermine delegated agents' express responsibility to their

[119] Schmidt 2013; see also Zürn 2000; Benz and Papadopoulos 2006. Note that Easton (1965) uses the term throughput, but limits it to administrative processes.
[120] See, e.g., Heritier and Lehmkuhl 2011; Dehousse 2011; Smismans 2003—and see discussion in Schmidt 2013.
[121] Harlow and Rawlins 2007
[122] Cini 2014; Nastase 2011
[123] Fischer 2004, p. 504; see discussion in Bovens et al. 2010, p. 38
[124] Héritier 2003, 2012; Novak 2011.
[125] E.g., Coen and Richardson 2009; Greenwood 2007. Note that this kind of interest-based throughput is categorically different from interest group 'input', in which demands are articulated through interest group pressures, protests, demonstrations, letter-writing campaigns, social movement activism, and the like in efforts to influence elected representatives, and which does not capture the ways in which interest articulation has become an integral part of the very throughput process of EU governance --see Smismans 2003; Kohler-Koch 2007; Liebert and Trenz 2009.
[126] See Habermas 1996; Bekkers and Edwards, 2007, p. 53.
[127] E.g., Joerges and Neyer 1997; Smismans 2003; Liebert and Trenz 2009; Risse and Kleine 2007.
[128] E.g., Majone 1993; Moravcsik 2002.
[129] E.g., Kohler-Koch 2010.

‘principals.’ Similarly, transparency can clash with efficacy, as in Council meetings where secrecy helps member-state officials clinch agreements that would not be possible if national publics knew about their officials’ specific compromises. The question for technical and political actors alike is how to balance the demands of efficacy with accountability, transparency, and/or inclusiveness in order to maintain or establish decision-making processes that work *and* respond to citizens’ concerns—which also means that they are output and/or input legitimate. This, of course, also entails that throughput has interaction effects with the other two democratic legitimizing mechanisms.

The quality of the governance processes, and not just the effectiveness of the outcomes or the responsiveness to citizen demands and expectations, has long been among the central ways in which EU institutional actors have sought to counter claims about the poverty of the EU’s input legitimacy and to reinforce claims to its output legitimacy (as in the Commission’s 2001 *White Paper on Governance*). In emphasizing the legitimacy of throughput processes, EU actors have operated under the assumption that good throughput may operate as a kind of ‘*cordon sanitaire’* for the EU, ensuring the legitimacy of EU level output and attention to input. But what they fail to recognize is that throughput quality does not involve the same kind of trade off as between output and input. Whereas little citizen input may be offset by effective policy output, and a lot of citizen input can legitimate a policy even if it is ineffective, better quality throughput does not make up for either bad output or minimal input—however efficacious the rules, accountable the actors, or transparent, open, and accessible the process. Even more problematic is the fact that bad throughput—consisting of governance practices considered to be oppressive, incompetent, corrupt, or biased—is likely to undermine public perceptions of the legitimacy of EU governance, and it can even throw input and output into question by seeming to skew representative politics or taint policy solutions.[130]

Throughput legitimacy has become particularly salient during the sovereign debt crisis because of the focus by European leaders on Eurozone governance through rules, numbers, and pacts or ‘governing by the rules and ruling by the numbers.’ Such rules-based, numbers-targeting governance raises legitimacy problems not only on its own throughput terms—regarding its efficacy, accountability, transparency, and accessibility—but also in terms of how these affect output performance and input responsiveness. And during the Eurozone crisis, as output performance deteriorated and input politics became more volatile, EU institutional actors slowly and incrementally over time began reinterpreting the rules ‘by stealth,’ that is, passing over in silence or even denying publicly that they were in fact adjusting the rules, in efforts to make them work better.

### 1.3.2 The Problematic Processes of Eurozone Governance

Analysts attribute the problems of throughput legitimacy primarily to the quality of Eurozone governance processes—focused on governing by rules and numbers—which they have criticized variously for their lack of efficacy, accountability, transparency, and inclusiveness. They also condemn the institutional shift toward a predominance of supranational and intergovernmental governance in the Euro area to the detriment of the ‘Community Method’ and any significant involvement of the European Parliament (EP), not to mention national parliaments.[131] This shift has led Habermas among others to warn against the dangers of ‘executive federalism,’ in which the tremendous shift of economic and budgetary power to the EU level has occurred without any concomitant increase in citizens’ (input) political involvement.[132]

Analysts have also critiqued the EU institutional actors’ governance processes based on ‘one-size’ rules. The ECB’s focus on its *‘one size fits one’* rules of Eurozone governance, intent on maintaining ‘credibility,’ has meant tortuous progress toward accepting to become the equivalent of a lender of last resort (LOLR) that in the interim allowed the crisis to mushroom when it could have been nipped in the bud.[133] The Council’s *‘one size fits one’* rules gave Germany out-sized influence over policy decisions, leading to delays that only exacerbated the crisis and produced non-optimal solutions.[134] The Commission’s articulation of a restrictive and uniform set of *‘one size fits all’* rules on austerity and structural reform has failed to ensure growth across the Eurozone’s very different varieties of capitalism.[135] And finally the EP’s minimal powers of oversight, let alone control, over decisions taken by the ECB, the Council, and even the Commission in matters affecting the various deficit and debt procedures,[136] has ensured it almost *‘no size at all.’*

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[130] Schmidt 2013.
[131] Fabbrini 2013; Schmidt 2013
[132] Habermas 2011; see also Crum 2013; Puetter 2012
[133] Blyth 2013
[134] Jones 2010
[135] Hall 2012; Scharpf 2014
[136] C. Barbier 2012; Fabbrini 2013

What critics often fail to acknowledge, however, is that EU institutional actors have incrementally reinterpreted the rules for the better, mainly in response to the bad output results and the worsening input politics. In so doing, EU actors could be seen as having created a new 'governance framework,' as opposed to simply following the rules.[137] In Euro crisis governance, the formal rules have often been supplemented, if not supplanted, by informal rules where possible, in particular when outside the spotlight. This should not be seen as the same as 'informal governance,' however, in which making exceptions to the rules is part of a process of negotiated agreement that actually reinforces the legitimacy of the formal rules.[138] In the Eurozone crisis, by contrast, governance is not so much about making exceptions to the rules as creating exceptional rules, while denying it.[139]

The problem for EU institutional actors is that the complexity of decision-making processes, the formal rigidity of the rules, and divisions among key players ensures that admitting that they are actually reinterpreting the rules is difficult if not impossible where they fear legal challenges or worry that political deals may unravel. But while reinterpreting the rules 'by stealth' certainly has output benefits, this creates a host of other problems regarding throughput and input legitimacy. In a system in which the focus on 'governing by the rules and ruling by the numbers' has created an increasingly rigid system of packs, pacts, and compacts, any exercise in political or administrative discretion demands rules for stretching or breaking the rules—or at the very least agreement on who has the authority to make or break those rules.[140]

This raises two questions: First, how does one go about legitimating one's reinterpretation of the legally binding rules if there are no rules for bending or breaking those rules? Put another way, who judges the scientific validity or normative appropriateness of the reinterpretations. Second, how does one legitimate such reinterpretations 'by stealth,' that is, by not admitting—or even denying—to the public what one is doing behind closed doors?

The answer to the first question on the legitimation of rule reinterpretation is embedded in EU institutional actors' own definitions of legitimacy as well as in the institutional settings in which they operate. Conceptualizations not just of efficacy but even more importantly of accountability (political as much as bureaucratic) need to be embedded in institutional understandings of what constitutes 'democratic' norms and standards for evaluation, in particular in an 'unsettled polity' like the EU, where principal-agent theories of compliance and control cannot account for the complexity of organizational relations.[141] To understand how EU institutional actors build legitimacy for their reinterpretations therefore requires looking at those actors' own very different institutional configurations and frameworks for legitimation. And it entails recognizing that different sets of EU actors build their authority to change the rules following different pathways to legitimacy.

### 1.3.3 Technical and Political Actors' Different Pathways to Legitimacy

Differences between technical and political actors affect throughput legitimacy as much as output and input legitimacy. Technical actors seek to come up with innovative policies in coordination with expert communities while political actors seek to reframe the issues in communication with their national constituencies. More specifically, technical actors in the ECB and Commission first engage with expert communities to develop new ideas as well as to legitimate their own ideas, building internal agreement after which they may coordinate with other EU actors and communicate to the public. Political actors in the Council and EP instead privilege communication with national constituencies to build legitimacy, often without admitting that the technocratic actors may have their tacit agreement, and even if their ideas may have come from EU technocratic actors and/or national expert communities, their agreements from negotiations in closed Council sessions, parliamentary committees, and/or co-decision-making 'trilogues' (between Council, Commission, and EP).

But how then do EU institutional actors communicate about such reinterpretations of the rules? Mostly by denying that what they are doing actually changes the rules, or even is a reinterpretation of the rules. The ECB slowly but surely came closer and closer to doing things that an LOLR would do, all the while denying and then

[137] Alcidi et al., 2014
[138] Informal governance in the case of Single Market regulations, for example, is when individual member-states are occasionally given exemptions after Council-led investigation and agreement that the political fallout from domestic groups' objections could jeopardize consensual EU level politics or national political stability. See Kleine 2013
[139] Another way of thinking about such reinterpretation comes from Italian constitutional theory, where the '*costituzione materiale,'* or the constitution in practice, is accepted as malleable and legitimately reinterpreted through practice because the veto points and players make it impossible to revise the constitution.
[140] Thanks to André Sapir for this comment, made in the wrap-up session of the Conference on "Europe in a Post Crisis World," Center for European Studies, Harvard University (Oct. 31-Nov. 1, 2013).
[141] Olsen 2013

passing over in silence the fact that it was reinterpreting the rules laid out in the Charter or the treaties. The member-state leaders in the Council have consistently claimed to be sticking to the rules, even as they demand and/or agree to flexibility that delays or revises their application. The Commission has claimed to impose a restrictive interpretation of the austerity rules on the member-states even as it makes exceptions and adjustments.

So why do EU institutional actors not just admit that they are making the rules work better through their reinterpretations? The problem is that they not only have difficulty coordinating their agreements. They have even more difficulty communicating to a public that consists not just of 'the people' but also the markets. Problematically, what EU actors say in the communicative discourse to the public can work at cross-purposes, given the multiple audiences. For example, communication about new policy initiatives that might calm the global markets can easily inflame the national publics of Northern Europe while comforting Southern Europe, or vice-versa. Agreements within the coordinative discourse among EU actors may be difficult where EU political actors think such an agreement will be hard to 'sell' to their national publics—in particular if they may appear to be contradicting themselves on discourses 'selling' an earlier agreement. Moreover, such agreements (or lack thereof) may be communicated through the media to the markets, possibly increasing their panic, and to the people, possibly reinforcing their resistance to any proposed solutions. At the same time, the markets themselves may respond directly to the coordinative discourse among EU technical actors when it is communicated by the specialized press or in online venues by experts and think-tanks, as well as to EU political leaders' actions or, more likely, non-action.[142]

In short, both technical and political actors have very good reasons for not admitting publicly to what they have been doing. These include the potential volatility of the markets as well as its continuing schizophrenia, as it has seemed to expect austerity and growth at the same time;[143] the uncertain reactions from different segments of the public; the possible opposition from other players; not to mention the threat of potential legal challenges (the referral of the ECB's Outright Monetary Transactions (OMT) program to the German Constitutional Court being a case in point). But because EU institutional actors therefore do not admit what they have been doing, and instead reinterpret the rules 'by stealth,' the answer to the second question—how to legitimate such reinterpretations to the public—is that legitimacy remains elusive.

Not admitting that one is legitimately reinterpreting the rules could cast suspicion on the output performance and input responsiveness of the reinterpretations themselves. With regard to output legitimacy, reinterpretation by stealth could make EU technical actors appear incompetent—or ideologically bullheaded—because they appear to be sticking to rules that don't work, thereby tainting public perceptions of the policy performance. Alternatively, since output legitimacy is established not just by technical communities but also by political communities, imposing rules that publics believe are not working—or harmful to community values—is also delegitimizing.

With regard to input legitimacy, the fact that mainstream politicians must obfuscate about the reinterpretations tends to skew the politics, making them appear less responsive than they actually are. Worse, it leaves their actions open to critique by the political extremes—who claim to 'tell the truth' while politicians lie, don't care, or care only about their own clientelist and/or class interests. But even without the populist take on this, the general public can get the wrong impression. To illustrate: when EU institutional actors ease the rules but continue to proclaim that they are imposing strict austerity and structural reform, Southern Europeans will continue to feel oppressed even when accommodated and Northern Europeans will feel deceived, regardless. Legitimacy, after all, is about perceptions of policy effects as much as it is about actual effects.

For technical actors in particular, moreover, reinterpreting the rules by stealth implies exercising a significant amount of discretion without significant democratic input accountability. This is less of a problem for the ECB, which has engaged in an elaborate communicative strategy to justify why it has been reinterpreting the rules (without calling this reinterpretation), than the Commission, which has been denying its own increasingly flexible interpretation of the rules. A further problem for the Commission is that its supranational oversight procedures give it a kind of built-in discretion without any built-in input accountability (as noted earlier).
In the case of the Excessive Macroeconomic Imbalance Procedure, for example, the Commission first engages in a discretionary evaluation of member-states' macroeconomic balances according to a score-card, after which it can then recommend any and all measures it deems useful for a country that fails the test, without reference to any agreed rules or even a shared economic paradigm, and finally it can decide on penalties, unless a reverse qualified majority is mustered in the Council.[144] The only possible input accountability comes when the

[142] Schmidt 2014.
[143] See Olivier Blanchard on this: http://blog-imfdirect.imf.org/2011/12/21/2011-in-review-four-hard-truths/
[144] Scharpf 2012a.

Commission is to inform the Eurozone ministers of its proposed actions. But it is perhaps testimony to the Commission's own recognition of the problems of input legitimacy—or at the least the political risks—that it has yet to find any member-state so much in breach of the rules that it has to recommend penalties. That said, putting a member-state into an MIP already serious limits the country's margins of manoeuver, thus potentially having a negative impact on the country's output performance.[145] In the Excessive Deficit Procedure, in contrast, the Commission does have explicit numbers that trigger the process. But here, (re)interpretation is also involved in the 'politics of numbers,' given the discretionary decisions related to the statistics (e.g., moving to 'structural deficit') that have increasingly served to benefit flexibility—along with the informal attention to the potential political input of the Council, as already noted.

Any assessment of the throughput legitimacy of the European Semester's two main fiscal surveillance procedures raises questions about whether the Commission's exercise of flexibility or discretion meets the basic procedural criteria. The first question would focus on the efficacy of the European Semester, as agreed by national as well as EU actors, including not only the efficiency but also whether, for example, the process represents a good 'learning' experience. The second question centers on technical actors' accountability to appropriate forums, but which ones? Certainly the expert networks in the Commission and national ministries count with regard to technical throughput legitimacy, but the Council is also important with regard to political throughput legitimacy, although this may be problematic where there are splits between hardliners and those who take a softer stance. Third, transparency is also essential, understood in terms of whether the process is open and clear to all, as articulated through a coordinative discourse among relevant actors that elaborate the technical reasons for the decisions as well as by a communicative discourse to the public, laying out the principles behind them. Fourth, inclusiveness is equally important, such that before making assessments the Commission meets with all relevant actors and responds to their concerns. This also feeds into the underlying principles of throughput legitimacy, fairness or equal treatment, such that member-states under the procedures do not have good reasons to feel that the process may be biased against them while treating others more favorably. This feeds back into questions of efficacy, in terms of how the Commission interacts with its interlocutors, and whether its officials are seen as rigid and unresponsive or even oppressive, as enforcers or the rules rather than as advisors or enablers who foster learning and 'best practices.'

Finally, if the rules and their reinterpretation are so problematic, why, one might ask, do EU institutional actors not then just change the rules? The obstacles are well known. On the dimension of ideas, in addition to the problems of communication discussed above, they come from the continuing divergence in policy preferences, in particular between core and periphery countries, and from differing philosophical ideas about how to govern the economy, which pits neo-liberals and ordo-liberals against so-called neo-Keynesians. On the institutional dimension, the built-in obstacles to action come from the constitutional and legal realities of the EU that make changing the rules extremely difficult, in particular in such uncharted territory. Devising ways to take and legitimate any bail out action at all under existing rules that explicitly forbid bailouts or financial assistance was a sign of EU actors' great ingenuity, but also helps explain why the actions taken were anything but a model of leadership.[146] Moreover, unanimity rules for treaties makes coordinating agreement on what to do, let alone how to do it, very difficult, while changing the rules, once agreed, is even more problematic as a result of the EU's 'joint decision trap.'[147]

Power and position naturally also matter. In the case of technical actors in the Eurozone crisis, the ECB has the autonomy to reinterpret the rules set out in its Charter so long as it can build a sense of agreement about what to do via an epistemic community of banking and economic experts that serves to persuade its own member-state bankers of the reinterpretation's economic validity—although often it will also need to persuade powerful Council members of the reinterpretation's appropriateness. The Commission has less margin for maneuver, since the rules it devises and administers have been decided by the Council (with the EP in certain instances) and pushed by the ECB. That said, within the context of the rules agreed by the Council, the Commission does have room for manoeuver with regard to its (re)interpretation of the rules, as already noted above.

Compared to technical actors, political actors such as the Council and the EP may be in a better position in principle to change the rules, since they are the legislators. In practice, however, the Council is boxed in by differences among member-state leaders concerned with their national constituencies while the EP has little remit with regard to Eurozone governance, since it has no powers of initiation and requires supermajorities to block any legislative package that might come its way.

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[145] See Alcidi et al., 2014.

[146] The most significant treaty-based impediments to action are the no bail-out clause and the stipulation that financial assistance can be granted only where difficulties are caused by 'natural disasters or exceptional occurrences beyond its control. See Schmidt 2010, 200-201.

[147] Scharpf 1999, 2012, 2014.

### 1.3.4 Technical and Political Actors' Differential Responses in Fast and Slow Burning Crises

Finally, the nature of the crisis itself matters greatly, as do the policy areas in which the crisis plays itself out. EU institutional actors respond differently when confronted with fast-burning crises as opposed to slower burning ones. In fast-burning crises, actors often have little time for reflection, and tend to form ideas about interests and coalitions based around those interests very quickly, with ideational and resource battles ensuing over problem definitions and policy initiatives, and action swift when a crisis peak is hit. As Tsingou (2014, p. 418) argues in the case of the global financial crisis, these are times at which "knowledge is 'hot' in addressing problems, where policy-makers seek clear ideas that can put out the flames." But where clear ideas are lacking, they are often likely to go back to old fixes, which may have worked in the past but are generally inadequate to respond to the new challenges. For example, the Greek sovereign debt crisis of 2009/2010 was the Council's fast-burning crisis, as member-states thought first and foremost about their immediate interests, which helps to explain the delays in responding, the mistaken framing of the crisis and diagnosis of the problems, as well as the chosen remedies—to reinforce the rules. The ECB's fast-burning crisis was the ever-increasing scale of the market attacks on the Euro between 2010 and 2012 and the spillover effects on the banks, actual and potential, that meant that the ECB backed hesitantly into one non-standard measure after the other rather than taking decisive action immediately. The Commission's fast-burning crisis began in 2010 and 2011, when it had to reverse its approach to the rules, from the easing of the rules in the EERP (European Economic Recovery Plan) related to the fiscal stimulus in 2009 to the highly restrictive European Semester.

In slow-burning crises, actors have more time to work out their interest-based ideas and coalitions, to reflect and consult more widely, such that battles may be fought not only over problem definitions and policies but also over programmatic redefinitions and philosophies. Here, interest-based coalitions tend to be more fluid, shifting as a result of deliberation and persuasion as well as, of course, altered circumstances and unexpected events. In such cases, as Tsingou (2014, p. 319) suggests, the "knowledge is 'cold' and reflection is deeper," while experts themselves are less tied to the limited options imposed by the fast-burning crisis, and are open to "more reflection and, potentially, more radicalism" as they "engage in discussions of new 'good science,' (and) the formation of consensus around new ideas." For technical actors like the ECB, the fast-burning crisis turned into a slow-burning one after July 2012, such that it could then turn to institution building, in particular with regard to Banking Union.[148] For the Commission, the slow burn probably began in 2012, as we see the first reinterpretation of the rules for some countries and the return of social policy concerns to the European Semester, if only on paper.[149]

For political actors like the Council, the slow-burning crisis also came in July 2012, as a result of ECB action stopping market attacks. The difference is that once the crisis slowed, ECB activism seemed to take the burden off other institutional actors.[150] The member-states in the Council in particular no longer felt the pressure to take any kind of even bolder action, such as to go any farther into financial union.[151] It took Draghi a full year to cajole Merkel into accepting banking union.[152] And member-state leaders who want to shift the focus to growth and investment are still fighting, although they have benefited from the Commission's further easing the rules.

This suggests that there may very well be differences in the interaction effects between technical and political actors in the midst of crisis, whether fast or slow burning. Technical actors in fast-burning crises have difficulty reinterpreting the rules significantly, given that they are engaging in 'seat-of-the-pants' fixes as they wait for political actors to change the rules and engage in the big reforms. But although political actors during fast-burning crises are likely to take bolder action, they are unlikely to do so until or unless new ideas have been circulating, which means that the technical actors will have had to prepare the ground already. Perhaps this means that the EU needs to wait for the next major crisis, and hope that the technical actors have done the innovative thinking to help spur the political actors to big reforms.

[148] Braun 2013
[149] Zeitlin and Vanhercke 2014.
[150] Jabko 2015
[151] Jones 2015.
[152] Spiegel May 2014.

# 2 EU INSTITUTIONAL ACTORS' DIFFERENTIAL PATHWAYS TO LEGITIMACY

EU institutional actors, including the ECB, the Council, the Commission and the EP may invoke any one, two, or all three legitimizing mechanisms for a given action. But each of these actors nevertheless tends to assume an overarching legitimation for itself in only one of the mechanisms. Thus, while the ECB as a non-majoritarian institution tends to conceive of its legitimacy as gained primarily from its output performance, the Council and the EP believe they retain legitimacy mainly through input representation (either indirect or direct), and the Commission considers that it maintains legitimacy by the quality of its throughput processes (through accountability to input legitimate actors, efficacy, transparency, openness, and inclusiveness). At a more immediate level, however, in particular at the inception of the Eurozone crisis, all such actors tended to see the policy solution to the crisis in terms of throughput legitimacy, that is, in 'one-size' governing by the rules and ruling by the numbers.' Over time, however, as they all began to reinterpret the rules, they tended to legitimate those reinterpretations by pointing to problems with the (output) performance of Eurozone policies and/or the need for (input) responsiveness to the citizens—even as they denied that they were doing anything other than following the rules.

As the Eurozone progressed, perceptions of EU institutional actors and their (re)interpretations of the rules and numbers came to differ wildly, both among analysts and the public at large. While many counted the ECB a hero for its repeated rescues of the Euro as it incrementally reinterpreted the 'one size fits none' rules governing monetary policy, others deemed it an ogre for its insistence on a *quid pro quo* from other institutional actors for austerity and structural reform. Whereas some likened the Council to a dictatorship as a result of the 'one size fits one' rules governing intergovernmental negotiation, which gave one member-state outsized influence (i.e., Germany), others continued to see the Council as a consensus-developing, deliberative political body. As for the Commission, while Commission officials' harsh discourse caused many to cast them as 'Ayatollahs of Austerity,' their increasingly flexible interpretations of the 'one size fits all' rules of Euro governance led others to see them as 'Ministers of Moderation.' Finally, for all the EP's attempts to get beyond its condemnation to almost 'no size at all' when it comes to setting policy, while some continue to liken it to a talking shop, others anticipate it inching its way to equal partnership in something approaching a new 'Eurozone Community Method.'

### 2.1 The ECB: HERO OR OGRE FROM 'ONE SIZE FITS NONE' TO 'WHATEVER IT TAKES'?

At the outset of the crisis, the ECB's response was largely centered on throughput legitimacy. The ECB's discourse of 'credibility' signaled strict adherence to monetary policy-making that concentrated on fighting inflation and to monetary decision-making insulated from political pressures. The discourse along with the processes changed slowly, however, as strictly following a narrow interpretation of the ECB's mandate, or the 'one size fits none' rules, turned out to be deleterious to output performance, which is at the foundation of the ECB's conceptualization of its legitimacy. And the ECB's lack of coordination with political leaders as well as poor communication to the markets did little to resolve the crisis. Output legitimacy increased, however, as the ECB changed its throughput processes, moving from 'non-standard' to 'unorthodox' and 'unconventional' monetary policy as its discourse dropped 'credibility' in favor of 'stability,' and as the ECB president coordinated more closely with influential political leaders while communicating more effectively to the markets. In so doing, the ECB made certain to legitimate its actions through the subtle reinterpretation of its Charter, consistently claiming in its public discourse to be following the rules even as it reinterpreted their meaning. It managed this legitimation process not only by consciously seeking to generate a persuasive communicative discourse to the public but also by opening up its coordinative discourse to a larger network of experts in search for ideas as well as technical output legitimacy. This in turn enabled it to convince EU institutional actors—its own board members as well as political leaders—that its new initiatives would be effective and appropriate.

General public perceptions of the ECB, as reflected in opinion polls and media stories, have tended to see it as the hero of the crisis, taking action time after time when no other EU actors were willing or able. But analysts are more divided. Some also judge the ECB a hero, pointing to its decisive actions in responding to the crisis, despite the obstacles, including a restrictive Charter, divisions in the Council among Eurozone member-state leaders, and potential legal obstruction of its actions (in particular from the German Constitutional Court). Others view the ECB more as an ogre. They cite in particular its insistent demands from the Council and member-states for austerity and structural reform in exchange for its monetary actions, and its hardline with the program countries. They also note how slow, timid, and incremental the ECB's initiatives were, especially when compared to the US Federal Reserve Bank, despite its institutional autonomy. But whether we see the ECB as a hero or as an ogre, the ECB's reinterpretation of the rules 'by stealth,' that is, by not admitting that it was in fact changing the rules, nor making the case that this was necessary and appropriate, limited not only what it did but also made it more difficult for it legitimate what it had to do over time.

### 2.1.1 Legitimating Change in Monetary Policy: The ECB as 'Hero'?

As a non-majoritarian institution, the ECB has generally been seen as legitimated by its output policy performance, with good rules-based output seen as a trade off for any deficiencies in political input. As for the throughput processes, regulatory governance has itself been characterized as a 'fourth branch of government' in which authority is to be exercised by consent, with expert consensus ensuring (technical output) legitimacy.[153] All central banks in advanced industrialized countries have over the years become increasingly insulated from input politics as a result of the increasing emphases on ensuring output performance via throughput regulatory isolation. The ECB is the supreme example of this given its significant autonomy without significant democratic control through parliamentary oversight —as noted above. But the ECB is therefore even more keenly aware of the need to succeed (and to be perceived as succeeding) in its (output) policy performance as well as to ensure the (throughput) quality of its governance processes. This also means managing the perceptions of a wide range of actors not only directly through citizens' experience of monetary policy performance but also indirectly through the effectiveness of the ECB's communicative discourse and/or by the range of groups engaged with the ECB in building, implementing, or assessing the Euro's effectiveness.[154]

Initially, the ECB sought to manage perceptions with a communicative discourse focused on the quality of its throughput processes, by emphasizing the importance of maintaining its 'credibility' through strict adherence to its (throughput) rules of inflation-fighting while resisting any (input) political pressures from member-state leaders. This was the main mantra of ECB presidents in the first ten years of the euro, first Wim Duisenberg and then Jean-Claude Trichet. This credibility discourse continued as the financial crisis turned into one of the real economy and then a sovereign debt crisis, even as ECB President Trichet engaged in what he called 'non-standard' monetary policies to shore up the currency once the 2008 crisis hit. All the while, however, Trichet insisted that the ECB was not and could never be a lender of last resort (LOLR), and that its 'credit easing' program was not the ECB's equivalent to the UK and US quantitative easing schemes.[155]

Even Mario Draghi continued with the discourse of 'credibility' while denying that the ECB could be a LOLR when appointed head of the ECB in late 2011.[156] Very soon thereafter (by Spring 2012), however, as Draghi began to engage in increasingly bold 'unorthodox' monetary policies in response to the unfolding crisis, his legitimizing discourse changed from one focused on 'credibility' to 'stability.' The switch from credibility to stability was not easy, since it involved internal fights within the ECB, and stability was not accepted as on a par with credibility until the euro itself was clearly in danger. Using the word 'stability' conjures up the 'stability paradigm' underlying EMU,[157] serving thereby to reassure all and sundry that the ECB remained committed to its basic philosophy and mandate, as outlined in the Charter, even while it signaled a move away from the 'credibility' associated with a narrow interpretation of the ECB's remit. As ECB officials themselves explained, in a crisis the central bank "must stand ready to back up the market while increasing its communication to explain that its primary objective has not changed in crisis mode."[158] Thus, at the same time they insisted that the Charter is correct to prohibit primary market purchases of public sector debt by central banks, to prevent the ECB and Eurosystem central banks from becoming an LOLR, they concluded that therefore "it must be clear that an increased intermediation role for and outright purchases of the central bank are only justified on grounds of malfunctioning of the financial markets—and hence the exceptional measures are temporary in nature—to ensure price stability in the medium term."[159] In other words, the ECB legitimated stretching or even breaking

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[153] Majone 1993
[154] See Scharpf 1999, and discussion in Jones 2009, pp. 1091-91, 97
[155] Trichet 2009
[156] In his first press conference, Draghi insisted that: "continuity, credibility and consistency are of the essence in the way we carry out our jobs" and, in response to the question of whether he would do whatever was necessary to keep the Eurozone in one piece, including act as lender of last resort (LOLR), he responded: "No, I do not think that this is really within the remit of the ECB." Draghi 2011
[157] Heipertz and Verdun 2010, p. 93
[158] With regard to the stability paradigm in particular, they stated that the ECB has "continually underlined that its primary mandate is to deliver price stability in the medium term through an appropriate adjustment of the monetary policy stance to economic developments on the basis of an independent decision-making process." Drudi et al., 2012, p. 890.
[159] Drudi et al., 2012, p. 894.

one set of rules (not buying sovereign debt) in the short term in the name of the cardinal rule—stability in the medium term.[160]

The switch to a stability discourse also opened up space for the ECB President Draghi to engage in informal interactions with EU leaders in the Council, in contrast to his predecessor Trichet, who seemed most concerned about maintaining his autonomy vis-à-vis member-state leaders for purposes of 'credibility.' Instead, Draghi sought to coordinate with Council leaders, and even engaged in a 'charm offensive' (as some described it) or, more accurately, in a concerted year-long effort to persuade Chancellor Merkel in particular that 'unorthodox' bond-buying programs and banking union were essential, all the while working in the bank to fashion policy packages acceptable (to Germany) and workable (for EMU)—against opposition from the Bundesbank.[161] Draghi succeeded in getting around Bundesbank opposition largely via Merkel and after bypassing the objection of the German representative on the ECB board.

Importantly, however, even as the ECB quickly switched its discourse from credibility to stability beginning in 2011 and undertook a range of bond-buying programs, it took much longer for the discourse to shift with regard to whether the ECB could or would act as a lender of last resort (LOLR). But the repeated denials in the ECB's communicative discourse between 2009 and 2012 that it would act as a LOLR, even as it slowly layered on incremental 'unorthodox' policy changes that brought it closer and closer to one,[162] had a significant impact on the course of the crisis itself. The discourse of denial kept the markets worried, and primed for panic and attack, while the actual policies created their own knock-on effects for member-states, the banks, and the ECB itself.[163]

It was only in July 2012, as the markets had begun massive attacks against Spanish and Italian sovereign debt, that Draghi pledged to do "whatever it takes to preserve the euro." The markets took this as a pledge to act as lender of last resort, although the ECB never stated that it was an LOLR, thus passing over in silence its reinterpretation of the rules. But there was one significant difference from what central banks ordinarily do as LOLRs. The ECB made clear in September 2012 that it would use the 'Outright Monetary Transactions' program (OMT) for the potentially unlimited purchase of Eurozone bonds to stop market attacks on Spanish and Italian bonds only if the Italian and Spanish governments asked for such purchases and in exchange agreed to a conditionality program. By insisting on conditionality, the ECB appeared to be trying to legitimate a break with one set of rules by reinforcing the others.[164] Moreover, conditionality made the program more akin to an IMF-style lending program, focused on dealing with insolvency, than an LOLR program, focused on illiquidity (Mody 2015). Even German leaders largely accepted this shift in policy,[165] with the exception of the more orthodox Bundesbank, which supported the court case in the German Constitutional Court that opposed the ECB's right to institute OMT.

By this time, only the Bundesbank and its head, Jens Weidmann, plus a large number of German economists, were opposed to the ECB's reinterpretation of the rules on the grounds that they violated the charter and risked long-term inflation. The question of the ECB's right to institute OMT was even taken up by the German Constitutional Court. It pitted Weidmann, who vehemently opposed ECB intervention on the grounds that its remit was to control inflation, and that only the politicians had the legitimacy to deal with the rest, against the ECB's executive board member Jörg Asmussen, who justified the unorthodox monetary policy measures as a response to unusual circumstances, insisting that: "We are in a situation of one size fits none, that is why we have extended these non-standard instruments."[166] Significantly, the Constitutional Court's decision, which sided with the Bundesbank's analysis of the illegality of the ECB's never-instituted OMT program, nonetheless referred the case to the ECJ.

But even the head of the Bundesbank, Jens Weidman, seemed to come around to ECB active management of the crisis shortly thereafter when he stated in an interview that in light of a strong currency and in view of deflation risks, the door was open to quantitative easing.[167] Once Draghi announced a new program of quantitative easing

[160] One could think of this as a question of Kantian conflict between categorical imperatives (which Kant himself never anticipated). The issue is which (throughput) rule comes first, the rule that forbids ECB debt purchases as a way of ensuring price stability versus the more basic one that gives the ECB responsibility for the euro. Clearly, if the euro explodes, price stability cannot be sustained. Thus, rescuing the euro overrides the ban against debt purchases.
[161] Spiegel 2014
[162] Buiter and Rahbari 2012
[163] Blyth 2013
[164] The Kantian conflict returns here, with the breaking of one rule—buying sovereign debt—balanced out not only by the cardinal rule of price stability in the long-term but also the imperative of conditionality.
[165] Newman 2015
[166] Asmussen testimony, *Financial Times* June 12, 2013.
[167] *Euroactiv* March 26, 2014

through bond buying, however, Weidman and other German members of the ECB expressed doubts and dissatisfaction—citing worries about inflation and the impact on creditors, whose savings would lose value.

So how do we explain the ECB's remarkable reversals, in particular given the continual denials in the discourse? The answers require considering the policy program and ideas on the one hand, the discursive interactions on the other. In terms of ideas, very generally speaking, we could explain ECB actions in terms of a search for solutions: The ECB's pre-crisis 'paradigm' on what to do in the event of a crisis did not cover all the contingencies, and the ECB had to engage in a continual process of '*bricolage'* in the context of emergency crisis management via 'unorthodox' policies that were unimagined and arguably unimaginable prior to the crisis. These were the *ad hoc* responses of the ECB agents puzzling their way through a fast-burning crisis rather than the result of 'willful actors' seizing the moment (Braun 2013). Any reinterpretation of the rules was not easy because of very different ideas held initially by different members of the ECB board between more pragmatic central bankers willing to take an increasingly more expansive interpretation of the rules and more orthodox ones insisting on following the rules as heretofore strictly defined. Initially, the more orthodox bankers mainly from Northern Europe formed a blocking coalition around Germany, but this changed over time, as more and more Northern European countries rallied around the ECB President, leaving the Bundesbank increasingly on its own to espouse the most orthodox positions.

In terms of interactions, the story has yet to be told. But it is likely that the ECB managed to generate this shift in coalitional support through its own conscious process of opening up to a larger expert epistemic community consisting of banking experts, think-tanks, and central bankers with different ideas, as it has done in the past.[168] This opening up to deliberation among experts served not only to help generate new ideas about how to cope with the crisis but also to promote greater (throughput) legitimacy for any ECB reinterpretation of the rules. After all, in the case of monetary policy, throughput legitimacy understood as the efficacy of applying the rules is generally assessed by the community of peers, meaning other central bankers and monetary experts, and is enhanced by the accountability that comes from wide-ranging and on-going consultation and deliberation. Over time, the deliberations in expert forums helped reshape central bankers' views of what to do, and even their analysis of the crisis itself. Only in this way can we explain the very big differences in ECB interpretations of the rules, as it went from a discourse of credibility focused on price stability to one of stability ensured by increasingly 'unorthodox' measures, and in its very different narratives of the causes or 'problem definitions' of the crisis prior to the sovereign debt crisis. In 2009, the problem was framed as the banks; in 2010, at the inception of the crisis response, Trichet argued that the cause was the failure to follow the rules of budgetary discipline;[169] and three years later, by 2013, the blame was back on the banks, with an admission that the excessive debt narrative 'is not correct.'[170] But while the ECB used this to begin upping pressure on the banks, in particular in the context of the soon to be established Banking Union and the upcoming stress tests on banks, it did not let up the pressure on member-states for austerity and structural reform.

### 2.1.2 Legitimating Continuity in Fiscal Policy: The ECB as 'Ogre'?

Throughout the Eurozone Crisis, even as the ECB reinterpreted its own rules toward greater flexibility as a LOLR, and in so doing became the 'hero' seen as rescuing the euro, it continued to press for fiscal consolidation—making it for many the 'ogre' of austerity and structural reform. Having been the only actor with the financial capacity and legal authority to make decisive interventions, and with a lot at stake once it had backed into quasi-LOLR activities by buying bonds beginning in 2010, it was largely able to set the agenda for the other institutional actors.[171] But why this particular agenda? For an answer, we need to look briefly more deeply into the ECB's economic ideas about macroeconomic policy and the expert networks providing them.

The best way to explain the ECB's janus-faced image of hero with regard to monetary policy and ogre with regard to fiscal policy is to contrast its fiscal policy recommendations with those of the IMF in terms of both ideas and expert networks. While both the IMF and ECB defended core neoliberal theory favoring consolidation of public finances through cutting public expenditures in order to inspire the confidence of sovereign bond markets, the ECB was much more orthodox in its views of when, how, and how much to

[168] For example, in the early 2000s, the ECB in coordination with a transnational network of epistemic elites managed to change the collateral strategy of banks--Gabor and Ban 2013. See also the contrast between the IMF and the ECB in terms of economic orthodoxy—Ban 2015.
[169] See discussion in Blyth 2013
[170] Constâncі 2013. This was said in a speech by Vice President of the ECB, Vítor Constâncio, at the Bank of Greece in Athens, May 23, 2013.
[171] Braun 2013, pp. 6-8

consolidate.[172] Whereas the IMF viewed fiscal consolidation as unlikely to have expansionary effects on output, and recommended gradual introduction of fiscal consolidation (back-loading), the ECB saw fiscal consolidation as expansionary, and recommended front-loading it immediately in all countries. While the IMF recommended that fiscal consolidation proceed through a combination of spending cuts and revenue increases, including through taxes, the ECB preferred only spending cuts and no tax increases. Although both targeted public jobs programs, social transfers, public sector wages, employment, housing and agricultural subsidies for spending cuts, the IMF exempted public investment whereas nothing was exempt for the ECB.[173]

These differences in ideas about how to manage the macroeconomy, between the IMF's revisionism and the ECB's orthodoxy in fiscal policy, can be related to a number of factors. Leadership of course plays a major role. The shift in IMF policy toward a more revisionist approach dates to the appointment of Dominique Strauss-Kahn as head and Olivier Blanchard as Chief Economist, just as the change in the ECB's monetary policy to do 'whatever it takes' dates to Draghi. The institutional context also matters, whether as constraints or opportunities. The IMF is more autonomous as an institution, as the delegated agent of such a large number of nation-states, than the ECB, which has representatives from each of the member-states on its governing board, with very different views of monetary and fiscal policy. But for policies even to be envisioned, let alone to be perceived as both workable and legitimate (in technical output terms), they must also have a strong connection to the networks of experts informing and legitimating technical actors' policies in the coordinative discourse of policy construction.

The IMF's ideas are largely in tune with the revisionist wave of macroeconomic thinking beginning in the 2000s that generated a kinder and gentler (new) Washington Consensus very different from the more orthodox Brussels-Frankfurt Consensus. The IMF's revisionism has much to do with the research done by the less orthodox economists from its own Research Department, by parts of the Fed, by several European central banks, and by faculty from some elite US academic institutions. Instead, the ECB's orthodoxy can be explained by how much it drew on the research of its own more orthodox internal researchers, other parts of the Fed, and different external allies, including a think-tank (CEPR), the orthodox resistance within the IMF (i.e. the Fiscal Affairs Department), the Bank of International Settlements, and a different assortment of central banks and prestigious US academic departments.[174] The ECB's beliefs, much as those of the Commission, reflect the economic theory of 'expansionary austerity' advocated by influential economists like Alberto Alesina of Harvard and Roberto Perotti at Bocconi University, who maintain that the frontloading of cuts will have a beneficial effect in jumpstarting stalling economies.[175] We could add the views of Reinhart and Rogoff (2009) in *This Time is Different* suggesting a 90% limit for sustainable levels of debt (that later proved un-sustained by the evidence)—also cited approvingly by Commission Vice-President and Commissioner of DG ECFIN, Olli Rehn.[176]

The ECB has been consistently focused on austerity and structural reform, even before the Greek crisis put it on the agenda. Already in January 2009, the ECB's Governing Council made a broadside against the 2008 fiscal stimulus on the grounds that "if not reversed in due time, this will negatively affect in particular the younger and the future generations;" and in September, it asked for "a swift return to sound and sustainable public finances," [177] to be paid for by spending cuts since "the focus of the structural measures should lie on the expenditure side, as in most euro area countries tax and social contribution rates are already high."[178] Mario Draghi even announced that "the European Social Model is already gone," although he explained this in terms of the rise in youth unemployment, insisting that the structural reforms "are necessary to increase employment, especially youth employment, and therefore expenditure and consumption."[179]

The ECB did not limit itself to public statements, however. In what has since been regarded as a major over-stretch in terms of its mandate and, indeed, an attack on member-states' national input legitimacy, ECB President Jean-Claude Trichet sent secret letters to Italian Prime Minister Silvio Berlusconi and Spanish Prime Minister Zapatero in August 2011 demanding austerity and structural reform. In the case of Spain, he ordered the Prime Minister to decentralize the labor markets, break the monopolies of certain professions, and institute cutbacks 'whatever the circumstances.' The revelation of the contents of the letter in late fall 2013 unleashed a debate in Spain about how much the President of the ECB had overstepped his bounds, whether by violating his own mandate to focus solely on Eurozone monetary policy, by interfering with the democratic control of elected

[172] See discussion in Ban 2015.
[173] See discussion in Ban 2015.
[174] Ban 2015
[175] Helgadottir 2014.
[176] Cassidy 2013
[177] ECB 2009a: 7—cited in Ban 2015
[178] ECB 2009b: 7—cited in Ban 2015
[179] *Wall Street Journal*, Feb. 23, 2012

governments, or in taking over the role of the Commission to make radical recommendations even the Commission would not have made.[180] A similar controversy hit Ireland in November 2014 when it came to light that Trichet had written Irish PM Brian Lenihan a letter threatening to withhold emergency ECB liquidity that essentially pushed the country into a harsh bailout package at the same time that it protected senior bondholders from losses to preserve confidence in the European banking system.[181]

Thus, although the ECB came to be seen as the hero of the Eurozone crisis because it ultimately quelled market attacks on the euro, it came relatively late to the 'unorthodox' promise to 'do whatever it takes.' The ECB's stability-focused ordo-liberal reading of its Charter, along with its initial focus on 'credibility' instead of results (believing these would necessarily follow), meant that the ECB initially did much less than it could and should have done (at least compared to the Fed's performance in the US).[182] What is more, its *quid pro quo* pressure on the member-states for austerity policies and 'structural reform' has been problematic not only in terms of the economics, having contributed to the economic slowdown that now threatens the EU with deflation, but also in terms of the politics. How input legitimate is a non-majoritarian institution like the ECB, after all, when it pushes democratically elected governments to impose policies that, in many cases, go against what they and their constituents want?

### 2.1.3 Towards the Future: The ECB as fully the 'Hero' of the Crisis

The only way out of this quandary is for the ECB to go back to its core mission and mandate, which is monetary policy and banking supervision, and leave the policy orientation and politics to the Council and the EP. As it is, the ECB has enough on its hands, what with quantitative easing and monitoring the banks. What it needs to do is generate more output legitimacy for what it has been doing, arguably by building a legitimating discourse and supporting (epistemic and political) coalition in favor of enabling it to become a true LOLR.

As part of this, the ECB could and should come up with policy solutions to the crisis. It backed slowly into the monetary policy remedies that have kept the euro alive, but only just. And now it is engaging in quantitative easing, which is a different form of reinterpreting the rules by stealth—since it essentially devalues creditors' savings, making it easier for debtor countries to refinance their debt (through low interest rates on bonds), although not necessarily to pay off that debt.

But there are surely other ways to solve the problems of the Euro in a more definitive way. But all of these require greater fiscal federalism. Of those involving the ECB specifically, there are mechanisms already discussed at length by think-tanks and policymakers, that would involve the ECB actively—including some form of mutualization of the debt—and passively, including other kinds of solidarity-related instruments.

Mutualization of debt could involve, say, issuing of Eurobonds (up to, say, 60%) to stop the market attack on sovereigns once and for all. Alternatively, repackaging old debt overhangs (esp. Italy) and restructuring the debt or lowering interest rates to near zero while pushing the dates for repayment out to thirty years, fifty years or more. Neither of these alternatives requires much centralized coordination. The mutualization of debt via Eurobonds, once established, would enable the ECB to engage more readily in OMT transactions (if ever required) and in QE. A level of 60% mutualization of debt obligations via Eurobonds has been recommended, after which member-states could issue their own bonds for which they are then liable.[183] This would mean that, much like US states, member-states could go bankrupt (and go to the ESM for a loan-bailout) without jeopardizing the whole system (assuming of course that their banks would be under the Banking Union, and that it also has sufficient resources in its banking rescue fund).[184] These solutions would obviate the need for the deficit/debt rules altogether.

An even better alternative, however, would be for the ECB—instead of flooding the capital markets with its 1.2 trillion QE program (risking asset price inflation)—to be freed from the prohibition of monetary state financing to provide emergency finance to member states with above-average rates of unemployment (provided they accept and enforce no-exceptions wage stop for three years—the kind of Keynesian enforced short-term wage controls employed in the 1950s and 1960s to great effect).[185]

[180] *El Pais* Dec. 1, 2013
[181] *New York Times* Nov. 7, 2014.
[182] Blyth 2013
[183] Claessens et al. 2012
[184] Henning and Kessler 2012
[185] Thanks to Fritz W. Scharpf for this suggestion. See also Scharpf 1991, Ch. 5.

If the above mechanisms cannot be developed, then other economic policy instruments remain a possibility. These could include a cyclical adjustment fund to stop countries from over-heating or over-cooling; and an unemployment insurance fund. As funds, these too would not require much in the way of policy coordination, just continued monitoring, as member-states put money in or take money out depending upon whether they are over-heating or deflating, or whether they are suffering from high unemployment.[186]

But all of these measures would also require initiatives from the Council, which has not been innovating much since the crisis moved into its slow-burning phase. The problem for the ECB is that the best it can do on the monetary policy end is stopgap measures—for which, as we have seen, it has been anointed a hero generally (although not by German economists and bankers).

## 2.2 THE COUNCIL: DICTATOR OR DELIBERATIVE POLITICAL BODY GOVERNING BY 'ONE SIZE FITS ONE' RULES?

The Council also slowly modified its interpretation of the rules and its discourse during the Eurozone crisis, but the rules under which the Council governed itself did not change much. During the Eurozone crisis, the institutional balance in decision-making in the Council shifted massively toward intergovernmental governance, on the grounds that the member-states in the Council were the most input legitimate. And in such 'super'-intergovernmental decision-making, one member-state in particular, Germany, has predominated, making for 'one size fits one' governance in which the response to the fast-burning crisis beginning in 2010 was largely focused on reinforcing the rules-based, numbers-targeting approach of the Stability and Growth Pact with a discourse centered on the need for 'stability.' That said, over time in response to failing output performance along with the increasing volatility of input politics, the Council (including Germany) has agreed to further deepening of economic integration and even added to the 'stability' discourse first a new objective—growth—and then a new approach to rule-following—flexibility.

Analysts are divided over whether the Council's approach to governance has constituted something of a 'dictatorship,' in which *diktats* from Germany rule the day, or has instead continued to be more of a 'deliberative political body,' in which politics through the search for consensus-based agreements is paramount. Those closer to the first interpretation cite Germany's power—economic and ideational—to dictate what to do and how to do it.[187] Those who prefer the second interpretation look more closely at the interactions between German and other Council leaders, to see more deliberation and consensus building generally.[188] Both sets of analysts, however, would agree that the Council has engineered a major shift in EU decision-making by turning Eurozone governance into an almost entirely intergovernmental process of decision-making that subordinates other EU institutional actors.[189]

### 2.2.1 Council Legitimacy in the Crisis: Germany as 'Dictator'?

Germany's outsize influence in the Council has taken a variety of forms. First and foremost, is the focus on EU economic governance through rules and numbers in successive pacts, which has largely been due to Germany's influence, aided by the ECB. German insistence on governing not just by legislated rules but also by their constitutionalization via treaty was evident from the very beginning. It can be seen in such cases as the demand that the EFSF be followed by a constitutionalized mechanism with the ESM, and that legislative agreements such as the Six-Pack—which could be revised through normal EU legislative procedures—be followed by the Treaty on the Fiscal Compact—which could not be.

Germany's success in pushing for such rules and numbers-based governance stems not only from its bargaining power—derived from its economic weight in the Eurozone—but also its ideational influence.[190] German leaders' discourse about the importance of a 'stability culture,' used as a strategic political resource by the conservative party in Germany since the 1990s, was re-emphasized by Merkel at the time of the Greek bail-out to reassure the German public that: "I will take care that we make sure together with our partners that the whole of Europe commits herself to "a new Stability Culture."[191] In addition to ensuring that this stability culture became that of the Eurozone, Merkel also helped frame the crisis as one of public debt, aided by her Minister of Finance

186 Enderlein et al. 2013
187 Blyth 2013; Newman 2015
188 Bickerton et al. 2015
189 Fabbrini 2013; Habermas 2011; Crum 2013; Borriello and Crespy 2015
190 Newman 2015; Jacoby 2015
191 Cited in Howarth and Rommerskirchen 2013, p. 762.

Wolfgang Schäuble, who also repeatedly communicated the need to avoid "piling up public debt"[192] and to engage in austerity because: "…Piling on more debt now will stunt rather than stimulate growth in the long run."[193] As a result, any attempts to frame the crisis as requiring solidarity—in particular by the French—simply did not and could not take hold.[194] It was remarkable that even in November 2014, as a potentially new fast burning crisis was slowly emerging—as deflation threatened the Eurozone and as even ECB President Draghi called for an end to austerity—Chancellor Merkel continued to insist on austerity and the German Finance Minister, on a balanced budget.

Germany's power of one has also undermined the 'power of two' relationship of the Franco-Germany couple, which was the traditional balance in the Council. Although the relationship between Germany and France went from one of bilateral leadership to a bilateral *directoire* between 2009 and mid 2012, as Sergio Fabbrini has noted, it was a *directoire* dominated by Germany, with Merkel the major partner in the 'Merkozy' leadership duo.[195] This can be seen not only in the content of the policies, with the German preference for financial stability having replaced France's focus on solidarity, but also on the processes, as German ideas came to dominate France's concept of '*gouvernement économique*'—with Commission-administered rules replacing the euro-group discretion that the French had wanted.[196] It was apparent even in Sarkozy's communicative discourse from 2010 to 2012, as he gradually shifted from an emphasis on the importance of 'solidarity' for the bailouts to Merkel's consistent talk of 'stability.'[197] That said, even as France adopted Germany's economic paradigm, Germany adopted France's political paradigm, that is the intergovernmental (throughput) mode of governance[198]—as we saw earlier in Merkel's approval of the 'Union Method.'

Additionally, German leaders, by way of the German Constitutional Court, have largely imposed their country's own rules of input legitimacy on the rest of the EU. Instances include leaders' frequent invocation of the Constitutional Court to delay decisions, most notably with regard to bailing out Greece; the German Constitutional Court's own rulings on democratic oversight of decisions; and the Constitutional Court's hearing on the ECB's various unorthodox programs to save the euro, despite its lack of jurisdiction. The point here is not that member states should do away with the national democratic processes they consider necessary to input legitimacy but that this can cause serious problems for the efficacy of European decision-making if these kinds of national democratic exigencies were to be multiplied across EU member states.[199]

Finally, one could also argue that Germany has largely imposed its own interests on the rest of the EU.[200] These can be variously understood as the narrow electoral self-interest of the Chancellor and her governing coalition, who calculated that a delay in any agreement would enable them to win a major subnational electoral contest (in Nord Rhine-Westphalia) on May 9, 2010; as financial self-interest with concerns about a 'transfer union' and the size of German liability in any bailout; or even, more generously, as the German conviction that 'living by the rules' of the Stability Culture was in Europe's best interest.

### 2.2.2 How the Council Builds Legitimacy as a 'Deliberative Political Body'

So is Germany the dictator in all of this? Or is what is going on more like deliberative intergovernmentalism in the shadow of Germany— and thus something more input and throughput legitimate than simple *diktats*?

We should not forget that Germany has also changed its position in response to changing circumstances and pressures from fellow member-states and other EU institutional actors as well as from internal German political actors, in particular the opposition Social Democrats, and especially when they have been part of grand coalition governments.[201] And naturally, Germany was not the only member-state promoting this set of ideas, nor appealing only to its own electoral constituencies in so doing. Germany's main supporters in Council meetings were the Finns and the Dutch, but there were also the Slovakians and other CEECs who saw Greece not so much as the profligate cousin as the richer one. Moreover, Sarkozy himself was perfectly willing to agree to a *quid pro quo* in which a rescue plan would be accompanied by an austerity program, including the 'golden rule,' since this was more in line with the preferences of his own center-right constituency, while it served to embarrass the

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192 *Financial Times,* June 24, 2010
193 *Financial Times,* Sept. 5, 2011
194 Crespy and Schmidt 2014
195 Fabbrini 2013.
196 For more detail, see Boyer and Dehove 2011; Vail 2015; Jabko 2015.
197 Crespy, and Schmidt 2014.
198 Fabbrini 2013.
199 Dehousse 2011.
200 See Newman 2015.
201 Jacoby 2015

opposition Socialists. Subsequently, even President Hollande towed the line—insisting that France needed to regain economic credibility before it could be credible enough to push for a change in rules. Other EU institutional actors also supported German positions, most importantly the ECB (as noted above) and the Commission (see below). In the development of many of the rules, moreover, the Council President Van Rompuy was equally important in building a consensus on Eurozone governance by setting up a working group that included the main EU institutional leaders in monetary and economic policy.

Germany's outsize power, in other words, also lies in the political coalitions constructed with it and around it, to push forward its agenda, as well as in the deliberations that may have persuaded other member-states that Germany's position was the correct one. Moreover, the Council's agenda has also changed somewhat over time, as the Council's discourse shifted from an exclusive focus on maintaining stability and strict adherence to the rules to one that admitted that by 2012 'growth' was important and, by early summer 2014, that even 'flexibility' was acceptable, but only insofar as this stayed within the pre-established stability rules.

Growth entered the discourse in late 2011, in response to the continued poor economic performance that threatened output legitimacy, as the crisis continued in its fast-burning phase. It was raised first by Italian Prime Minister, Mario Monti, and quickly followed in the campaign discourse of French Socialist presidential candidate François Hollande in early 2012. But the discourse did nothing to change the rules. And after the peak of the fast-burning crisis passed, seemingly solved by the ECB's discourse of 'whatever it takes,' the Council seemed little inclined to even contemplate further bold actions. In the subsequent slow burn of the continuing crisis, not much was done, other than a paltry youth employment scheme, as EU institutional actors continued for the most part to insist that the way to growth was through structural reform—and more rules. Most notable was a proposal introduced in the 'Four Presidents' Report' of December 2012,[202] and reinforced by a joint letter from French and German leaders in May 2013 calling for 'contracts' signed between member-state and the Commission.[203] By December 2013, however, the European Council had rebuffed Merkel's continued push for such contracts.

The initiative with regard to contracts was a further step in Council pressure to tie the hands of member-state leaders—all in the interest of enforcing the rules and restrictive numbers. The problem is that although bringing in national parliaments may appear to make this contract approach more input legitimate, it is actually even less so. It forces national parliaments to buy into agreements of which they may not approve, and for which they have little or no say. It becomes a further restriction on national input responsiveness, in particular because the budget is already the product of the national government under pressure from the EU Commission to be output 'responsible' rather than 'input' responsive.

Only in 2014 did the discussion of growth intensify, with the arrival of a new Italian Prime Minister, Matteo Renzi, who pushed for greater flexibility in the application of the rules, in particular by slowing the pace of deficit reduction and not counting investment in growth-enhancing areas against the deficit. As of summer 2014, however, nothing had been formally changed, nor was it likely to as Merkel insisted (in a speech to the Bundestag) that there was no need to change the rules since the Stability and Growth Pact already contained all the necessary flexibility. But this at least seemed to open the way to even more informal reinterpretation of the rules—and thereby to bolster the legitimacy of the Commission to do so.

Flexibility returned to center stage in October 2014 with the very public wrangling over the vetting of national budgets, in a skirmish that was as much about input responsiveness as it was about output performance. Hollande and Renzi wanted and needed a very public fight to show their citizens that they have been pressing for less austerity to ensure economic growth, even as they reaffirmed their respect for the rules. They won by gaining modest concessions that marginally violate the rules on austerity. But Merkel also won by ensuring that they too had to make modest concessions toward greater austerity.

By late 2014 and early 2015, the Council's 'one size fits one' governance seemed to be loosening, with the increasing politicization of EU leaders' coordinative discussions and public communications, as Southern Europe and France pressed for greater flexibility while Northern and Eastern European leaders pushed for continued discipline. Even Germany was no longer always 'one,' as illustrated by the discussions with the Syriza government over Greek debt extension in February 2015, in which the conservative German Finance Minister pushed one way, the social democratic leader pushed the other, and Merkel played the pragmatist, and gave in—a bit. And yet divisions remained, even among countries one would have thought open to flexibility.

[202] Van Rompuy et al., 2012.
[203] Those contracts pledged even more binding adherence to the rules as well as structural reform where deemed necessary.

Most notable was the refusal by center-left and Southern European member-state leaders to concede much to the newly-elected Greek government's push for an end to austerity beginning in February 2015, arguably because of their own rhetorical commitments and/or their own national attempts to meet or offset the numerical targets through structural reforms. Moreover, the CEECs felt they had imposed on their own citizens harsh fiscal discipline that had turned their countries around, so why couldn't and shouldn't the Greeks?

### 2.2.3 Towards the Future: The Council as a truly 'Deliberative Public Body'

Such politicization is part of a game by member-state leaders to legitimize themselves to national constituencies by ensuring ever more flexible rules-reinterpretation while using the EU's outside pressure to keep up the internal push for reform. But this risks turning the EU into the scapegoat, and grist for the populists' mill.

By the same token, however, the public debate and contestation on how to apply the rules by member-states in the Council could make for greater throughput transparency and accountability in the negotiations, while government responsiveness to the citizens' concerns—on both sides—is demonstrated. It also means that the process becomes politicized in a positive way, with public debate about how to apply the rules appropriately. The EU looks less rigid or draconian as a result. And member-state leaders look like they are saying what they are doing. Moreover, this could be seen as constituting the beginning of what the French have long called for: a *gouvernance économique* that puts the emphasis on governance.

This bodes well, thinking in terms of the future. Council debates about how to apply the rules—used more as guidance than as rigid *diktats*—together with a more accommodating ECB—could come to constitute a more throughput legitimate way of governing. It would be more accountable and transparent because of the open debates on how to apply the rules, and more input legitimate, because more responsive to all member-states' concerns, not just to those of the member-state with the greatest bargaining power. The output results may also, thereby, also likely to be better.

Governing by the rules is of course no ultimate solution, even if the rules become the focus of the more political discussions of a more deliberative body. The Council still needs to take the bold actions necessary to solve the crisis once and for all. This means finally agreeing to some sort of 'fiscal federalism,' in which debts up to a certain level are mutualized, and some form of 'Eurobonds' or EU debt instruments (as mentioned earlier) are created to ensure all member-states the kinds of low interest rates from which the Germans (and other Northern European countries) have long benefited. Alternatively, develop mechanisms like cyclical adjustments funds or unemployment insurance (see above). Equally important would be to give the Commission its own resources (discussed below). Beyond this, the EU now faces a large number of important challenges, including security inside and outside its borders and climate change, in addition to the European economy. The Council has failed to address these issues appropriately because of its focus on the Eurozone crisis. And it hasn't fixed that either.

## 2.3 THE EU COMMISSION: 'AYATOLLAHS OF AUSTERITY' OR 'MINISTERS OF MODERATION' IN 'ONE SIZE FITS ALL' GOVERNANCE?

Public perceptions of the EU Commission's responses to the crisis can be encapsulated by two very different stories that have crystallized over the course of the crisis. The first story depicts EU Commission officials as the 'Ayatollahs of Austerity' who have zealously pushed rules focused on fiscal consolidation and structural reform. These have deleterious consequences for European economics, endangered by low growth and the threat of deflation; for European politics, as mainstream parties and party democracy weaken while populist parties grow along with Euroskepticism; and for European society, as citizens suffer from increasing inequalities, unemployment, and poverty, in particular in Southern Europe. In contrast, the second story paints EU Commission officials as 'Ministers of Moderation' who managed to reconcile demands for strict enforcement of the rules with needs for greater flexibility. This has produced positive results for European economies, with program countries turning the corner; for European politics, as centrist parties in power continue to govern 'by the (stability) rules'; and for European society, with new initiatives targeting youth unemployment and investment to address the social spillovers of the economic crisis.

Neither story entirely fits the complex reality, which has in any case changed over time. The initial responses to the crisis better reflect the story about the 'Ayatollahs of Austerity,' especially from 2010 to 2012, as Commission officials appeared to rigidly implement the increasingly restrictive stability rules that they had a part in designing. The narrative of the 'Ministers of Moderation' increasingly came to define following years, as these officials slowly re-interpreted the rules with greater moderation, albeit mostly without admitting it in their

Ayatollah-sounding discourses. The exceptions are the program countries under Troika rule, where the Commission's push for austerity continued unabated, without moderation.

During the crisis between 2010 and late 2014, the Commission incrementally altered its interpretation of the rules without acknowledging it. But unlike the ECB, which has the autonomy to reinterpret its own rules, and therefore communicated that its reinterpretations remained true to its cardinal rules, the Commission largely sought to hide its increasing flexibility with a harsh discourse focused on its 'one size fits all' rules pushing austerity and structural reforms. The reasons for this have much to do with the Commission's own institutional position as well as its sources of legitimacy, both of which put it between a rock and a hard place. In the absence of real remedies to the crisis, such as a fiscal union or Eurobonds, and in light of a narrative focused on the sinners who overspent, the Commission was stuck with searching for solutions 'like the drunk who looks for his lost keys under the lamp post' because 'that is where the light is.'[204] Recognizing this reality, in particular as economic output performance deteriorated, the Commission made exceptions and flexible adjustments for non-program countries. But it denied this publicly so as to circumvent the political pressures and objections from pro-austerity Council members. No such flexibility, however, was forthcoming for program countries, which under IMF rules could be prescribed a country-specific adjustment path outside the norms of commonly agreed fiscal surveillance.

### 2.3.1 Commission Legitimacy in the Crisis: Ayatollahs of Austerity?

In the Eurozone crisis, increasing intergovernmentalism meant that the Commission saw its (input based) accountability as focused first and foremost on the Council—in which the rules-focused austerity coalition predominated. At the same time, moreover, the Commission's own increasing supranational powers in the context of the European Semester, which gave it quasi-independent powers and discretionary authority to enforce the various oversight functions of the macroeconomic imbalance and excessive deficit procedures, along with its participation in the 'Troika', also linked its legitimacy to the output performance of the policies it administered. Initially, however, the Commission was most concerned with the throughput processes, conceiving of its autonomy rather narrowly, with a constant eye to possible Council (read Germany and its coalitional allies) response, as the 'legitimate' authority. This meant that during the fast-burning phase of the Eurozone crisis, the Commission focused more on ensuring throughput efficacy as it administered the rules rather than on output performance.

As the crisis slowed, however, after July 2012, the Commission was able to reflect more on the output and in the face of the poor performance of the countries under its supervision it became more accommodating with regard to enforcement of the rules. But because it lacked the independent authority of the ECB, and probably worried about the legal implications of any shift in rules application, the Commission did not generate a communicative discourse to the public that sought to legitimate its reinterpretation of the rules. Much the contrary, the Commission's discourse proclaimed its strict adherence to the rules, to hide the fact that it was actually becoming more accommodating.[205] Although such reinterpretation 'by stealth' is understandable, given a Council run by 'one size fits one' rules, it has been problematic for public perceptions of the Commission's legitimacy generally. From the outside, Commission officials have been seen as unreasonably rigid and inflexible, and thus akin to 'Ayatollahs of Austerity,' even if from the inside they have slowly readjusted the rules, as 'Ministers of Moderation.' This began even before the sovereign debt crisis, in the response to the financial crisis and subsequent stimulus.

Most notable in the Commission's governance of the sovereign debt crisis beginning in 2010 was the reversal of its approach from the period immediately before, during the financial crisis and the crisis in the real economy. In the mid-2000s, as the rules of the Stability and Growth Pact were eased, there was some question as to whether the SGP itself could survive. Its death knell seemed to have come with the onset of the crisis in 2008, when the Commission championed deficit spending through the European Economic Recovery Plan (EERP), in line with the Council's preferred move toward Keynesian demand policies in response to the crisis.[206] But by setting up the EERP as an exceptional response to a major fast-burning crisis even as it continued to apply the SGP rules, the Commission found a way of bringing the rules into harmony with the crisis-fighting response. Thus, while continuing to open up EDPs (Excessive Debt Procedures) suggested principled commitment to 'sound finances,' creating the EERP stretched "the boundaries of exceptionality" and sanctified non-compliance.[207]

[204] Mabbett and Schelkle 2014
[205] Schmidt 2015
[206] Larch et al. 2010
[207] Pelc 2009, 335.

Whereas to people on the outside, opening up EDPs may have seemed contradictory—and another example of the Commission's blind commitment to the stability paradigm—on the inside it must have appeared as the only way to ensure consistency over time with the Commission's mandate, and thereby 'throughput' accountability as well as efficacy. This approach to Eurozone governance also ensured that the Commission had little problem dropping the exceptional EERP when the Council switched to austerity policy and a focus on structural reform in May 2010 while the ECB pressed for stronger fiscal control mechanisms.
The Commission itself proposed the European Semester in May and June 2010. This was to be the new precision instrument for 'governing by the rules and ruling by the numbers.' It established a framework through which to coordinate member-state budgetary and economic policies and monitor their budgets on an on-going basis. Following quickly upon its approval in September 2010 came the various pacts and compacts that the Commission drafted—at Council request and German and ECB instigation[208]—to further reinforce the rules, specify the numbers, and increase the sanctions on member-states found in violation. Moreover, while these rules tied the hands of the Council through the RQMV (reverse qualified majority voting), and the hands of the member-states through the rules and numbers of the European Semester, they also tied the hands of the Commission. The Commission's room for maneuver was limited by the increasingly precise definition of rules and numerical targets. But rather than weakening the Commission, it actually strengthened its hand.

Although increasingly precise, the rules themselves still left the Commission greater margins for flexibility than it admitted publicly, especially at first. The Six Pack regulations increased Commission discretion in evaluating a member-state's fiscal position and adjustment effort, since the Commission was to take into account the 'range of relevant factors' when judging non-compliance, including mitigating or aggravating ones, along with 'exceptional circumstances.'[209] Moreover, RQMV made it harder for the Council to reverse a Commission decision. That said, there is a difference between the Macroeconomic Imbalance Procedure, which allows significant flexibility in the assessment, and the Excessive Deficit Procedure. Whereas in the former, a range of calculations make up the decision on whether or not to initiate a procedure, in the latter, merely hitting a certain number would trigger the procedure. But for both, the actual calculations matter, giving way to a 'politics of numbers' that is extremely important for any assessment—and raises questions about the 'accounting' end of flexibility.[210]

Numbers matter, and how they are calculated matters a great deal to the countries in danger of falling under fiscal surveillance procedures or needing a bailout. The determination of the numbers is not solely in the Commission's hands, though, because the country statistics upon which the Commission bases its decisions are the domain of the statisticians of Eurostat, whose accounting procedures follow the norms of 'comprehensiveness' (meaning including all previously off-budget operations like loss-making public trading entities such as bad banks taken into public ownership) and 'mark to market' (market valuations of whether an entity is viable, and therefore government support is a financial transaction or instead a capital transfer). Eurostat statisticians decide whether operations are viable trading entities, which means they don't count toward the deficit, or not, which means they count toward the deficit as government spending because support is unlikely to be recovered. Although these norms are applied to all member-states without prejudice, in unstable macroeconomic situations calculations of country deficit and debt based on such norms tend to disadvantage countries that the markets consider less viable.[211]

As a result, although Ireland, the Netherlands, and Germany all had bank bailouts, only Ireland's were classified as capital transfers on the grounds of poor recovery prospects, thereby increasing its debt by 20.2% of GDP in 2010, despite the fact that the actual recovery for Germany turned out to be no better, but because classified as a financial transaction had no effect on its balance sheets.[212] Thus, statisticians' accounting procedures and classifications, with no political bias intended, can nevertheless make it much harder for already weak countries to recover and makes it more likely that they will fall foul of the rules. Moreover, it may even make it appear that countries are hiding debt figures, whereas it is only that in worsening economic environments, statisticians have reclassified their public enterprises as part of general government because of the magnitude of their losses. This happened to both Greece, which saw its debt grow by 7.8% of GDP in 2009, and Portugal.[213]

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[208] This whole process deserves close empirical investigation, to trace the processes of interaction between certain Council members (notably German), the Commission, and the ECB that led to the specific legislative agreements.
[209] Reg 1177/2011, Article 1(2)(a)—see discussion in Mabbett and Schelkle 2014, pp. 12-13
[210] On the issues involved in the politics of numbers, see, e.g., Mügge and Stellinga 2014
[211] See discussion in Mabbett and Schelkle 2014, pp. 15-17.
[212] In the Dutch case, its 14.6% of GDP costs for bailouts, had been largely recovered by the end of 2012 (10%). This was not the case for Germany. Of its 12.8% of GDP bailout expenditure, only 1.4% was classified as capital transfer, even though recovery through asset sales has come only to 2% of GDP--Eurostat 2012a: 4, 8; IMF 2013: 14, Table 5—cited in Mabbett and Schelkle 2014, p. 18
[213] Mabbett and Schelkle 2014, pp. 18-19.

The game of numbers had the greatest impact on the program countries that, in exchange for a bailout, were subject to conditionality via the Troika (ECB, EU Commission, and IMF). On the basis of the numbers, they have been subject to harsh pro-cyclical austerity measures, with enforced cuts pushed by the Troika for Greece, Ireland, and Portugal. In contrast, the Commission's approach to non-program countries in the various common fiscal surveillance procedures in the European Semester was much more flexible and accommodating, given that they were encouraged to find ways to ameliorate their balance sheets while avoiding pro-cyclical measures. In all such cases, however, the Commission came in for criticism on the (throughput) processes as well as the (output) results.

One such criticism had to do with the centralization of the evaluation process in the Directorate-General of Economics and Finance (DG ECFIN), reinforced by Commission President Barroso's decision to grant autonomy of decision to the Vice-President and Commissioner for Economic and Monetary Affairs, Olli Rehn. The result was a process in which DG ECFIN was perceived even in other parts of the Commission—perhaps with a certain amount of exaggeration—to work out the numbers on its own, largely in secret, to make its decisions, and only then to inform the rest of the Commission.[214] While this may have improved the throughput efficacy of the application of the rules, DG ECFIN's secrecy was arguably problematic in terms of (throughput) transparency. Lack of (throughput) inclusiveness in the evaluation process was also an issue, in particular at first, since it shut out other Directorates-General that could have provided more nuanced information to moderate judgments about the numbers as well as the effects of any cuts (although as we will see below this changed over time).

Another critique comes for the Commission's role in the Troika, where it can be seen as largely responsible—arguably along with the ECB—for pushing hard on austerity. Already in 2008, with the loan bailout programs for the CEECs, it was the Commission that had pushed for the strictest conditionality, against the wishes of the IMF, making this the European 'rescue of the Washington consensus.'[215] The strict conditionality imposed on Eurozone members as of 2010 was also due to Commission insistence, and in particular the harsh terms imposed on Greece that set the ground-rules for all future bailouts. The IMF itself later conceded not only that the policy on Greece was a major mistake because it assumed that severe austerity would lead in short order to growth. It also condemned the Commission's emphasis on the throughput rules to the detriment of output performance, because "the Commission, with the focus of its reforms more on compliance with EU norms than on growth impact, was not able to contribute much to identifying growth enhancing structural reforms."[216] This critique was echoed in a June 2014 report by the French Commissariat on Strategy, which also noted that in the European Semester, the efficacy of the approach 'merits discussion' in view of the formalism and heaviness of the procedures, the possible inefficacy of sanctions, and the poor integration of the social and employment dimensions—which in a footnote suggests that these are considered only in terms of costs and not with regard to their possible productive effects.[217] In contrast, the French report mildly noted how the ECB, despite a very narrow mandate, has managed to respond effectively to the crisis. In short, the Commission is seen as the 'heavy' because focused more on (throughput) rules compliance than on (output) performance. And the Commission only reinforced this view through its unchanging discourse focused on following the rules.

Even in 2013, when the Commission tacitly acknowledged the failure of fiscal consolidation policies by agreeing to ease the policy on rapid deficit reduction, Commission spokespeople stuck to a discourse that claimed that it was prior success, not failure, which allowed for a more flexible policy. Commission Vice-President and head of DG ECFIN, Olli Rehn, for example, claimed that things were getting slightly better only because the crisis response offered "a policy mix where building a stability culture and pursuing structural reforms supportive of growth and jobs go hand in hand."[218] Continued belief that structural reform produces growth meant not just that the Commission recommended but did not require member-states to take into account the Commission's own Europe 2020 agenda that sought to create the conditions for growth by promoting employment, improving education, and reducing poverty and social exclusion. It also entailed keeping a rather inflexible approach to the remaining rules. Thus, Rehn continued to allow only those countries that posted a primary surplus to increase their deficits in order to propel growth. This is why France and Italy were allowed delays but Spain was not, until the Commission agreed to change the calculation of the 'structural deficit' as proposed by the Spanish government (on the grounds that it underestimated the impact of unemployment) so that it would also have a primary surplus. But although the Commission's 'Output Gap Working Group' agreed to make an ad hoc

[214] Interview with a senior Commission official, September 2013.
[215] Lutz and Kranke 2011
[216] IMF 2013, p. 13
[217] Nicolaïi and Valla 2014, p. 16
[218] Rehn 2013

methodology change for Spain because the normal calculation appeared so improbable, it refused to generalize this calculation out of 'concern in some capitals' (read Germany) about the implications of using better estimates—which might ease up the pressures on program countries.[219] Subsequently, moreover, Rehn appeared to remain uncompromising—at least in his discourse—when Italian Prime Minister Renzi's pushed for greater flexibility, declaring that: "…piling new debt on top of this old debt does not seem to improve the economic competitiveness of Italy."[220]

### 2.3.2 How the Commission Builds Legitimacy as 'Ministers of Moderation'

But while the discourse remained largely uncompromising across time, and outside analysts saw the Commission as tone deaf to the socioeconomic impact of numbers-targeting rules, the actual internal bureaucratic process to develop the country reports became incrementally more inclusive of such concerns. This resulted not only from Commission responsiveness to Council admonitions but also to an internal opening by DG ECFIN to other Directorates-General as well as to the member-states in the context of the sectoral advisory committees on employment and social policy.

The initial experiences did indeed confirm critics' worst fears regarding a 'one size fits all' approach in the European Semester that subordinated social cohesion goals to fiscal consolidation, budgetary austerity, and welfare retrenchment. This was clear in the first AGS (Annual Growth Survey) and CSRs (Country Specific Recommendations).[221] DG ECFIN in the 2011 exercise was very narrowly focused. The first priority of the AGS was 'to set budgetary policies on a sound footing through rigorous fiscal consolidation;' the second priority was to engage in 'rapid reduction in unemployment through labour market reforms' focused on wage devaluation for countries with high deficits and debt through implementing 'concrete corrective measures' (these could include strict and sustained wage moderation, including the revision of indexation clauses in bargaining systems);' and only the third proposed 'growth enhancing measures,' while there was no mention of social concerns such as the increase in poverty.[222]

Even worse, however, were the Troika's strictures for program countries. The demanded reductions in the substantive level of protection resulted in across-the-board cuts in wages, pensions, health care, social assistance, and education produced increased penury, misery, and violations of human rights, as documented by the Council of Europe report cited earlier, at the same time that it negatively affected growth.[223] This can also be seen as a violation of the understandings at the basis of the European Union itself, in which social policy was left to the member-states in order to ensure that it would remain input legitimate to the citizens, even as the EU provided output legitimacy via better performance through freer markets.[224]

But while the Troika's strictures continued unchanged, subsequent exercises of the European Semester were less narrowly targeted, at least on paper. Moreover, even in the assessment of the results of the 2011 European Semester and guidance on 2011-2012 written in June 2011, the Commission was already highlighting problems with the (output) results, stating that: "Additional efforts are required for reaching the targets in the areas of employment, research and development, energy efficiency, tertiary education and poverty." But the focus on austerity remained, with the first substantive section, involving recommendations on the 'pre-requisites for growth,' beginning with: "(the) Commission considers that it is essential to stick to agreed deadlines for the correction of excessive deficits and to consolidate swiftly, moving towards the medium-term budgetary objectives specified by the Council." Even here, however, the Commission signaled its own awareness of problems with the input legitimacy of the exercise. The note ends with: "To build the legitimacy and effectiveness of the new EU economic governance, the Member States should decide on the best ways to involve their national parliaments, as well subnational authorities and other stakeholders, in the development and follow-up of their programmes."[225]

The 2012 AGS (Annual Growth Survey) (of November 2011) recommended a more socially balanced set of priorities, including 'tackling unemployment and the social consequences of the crisis' together with 'pursuing

[219] *Wall Street Journal* Sept. 24, 2013
[220] *Financial Times* Feb. 18, 2014
[221] Pochet 2010; see also discussion in Zeitlin and Vanhercke 2014, pp. 12-14.
[222] 2011 Annual Growth Survey (AGS, COM 2011, 11 final, Jan 12, 2010, p. 9).
[223] It should be noted that blame also lies with member-state governments, whose politicians went for across the board cuts rather than targeted reforms that might have hurt their own particular constituencies more. Different members of the Troika also occasionally pointed to the need for, say, increased spending on social assistance for the poor and training for the unemployment in Latvia, and for unemployment insurance in Italy. Zeitlin and Vanhercke 2014, p. 13.
[224] See Chalmers et al., 2014.
[225] COM(2011) 400 final, June 7.

differentiated growth-friendly fiscal consolidation,' which were reaffirmed in the 2013 and 2014 AGSs. Moreover, CSRs (Country Specific Recommendations) sent to member-states addressed issues of poverty reduction and social inclusion (seven in 2012, eleven in 2013, twelve in 2014) as well as issues of education, training, and active labor market policies, pensions, and health policy. This can be explained by the fact that the CSRs themselves were drafted in an increasingly more collaborative process over time within the Commission itself through more bottom-up input from desk officers and support from horizontal policy units across a wide range of DGs. This made for a drafting process that has become increasingly deliberative and 'evidence-based,' in particular because enhanced by greater openness to amendment by employment and social policy actors in the specialized sectoral committees of the member-states.[226] That openness increased even further after the revised procedural framework was adopted following highly charged conflicts in the Council about the second European Semester.[227] Missing, however, is any significant involvement of non-governmental stakeholders—whether NGOs or the social partners at EU or national levels—thus raising questions of (throughput) legitimacy with regard to accessibility and inclusiveness.

Although the stated objectives and recommendations did become more social and employment-friendly on paper, and more all-inclusive in the process, the question remains as to their actual impact in practice. There is little evidence that the European Semester exercise from 2011 through 2014 changed in a positive direction along the social dimension, or in terms of truly growth friendly policies. The problem with the continued pressures for fiscal consolidation is that member-states have had little room in their budgets for growth enhancing or socially responsive measures. Moreover, the CSRs themselves provided limited guidance on how best to address the social and employment problems. This means that the focus on cost, evaluated through macro-economic measures, and the push for money saving cuts above all, has largely trumped socio-economic considerations. The fact that the first priority in the Annual Growth Surveys from 2011 through 2014 remained fiscal consolidation also helps explain why member-states cut first, and then naturally found there was nothing left for growth-friendly policy based on the Commission's Agenda 2020, let alone for poverty alleviation and employment promotion.

Only in the 2015 Annual Growth Survey do we see significant change, with attention to issues of social justice and fairness and a shift in the order of priorities. In the introductory section, the first item described is a "coordinated boost to investment" followed by a 'renewed commitment to structural reforms.' Only the third item mentions 'pursuing fiscal responsibility' (note the change in language from 'consolidation'[228]) in which member-states 'still need to secure long term control over deficit and debt' while those 'with more fiscal space should take measures to encourage domestic demand,' with a particular emphasis on 'investment' while 'addressing tax fraud and tax evasion.'[229] The labor market recommendations are more labor-friendly, less focused on destroying labor market protections, and more open to working out reforms with the social partners.[230]

The change in the Annual Growth Surveys over the crisis years along with the major shift in 2015 suggests that Commission officials have indeed moderated their approach to rules-based governance, in particular as regards austerity policies related to rapid deficit reduction. The change in their approach to 'structural reform,' which has become the new mantra not only of the ECB but also of the Commission, requires closer scrutiny.

Most interesting in this regard is the Commission President Juncker's (2015) joint analytical note in cooperation with the Presidents of the Council, the Eurogroup Finance Ministers, and the ECB focused on the next steps for better Euro area governance.[231] After setting the record straight on the causes of the crisis (mentioned earlier), the note plays the 'politics of numbers' to support structural reforms focused on increasing labor market flexibility. To do so, it provides two charts to demonstrate that the problems for competitiveness come from labor market rigidities and wages that remain too high. The first chart correlates labor and product market rigidities in 2008 with the increase in unemployment rates in Southern Europe in 2009-2013; the second uses different time periods to show that increases in unit labor costs in 2001-2009 correlate positively with the rise in

[226] Zeitlin and Vanhercke 2014, pp. 21, 28.
[227] Zeitlin and Vanhercke 2014, pp. 25-26.
[228] Although it is important to mention that the definition of the new phrase comes in as 'growth-friendly fiscal consolidation.'
[229] AGS COM (2014) 902 final, Nov. 28.
[230] The statement reads: "Employment protection rules and institutions should provide a suitable environment to stimulate recruitment, while offering modern levels of protection to both those who are already in employment and those looking for a job. Member States must do more to remove obstacles to job creation, with the involvement of social partners…. (but member-states) "still need to complete the correction of pre-crisis trends, with wages outpacing productivity gains. The role of social partners is crucial. Collective agreements should allow a certain degree of flexibility for differentiated wage increases across sectors and within sectors, according to specific productivity developments." AGS COM (2014) 902 final, Nov. 28, pp. 11-12.
[231] Juncker 2015

unemployment rates for Southern European countries in 2009-2013.[232] For the first chart, if one eliminates product markets from the calculation on the grounds that this has little to do with labor markets, then one finds no significant correlation between labor market rigidities in 2008 and increasing unemployment rates in Southern Europe in 2009-2013. For the second chart, if one takes the same time periods of 2009-2013 for both unit labor costs and unemployment rate increases, there is actually a negative correlation, meaning that cuts in wage costs correlate with rising unemployment. This suggests that internal wage devaluation produced recession, not that further wage reduction is necessary.[233]

The big question is: What is structural reform? Initially at least, the concept seemed based exclusively on neo-liberal assumptions about needs for labor market flexibility, meaning the reduction in workers' job protections and wage-bargaining power to make hiring and firing easier and to allow wages to go down to their market-determined level. This has failed to deal with the complexities of labor markets as well as their embedding within very different national systems of capitalist production, supported by different national welfare systems.[234] National political economies differ not only with regard to industrial specializations, production and innovation systems, financial market profiles, labor markets and wage-bargaining systems, pension and health care arrangements, and systems of taxation but also in state capacities and the politics that may or may not enable the state—whatever its capabilities and the economy's comparative advantages—to engage successful reform.[235] The Commission appears to have come to recognize all of this, at least in its documents, which increasingly refer to differences in member-states' political economic profiles in the CSRs while over time the AGSs have become more open in their recommendations on labor market reform, as noted above, as well as on what might constitute structural reform.

The countries of the periphery face special challenges, in particular because many are plagued by clientelistic politics, political corruption, and weak administrative capacity. Structural reform in these countries is indeed necessary. But such reform requires fine-tuned strategies that take into account national complexities, and that serve to encourage countries to make the necessary reforms that will promote growth. Pressures for a quick macroeconomic fix, in particular in the initial European Semester exercises, were bound to reinforce the clientelistic patterns rather than to break them. And this was certain to make citizens generally experience greater social injustice, and unwilling then to support the reformers. A case in point was that of Mario Monti, whose budget-cutting program focused on 'save Italy' left him without the money or the public support to move forward with the reforms envisaged in 'grow Italy.'[236] If the EU wants real reform in these countries, it needs to find ways to help reformers reform, and thereby encourage the rebuilding of trust in public institutions, which is the first step for countries to move beyond clientelistic politics and corruption.[237]

### 2.3.3 Towards the Future: The Commission as a true 'Minister of Moderation'?

Looking toward the future, for all countries, but in particular for the member-states in trouble, the answer is not ever bigger sticks, but carrots along with the sticks. Some of these were already mentioned in the context of output legitimacy. They involve generating better policy performance through slowed deficit reduction accompanied by investments in growth-producing areas that should not count toward the deficit, such as education, training and R&D or sustainable energy. In fact, why not make any efforts toward improving skills and human capital deductible as part of the 'social investment' initiative of the EU that seeks to promote growth in knowledge-based economies.[238] Beyond this, why not leave off the balance sheets any growth-enhancing investments in infrastructure projects, education, training, research and development? This seems to be the idea behind the deductibility of member-state investment in conjunction with the Juncker Investment plan. But why not make it the case for all such investment?

Equally useful would be full-fledged investment programs funded through the European Investment Bank, focused on developing member-state capacity in growth-producing industrial sectors. Attention to how to make the welfare state a positive part of the political economy, arguably as a 'social investment state,' should also be a focus. In the European Semester, for example, the Commission could pick up on its 2013 *Social Investment Package for Growth and Social Cohesion* to encourage member-states to engage in activating social policy

[232] Juncker 2015, Charts #3 and #4, p. 4
[233] See alternative charts and discussion in Janssen 2015 http://www.socialeurope.eu/2015/03/european-economic-governance-and-flawed-analysis/
[234] See, e.g., Scharpf and Schmidt 2000; Schmidt 2002; Emegnegger et al., 2012; Beramendi et al. 2015.
[235] See, e.g., Schmidt 2009b; Beramendi et al., 2015
[236] Comment by Lorenzo Bini Smaghi, Harvard, 2013. See also Sacchi 2015.
[237] See Bo Rothstein's work in the Quality of Government Institute, Gothenburg, Sweden.
[238] Vincenti 2011

reform by way of conditional social investment contracts, supported by specially designed social investment project bonds or by not counting social investment toward the deficit.[239] Moreover, the Commission should equally try to find a way to make the statistics more transparent and less punitive for countries in trouble, as already noted.[240]

Structural reform, in short, needs a redefinition and refinancing. In addition to the specific areas mentioned above, the Commission could start by taking its own Europe 2020 goals seriously, by not just incorporating social issues on paper but also in practice. This means arguably incorporating other numbers in the targets, such as rising inequalities along with unemployment, and proposing moves toward more progressive taxation and redistribution. But how can the Commission do any of this, since such changes on the output policy side of legitimacy also require changes on the throughput side? The challenges are not just attitudinal but also organizational and legal as well as financial.

In terms of finances, first, the EU also needs to have its own sources of revenue. The EU has little revenue from its own resources and instead depends largely on the member-states for its operating budget. This has been highly problematic because the Commission is consistently underfunded in terms of its operations, especially because much of its budget goes to the CAP. As Maduro (2012) has argued "financial solidarity in the EU must be detached from transfers between states and related, instead, to the wealth generated by the process of European economic integration."[241] Examples abound. These include a *financial transactions tax*, modeled on the Tobin tax initiative, and expanding the FTT already in process through enhanced cooperation for a limited number of member-states (but which seems to be slated to go into national coffers). A *European corporate tax* that could also involve harmonization of national corporate tax so as to ensure that European corporations pay reasonable tax in their home countries, and that multinationals are no longer able to game the system, and pay appropriate taxes, full stop. A *VAT on EU generated wealth* related to cross-border transactions and/or online sales (as part of the new EU Digital services market?) that could pay for the spillover effects of the Single Market, geared to environmental, urban, and social problems.[242] And a *solidarity tax* (or fund) levied on all citizens and residents of the EU, targeted for poverty alleviation. Initially, it could be voluntary, possibly collected via national taxes through a box checked on national tax forms that would then be transferred to the EU to administer.[243]

But more money, to be administered by the Commission, is just a beginning. To make structural reform of the kind discussed work, the Commission itself would need changes in its own approaches not only to what it does but how it does it.

The European Semester as it currently stands is highly centralized. In this process, the Commission has been the 'enforcer' in a centralized exercise that threatens to impose hard and fast sanction-triggering numbers (however flexibly interpreted). Moreover, as the Commission's own Annual Growth Strategy report (2015) admits, its democratic legitimacy "has sometimes been called into question." Its effectiveness is also in question, in particular since a low percentage of recommendations in country reports have been taken up, while the imperative of rapid deficit reduction has meant that countries in programs or at risk of programs have tended to implement across-the-board cuts that did nothing with regard to growth producing structural reform and were often socially unjust.

By empowering local actors through the decentralization of the process, the European Semester could help generate more workable kinds of 'structural' reforms, fine-tuned for each member-state's political economy. Were the rules themselves to become more positively flexible within such a decentralized process, say, by encouraging member-state take-up of the Europe 2020 goals, as noted above, the European Semester itself could become a boon for social Europe.

Within this context, moreover, instead of Community 'enforcer' the Commission should become the 'enabler' or 'advisor' within a more decentralized system of supervision and support. This could involve more opening up of the process to national actors—not only experts but also members of parliament, NGOs, labor representatives, and other stakeholders—possibly along the lines of the Open Method of Coordination. More generally, while the Commission would continue to coordinate policy, the European Semester needs to be as decentralized as possible, so that the member-states take ownership of it. Additionally, it could mean that the Commission would

[239] Hemerijck 2014.
[240] Mabbett and Schelkle 2014: 15-17
[241] Maduro 2012
[242] Maduro 2012
[243] Schmidt 2012

act in some sense as a consultant to national parliaments, serving to empower national actors to push for the right kinds of reform.

With all this additional information gathered in an input and throughput legitimacy-enhancing manner, the Commission could find that it will have little need even to begin the various procedures of Significant Observed Deviation, Excessive Imbalance and Excessive Deficit, let alone impose sanctions at the end of the process. Instead, the process itself could be re-envisioned as one based not on punishing member-states for failure to follow the rules, but on helping them to enhance their performance so that they can meet the rules. This would not only prove more 'credible' to the markets. It could also make for increased trust and cooperation from member-states.

Most importantly, the Commission has to stop engaging in reinterpretation 'by stealth,' and make clear that it is easing the rules for good reason. In other words, Commission discourse to the public needs to say out loud what it is doing, and that this is both necessary and appropriate as a way to exit the crisis once and for all. Such truthfulness is actually now possible in a way it was not before not only because the Council has agreed that the rules do have built-in flexibility. It is also because of the new institutional realities that follow from the appointment of the leader of the winning party in EP elections in May 2014 to be President of the Commission.

The new institutional mix now gives the Commission a much clearer double accountability to the EP and Council. This potentially re-empowers the Commission, enabling it to go back to playing its traditionally more autonomous leadership role with regard to policy initiatives. Such re-empowerment could be crucial to finding ways out of the Eurozone crisis, given the importance of technical actors in slow-burning crises to come up with innovative ideas that political actors could take up in the fast-burning moments.

But to do this right, the Commission would need to be able to propose ideas that could fit with any emerging political orientation of the Council—especially in view of a potentially shifting majority toward the center left—and of the European Parliament, with its general 'grand coalition' orientation toward the public interest. In short, the Commission needs to go back to what it used to be, which was an active *vivier d'idées*, a veritable beehive of innovative ideas, in which possible solutions on the right, left, and center get debated and new syntheses proposed. For a very long time, neo-liberalism has seemed the only answer—and the Commission appeared to internalize this even more than any national regimes, in particular in certain areas, such as DG Competition and, arguably, DG ECFIN.[244] This is no longer productive economically, nor is it appropriate politically, in particular given the Commission's role in the European Semester, which has a direct impact on national input legitimacy.

Only with the inception of a new Commission in January 2015 has the discourse seemed to be in greater sync with actual practice. The Juncker Commission began presenting structural reform as a *quid quo pro* for greater flexibility through slower deficit reduction, and it pledged to do more to alleviate the social costs of the crisis, as well as to promote growth through an investment fund. Whether Commission officials come to be seen by EU citizens more generally as 'Ministers of Moderation' as opposed to as 'Ayatollahs of Austerity' depends a lot upon the Commission's own oversight practices, as well as whether the Commission is able to come up with new innovative ideas that help EU political leaders come up with solutions to the crisis at last.

## 2.4 THE EUROPEAN PARLIAMENT: FROM A TALKING SHOP WITH ALMOST 'NO SIZE AT ALL' TO AN EQUAL PARTNER?

If during the euro crisis the ECB started with 'one size fits none' rules and the Council continues with 'one size fits one' governing while the Commission remains 'one size fits all' ruling by numbers, then the European Parliament could be seen as having almost 'no size at all.' This is due in large measure to the EP's lack of 'size' with regard to national input legitimacy, as discussed above. But it also has to do with its lack of legal and institutional 'weight' with regard to Eurozone governance as a result of the treaties. The Council's shift to intergovernmental rule in the crisis took over much of the initiative from the Commission while leaving the EP out in the cold. But where the Community Method was used, the Commission initiated legislation largely in view of Council demands, with the EP brought in mainly to accept rather than amend.

Although the EP elections of 2014 now directly link it to the Commission, whether this will translate into greater throughput significance for the Parliament, as opposed just to greater input legitimacy for the Commission,

[244] Mügge 2013; Thatcher 2013.

remains to be seen. A better scenario, however, would be one in which the EP would come to be seen as more relevant, in particular because of its greater influence on policy through the linkage with the appointment of the Commission President. But much more would be needed for the EP to have significant influence, with treaty changes that would bring the EP into all aspects of Eurozone decision-making, such that we see a shift from intergovernmentalism to the Community Method.

### 2.4.1 The EP's Problems of Legitimacy: A 'Talking Shop' with 'No Size at All'?

During the Eurozone Crisis, the EP has largely been excluded from most major decisions on the architecture of Eurozone governance by EU treaties as well as in cases where international institutions have been involved—meaning all the loan bailouts and guarantees, with governance by the 'Troika' of the IMF, EU Commission, and ECB. The EP's exclusion has thereby precluded in most instances the parliamentary debates that could have served to amend and/or legitimize policies negotiated behind closed doors by the Council. That said, the EP also had a hand in its own marginalization where it did have a role to play. In the Six-Pack and Two-Pack, for example, it largely voted to give the Commission exclusive power to apply the rules, denying itself the ability to oversee the Commission's decision even as it limited Commission discretion by specifying numerical targets for intervention. Here, the heightened sense of crisis together with the discourse of 'no alternative' was such that most MEPs voted in favor of austerity and fiscal tightening—indeed, pushed for more stringent measures than were on the table.[245]

In some instances requiring the creation of new regulation related to new Eurozone crisis instruments, however, the EP has been involved in co-decision processes as an active partner. Certainly, its participation in discussions of banking union and financial regulation suggest that it can not only be proactive but also play a significant role.

Moreover, despite its minimal formal input into the reform of Eurozone governance architecture, the EP has informally increased its impact on decision-making through pointed criticisms of other EU institutions. For example, the EP stepped up its criticism of the Troika in terms of its throughput processes and its output effects on the bailout countries. In two non-binding reports, the EP condemned the "lack of appropriate scrutiny and democratic accountability as a whole" along with the negative social consequences due to a lack of a "proper impact assessment" on citizens such as cuts in healthcare, increased unemployment, youth migration and rising poverty. Additionally, it blamed finance ministers and the Eurogroup for "failing to give clear and consistent political pointers to the Commission and for failing to shoulder their share of responsibility in their capacity as final decision-taker."[246]

But until the EP gains more say over Eurozone decision-making, it will not have any robust input into current intergovernmental politics, nor can it affect output policies. Notably, the Council has no plans to significantly increase the EP's role in Eurozone crisis governance. Even in the various documents proposing a future 'blueprint' for the EU, or in the Four Presidents Report, the EP is afforded only a 'monitoring' role, to debate perhaps, and to provide 'accountability,' but little more.

The question today is how the EP's marginalization may change with the appointment of the leader of the winning party in the EP 2014 elections as the Commission President. Ideally, this would help rebalance the EU system not only by ensuring the Parliament greater oversight over the Commission but also by putting the Commission in the shadow of European politics. For the moment, however, the increased input legitimacy of the Commission resulting from the designation of the Commission President via EP elections may not do much to improve the quality of the throughput processes with regard to governance of the Eurozone. Much depends upon the extent to which the EP is able to play upon differences in the Council, say, to push for increased flexibility in Commission oversight of the member-states' budgets. But this assumes that the grand coalition of major parties in the EP will be able to reach agreement on a coherent orientation for the Commission, and that this would prevail even over and against Council preferences. Given the EP's limited mandate in Eurozone governance, this is unlikely to happen very soon.

### 2.4.2 Building the EP's Legitimacy: 'Resizing' the EP as an Equal Partner

Any increase in the EP's legitimacy would need to be linked to institutional reforms providing, for example, for greater EP input at the beginning stages of policy formulation. This actually goes beyond the question of Eurozone governance, since the EP has had little say in policy formulation generally. Reforms here could

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245 C. Barbier 2012
246 *Euractiv*, March 14, 2014

involve linking relevant EP members and committees to the Commission's expert committees. Even without this, however, the Commission could lay out the political dimensions of its policy initiatives, rather than presenting them as purely technical, while the European Parliament could do more to debate the issues (Magnette, 2003; Schmidt, 2006, pp. 268-9). In addition, the EP could be more fully connected to national parliaments – and needs to be, way beyond the provisions in the Lisbon Treaty. This may be the only way to ensure greater national parliamentary engagement with EU issues. Greater citizen access to the EP either directly or through the national parliaments is another area crying out for reform, as the Lamassoure report (2008) made clear, since citizens don't know their rights or how to ensure them through EU institutions

Another remedy to EU legitimacy problems would be through more *pluralist politics.* This is a national task as much as an EU level one. At the national level, political leaders' discourse should make it clear to national publics that national governments are not the only voices which can speak for national interests and values, but that citizens – as opposed to just experts – can and should have more direct input into supranational decision-making. In addition to informing citizens of the pluralist nature of supranational governance, they need to help citizens to organize themselves so as to gain access and influence in European decision-making – providing funding, information, and strategic advice – as opposed to trying to avoid citizen involvement. Moreover, they need to put procedures into place to enable citizens to participate in the national formulation processes focused on EU decision-making. All of this would also afford the already activist citizens and social movements better access and input at both EU and national levels.

With regard to Eurozone governance specifically, for the EP to have any real sway over decision-making, the mode of governance itself would need to be changed from highly intergovernmental to more co-decision via the Community Method. For this to happen, however, Treaty based rules would have to become ordinary legislation, which means open to amendment through political debates and compromise. Opt-outs for individual member-states would also be necessary, but subject to denial by qualified majorities.[247] The benefits would be many, but in particular we would see an end to the unanimity rule that imposes a lock-in via treaties, which once agreed cannot be undone because of the decision-trap of the unanimity rules. Abandoning the unanimity rule would help avoid the hazards of the current process, in which individual member states have been able to hold the others hostage, delaying the entry into vigor of treaties approved by the others and often watering down measures desired by large majorities in futile attempts to engineer compromise. Without the unanimity rule, member states could reach agreement on the big policy issues to pursue by allowing the occasional negotiated opt-outs for those members with legitimate reservations about participation in a given area.[248] The UK sagely has the rule that one Parliament cannot bind the hands of the next. All democracies allow amendments to Constitutions by a supermajority (generally two thirds). Only the EU enables treaties, which are essentially 'constitutionalized' laws, to be unchangeable because of the unanimity rule. The Council has informally been attempting to get around this anyway, e.g., with the EFSF as multiple bilaterals, or the Fiscal Compact as outside the treaties.

In the past couple of years, an alternative suggestion has been to set up a special Eurozone Parliament. This is a bad idea, in particular because all member-states except two (UK and DK with opt-outs) are slated to become members at some point in the not too distant future. And how would such a Eurozone Parliament be chosen? From the existing EP? Or newly elected, to concentrate only on this? And at what level of abstention in voting could this body still be input legitimate? Instead, special sessions of the EP could be focused on the Eurozone, in which everyone has voice and can be heard, but that votes remain for Eurozone members, assuming that the policies will affect them alone. That said, where policies affect others, and/or other member-states want to be a part of them, they too should be able to vote. It would be better to spend one's time figuring out how to revitalize the existing EP, and make it better linked to the national parliaments, rather than to create another special body.

The European Semester is itself also another area of possible expanded EP and national parliamentary involvement.[249] A major decentralization of the semester, as recommended in the section on the Commission, could be a way in for national parliaments. But failing that, at the very least once the Commission has made its country recommendations in the CSRs, it should have to defend its recommendations in the national parliament and/or the relevant parliamentary committees—with revision expected in response to parliamentary concerns. Moreover, different moments of the European Semester could also provide opportunities for EP involvement. In particular, were the Council to seriously deliberate priorities for the Eurozone at the beginning of the exercise, in response to the Annual Growth Survey, then the EP could respond, say, in the form of a send-back right or a

[247] For further elaboration, see Scharpf 2014.
[248] See discussion in Schmidt 2009a.
[249] See Alcidi et al., 2014.

conciliation procedure.  Finally, where the Troika prescribes specific policies (if the Troika continues), the demands on national governments should not be kept in secrecy but, rather, considered in national parliament.[250]

In short, the Eurozone should try to resemble more something of a normal governance system, where the forum for discussion, debate, deliberation, and contestation naturally takes place within and between governments and parliament.  The increased supranational powers of the Commission and the greater intergovernmentalism of the Council, however understandable as a result of the crisis, now needs at the very least to be counter-balanced by enhanced involvement of the European and national parliaments.  Input legitimacy is at stake, not only by giving citizens the sense that their votes matter, but also that the processes of national governments and EU governance are subject to parliamentary scrutiny and to democratic deliberation sufficient to legitimate any compromises.

[250] See Crum 2015.

# 3 RETHINKING EUROPEAN UNION GOVERNANCE IF EUROZONE GOVERNANCE DEEPENS

With proposals for greater deepening of economic integration, some have argued for a 'core Europe' in which a compact group of member-states agreeing to fiscal union would be surrounded by a larger circle constituted by a looser group united by the Single Market.[251] But this ignores the realities of what the EU is.[252] With the exception of the all-encompassing single market, the EU is essentially made up of clusters of member-states in overlapping policy communities with variable boundaries in terms of membership—not just the 18 members of the Eurozone but Schengen (with the UK and Ireland out but Switzerland, Norway and Iceland in), Common Security and Defense Policy (Danish opt-out and all others opting in), and the Charter of Fundamental Rights (UK and Polish opt-out). Moreover, the number and variability of the EU's policy communities are likely only to increase over time as a result of enhanced cooperation in a range of areas (e.g., security and defense, or possibly immigration policy). The EU cannot be made up of one 'hard core'. It does better to be understood as having many overlapping policy clusters, which through their overlap creates a *soft core* encompassing a large majority of member-states.

Creating a hard core around the Eurozone may make other potential community clusters more difficult to pull together, with the other clusters likely to be characterized by an increasingly high degree of differentiation without integration—already the case for transport, communications, and infrastructure—or even fragmentation and the risk of disintegration—in areas such as energy and the environment as well as migration, mobility, and asylum.[253] Moreover, given the differences among member-states on these issues, there is no guarantee that even a hard core around the Eurozone will expand to incorporate these other policy areas.

Imagining the Eurozone as the core disregards the effects of the Eurozone crisis, which has created an increasing division in economic identity constructions—in which the 'other' now appears to be inside Europe, between groups of member-states, rather than mainly outside—in particular between Northern and Southern Europe but also more generally between inside and outside the Eurozone. It is unclear that a smaller hard core would be able to come to agreement any better than the larger EU membership can.

In addition to these problems are further practical questions such as which member-states are to be included and which excluded, in particular if member-states to be left out might have capacities necessary for the core to succeed in another given area (e.g., Britain in defense and security policy; Sweden on the environment). Moreover, if all member-states are notionally to become members of the core at some later date (in particular if the Euro forms the 'core'), does it make sense to exclude them now? As it is, most member-states belong to some aspect of Eurozone governance. All member-states signed up to the SGP, the European Semester, and the 'Six-Pack' legislation (requiring all members above 60% debt to move toward compliance and be subject to the Macroeconomic Imbalance Procedure); all but the UK and the Czech Republic, to the Treaty on Stability, Coordination, and Governance (the so-called 'Fiscal Compact,' which reinforces the legislation above by making it a treaty as well); 23 member-states, to the 'Euro Plus Pact'(17 eurozone members plus Bulgaria, Denmark, Latvia, Lithuania, Poland, and Romania, focused on improving competitiveness, employment and fiscal consolidation); and 17 (eurozone) member-states to the 'Two Pack' (strengthening provisions of the European Semester and financing mechanisms such as the ESM and the EFSM).[254]

The EU, in short, cannot be made up of one 'hard core'. It does better to be understood as having many overlapping policy clusters, which through their overlap creates a *soft core* encompassing a large majority of member-states.[255] One such soft core is the Eurozone. And all member-states, in any case, are part of the largest policy community—the Single Market.

The danger for the EU, in particular given the Eurozone crisis, is *differentiated disintegration*. The best way to avoid this is on-going *differentiated integration*, which means that the heterogeneity of EU member-states' economies and polities is recognized as at the basis of European integration. But this still leaves the question of how to construct a fully democratic European Union, that is, one that can be legitimized in terms of its output

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[251] E.g., the Glienicker group (2013), Eiffel group (2014), Future of Europe initiative (2012), President Hollande (2013)

[252] I like to call the EU a 'region-state,' as a regional union of member-state nations in which the creative tension between the supranational Union and its member-states ensures both ever-increasing regional integration and ever-continuing national differentiation--Schmidt (2006).

[253] See Tocci 2014.

[254] Tocci 2014.

[255] Schmidt 2006.

performance, input responsiveness, and throughput quality. My preliminary suggestion is that the EU needs to have one set of institutions, that all these institutions require greater legitimacy not only on their own but also in their interactions, and that deeper integration must at the same time allow for greater differentiation and decentralization.

But how then can we conceive of a reset of European economic governance within and beyond the Eurozone? How does the EU get beyond 'governing by the rules' and 'ruling by the numbers?' The reinterpretations of the rules that have already led to a more politicized Council, a potentially more autonomous because doubly accountable Commission, a more empowered EP, and an ECB acting akin to an LOLR suggest the beginning of the way beyond rules-based governance. The recommendations for more policies promising economic and social solidarity would add to this. But more coordinated EU economic governance is also necessary. With a more decentralized European Semester, the existing EU-wide system of member-state budget development and oversight adds bottom-up processes to top-down ones. But the top-down processes could and should also be reformed. They need not remain stuck with the numbers-targeting rules.

Instead of speaking and/or acting as if the rules and numbers are set in stone, they should be understood as general guidelines—which is what they actually have become in practice. The specific targets could therefore be revised upward or downward in yearly budgetary discussions of what the EU economy as a whole requires to become and/or remain healthy. This has actually already started informally, with the shift away from the insistence on austerity to growth and investment, beginning in 2014 in the Council and contained in the Commission's Annual Growth Survey of 2015. But it could be formalized as a yearly exercise, in which the Commission could make recommendations based on ECB forecasts of the needed inflation rate in consultation with the decentralized National Semester Councils of the member-states, to be then deliberated in the Council—among Eurozone and non-Eurozone member-states alike—with the recommendations then considered in the EP in consultation with national parliaments. Such an EU-wide system of budgetary coordination would thus come closer to an EU-level economic governance in tune with the real changes in national and EU economies, responsive to changing realities and more open to the needs of European member-states' heterogeneous economies

# CONCLUSION

Before considering specific conclusions, it is perhaps useful to step back for a moment to think about the major transformations that have occurred over the past half-century in the state and its relationship to national political economies and democracy, in order to understand the challenges facing the EU today, in particular in light of the current crisis. The nature of the state at the supranational level is quite different from that of the nation-state not only in terms of differences in the exercise of power but also in terms of its framing of citizen's lives. If the nation-state in the 20th century can be seen as increasingly 'caging' citizens, then Europeanization, much like globalization, could be seen as a kind of 'de-caging'.[256] The difference between the two forces is that globalization has remained a force for opening up the nation-state, with comparatively little reregulation at the international level (despite being highly necessary in areas such as finance or the environment). In contrast, Europeanization has re-enclosed citizens in a larger whole in a wide range of areas. This could be seen as liberating citizens from the constraints of their national state, e.g., through borderless travel, protections in terms of work conditions and human rights across borders, and so on. But it could also be seen as further constraining citizens through a more rigid kind of EU re-caging, given the emphasis on 'norms' and rule of law and, in the Eurozone crisis, on EU rules-based requirements with regard to national spending patterns, in particular where they have constrained citizens' social benefits and labor protections.[257]

Most problematic for the EU is that today it could very well be seen as an extreme example of Rodrik's trilemma.[258] For Rodrik, countries under conditions of hyper-globalization must choose between abandoning either national sovereignty or national democracy. In the hyper-Europeanization of Eurozone governance, countries risk giving up national democracy along with their sovereignty.

Thirty years ago, when national economies were largely controlled by national governments, the spheres of capitalism and democracy were seemingly co-terminus. Today, capitalism has become European (and global) while democracy remains local. Moreover, the national state is no longer the central focus of democracy. It has become denationalized and dispersed, as decision-making has moved upwards to international and (supra-national) regional bodies; downwards to (sub-national) regional governments, corporate actors and NGOs; and sideways to regulatory agencies, public/private partnerships, and self-regulatory bodies.[259] This is a challenge to traditional views of democracy and legitimacy as situated at the level of the nation-state, in particular when decision-making moves upwards, outside the confines of the nation-state. And for European member-states, that democratic challenge is compounded by the presence of the EU as intermediary layer between them and the global.[260]

This raises the question of how to reconcile the EU's member-states with the challenges to sovereignty, and what to do about democracy, especially at a time of increasing political volatility related to citizen dissatisfaction with and disaffection from current governing arrangements and policies at EU and national levels. With democratic legitimacy in the EU split between national input and EU output and throughput, more needs to be done to ensure that citizens have more say over output policies via greater EU and national level input politics as well as greater access to throughput processes. This would suggest that at least part of the answer is greater decentralization in a whole range of areas that are now centralized through control by the EU, including and perhaps especially those that have been taken over during the Eurozone crisis. It is certainly the case that common rules and goals are necessary. But when we are considering the complexities of capitalism, where heterogeneity provides comparative advantage, and there are so many different paths to growth, the one-size approach to economic policy via austerity and 'structural reform' is—and has proven to be—a dangerous experiment. What is necessary is to decentralize the exercise of control as much as possible, and thereby to rebuild trust in the EU level by trusting the national level more. Also necessary is to remedy the output performance problems that EU level policy has also engendered for national economies, and to make the throughput governance processes work.

For the short term, what should be clear by now from the overall argument in this paper is that rules are made for reinterpretation, as remedies for one day need to respond to the problems of the next. The EU's institutional actors have recognized this, and have done their best to readjust the rules to meet changing circumstances. But

[256] Mann 2012
[257] See discussion in Schmidt 2009a.
[258] Rodrik 2011.
[259] Bieling 2007
[260] See discussion in Schmidt 2009a.

they have not sufficiently sought to legitimate those reinterpretations publicly, often preferring either to deny or pass over in silence what they have been doing. And in continuing to reinterpret the rules 'by stealth,' in failing to legitimate their reinterpretations, they also close off the possibility of bolder actions that go beyond the current rules, in order to solve the Eurozone crisis in all its dimensions once and for all.

This paper has already made some specific recommendations for short term solutions with regard to how EU actors could proceed, especially in light of their different roles in Eurozone governance and their different modes of interaction—in particular in fast burning as opposed to slow burning crises. The ECB needs to focus on its own output-related legitimacy by concentrating on doing 'whatever it takes' in monetary policy as quasi lender of last resort and as bank supervisor, leaving economic policy orientation, in particular fiscal policy, to more input legitimate actors to debate and take action on with regard to reforms. In short, it needs to focus on continuing to be the 'hero' in monetary policy, and give up the last of its 'ogre'-like pressures on member-states.

The Council needs to get beyond its 'one size fits one' governing mode by building greater input legitimacy through more politicized public debates over the rules, numbers, or other means by which to govern the Eurozone—something that may be facilitated by shifting majorities in the Council. In other words, the Council needs to become a more truly 'deliberative public body,' and overcome the last vestiges of the seeming 'dictatorship' of Germany's 'power of one.'

The EP needs to get some 'size' in Eurozone governance, building on the fact that its elections now anoint the Commission President—and become more of an equal partner, beyond the talking shop to which it has been relegated by its lack of formal role in Eurozone governance. But it needs to do this by also bringing in national parliaments and national citizens into the deliberation process. Overall, Eurozone governance needs to become like most other areas of EU legislation, which means it should mainly use the Community Method for legislation. This would mean giving the EP more 'size,' by being brought into all Eurozone decision-making, while reducing the intergovernmental dominance of the Council in Eurozone governance.

Finally, the European Commission needs to move fully from being perceived as 'Ayaltollahs of Austerity' to 'Ministers of Moderation.' For this, to begin with, it should conceive of itself less as community 'enforcer' and more as 'enabler' or 'advisor,' with more flexible interpretations of the rules and numbers and with better adapted 'structural reforms' focused not on rule-following but on making national political economies work better through more decentralized forms of 'enhancing' supervision. It also needs to be a generator of new innovative ideas for the medium and long-term, as a '*vivier d'idées,'* and for the next time a fast-burning crisis arises. Serving two masters, through its new double accountability—to the EP in addition to the Council—may actually enable the Commission to be a more independent and resourceful institutional leader. Leadership, in other words, is the watchword, even if this means 'leading from behind' by providing the ideas for input-legitimate actors to take up.

The Commission's re-empowerment could be crucial to finding new ways out of the Eurozone crisis, given the importance of technical actors in slow-burning crises to come up with innovative ideas that political actors could take up in the fast-burning moments. It might also make the Commission feel able finally to tell the truth, that it is indeed exercising flexibility in its interpretations of the rules and calculation of the numbers, and to provide legitimizing arguments for why and how it is doing so.

All of this will help the EU continue to muddle through, but it will not solve the main problems that continue to plague the Eurozone zone. In the medium to long-term, the EU needs to devise policies that promote better output performance. This means not only giving up the focus on rules-based, numbers-targeting governance, dropping the mantra of austerity, and redefining structural reform; it also means taking bold actions with regard to member-state debt, whether to mutualize, forgive and/or restructure it, as well as develop other forms of fiscal solidarity, as discussed in the section on output legitimacy. The EU also must develop better linkages between EU and national level representative institutions, and more points of access for citizens in Brussels, to ensure greater responsiveness to citizen input, whether expressed at the national or EU levels. The EU additionally requires throughput processes that work in ways that do not risk being seen as oppressive or biased, let alone incompetent not to mention corrupt. Here, the challenge is not just to go beyond 'governing by the rules and ruling by the numbers' through greater flexibility that also builds in accountability and transparency. In the long term, the challenge is to find new ways of governing the Eurozone that work effectively and respond to the will of the citizens, beyond rules and numbers.

For this, additional institutional reforms are necessary. One suggestion would be to change the nature of Eurozone governance processes by making the related 'treaties' no longer of constitutional status but legislative.

Such downgrading would ensure greater input as well as throughput legitimacy by bringing all Eurozone related laws into the regular political process, to be debated and amended on a regular basis. As for the treaty process itself, instead of the unanimity rule, supermajorities and opt-outs should become the main *modus operandi*. If not these remedies, then other institutional remedies are required to make the EU work in ways that appears more input legitimate to the citizens as it provides better output performance.

The question for today is whether and how the Eurozone, with a new Commission and new institutional leaders, can provide some fresh solutions. Avenues already exist. Debates among political leaders in the Council have produced agreement that growth is to be the focus of economic policy, albeit not to the detriment of stability, and that flexibility is acceptable, so long as it remains with the established rules. The new Commission President has proposed an investment fund and a range of other initiatives. But little in terms of lasting solutions providing for deeper integration has been introduced into official discussions.

The new realities as of 2015 may offer new opportunities to break the institutional impasse. The inauguration of new institutional leaders, in particular with a new Commission headed by the leader of the newly elected majority in the EP, is promising also with regard to restoring the institutional balance in the EU as a whole. The politicization of Council meetings suggests that it is becoming more of a deliberative political body, and this gives hope for it becoming more input legitimate in a very general way. Not so much as a representative body but as something beyond the traditional bargaining arena of treaty organizations into a forum of discussion and deliberation which serves to legitimate decisions to the public even when they might not approve of the compromises.

The current Greek crisis could itself also present a new opportunity to solve the EU's Eurozone Crisis. New negotiations on Greek debt, and the danger of Grexit have come to constitute a renewed fast-burning crisis that has helped concentrate minds. The question is how to resolve this particular crisis in a win-win manner. The only way out is to take the high road, and to offer an overall way out of crisis for all member-states. But to do this is to move toward deeper economic integration and some more quasi-'federal' solutions. As I finalize this paper, an agreement on Greece still hangs in abeyance.

These are not dangerous times yet, but nationalisms are rising, putting increasing pressures on member-state politics. There is still a window to respond—but time is short. As the crisis continues and disillusionment sets in, the negative forces will become increasingly difficult to reverse. It will become harder and harder to resolve the crisis with innovative ideas because polarization will increase, not decrease. EU institutional actors need to seize the moment. And for a beginning, they need to recognize that while the reinterpretation of the rules by stealth may have been useful up until now, it is no longer. And it is ultimately most counterproductive for Commission itself—which risks coming to be seen as the embodiment of all that is wrong with the EU.

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