

University of Twente  
Department of Political Science and Research Methods

Supervisor: Dr. Rik de Ruiter

**THE ROLE OF NATIONAL PARLIAMENTS  
IN THE OPEN METHOD OF COORDINATION**

Student: Stefan Becker  
Student number: 0176524

Address:  
Im Fuchsloch 20  
32584 Löhne  
Germany

Contact:  
+ 49 5732 81207  
+ 49 177 9356663  
beeckeer@gmail.com

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## 1 Introduction: Research aims and context

At the turn of the millennium, so-called new modes of governance<sup>1</sup> appeared to be the panacea for most problems that have befallen the European Union (EU). Guided by the principles of voluntarism, subsidiarity and inclusion of further actors (Heritier 2002, 3), these instruments were thought to ameliorate the deficiencies of traditional EU law-making in terms of both efficiency and legitimacy. In its White Paper on European governance, the Commission (2001, 4) exemplarily argued that the »Union must renew the Community method by following a less top-down approach and complementing its policy tools more effectively with non-legislative instruments«. At the same time, literature on new modes of governance grew exponentially, mostly raising high expectations. In this »flurry of analyses« (Citi & Rhodes 2007, 4), there is one instrument that attracts particular scholarly attention: the Open Method of Coordination (OMC). In its most basic sense, this method can be considered a »flexible instrument, leaving it to the Member States to implement coordination defined at European level and so respecting the diversity of national systems while introducing some degree of continuity between Community and national arrangements« (Commission 2002, 213).

What is remarkable is that the vast debate on the OMC has so far paid only marginal attention to national parliaments. Does this mean that national parliaments are irrelevant to the logic of open coordination? Or is it rather their practical involvement that is insignificant? This thesis seeks to delve into these questions. It sets out to examine the role of national parliaments in the OMC in both theory and practice. For this purpose, it first tries to determine whether there is a need for their participation:

*(a) Should national parliaments play a role in the OMC?*

In answer to this question, Chapter 2 brings forward three interrelated arguments for a prominent role of national parliaments in open coordination. Based on a survey of relevant literature, it is first argued that the OMC suffers from legitimacy deficits which more parliamentary involvement can decrease. Second, it is shown that national legislatures can also help to bridge some effectiveness gaps of open coordination. Third, it is contended that this mode of governance can in turn empower member state parliaments vis-à-vis their governments – provided that legislators take the OMC seriously. This chapter concludes by identifying different opportunities for parliamentary involvement that result from the theory of open coordination and linking them to the arguments. Two of these opportunities are then examined in the empirical part:

*(b) To what extent do national parliaments play a role in practice?*

Regarding the actual involvement in OMC processes, Chapter 3 predominantly focuses on the parliamentary ownership of National Reform Programs. It also hints at the use of respective outputs (such as guidelines, recommendations and Joint Reports) in these institutions. In so doing, this thesis covers only a part of the story; yet both measures deliver some valuable insight into the role national parliaments currently play in the OMC. General evidence from Europe and a case study on the involvement of the German parliament in the European Employment Strategy<sup>2</sup> show that – at least in these two cases – they now fall short of what they could and should do in open coordination.

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<sup>1</sup> In fact, most of these modes are not new. Regarding the Open Method of Coordination, Schäfer (2005) provides a detailed genesis of older coordination procedures in the EU, IMF and OECD.

<sup>2</sup> Both case study choices are argued for in section 3.

The relevance of this thesis arises, on the one hand, from said research deficits. On the other hand, there is growing disillusionment with open coordination which necessitates rethinking its current *modus operandi*. Initially designed as an employment policy instrument in 1997, the OMC was three years later adopted to help attain the Lisbon Strategy goal of the EU becoming »the most dynamic and competitive knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion« (European Council 2000, point 5).<sup>3</sup> Given that the EU has no competences for the policy areas in question, the Lisbon Strategy necessitates better coordination of individual member state action. As envisaged by the European Council, this was to be implemented by:

- »Fixing guidelines for the Union combined with specific timetables for achieving the goals which they set in the short, medium and long term;
- establishing, where appropriate, quantitative and qualitative indicators and benchmarks against the best in the world and tailored to the needs of different Member States and sectors as a means of comparing best practices;
- translating these European guidelines into national and regional policies by setting specific targets and adopting measures, taking into account national and regional differences;
- periodic monitoring, evaluation and peer review organised as mutual learning processes« (European Council 2000, point 37).

Several procedures have by now emerged from this blueprint, some of which go beyond the Lisbon Strategy's scope. Although most of them are commonly referred to as open coordination, there are actually as many different procedures as there are fields of application (see section 3.1.1). While it is important to account for this empirical diversity, the theoretical debate on »the« OMC also remains relevant as well. After all, the established coordination procedures are still evolving while others, such as in the field of cultural policy, are in the pipeline.<sup>4</sup> Discussing the theory of open coordination therefore implies examining the potential of these ongoing procedures.

According to most early contributions, their potential seemed almost unlimited: The OMC was thought to overcome stalemates in the integration process by introducing an innovative alternative to the community method; to enhance multi-level governance by better integrating sub-national entities; and to ease the democratic deficit by fostering stakeholder participation (for an overview of expectations, see Borrás and Jacobsson 2004, 185-187). The debate became more balanced after a few years of practice, as it turned from theory to empiricism. While there is still a considerable amount of positive reviews, the number of critical assessments is growing (for one of the most ardent pleas against the OMC, see Hatzopoulos 2007). While the first skeptical accounts have largely focused on the limited effectiveness of open coordination, by now more and more questions arise regarding its legitimacy (e.g. Benz 2007, Büchs 2008). Research has, for instance, shown that the OMC is actually not that open when it comes to participation (de la Porte & Pochet 2005, Smismans 2008) or transparency (de la Porte & Nanz 2004, Radulova 2007). Contrary to the initial enthusiasm, this new mode of governance therefore faces the same problems as traditional EU law-making as regards efficiency and legitimacy. As the following chapter shows, national parliaments can help to solve these problems and benefit from open coordination at the same time.

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<sup>3</sup> In June 2001, the Gothenburg European Council further added an environmental pillar.

<sup>4</sup> For the European Agenda for Culture, see COM/2007/0242.

## 2 National parliaments in the OMC: Why bother?

As mentioned above, the scholarly debate on open coordination has so far only tentatively touched upon the role of national parliaments. By synthesizing the literature that directly or indirectly deals with this topic, the following section argues that these institutions should be taken seriously. To this end, three interrelated arguments for more parliamentary involvement are developed against the background of three common criticisms against the OMC: That it lacks legitimacy, is ineffective and/or triggers deparliamentarization.

### 2.1 The legitimacy argument

The EU's »mixed polity« (Wessels 1996, 69) has already posed serious challenges to hitherto common definitions of legitimacy and strategies to improve it.<sup>5</sup> Given the peculiar nature of the OMC as some kind of third way between intergovernmentalism and supranationalism,<sup>6</sup> any inquiry into its legitimacy must therefore be based upon particular conceptual clarity. This chapter focuses on the normative justification of open coordination. In doing so, it deliberately neglects the question of legality, i.e. conformity with the law.<sup>7</sup> It does also postpone the examination of acceptance and compliance, empirical notions of legitimacy (Beetham 1991; Wimmel 2008, 6-9).<sup>8</sup> These measures, within the OMC rather related to governments and parliaments than actual citizens, are partly taken up in the empirical part of the thesis. For now, open coordination is evaluated against normative theory. Yet before elaborating on the yardsticks applied, it is necessary to ascertain whether this mode of governance has to be legitimated in the first place.

#### 2.1.1 The need to legitimate soft law and open coordination

As outlined in the introduction, the bulk of contributions on the OMC has focused on its effectiveness, intentionally ignoring or postponing a debate on its democratic quality. And it is indeed a valid question why to challenge the legitimacy of an instrument that is »designed to *help* Member States to progressively develop their own policies« (European Council 2000, point 37, emphasis added). Among those opinions that deny the need for legitimating soft modes of governance<sup>9</sup>, Borrás and Conzelmann (2007, 533-534) report on

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<sup>5</sup> See for example the »legitimacy trilemma« proposed by Höreth (1999).

<sup>6</sup> »While the cooperation is formally intergovernmental, there are supranational elements (cf. QMV vote on recommendations and guidelines and the role of the Commission as an initiator) indicating a new combination of domestic policy-making and European level cooperation« (Jacobsson 2002, 12).

<sup>7</sup> This omission does not mean that this aspect is insignificant. Currently, most OMCs have thin or non-existent treaty bases (the prominent exception being the European Employment Strategy, see next section). If eventually ratified, the Lisbon Treaty would introduce identical frameworks for open coordination in four policy areas: Social policy (Art. 156 TFEU), public health (Art. 168 (2) TFEU), industry (Art. 173 (2) TFEU) as well as research and technology development (Art. 181 (2) TFEU). However, these frameworks fall short of both various criticisms passed on the OMC and its actual implementation (see e.g. the final report of the European Convention Working Group on Social Europe, CONV 516/1/03). At the same time, a »generic provision« defining the basic principles and limits of open coordination (De Búrca & Zeitlin 2003, 3) – and actually calling it by its name – failed to find a way into the treaty. The most important allegations regarding the legal legitimacy of the OMC therefore remain.

<sup>8</sup> The authors cited stand for the categorization, not the legitimacy concepts themselves. These go back to the works of David Easton or Max Weber (in the case of acceptance and compliance). Other authors classify differently, for example by subsuming legality under the throughput dimension of normative justification (Holzhacker 2007, 259).

<sup>9</sup> According to the authors, *soft modes of governance* are »based on voluntary and non-sanctioning forms of public action, where state and non-state actors interact in extensive

two main arguments: First, critical observers note that these modes do not produce binding laws and, following Easton (1953, 129), can thus not be considered to authoritatively allocate values for the whole society. Second, echoing Majone's (1996) notion of a European »regulatory state«, they claim that these instruments merely provide policy solutions in a depoliticized and non-partisan fashion.

Regarding the former argument, the OMC does in fact not compel member states to take a certain course of action as it does not feature formal sanction mechanisms in cases of non-compliance with guidelines or recommendations. Neither the Commission nor the European Court of Justice can prosecute and punish national defiance.<sup>10</sup> But the non-binding and voluntary nature of the OMC does not necessarily mean that it is without effect. Instead of a legal logic it follows a political one: While policy convergence through (gradual) harmonization is ruled out, open coordination is designed to provoke changes on the cognitive level by deliberation and competition. Its potential impact on national policy-making is therefore not direct but subtle. In the end, the OMC might promote »[c]ognitive convergence« which »refers to the identification of a common set of beliefs about the main problems and the causal mechanisms at work in a policy area« (Radaelli 2003, 45). It goes without saying that empirical evidence for this theoretical promise is rare and contested<sup>11</sup>, albeit not completely absent. Based on a collection of case studies, Zeitlin (2005, 451), for example, reasons that the OMC has »contributed to broad shifts in national policy orientation and thinking«. Granted that open coordination has such a »framing effect« (López-Santana 2006, 481) on national policy-making, it does require legitimation. The more so as the second objection is much weaker than the first – at least in case of the OMC: By no means does it solely concern Pareto-improving policies. The EU Social Protection and Social Inclusion Process and the European Employment Strategy are prominent cases in point. Both can very well have redistributive effects, if they are effective (Tsakatika 2007, 550).

### **2.1.2 Why national parliaments should contribute**

Assuming the need to legitimate open coordination, the question of appropriate avenues arises. Every answer depends on the underlying theory of democracy: Claims for more parliamentary involvement are usually based on notions of liberal democracy whose »ideal mode of decision and policy making can be conceived as institutionalizing the aggregation of individual preferences, which is essentially fulfilled by voting procedures within the framework of representative legislatures« (Auberger & Iszkowski 2007, 277). From this perspective, modes of governance that bypass this framework of legislatures would be considered undemocratic.

A closer look at the institutional architecture of open coordination reveals that there is no specific role intended for directly elected representatives. At supranational level, the European Parliament (EP) is largely excluded from the decision-making process (Borrás & Jacobsson 2004,

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networks to solve complex social problems« (Borrás and Conzelmann (2007, 531). This umbrella term bears striking resemblance to the *new modes of governance* mentioned above.

<sup>10</sup> Currently, the Court plays virtually no role in open coordination. Hatzopoulos (2007, 335), however, argues that it *could* refer to OMC objectives in its decisions. Such a decision would certainly add another burden to the legitimacy of open coordination.

<sup>11</sup> Contested insofar as measuring this effect is an almost impossible exercise. Most contributions (e.g. Mosher and Trubek 2003 for the EES) have so far relied on official documents in order to assess domestic impacts, accepting biases in national reporting. Yet even if non-objectivity of the main source could be resolved, there are still several explanatory variables that may be responsible for rethinking policies in general and cognitive convergence in particular. A chain of cause and effect is therefore hard to establish (Hartlapp 2006, 8-9).

199); in most cases it is simply kept informed. »At what stage of the procedure, to what effect, how long the EP will be allowed to reflect for, how its opinion shall be taken into account, whom should the EP committees contact in order to enquire further into the national reports, are all issues to which no clear answer exists« (Hatzopoulos 2007, 327). The European Employment Strategy is a prominent exception: According to Art. 128 (2) TEC, the EP has to be consulted when drawing up employment guidelines. In practice, however, the EP (e.g. 2003, 15) has frequently called for its role to be »clarified and enhanced«, inter alia calling into question the extent to which its views are taken into account.

And even in this case, there is no treaty provision regarding the role of national parliaments. Their involvement therefore solely depends on legal and political circumstances at member state level. European institutions have, however, frequently made clear that the OMC should involve national legislatures. The claim »for increased involvement of national parliaments to provide democratic control and legitimisation of the national policies adopted under the OMC« (Commission 2002, 233) already emanated from the preparatory work for the White Paper on European governance published in 2001. In the course of the Lisbon Strategy's mid-term review in 2005, the Commission (2005, 31) renewed the appeal for stronger parliamentary involvement in the member states, following the tenor of the Employment Taskforce report: »scrutiny should be real and approval more than a rubber-stamping exercise« (Commission 2003, 58). The same concern, more »influence and responsibility« for national parliaments, has also been expressed by the EP (2003, 7).

These normative claims raise the question whether additional parliamentary scrutiny is necessary in the first place. After all, every policy that might in any way be related to open coordination is decided upon in the respective domestic political system, i.e. with legislative approval. The OMC does therefore not directly undermine national parliamentary democracies. However, as Benz (2007, 516) notes, »the real challenge parliaments are exposed to does not consist in a lack of power [...] but in the asymmetric distribution of information«. Therefore, if parliamentary legitimacy is not perceived as a dichotomous variable based on the sheer existence of veto rights, it can still be enhanced in open coordination. A liberal democratic approach to containing the OMC at member state level could be based on stronger ex ante checks and ex post controls of the government.

In this way, national legislatures could add to accountability, contestation and representation within open coordination. All three criteria are common when assessing democratic quality but at least questionable when it comes to the OMC. Tsakatika (2007, 555), for instance, argues that open coordination »is said to involve horizontal accountability, exercised through greater transparency, peer review and benchmarking«. In theory, governments are thus accountable to their counterparts in fellow member states. According to the author, however, these mechanisms can not replace parliamentary accountability as they are neither public nor comprehensive. Benchmarking and peer review tend to be quite opaque and task-focused processes. Parliaments could instead provide a public forum, in which they »hold the government to account for the acceptability of [general] trade-offs made rather than for the minutiae of policies«. This way, they would additionally »create forms and fora for political contestation« (Borrás & Conzelmann 2007, 541), which are both key to liberal conceptions of democracy but mostly absent in EU politics (Follesdal & Hix 2006). Instead of being a technocratic process that involves few civil servants, open coordination could be politicized by parties discussing its means and ends in plenary debates, while using its output (e.g. Joint Reports) for their political agendas, adding authority to their arguments.

Regarding representation, the basic institutional architecture of open coordination clearly favors functional and bureaucratic modes: representation is thought to be accomplished by involving either functionally differentiated associations (e.g. social partners) or scientific experts. National parliaments could hence strengthen the territorial dimension: Representation »based on territorially organized elections« (Kröger 2007, 569).<sup>12</sup>

At last, parliamentary involvement is also reasonable for improving the democratic legitimacy of open coordination from a deliberative perspective, which stresses »the necessity of an open public debate between free and equal citizens« (Borrás & Conzelmann 2007, 540). By providing additional venues, plenary debates could help to break open opaque decision-making processes and foster the interest of the so far incurious media,<sup>13</sup> as Radulova (2007, 377) argues. The same author adds that this »is also the way in which implementation of the OMC objectives and policy learning can be improved«, which leads over to the second argument for more participation of national parliaments.

## 2.2 The effectiveness argument

At the latest since the mid-term review, it has been foreseen that the quantitative goals set at the Lisbon and Stockholm European Councils will not be reached by 2010 (see Table 1). Although progress has been made since 2000, considerable gaps between ambition and reality remain – even against the background of sound economic growth in the EU over the last eight years. It goes beyond the scope of this thesis to assess the impact of the Lisbon Agenda and open coordination on this development. Instead, according to Mosher and Trubek (2003, 73), the first question when assessing the effectiveness of the OMC should be whether it even influences national policy-making. In other words: Does it meet the claim of *helping* member States to develop their own policies? And if not, where does this mode of governance fail? After introducing the main logics behind open coordination, some of the most prominent problems in practice are presented. On this basis, it is argued why national parliaments can and should bridge some effectiveness gaps in the OMC.

**Table 1** Progress on employment targets (for 2010)

	Target	Current Status <sup>a</sup>	Gap
<b>Overall employment rate</b>	70%	65.4%	4.6%
<b>Female employment rate</b>	60%	58.3%	1.7%
<b>Older<sup>b</sup> people's employment rate</b>	50%	44.7%	5.3%

<sup>a</sup> 2007

<sup>b</sup> aged 55-64

Source: European Commission 2008.

### 2.2.1 Logics behind open coordination: Learning and competition

Revisiting the theoretical promises of open coordination is also instrumental in discussing its effectiveness as regards the ability to promote policy change. In reference to the general procedure, the Lisbon European Council (2000, points 37 and 38) called for a »fully decentralised approach [...] in line with the principle of subsidiarity«. This means, inter alia, indicators and benchmarks

<sup>12</sup> Another way of strengthening the territorial dimension of open coordination would be a balanced inclusion of all entities at a given sub-national level. It goes without saying that this would be a more complicated undertaking than simply involving national parliaments.

<sup>13</sup> As De la Porte and Nanz (2004, 277-278) show, media coverage on the European Employment Strategy has been declining for several years, while for the OMC pensions it is non-existent.



»tailored to the needs of different Member States« and the translation of European guidelines into national policies »while taking into account national and regional differences«. These early promises show that the OMC is designed to go beyond »respecting the autonomy and diversity of each member state« (Citi & Rhodes 2007, 21) – assurances that are common in sensitive areas such as employment or social policy. Instead, in the logic of open coordination »diversity is no longer antagonistic to the European integration project, but a positive asset that can unleash mutual learning and change affecting in a constructive way the overall European project« (Borrás & Jacobsson 2004, 202).

Learning is, however, but one instrument to promote policy change. Following Benz (2007, 511), the basic definition of the OMC provided by the European Council covers two mechanisms of coordination: deliberation and competition.<sup>14</sup> While the former relates to said learning processes among national and regional policy-making communities through monitoring, evaluation and peer review; the latter concerns the actors' incentives to perform better against the background of benchmarking. Put differently, there are two conditions under which national governments are willing to follow voluntary guidelines: »either they can be convinced of the advantage of this policy or they are driven by their interest to succeed in a competition« (ibid.). Both mechanisms deserve some further consideration, before elaborating on how national parliaments fit into their logics – or rather why should.

When it comes to policy learning, open coordination actually seeks to encourage a multitude of learning modes, bringing together different groups of actors in various frameworks. It is out of the scope of this thesis to review the literature on policy learning within the OMC.<sup>15</sup> Instead, it broadly follows Hartlapp's (2006, 5-6 and 13-26) approach to conceptualizing learning in open coordination, according to which there are three distinct modes. First, the OMC fosters *learning through experience* by way of guidelines, recommendations and indicators. These theoretically allows for more systematic evaluation and hence improve the national policy-makers' state of information. Second, open coordination encourages *learning from others*, especially in peer review mechanisms. Through direct exchange of information among the member states, best practices are identified and emulated. Third and last, the OMC seeks to stimulate *learning with others*. National policy-makers may learn either with their equivalents from other member states or with actors from their own political system.

Policy change through competition is easier to conceptualize (Benz 2007, 512). Against the background of common objectives, benchmarking provides the framework in which national governments independently try to achieve the best performance. Such endeavors could also be interpreted as learning in that policy-makers learn from others how to make more successful policies. However, the main impetus is coercion; not through formalized sanction mechanisms but by means of »naming and shaming«. In theory, this mechanism works in a twofold way. On the one hand, national governments are obliged to improve their performance vis-à-vis their European counterparts – given their commonly agreed objectives. On the other hand, they seek to do so in the light of their constituency as they are dependent on their support.

While these mechanisms of policy change sound proper in theory, they have certain conditions that run counter to the political reality of the EU.

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<sup>14</sup> Benz' classification is rather simple. Trubek and Trubek (2005, 90-94), for instance, differentiate among four different mechanisms: shaming; diffusion through mimesis or discursion; creation of new policy networks; as well as experimentation, deliberation and learning. Both approaches cover about the same mechanisms, albeit with different degrees of abstraction, but Benz' dichotomy is more valuable for the line of argument in this section.

<sup>15</sup> See e.g. Radaelli 2004 or Kerber & Eckardt 2007.

These pitfalls of open coordination are briefly outlined in order to reasonably integrate national parliaments into its mechanisms.

### **2.2.2 Practical problems: Why national parliaments need to step in**

The learning dimension of open coordination suffers from several flaws, as can exemplarily be seen in studies of the European Employment Strategy. First, the character of guidelines and recommendations renders reflexive learning of governments almost impossible. As guidelines are rather results of »interest-driven bargaining than result-open deliberation« (Jobelius 2003, 14) among member states and recommendations principally emanate from National Reform Programs, they hardly expand the policy-makers' state of information (Hartlapp 2006, 13-15). Second, learning from others requires groups of actors with similar problems and, even more important, similar circumstances. In an ever more diverse union this condition is hard to fulfill. As a case study shows, »there is a battery of institutional constraints – in the form of [...] legal, industrial relations, political, social security or tax systems« (Casey & Gold 2005, 30) – when it comes to cross-national learning in peer review mechanisms. Third, learning with others needs compatibility of interests. In the European context, interests may be compatible in the long-run (in terms of ends), but certainly differ in the short run (in terms of means). And, even more than other forms, learning with others requires participation: »The method can work like a radar and find solutions only if it involves many different actors« (Radaelli 2004, 13). Yet the lack of participation in the OMC has been frequently documented (e.g. Jacobsson & Vifell 2007 and Smismans 2008). In the end, the policy-makers' individual rationales for learning are questionable. As Kerber and Eckardt (2007, 236) put it, for the OMC »the most interesting aspects concern (1) the incentives for actors to actively participate in learning about better policies; and (2) the incentives to actually implement such better policies«.

Especially the latter aspect refers to the competitive dimension of open coordination. As hard sanction mechanisms are absent, pressure from either fellow member states or below is thought to induce policy change if governments fail to implement guidelines and recommendations. However, little peer pressure can be expected because obvious scoreboards that rank individual performances are mostly missing.<sup>16</sup> And even if such a frame of reference did exist, member states would be likely to refrain from using it; after all, they could be criticized next. Explicit top-down benchmarking would likewise bring about the same problem as peer reviews: the neglect of national diversity and other systematic factors. Therefore, benchmarking should be better pushed for from below, i.e. by parliaments, parties and voters.

In doing so, parliamentary involvement would not only promote the legitimacy of open coordination but also its effectiveness. As Benz (2007, 519) notes, »[w]hen democratic governments compete, the immediate consequence is a transmission of inter-jurisdictional policy competition into party competition inside each jurisdiction«. This need not necessarily result in policy change; but it raises the odds by applying another layer of pressure on decision-makers. To this end, the simplest way is to expose any divergence between the government's actions and the goals agreed the European level. Naturally, this would mainly be the opposition's task; but also coalition parties could try to use European examples to »advance national bargaining agendas« – a move that has already been seen with social partners (Ashiagbor 2004, 314). At the same time, »standards, targets and indicators can be politicized in

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<sup>16</sup> In the European Employment Strategy, for instance, only the Joint Employment Reports of 2005 and 2006 contained such an explicit scoreboard.

the competitive game, i.e. they are subject to political debates when it comes to the evaluation of national performance« (Benz 2007, 519). Accordingly, while assessing what exactly can be learned from good practices of other countries, parliamentary involvement safeguards the diversity that is to be kept in the OMC as the European Council once promised. This would also bring learning in open coordination closer to the ideal of »context-sensitive lesson-drawing« (Radaelli 2004, 27), i.e. taking into account »holistic components of success and the systemic nature of policies« (Radaelli 2003, 41). Lastly, national parliaments would also strengthen *learning with others*. If currently the OMC is a »narrow, opaque, and technocratic process involving high domestic civil servants and EU officials in a closed policy network« (Zeitlin 2005, 460), more parliamentary involvement could break this process open and provide additional stimuli. Such deliberation would emphasize the »bottom-up« dimension of open coordination (Trubek & Trubek 2005, 91).

### **2.3 The empowerment argument**

After stating why national parliaments should participate in open coordination for the sake of this particular mode of governance, the third and last argument refers to reasons why they should do so for their own benefit. This section is largely based on the discussion led by Duina, Oliver and Raunio. Against the background of a looming deparliamentarization through the OMC, the authors develop a blueprint for national legislatures to compensate for lost powers.

#### **2.3.1 The »deparliamentarization through the OMC« hypothesis**

In the course of European integration, domestic opportunity structures have been shaken up quite frequently, with executive-legislative relations being no exception. As more and more decision-making competencies shifted from the national to the European level, in the member states more and more powers transferred from parliaments to governments. According to Moravcsik (1993, 515), the »institutional structure of the EC strengthens the initiative and influence of national governments by insulating the policy process and generating domestic agenda-setting power«. Yet although they have long been considered »losers« of European integration, by now national legislatures have regained considerable ground.<sup>17</sup> The Amsterdam treaty reform produced the Protocol on the Role of National Parliaments, while these legislatures independently obtained further rights to participate in EU affairs, build up respective capacities and strengthened inter-parliamentary cooperation, especially in the Conference of the European Affairs Committees (Duina & Raunio 2007, 491). The yet-to-be-ratified Lisbon Treaty would also grant further rights for national parliaments, particularly with regard to the subsidiarity check laid down in Article 12 TFEU. In the meantime, however, new challenges have emerged in the form of open coordination. As Borrás and Jacobsson (2004, 197) acknowledge, »the newly established OMC procedures are not neutral, and of course, there are potential winners and losers«.

Following Raunio (2005; 2006), the OMC can be considered a classic example of cooperative federalism: The federal (EU) level defines objectives and monitors progress, while implementation rests with the member states. Raunio argues that similar divisions of labor in fully-fledged federal states have concentrated power in the executive branch at state level, citing Australia and Germany as examples. In the former case, »cooperative federalism has resulted in a proliferation of intergovernmental committees and working

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<sup>17</sup> For an overview of the vast literature on national parliaments see Goetz & Meyer-Sahling 2008. In this context, the term »losers« derives from Maurer & Wessels 2001 (cited therein).

groups« that are closed and opaque. The same is true for Germany, where »extensive intergovernmental cooperation« has produced »a total of over one thousand working groups and committees« (2005, 10). In both cases, state parliaments have frequently voiced complaints about being sidelined, which is why cooperative federalism is also called executive federalism.

Due to its institutional architecture, Raunio considers the OMC as yet another form of executive federalism within the EU, which poses different challenges than the traditional Community method (2006, 130). Compared to EU decision-making processes that produce binding laws, parliaments will find it harder to control and scrutinize their government's actions in open coordination because of its flexible rules and non-transparent procedures. Both parliamentarians and their established scrutiny procedures may be ill-equipped for this new mode of governance. Raunio therefore arrives at the conclusion that in the OMC national legislatures are marginalized in terms of participation.

### **2.3.2 Why national parliaments could still benefit**

When assessing the (potential) relationship of national parliaments and open coordination, Duina and Oliver (2005; 2006) take a different approach. By examining the legislative activities at European level, they generally argue that

»European integration has benefited national parliaments through two specific venues: precedent setting and policy transfer. Through these venues, the EU has helped national parliaments to fulfill their fundamental function of regulating society. Precedent setting has done so by expanding the reach of parliaments, while policy transfer has done so by confirming the viability of those parliaments as regulatory institutions« (2005, 176).

As has been shown in section 2.2, policy transfer through either learning or competition is the main rationale behind open coordination. Duina and Oliver therefore claim that the OMC has »solidified and affirmed national parliaments in their role of regulators in society« (2006, 132). While Raunio emphasizes the lack of *participation*, these authors come to a more balanced conclusion by focusing on the *output* of open coordination.

In later articles, which synthesize the arguments of both sides (e.g. Duina & Raunio 2007), these beneficial effects are specified. On the one hand, the OMC is thought to generate insight and guidance for more successful domestic legislation. This becomes manifest in different elements of open coordination. First, National Reform Programs offer parliaments abounding data on favorable and unfavorable legislative approaches in fellow member states. Second, Joint Reports put this specific information in the broader context of national strategies in the respective policy areas. Third, indicators may point to hitherto neglected issues and serve as yardsticks for future legislative initiatives. Fourth, peer review mechanisms enable direct spread of best practices. In this regard, it is important to note that even if national legislators are not directly involved in all these processes and »do not participate in producing all these documents«, »the resulting information is easily available to them« (Raunio 2007, 10). For this reason, open coordination is not perceived as an institutional zero-sum game, in which winners are always accompanied by losers, but as differently benefiting both the executive and the legislative branch at member state level (Duina & Oliver 2006, 132).

On the other hand, the OMC is seen as providing national parliaments with further grounds for criticizing their governments. By producing comparative data on policies and performances of other member states, it

offers »exceptional (and third-party and thus more ‘objective’) munitions for attacking the executive branch« (Duina & Raunio 2007, 496). If opposition parties seize the opportunity, governments will not be able to dismiss criticism on the basis of irrelevance or bias. The OMC can therefore strengthen the accountability of the executive to the parliament by expanding the latter’s state of information and improving the credibility of their arguments. Sabel and Zeitlin (2007, 9-10) call this potential a »democratizing destabilization effect«:

»The requirement that each national administration justify its choice of rules publicly, in the light of comparable choices by the others, allows traditional political actors, new ones emerging from civil society, and coalitions among these to contest official proposals against the backdrop of much richer information about the range of arguably feasible choices, and better understanding of the argument about their merits, than traditionally available in domestic debate«.

It is obvious that this empowerment argument is similar to the effectiveness logic outlined above. Duina and Raunio relate to both the deliberative and the competitive dimension of open coordination. However, the lines of argument are different in that Benz considers national parliaments valuable instruments for improving the functioning of the OMC, while the others consider the OMC a valuable instrument for improving the functioning of national parliamentary democracy. In the end, both scenarios are compatible; but they currently assume different pre-conditions: While Benz argues that the contemporary state of open coordination clearly favors deliberation at the expense of policy competition, Duina and Raunio claim that parliaments are already able to use OMC outputs for better criticizing their governments. Their reform recommendations therefore differ as well: Benz would like to see the OMC’s institutional architecture revised, as the others put national parliaments in charge first.

## **2.4 Opportunities for (more) parliamentary involvement**

It has been shown that national parliaments are well advised to participate in open coordination for the benefit of both themselves and this new mode of governance. But it has also been shown that, despite the OMC’s implicit promise and respective political claims, the European legal order does not feature specific stipulations regarding the role of national legislatures. Therefore, the question arises what opportunities these institutions have. Needless to say, much depends on national factors – first and foremost the overall entitlement and capability of member state parliaments to scrutinize EU affairs. For this reason, this section limits itself to highlighting the most prominent and promising opportunities that derive from the theory of open coordination, deliberately neglecting further context variables. These options can be identified by dividing the OMC in three broad dimensions: input, throughput and output.<sup>18</sup>

*Input* is understood as participation in decision-making processes. When it comes to national parliaments in open coordination, this primarily concerns the national level.<sup>19</sup> In this arena, National Reform Programs (or Action Plans) are of vital importance. Having in mind their purpose of

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<sup>18</sup> These terms are used idiosyncratically. Instead of being borrowed from other categorizations (e.g. Zürn 1998, 236), they are oriented at the »typical« cycle of open coordination.

<sup>19</sup> Mandating arrangements for the Council meeting that decides on guidelines or objectives are also conceivable, yet unlikely.

»translating« European guidelines into national policies by outlining respective strategies, these documents seem to provide the ideal object of parliamentary scrutiny. While *ex post* control through hearings or debates would boost the legitimacy of open coordination through more accountability and transparency of governmental action, *ex ante* involvement would improve representation and deliberation during the drafting process. In doing so, early parliamentary participation would also add to the effectiveness of these programs. On the one hand, it could safeguard national diversity by fostering context-sensitive approaches. On the other hand, the drafting process represents the perfect opportunity for *learning with others* in domestic frameworks.

*Throughput* is perceived as the implementation of European objectives. In this regard, parliamentary monitoring of progress would keep governments accountable concerning their reform or performance promises made in National Reform Programs. This form of continuous *ex post* scrutiny would therefore also add to both legitimacy and effectiveness of open coordination.

*Output* is understood as the bulk of documents and information that emanates from open coordination: Guidelines, objectives, Joint Reports, recommendations, indicators, peer review and best practices. All these offer opportunities for national legislatures to improve their informational base and hence the control of their governments. By either faming or shaming certain practices, parliaments could put additional pressure on their government to pursue a certain policy. Opposition parties could use recommendations or best practices to improve the credibility of their arguments. At the least, the quality of domestic discussions could increase if parties either use OMC documents to *learn from others* or use the established indicators to individually *learn from experience* that can now be reassessed.

There are therefore numerous options for national parliaments to participate in and benefit from open coordination in theory. However, these »opportunities provided by [...] co-ordination procedures must be perceived as such by actors in order to take effective advantage of them« (Jacobsson & Vifell 2007, 69). The remainder of this thesis examines to what extent national parliaments actually seize these opportunities. For this purpose, it analyzes the parliamentary ownership of National Reform Programs and the use of OMC *outputs*. Yet as the focus is on the former, emphasis lies clearly on the *input* dimension of open coordination.<sup>20</sup>

### **3 National parliaments in the OMC: The empirical record**

The parliaments' role in drafting and adopting National Reform Programs as well as their use of OMC outputs are analyzed following the same pattern: A European overview is followed by a more detailed examination of the German case. While the former sketches the overall degree of involvement, the latter allows for considering (domestic) restrictions and challenges parliaments may face. Regarding the use of outputs, this thesis limits itself to analyzing the European Employment Strategy. The rationale for these case studies is explained first.

#### **3.1. Case study rationale**

##### **3.1.1 The EES: Precursor and template of open coordination**

As mentioned in the introduction, different open coordination procedures evolved from the general framework laid down by Lisbon European Council.

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<sup>20</sup> *Throughput* is only mentioned casually as there is hardly any parliamentary monitoring of implementation progress.

While some fail to meet the core elements, others go far beyond what is explicitly stated. They thus differ in degrees of institutionalization, process cycles and actors involved. In the end, there are as many coordination procedures as there are fields of application. Consistent empirical analyses of *the* OMC are therefore highly impractical and in most cases scholars resort to case studies, from which they more or less cautiously infer conclusions about open coordination in general. More elaborate procedures have naturally attracted most attention in this regard, with two cases standing out: the EU Social Protection and Social Inclusion Process and the European Employment Strategy (EES) (see, for instance, the case studies in Zeitlin & Pochet 2005).

Especially the latter example comes as no surprise: Launched three years earlier, the EES basically served as a blueprint for the OMC as envisaged by the Lisbon European Council and is still widely acknowledged as *the* benchmark of open coordination – at least in terms of institutional prerequisites. Regarding an empirical analysis, there are five factors worth mentioning that distinguish the EES from other procedures: First, it is based on a strong and articulate treaty base (Art. 125–130 TEC). Apart from the macro-economic policy coordination (Art. 99 TEC), all other OMCs are not based on a clause comparable to Art. 128 TEC.<sup>21</sup> It goes without saying that such elaborate treaty provisions have more normative impact than any secondary legislation on which open coordination may be based; member state compliance is therefore likely to be stronger as the perceived salience of employment policy coordination is higher. Second, the EES is currently one of only two OMCs that feature country-specific recommendations (the other one once again being the coordination of macro-economic policy). As pointed out before, these recommendations could at least theoretically prompt further national debates by putting pressure on member state governments.

Third and fourth, the EES features a peer review mechanism (the Mutual Learning Program) and is designed to involve non-governmental actors; both elements set it apart from the aforementioned economic policy coordination. At least in theory, the EES can therefore be considered the most developed OMC. Fifth and last, a trivial but important point: seniority. Although the EES is only three years older than most subsequent open coordination procedures, this difference appears quite significant when taking into account their overall durations of six to ten years. In fact, the coordination of national employment policies has already been put on the European agenda by the Commission's White Paper on growth, competitiveness and employment in 1993.<sup>22</sup> The Essen process initiated about a year later was the first tentative attempt to put this idea into practice.<sup>23</sup> All this accounts to considerable visibility (De Ruiter forthcoming a). It can therefore be argued that member states, or rather their institutions, are much more accustomed and alert to coordination in the field of employment than in other policy areas.<sup>24</sup>

The EES is therefore an appropriate object of analysis for an empirical assessment of the OMC because of its seniority, degree of institutionalization and elaborate procedures. This is also reflected in a study conducted by Laffan and Shaw (2005), who set out to capture all open coordination procedures in operation (see Table 2). Yet it has to be noted that, since their research, other

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<sup>21</sup> And this will not change if the Lisbon Treaty comes into force. See footnote 6.

<sup>22</sup> See COM (93) 700 final.

<sup>23</sup> For a detailed genesis of the EES, see Goetschy 1999.

<sup>24</sup> However, the streamlining of all Lisbon Strategy-related coordination procedures (see below) probably reduced the visibility of the EES.

coordination procedures have been »catching up«. <sup>25</sup> The OMC on education now features national reporting and peer review; coordination of research and development now has guidelines and national reporting as well (De Ruiter forthcoming b). The latter was realized through the Lisbon Strategy review and the subsequent streamlining of all related coordination procedures in 2005. As regards output, however, a focus on the EES remains reasonable because, except for the reporting structure, little has changed.

**Table 2** *Open Methods of Coordination across policy areas (2005)*

Policy area	Objectives	Indicators	Guidelines	NAPs/ NRPs	Recommendations	Benchmarking	Peer review
<b>Employment</b>	X	X	X	X	X	X	X
<b>BEPG</b>	X	X	X	X	X	X	
<b>Social policy</b>	X	X	X	X		X	X
<b>Education</b>	X	X	X			X	
<b>Enterprise</b>	X	X	X			X	
<b>e-Europe</b>	X	X	X			Partial	
<b>R&amp;D</b>	X	X				X	Informal
<b>Regulation</b>		In preparation	Partial	Partial			In preparation
<b>Environment</b>	X	X					
<b>Pensions</b>	X			Strategies		Partial	
<b>Health</b>	X						
<b>Youth</b>	X						
<b>Tourism</b>							
Degree of institutionalization:				Very strong	Strong	Nascent	Weak

Source: Laffan & Shaw 2005, 13-14.

### 3.1.2 Germany: Open coordination in a skeptical environment

Apart from practical reasons, the case study on Germany can also be justified on theoretical grounds. First, it goes without saying that the parliament of the largest member state is an important institution to study. More specifically, both the involvement in and the attention devoted to open coordination by the *Bundestag* and *Bundesrat* can have a signal effect on other member states and their legislatures. Second, the German parliament can be ranked among the legislatures equipped with the strongest influence capabilities in traditional EU law-making, at least from a formal perspective (e.g. Maurer 2002, 344-345). The actual exhaustion of these opportunities notwithstanding, it therefore seems reasonable that its role in the OMC is prominent as well. Third, Germany's parliamentary chambers have both been quite frank when it comes to open coordination. Their positions lie somewhere in between constructive criticism (*Bundestag*) and outright opposition (*Bundesrat*).

On the one hand, the German *Länder* have frequently expressed their suspicion of open coordination on grounds of competence creep. The *Bundesrat* already argued against expanding the OMC to further policy areas in the run-up to the Stockholm European Council in 2001.<sup>26</sup> In one of its

<sup>25</sup> It has also to be noted that some of these procedures, such as in the fields of regulation and tourism, can hardly be considered open coordination if we apply the criteria of the Lisbon European Council. Yet others are still in the making (e.g. culture).

<sup>26</sup> See BR-Drucksache 86/01 (Beschluss).



latest resolutions on the matter,<sup>27</sup> it credited the OMC on social inclusion with centralizing effect and criticized it for softening the established delimitation of competencies among the European, national and sub-national levels. The *Bundesrat* furthermore sees democratic deficits in open coordination; its representative to the European Convention, Erwin Teufel, therefore subscribed to a call for the OMC to »specifically involve national parliaments«.<sup>28</sup>

The position of the *Bundestag* is also critical, yet generally more affirmative.<sup>29</sup> During the European Convention, its representative, Jürgen Meyer, described the OMC as a »valuable« tool that should be used for constructing »social Europe«. But he added that the current intergovernmental nature of open coordination has severe democratic deficits.<sup>30</sup>

Against the background of this skepticism, it seems reasonable that the German chambers of parliament are especially alert to open coordination and thus play a prominent role in these processes. From a more general point of view, it is also interesting to examine how the OMC operates in more hostile environments. After all, this voluntaristic measure can only effectively operate if it is accepted and taken seriously by the member states as a whole.

## **3.2 Parliamentary ownership of National Reform Programs**

### **3.2.1 Patterns across the EU**

In order to assess the overall parliamentary ownership of National Reform Programs (NRPs) in the EU, both the evidence in these documents and the view of national legislatures are taken into account.

#### **3.2.1.1 Evidence in National Reform Programs**

Based on a survey of the NRPs that the (then 25) member states produced for the last three-year cycle of the Lisbon Strategy, Pisani-Ferry and Sapir (2006) analyze the degree of national ownership in open coordination. They conceptualize ownership of NRPs as the sum of the attention devoted by national governments, the amount of respective media coverage as well as the involvement of stakeholders and national parliaments in the design and adoption of these plans. The latter dimension, which is of primary concern here, is operationalized using a four-item scale of parliamentary involvement: 0 = no involvement; 1 = informed; 2 = committee level; 3 = broad involvement/plenary discussion.

Concerning the general ownership of NRPs, the authors arrive at some sobering and some surprising conclusions. Overall, the average ownership index is 5.8 (out of a possible 12). However, there is great diversity among the member states; individual ratings range from scores as low as two (United Kingdom) to as high as eleven (Estonia). The authors additionally detect some systematic patterns. On the one hand, institutions and actors of smaller states participate more actively than their counterparts in larger countries (6.1 versus 4.7).<sup>31</sup> On the other hand, the overall ownership rating for new member states is considerably above the rating for old ones (6.8 and 5.1 respectively). Especially the latter finding may come as a surprise, if one thought the newcomers may need some time to adjust to open coordination.

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<sup>27</sup> BR-Drucksache 498/1/08.

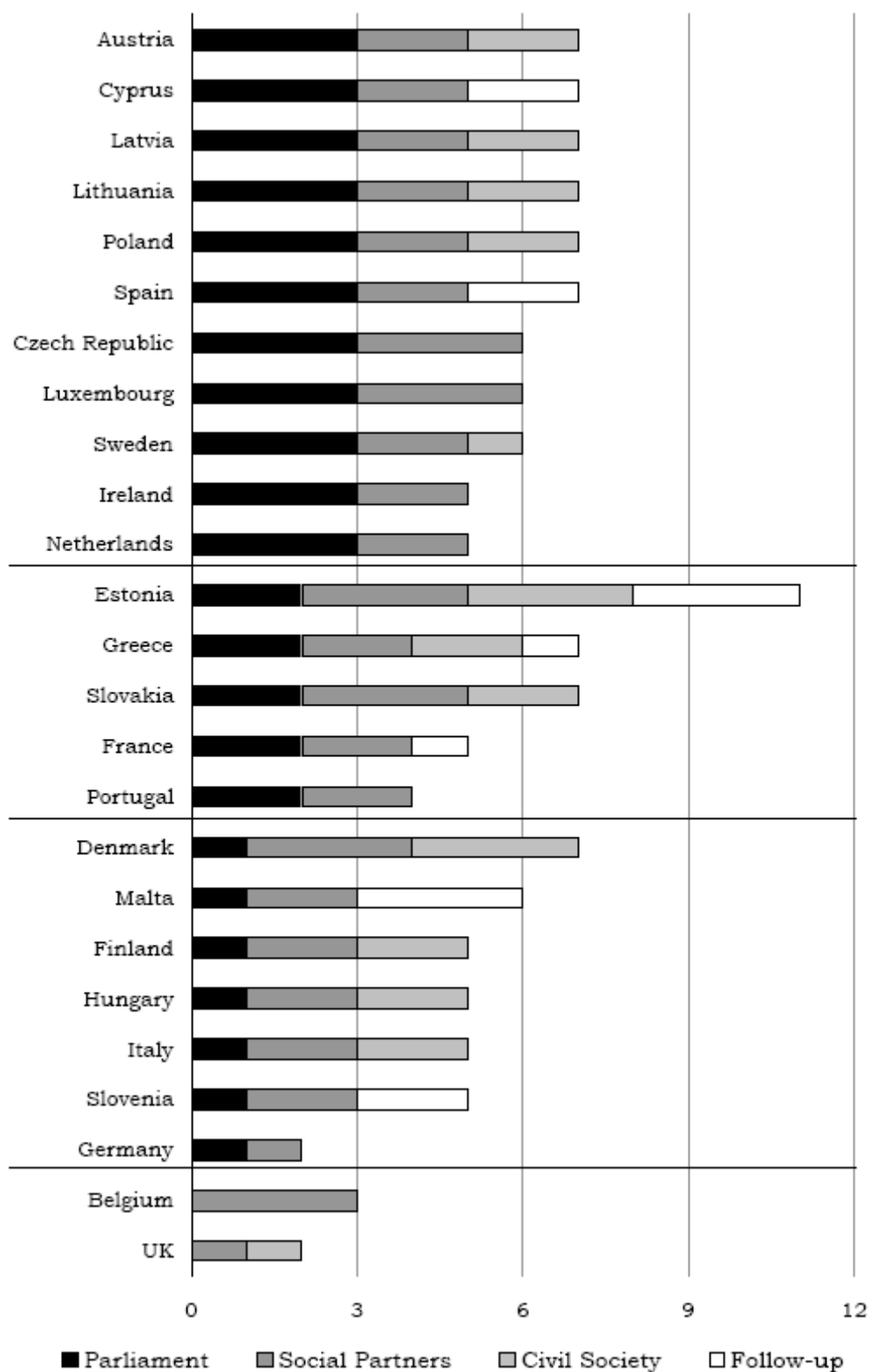
<sup>28</sup> CONV 503/03, 4.

<sup>29</sup> It is obvious that *the* position of the Bundestag is hard to identify, if it even exists.

<sup>30</sup> CONV 535/03, 4.

<sup>31</sup> In this analysis, the group of larger member states consists of Germany, France, the United Kingdom, Italy, Spain and Poland.

**Figure 1** Ownership of National Reform Programs in the EU-25



Source: Based on Pisani-Ferry & Sapir 2006, 20.

When it comes to the involvement of national parliaments, the study's findings suggest that this aspect of ownership is the most developed (see also Figure 1). On average, member state legislatures have an ownership index of 2 (out of possible 3). Not less than eleven parliaments get full marks for their participation in the design and adoption of NRPs. At the other end of the scale, Belgium and the United Kingdom are the only member states in which

governments failed to even inform their legislators. Furthermore, systematic patterns in parliamentary ownership are absent: In all four categories, there are old and new as well as small and large member states. From this perspective, it thus seems as if claims for more parliamentary involvement are somewhat exaggerated.

However, such an assessment may be inaccurate. The available data also allows for a more pessimistic interpretation. From this point of view, nine member state governments did not even engage their parliaments at committee level (apart from the authors, see for this interpretation Tsakatika 2007, 553). What is more, Pisani-Ferry and Sapir's findings may be factually flawed. As deliberate government documents, NRPs can be hardly be considered objective sources (Hartlapp 2006, 9). Their validity may ironically depend on the actual degree of parliamentary scrutiny. But more important than the chances of governmental whitewashing are the levels of measurement. For instance, what does involvement at committee level actually mean?<sup>32</sup> Mere supply of documents to the relevant committees is no evidence of the attention these bodies effectively pay. It is therefore necessary to complement Pisani-Ferry and Sapir's – nonetheless insightful – findings by adding assessments of national parliaments themselves.

### **3.2.1.2 Assessments by national parliaments**

The Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC) offers a comprehensive account of such parliamentary assessments. In preparation for its 37th meeting held in 2007, the COSAC secretariat produced the eighth bi-annual report on the »developments in procedures and practices in the European Union that are relevant to parliamentary scrutiny«, as it is stated in each introduction. The role of national parliaments in the Lisbon Strategy is one of the topics examined in this version. More telling than the report itself (COSAC 2007a) are the answers of all 27 member state parliaments to the questionnaire that was sent out in advance (COSAC 2007b); one of the three questions specifically deals with parliamentary scrutiny of NRPs.<sup>33</sup> Both report and questionnaire provide a picture of parliamentary involvement that differs from Pisani-Ferry and Sapir's analysis outlined above.

However, some methodological remarks are appropriate at this point as well. On the one hand, it seems advisable to be as skeptical about the statements as about the governments' portrayals of parliamentary involvement. Self-assessment may be just as biased – be it positively or negatively. On the other hand, the COSAC questionnaire is relatively open-ended which makes for incoherent answers and hence difficult analysis. While some parliaments give detailed accounts of their role in the Lisbon Strategy, others resort to short or vague answers.<sup>34</sup> This section therefore primarily focuses on some remarkable examples, taking into consideration the findings of Pisani-Ferry and Sapir. In addition, Table 3 shows the 27 parliamentary scrutiny mechanisms concerning NRPs as the differently structured answers to the questionnaire depict them.

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<sup>32</sup> For instance, the case study on Germany will show the differences possible between formal and actual involvement at committee level.

<sup>33</sup> The three questions are: 1) Does your parliament have any influence on the definition of policies and the setting of priorities in the framework of the Lisbon Strategy? In how far is your parliament involved in the so-called "open method of coordination"? 2) Is your parliament involved in the implementation of the Lisbon Strategy, especially with regard to the establishment of the National Reform Programmes and the related national Progress Reports? 3) Did the revision of the Lisbon Strategy in 2005 have any influence on the role and participation of your parliament in the process?

<sup>34</sup> For shorter and longer examples, see the cases discussed below, especially Latvia and Spain.

Regarding the overall state of involvement, the contribution adopted at the respective COSAC meeting declares that »national parliaments are [...] actively involved in the implementation of the Lisbon Strategy« (COSAC 2007c). And indeed, based on an analysis of the individual answers provided by the member state legislatures, the report prepared for this meeting comes to a similarly positive conclusion:

»With regard to the implementation of the Lisbon Strategy, the majority of national parliaments report that the national reform programmes and the national progress reports are subject to parliamentary scrutiny or at least subject to parliamentary debate. The bodies involved are the EU Committee, subject committees, the plenary or a mixture of all three. In some cases government ministers are questioned during these parliamentary activities. In most cases national parliaments forward resolutions or recommendations to their governments« (COSAC 2007a).

This general assessment is followed by an exposition of remarkable examples (see below). While this fairly positive appraisal is not diametrically opposed to a favorable interpretation of Pisani-Ferry and Sapir's findings, it does contain some notable discrepancies. Furthermore, some individual answers to the questionnaire significantly deviate from this general evaluation.

The first example in which previous findings and the perception of the parliament concerned differ is Cyprus. According to the ranking in Figure 1, the *Vouli ton Antiprosópon* is broadly involved in the drafting and adoption of NRPs. In contrast, the body's self-assessment is more pessimistic: It »is not involved in the Open Method of Coordination processes« and describes its role as »limited regarding the preparation« of NRPs (COSAC 2007b). The European Affairs Committee (EAC) as well as the Financial and Budgetary Committee are simply kept informed and may express non-binding views. Much more involved are political parties which are invited to a wider discussion with respective ministries as well as social partners and delegates from the private sector. However, as this discussion takes place *after* the final draft is completed, this seems to be yet another channel used by the government to keep other actors informed. Another, and because of its size probably more important, example is Spain. While Pisani-Ferry and Sapir rank its parliamentary involvement in the strongest group, the *Cortes Generales*, which consists of Congress and Senate, has a different view of the matter: »The definition of policies related to the Lisbon Strategy as well as their implementation fall broadly within the scope of the Government's right of initiative in the conduct of domestic and European policy« (ibid., 136). This statement constitutes the whole answer to the question, which is additionally suggestive of low parliamentary involvement in drafting and implementing Spanish NRPs. Lastly, Finland is a case in which parliamentary self-assessment provides insights that run counter the previous findings in the opposite way. According to the *Eduskunta*, its involvement is much stronger than the ranking above suggests: »Eight sectoral committees of the Parliament issued opinions on the National Finnish Reform Programme 2005-2008. These were subsumed into the Grand Committee's statement that was normative for the government's policy« (ibid., 42). If so, the Finish parliament would be strongest concerning parliamentary ownership of NRPs – a circumstance that an analysis of these documents failed to detect.<sup>35</sup>

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<sup>35</sup> It would, however, not be too surprising as the »Eduskunta has gone on record with criticism of the "open method of coordination", because of problems related to transparency and political and juridical accountability for actions taken in this sphere« (COSAC 2007b, 41).

But there are also several examples that underscore previous findings. These mostly concern cases of strong involvement. For example, aside from the common hearings at committee level, remarkable mechanisms of parliamentary scrutiny have emerged in Latvia and Lithuania. In the former, selected members of the *Saeima* supervise the implementation of the Lisbon Strategy in a body specifically designed for this purpose. The participants in this Lisbon Strategy Scrutiny Council chaired by the Latvian Minister of Economics are recruited from the relevant sectoral committees, i.e. economic affairs; education, culture and science; as well as social and employment (ibid., 80). In Lithuania, members of the *Seimas* even take part in drafting NRPs. They are doing so in two ways. First, three EAC members, representing different parties, participate in the interdepartmental Commission for the Monitoring of the Drafting and Implementation of the National Lisbon Strategy Implementation Program. Second, several *Seimas* members participate in the activities of the Lisbon Strategy task force, joining representatives from government, business and science (ibid., 84-85).

Latvia and Lithuania are the only member states in which the Lisbon Strategy triggered institutional adaptation; all other parliaments make use of their ordinary procedural frameworks. While this finding is remarkable, it is still not conclusive for the overall involvement in drafting and adopting NRPs.

**Table 3** *Parliamentary scrutiny of National Reform Programs*

Austria	Debates on Lisbon Strategy at plenary and committee level
Belgium	Hearing of responsible ministers in House of Representatives and Senate
Bulgaria	Hearing of responsible ministers in EAC
Czech Republic	Hearing of responsible ministers in EAC; discussion in the same body
Cyprus	EAC and financial committee are informed by government
Denmark	EAC is informed by government
Estonia	Discussion in EAC and sectoral committees
Finland	Sectoral committees issue opinions »normative« for government's policy
France	Hearing of responsible minister in House of Representatives
Germany	Parliamentary groups informed
Greece	Discussion in EAC and economic committee; monitoring by EAC
Hungary	Hearing of responsible government representatives in EAC
Ireland	Monitoring by EAC
Italy	Plenary hearing of responsible government representatives
Latvia	Monitoring by EAC; representatives of committees are part of Scrutiny Council
Lithuania	Members of Parliament take part in drafting; discussion in EAC
Luxembourg	Plenary hearing of responsible government representatives
Malta	Debate on Lisbon Strategy at plenary and committee level
Netherlands	Hearing of responsible ministers in House of Representatives
Poland	Debate at plenary level in the House of Representative
Portugal	Parliament is informed and monitors implementation
Romania	Parliament is consulted; EAC monitors implementation
Slovakia	Discussion at committee level
Slovenia	Discussion at committee level; adoption of resolutions
Spain	Parliament not involved
Sweden	Meeting of government representatives and EAC as well as sectoral committees
UK	Parliament not involved

Source: COSAC 2007b.

Note: If it is possible to clearly differentiate, only the »harder« scrutiny mechanisms are listed.

Overall, ex post scrutiny is the predominant modus operandi when it comes to NRPs. It is realized either through plenary debates or discussions at committee level. Both procedures have advantages: Plenary debates are more transparent and may improve the publicity of these documents. This, in turn, may trigger more media attention. Then again, scrutiny at committee level may be more effective in that different groups of policy experts discuss the diversity of NRPs in much more detail. However, both mechanisms seem instrumental in making the government more accountable. For this purpose, it would also be helpful to establish continuous monitoring procedures. Only few parliaments specifically mention such procedures, while some others may imply them by referring to hearings. Yet regarding effectiveness, it seems that progress would be more likely if NRPs and their implementation are specifically kept on the agenda. When it comes to ex ante involvement, there is only one parliament that explicitly participates in the drafting process.

Taking into consideration the methodological flaws outlined above, these findings can only be of tentative character. And in some cases, they are quite cursory. »Discussion at committee level« has the same explanatory power as Pisani-Ferry and Sapir's category of »involvement at committee level«. Against this background, an in-depth analysis of one example is instrumental in complementing these preliminary findings. The following case study on Germany provides detailed information on how the parliament of the largest EU member state participates in drafting and adopting NRPs. It also hints at some explanatory variables for parliamentary involvement.

### **3.2.2 The German case**

This section examines the role of the *Bundestag* first, with the *Bundesrat* following. As the other parts of the thesis, this case study draws from official documents (of the German parliament) as well as previous studies. In addition, nine qualitative interviews with parliament representatives were conducted.<sup>36</sup>

For assessing the scrutiny of National Reform Programs at committee level in the *Bundestag*, representatives from its administration and the parties were interviewed. Given the focus on the European Employment Strategy, the selection was deliberately narrowed down to three committees: Affairs of the European Union, Labour and Social Affairs as well as Economics and Technology. A total of 18 potential interviewees were contacted: Three representatives from the committee secretariats and fifteen party employees who are concerned with the respective committees' work. In the end, six agreed to an interview, while three others frankly stated that their committee or party does not bother with National Reform Programs or the output of open coordination. The overall response rate for the *Bundestag* was therefore 50%. Regarding the *Bundesrat* involvement, a representative from the secretariat of the Committee on European Union Questions was contacted. Additionally, interviews were requested from two state representatives concerned with the informal involvement of the *Länder* in the drafting of National Reform Programs. All three agreed. The interviews were conducted until the end of February 2009 and recorded with written notes. They were semi-structured, using six questions<sup>37</sup> as broad guidelines.

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<sup>36</sup> For a key to the interviews, see section 7.

<sup>37</sup> Welchen Stellenwert und Zeitaufwand nimmt die Beratung nationaler Reformprogramme der europäischen Beschäftigungspolitik innerhalb der Ausschussarbeit ein? Auf welche Informationsquellen wird dabei zurückgegriffen? Wie funktioniert die Zusammenarbeit zwischen dem jeweils federführenden und den beratenden Ausschüsse? Wie häufig und intensiv beschäftigen sich die Ausschussmitglieder individuell mit der Beschäftigungsstrategie? Wie beurteilen sie deren Wirkung? In welchem Maße wird in der Ausschussarbeit auf Ergebnisse der Beschäftigungsstrategie (z.B. Empfehlungen) Bezug genommen?

The analysis of each chamber is preceded by a brief outline of their respective role in Germany's European policy. These paragraphs are to put the following findings in context.

### 3.2.2.1 Bundestag

Parallel to the process of European integration, the involvement of the *Bundestag* in European affairs has changed significantly after the ratification of the Maastricht Treaty in 1992,<sup>38</sup> when its role was constitutionalized. Revised Article 23 of the German Basic Law (*Grundgesetz*, GG) now regulates the general conditions of German EU policy. According to section 2 of this article, the Bundestag »shall participate in matters concerning the European Union« while the »Federal Government shall keep the Bundestag [...] informed, comprehensively and at the earliest possible time«. Section 3 of the same article stipulates that the »Federal Government shall provide the Bundestag with an opportunity to state its position« and »shall take the position of the Bundestag into account during the negotiations«. Furthermore, Article 45 GG requires that the »Bundestag shall appoint a Committee on the Affairs of the European Union« – only three other committees enjoy such a constitutional guarantee.<sup>39</sup> In early 1993, the chamber's rights to participate in European affairs have been implemented by law<sup>40</sup>. The respective act has since been amended (2005) and further specified by an inter-institutional agreement (2006)<sup>41</sup>. While it goes beyond the scope of this paper to discuss these rights in detail, it is important to acknowledge their quality: Currently, the Bundestag »is one of the chambers of parliament in Europe formally endowed with far-reaching possibilities for participation in EU affairs«; yet at the same time, »it does not come close to exhausting these possibilities« (Kietz 2005, 8). However, these findings primarily relate to »traditional« EU law-making, whereas this thesis focuses on the OMC, a new mode of governance. In order to assess whether these findings also apply to the ownership of NRPs, two questions arise: Which possibilities exist? And to what extent are they exhausted?

When it comes to drafting, *Bundestag* involvement is absent for lack of possibilities. Unlike the Latvian and Lithuanian examples, there is no designated role for this chamber to contribute to the document. The latest NRP was primarily »drawn up by the Federal Government under the auspices of the Federal Ministry of Economics and Technology«, as it is stated in the introduction to the document itself. Although the *Länder* were involved in the drafting (see the next section) and social partners were heard, there are hardly any signs of *learning with others* in this domestic framework. For poor participation of other stakeholders (see also Büchs & Friedrich 2005, 253-256), representation within the process seems limited as well.

As regards *ex post* scrutiny of NRPs, the situation is different: While possibilities exist, they are not exhausted. By way of example, the German government submitted the latest document to the *Bundestag* in late August 2008.<sup>42</sup> When shortly after the NRP appeared on the latter's agenda, there was no plenary debate on the topic; it was instead decided among all factions that the speeches would be added to the official protocol. Simultaneously, the

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<sup>38</sup> Although rights of information had already been laid down in the ratification law on the Treaties of Rome – then unique among the founding states –, institutional development had since been protracting. Bodies with different rights and standings that were to be concerned with the coordination of European policy emerged and vanished (Janowski 2004, 88-89).

<sup>39</sup> These are the Committee on Foreign Affairs, the Defence Committee and Petitions Committee.

<sup>40</sup> Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union. 12 March 1993.

<sup>41</sup> Agreement between the German Bundestag and the Federal Government on cooperation in matters concerning the European Union. 28 September 2006.

<sup>42</sup> See BT-Drucksache 16/10250.

matter was referred to the committee level, with the Committee on Economics and Technology in charge and eight other committees<sup>43</sup> in advisory capacity.<sup>44</sup> The first tentative finding is therefore that this (ordinary) procedure fails to improve the publicity of NRPs. However, as the *Bundestag* is rather a »working parliament« in which committee work outweighs plenary debate (e.g. Schmidt 2007, 150-151), the more important venue for parliamentary scrutiny of this governmental document may also be found at committee level.

In theory, the heterogeneity of the involved committees is adequate to examine the broad range of policy areas touched upon in the NRP. And if the latter was truly a guiding instrument for future policy-making, these sectoral bodies of *Bundestag* would be well advised to follow their government's initiatives in open coordination. In practice, however, the attention that is paid to NRPs in the committees is marginal. The latest document was not discussed, but simply taken note of in the three bodies examined here: the committees on economics and technology (A1); labor and social affairs (A2, A3); as well as European affairs (A4). The latter's disregard is plausible if its main task is considered to be addressing basic questions of European integration.<sup>45</sup> While the lack of scrutiny in sectoral committees is more noteworthy, it does not come as a surprise either: In general, EU affairs still rank low on their agendas. It goes without saying that within this broad category, traditional EU law-making trumps anything related to new modes of governance.<sup>46</sup> In either case, NRPs are treated as »subordinate« (A4) or »insignificant« (A3). The latest document was consequently passed without any modification proposals.<sup>47</sup>

Therefore, the question arises why these scrutiny opportunities are not seized. In this regard, Raunio (2006, 131) proposes three reasons for low parliamentary involvement in open coordination. First, parliamentarians may find it hard to follow OMC processes for their flexible nature or distant deadlines. As to the second part of the argument, Schwanholz and Krummel (forthcoming) indeed observe an increased attention for NRPs in the *Bundestag* after the mid-term review which emphasized that the member states were far from being »on track« for reaching the Lisbon goals. Yet since then, the strategy seems to have been fading away in the lower house of parliament as it already did shortly after its inception. Regarding the first part of the argument, members of parliament seem indeed to have knowledge gaps when it comes to open coordination (A1-A6). But the scrutiny of NRPs follows known procedures in the *Bundestag*; therefore, parliamentarians can not find it hard to follow this part of the OMC. Then again, they may misperceive NRPs if they do not know the broader context.

Second, Raunio argues that »there is also (at least in some parliaments) procedural ambiguity about how to process these things« (ibid.). While it will be demonstrated that this is true for the output of open coordination, it does not apply to the input. There is a well-established procedure in the *Bundestag* which allows parliamentarians to scrutinize NRPs at committee level. It is also noteworthy in this context that only one of the interviewees (A4) complained about the relatively narrow time-frame for the chamber to discuss and

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<sup>43</sup> These were committees on labor and social Affairs; health; transport, building and urban affairs; environment, nature conservation and nuclear safety; education, research and technology assessment; Tourism; affairs of the European Union; and the budget.

<sup>44</sup> See BT-Plenarprotokoll 16/179, 19137A - 19137B.

<sup>45</sup> If it was perceived to be dealing with the European dimension of matters that cut across several policy areas, it should also be in charge of the deliberation on NRPs. However, in many publications the German EAC is still considered to be both (e.g. Schreiner & Linn 2008, 61).

<sup>46</sup> However, the differentiation between soft and hard law is not as crucial as the policy area concerned. Much attention is paid to soft law initiatives that are perceived as precursors to binding regulation (A5).

<sup>47</sup> See BT-Plenarprotokoll 16/209, 22654D - 22655C.



comment on these documents (after all, NRPs are supposed to be sent off to Brussels in October).

An explanation for the low level of attention may therefore rather be found in Raunio's third argument which refers to the effectiveness of the OMC – or rather, the lack thereof: Parliamentarians may not find it worthwhile to scrutinize open coordination as they consider it ineffective. This line of reasoning seems to provide the strongest explanatory power for the *Bundestag* case. Open coordination in general is perceived as having no impact on policy-making (A1, A2) or, at best, serving as a thought-provoking impulse (A4). National reporting is therefore considered to be of inferior importance as well.

### **3.2.2.2 Bundesrat**

As the chamber of federal states, the *Bundesrat* has been taking great interest in European integration ever since the Treaties of Rome. It was and still is (rightly) feared that the political and functional demands of an ever closer union undermine the domestic allocation of competencies as enshrined in the Basic Law. The *Länder* and their chamber at federal level have hence been more active in the integration process than the *Bundestag*. For instance, the ratification law on the Single European Act (Article 3) already stipulated that the German government was allowed to deviate from a *Bundesrat* resolution only on grounds of irrefutable foreign or European policy reasons.<sup>48</sup> Analog to the *Bundestag*, the role of the *Bundesrat* has been constitutionalized in the course of the Maastricht Treaty ratification. Revised article 23 GG introduced a gradual model of participation depending on the national allocation of competencies. The involvement of the *Bundesrat* therefore ranges from taking into account its opinion where the »interests of the *Länder* are affected« to the transfer of »the rights of the Federal Republic of Germany as a member state of the European Union [...] to a representative of the *Länder* designated by the *Bundesrat*« in cases where »the exclusive legislative jurisdiction of the *Länder* is affected« (Paragraph 4). In this institutional architecture, the Committee on European Union Questions plays a central role.

This body is also responsible when it comes to scrutinizing NRPs; in fact, it is the only committee to which the document is referred after it is submitted to the second chamber by the government.<sup>49</sup> Similar to the *Bundestag* committees, this year it was simply taken note of.<sup>50</sup> The same holds true for previous reporting cycles: The *Bundesrat* has never taken a decision on the former National Action Plans on employment either (Büchs & Friedrich 2005, 255). However, this lack of ex post scrutiny has to be read in context: Other than the *Bundestag*, members of the *Bundesrat* have contributed to the drafting through an informal procedure. The final document is then simply »nodded through« (B1).

In the current procedure, a group of four state chancelleries produce texts which deal with the different policy areas that are touched upon in the NRP. Assignment to this task group is mostly based on idle capacities within the state governments (B2). In either case, the body is made up of two *Länder* in which the Social Democratic Party is part of the governing majority and two *Länder* in which the Christian Democratic Union (or the Christian Social Union in Bavaria) holds the same position. One of these chancelleries thereupon compiles a joint document which is submitted to the federal government. In the form of the first NRP draft, the government's feedback

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<sup>48</sup> See, for example, BR-Drucksache 600/86.

<sup>49</sup> See BR-Drucksache 605/08.

<sup>50</sup> See BR-Plenarprotokoll 848, 331A - 331C.

usually arrives shortly before the summer recess. After some correspondence, the document is completed and finally presented to the *Bundesrat*.

Against this background, the lack of scrutiny in the chamber is perceived differently. The positive interpretation is that there is no need to discuss or comment on NRPs for the informal involvement in the drafting process (B3). From this perspective, the committee's approval expresses that the federal government has sufficiently integrated the *Länder* contributions. In fact, the government's willingness to cooperate in this regard is seen as being based on this »shadow of sanction«. A more critical assessment highlights the content and character of NRPs (B1-2). On the one hand, they are dominated by vague passages at which no state can seriously take offense. On the other hand, these documents appear as retrospects on policies already implemented. Further scrutiny is therefore deemed unnecessary. However, such criticism implies that the *Länder* are either not able or not willing to redesign NRPs into more specific and forward-looking documents during the drafting phase. Lack of will finally relates to the most pessimistic interpretation, according to which the *Länder* have simply lost interest in the Lisbon Strategy altogether (B2).

Albeit these different interpretations, the current role of the *Länder* as regards designing and adopting NRPs has some serious deficiencies if we apply the yardsticks outlined above. The effectiveness of open coordination does not seem to benefit from the status quo: Although the *Länder* are informally involved in the drafting process, there is no evidence of *learning with others*. Participation is limited to few state chancelleries whose main task seems to be documenting previous policies.<sup>51</sup> As regards legitimacy, neither representation nor deliberation in the OMC can be expected to increase through this procedure, while transparency suffers. Furthermore, the lack of formal scrutiny somewhat depreciates the Lisbon Strategy.

The flaws in the current system have not gone unnoticed in the political sphere. Quite the contrary, there have been talks about integrating NRPs into the institutional order of the *Bundesrat* just recently (B1-3). In this scenario, the scrutiny procedure would broadly resemble the one in the *Bundestag*: One committee would be in charge and a few others advisory. The only difference would be the Committee on European Union Questions being responsible instead of the economic committee. In the end, there would ideally be one common resolution which effectively feeds in the views of the *Länder* and holds the government accountable – both in a more transparent manner. Yet at the same time, this procedure would possibly overburden the *Bundesrat* in that the time-frame for scrutinizing NRPs in the committees is too short. Due to the infeasibility of re-integration, the *Länder* have decided to keep the informal procedure, but to put it on a new basis. In the future, the Sector-specific Conferences of Ministers will deal with contributing the states' share. The impact of this reform remains to be seen; for now, improvements in terms of effectiveness and legitimacy appear rather unlikely.

### **3.3 The use of OMC outputs in national parliaments**

Parallel to the scrutiny of NRPs, the use of open coordination outputs is first analyzed at the European level. However, there are no studies regarding the exploitation by national parliaments; most contributions simply refer to the impact of OMC processes on national policy-making in general, mostly by focusing on the governmental arena. They therefore tell little about the claims that the OMC can facilitate better law-making or improve the parliaments' standings in national institutional orders. While the following case study on Germany sheds some light on these questions, analyzing the use of

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<sup>51</sup> State parliaments are therefore sidelined as well.

employment guidelines and recommendations in the *Bundestag* does not come without some methodological difficulties either.

### 3.3.1 Evidence from Europe

To support their argument that the OMC allows national legislators to craft better domestic laws, Duina and Raunio (2007, 499-501) cite a variety of examples from across the EU. In the fields of employment and social inclusion, these supposed impacts range from introducing gender issues to the political debates in Italy and Greece, to promoting policy coherence in France, to inspiring the Agenda 2010 labor market reforms in Germany. They additionally refer to EES national action plans from 2002, citing once again Italy and Greece as well as Ireland, to show the impact of open coordination on national-policy-making; even though Italy has expressed discontent with the EES approach in its national impact assessment report from the same year.<sup>52</sup> They arrive at the conclusion »that the OMC has influenced in a positive manner the activities of national legislators« (ibid., 500). Yet apart from their unexpressed definition of *better* laws, Duina and Raunio's argument appears flawed in different ways.

First of all, there is a lack of clear causal relationships. In addition to thoroughly independent processes at national level, Zeitlin (2005, 453-455) identifies several external factors that may account for policy change, such as the OECD Jobs Strategy or the much older Commission White Paper on growth, competitiveness and employment. Furthermore, optimistic assessments of open coordination impacts are often based on questionable sources. The familiar problems of self-reporting arise: »Governments may [...] deliberately over- or understate the influence of OMC processes on domestic policy in reporting to the EU« (ibid., 456). And still, while Duina and Raunio (2007, 500-501) »acknowledge that these improvements in domestic legislation could in theory have taken place even without the OMC«, they »take seriously the possibility that the OMC may have facilitated, if not caused, the production of these laws«. But even if that was the case, it would not help their argument.

For their examples say nothing about the degree of parliamentary involvement. In fact, it may very well be few governmental representatives who craft better laws, while national legislators simply consent. While this is irrelevant to the claim that the OMC induces better law-making, it at least casts doubt on the argument that open coordination benefits national parliaments. Such an assessment would be more accurate if legislators actively use OMC outputs. In this light of Duina and Raunio's argument, it almost seems as if there is no need to take open coordination more seriously.

There is also little evidence that national parliaments use these grounds to better control their government. The most-cited example is Sweden, where the opposition parties employed the Council's employment recommendations to put pressure on the Social-Democratic government in the years from 2001 to 2003 (López-Santana 2006, 491). Other cases are scarce. This is not to say the OMC has not opened any windows of opportunity. As Jacobsson and Vifell (2007, 65) argue, the »EES has provided certain actors[,] such as social partners but also wider sections of civil society, with a say, or at least a legitimate claim to be heard«. But it has yet to benefit national legislators – or

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<sup>52</sup> In detail, the report criticized its suitability to national peculiarities: »The EES, while highlighting the need for an organized strategy to support employment and the importance of policy mainstreaming, has simply given particular emphasis to certain concrete guidelines which were not very suited to the often fundamental nature of the Italian structural problems, with respect to the actual labour market« (as cited in Mosher & Trubek 2003, 74).

rather the parliamentary opposition. The case of Germany suggests why this has not happened so far.

### **3.3.2 Bundestag**

To begin with, there are no institutional mechanisms for processing outputs of the OMC in the *Bundestag* – and if there were, they would probably still go unnoticed for the bulk of other EU documents national parliaments already have to process. It is therefore up to the factions to seize and use guidelines, recommendations, Joint Reports and so forth. Yet as the interviews suggest, this is hardly the case.

Just as the parliament as a whole, the Bundestag factions have no institutionalized procedure for handling outputs of the EES (A1-A5). If at all, individual parliamentarians are responsible for bringing these European documents into action in the German parliament. This concerns both the governing majority and the opposition parties. In both cases, the approach is quite selective: Opposition politicians pick certain elements from reports or recommendations to add authority to their arguments (A2) or »bother the government« (A3). In turn, politicians of the governing majority pick other elements from the same documents to (ex post) legitimate their reforms (A4). In this instrumental way, the OMC has indeed found its way into the *Bundestag*. It has to be noted, however, that such recourse to the EES remains a seldom occurrence, even ten years after its inception. The most important reason seems to be the assumed cost-benefit ratio of dealing with EU topics: In the broad realm of European integration, most parliamentarians may still not find it worthwhile to dwell on topics that are hard to grasp (A1). It goes without saying that the OMC is one of them.

When it comes to *learning from others*, the EES does not seem to induce processes additional to those already working in the *Bundestag* factions. As one interviewee pointed out (A3), there is an increasing tendency to follow best practices of other member states; politics indeed become more Europeanized in this regard. However, this trend cannot be traced back to open coordination. There is also little evidence that OMC indicators have provided a new frame of reference for *learning from experience*. The high hopes that open coordination would trigger various learning processes has therefore hardly come true for the German parliament: Neither NRPs nor the output of the EES have so far provided additional bases for deliberation. The other mode of governance inherent in open coordination, competition, is only slightly more developed. While there is some evidence of OMC outputs finding their way into national bargaining agendas, the scrutiny of NRPs as a form of government control is virtually absent.

## **4 Conclusion and discussion**

The plethora of literature on open coordination has so far largely ignored national parliaments. This thesis hence set out to examine their role in this particular mode of governance in both theory and practice. For this purpose, it initially sought to determine whether there is a need for their participation in the first place:

(a) *Should national parliaments play a role in the OMC?*

Chapter 2 showed that they should do so for three different reasons. Granted that the OMC has a »framing effect« on national policy-making, it does require legitimation. In this regard, national parliaments could firstly help to improve the legitimacy of open coordination by fostering accountability, transparency,

representation and contestation through scrutiny and debate. This liberal democratic approach is obviously just one alternative for strengthening the legitimacy of open coordination. Yet it might be the most feasible and could also entail other advantages, as national parliaments can secondly foster its effectiveness. In theory, they are able to advance both the deliberative and the competitive dimension of the OMC. Parliaments and parties can be actors in domestic frameworks of learning or integrate outputs of open coordination into national party competitions. Either way, they can thirdly benefit from such involvement by gaining additional information for better law-making and further grounds for criticizing government. Taken together, these three arguments illustrated that national parliaments should indeed play a role in the OMC.

The theoretical part of this thesis then concluded by highlighting how this could come about. This list of opportunities is not meant to be conclusive, but to give an idea of how national parliaments could theoretically participate in open coordination. Two of these opportunities were then exemplarily taken to address the second research question:

*(b) To what extent do national parliaments play a role in practice?*

Chapter 3 revealed that they currently play a minor role when it comes to the ownership of National Reform Programs and the use of OMC outputs. With one exception (Latvia), member state parliaments do not participate in the drafting process, while most of them do not pay much attention to the ex post scrutiny of these documents either. At the same time, the output of open coordination does not seem to have found its way into national parliaments. Parties choose not to either integrate guidelines and recommendations into their bargaining agendas or try to learn from Joint Reports or other countries' National Reform Programs. The current state of parliamentary involvement therefore hardly improves the legitimacy and the effectiveness of the OMC, while it also fails to empower member state legislatures. As regards legitimacy (from a liberal democratic perspective), the transparency of open coordination processes remains low when it comes to National Reform Programs as parliaments do not participate in the drafting process and rarely make these documents topic of discussions in plenary debates. They do therefore also not trigger any further political contestation. Furthermore, there are not too many monitoring procedures with which parliaments hold their governments accountable. This also relates to the effectiveness argument: There are fewer incentives for governments to initiate policy change if parliaments do not monitor the implementation of reform programs or criticize the executive for not working towards common objectives. And as long as national parliaments do not participate in the OMC more seriously, they will at best not gain any ground and at worst even lose some ground vis-à-vis their governments.

However, much more research is needed to fully assess the actual extent to which national parliaments participate in the OMC and the consequences thereof. The information used in this thesis for assessing the ownership of National Reform Programs may not only be biased due to self-reporting.<sup>53</sup> It also has limits regarding the difference between formal and actual involvement. As the case study on Germany showed, »involvement at committee level« does not necessarily mean strong scrutiny. Future research could therefore be dedicated to establishing a more coherent picture of parliamentary ownership across the EU. At least, the seemingly more active parliaments (first and foremost Lithuania, Latvia and Finland) deserve some

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<sup>53</sup> This is somewhat compensated by taking into account both the governmental and the parliamentary point of view.

further attention. The same is true for the use of OMC outputs. While this thesis showed that German parties are reluctant to seize these opportunities, their counterparts in other member states (especially those less skeptical of open coordination) may act differently. To this end, however, more elaborate research designs would have to be developed in order to assess any possible »framing effect« at party level. Lastly, this thesis only analyzed the use of European Employment Strategy outputs. Although this is the oldest and most institutionalized open coordination procedure, documents emanating from other OMCs – in less controversial policy areas – may be received better.

It is nonetheless safe to say that the parliamentary dimension of the OMC has overall room for improvement. Solutions for better involving the European Parliament are obvious (first and foremost, application of the co-decision procedure when adopting guidelines or objectives), whereas the »right« role of national parliaments is still disputed. It follows from this thesis that the discussion on this role takes place within the debate on the near future and distant finality of open coordination. What is crucial here is not the difference between opponents and proponents of the OMC, but rather their specific plans on either taming or improving it – for critics and supporters alike can fit national parliaments in their reform ideas.<sup>54</sup> By way of example, almost all of those who see the future of the OMC in further constitutionalization refer to national legislatures in their arguments. While the Convention Working Group on Social Europe called for a generic clause that more or less precisely describes the role of national parliaments,<sup>55</sup> de Búrca and Zeitlin (2003, 4) rather recommend an »obligation to ensure [their] fullest possible participation« in order to not interfere with the flexibility that is inherent in the OMC. The practical impact of such obligations remains questionable. Above all, both options seem to be distant prospects, given the outcome of the Convention and the current constitutional stalemate.

The debate on the finality of open coordination also concerns national parliaments. Coming from an experimentalist democracy perspective, Zeitlin (2005, 488), for instance, argues that further participation of national parliaments in the OMC

»would involve a transformation of the conventional conception of parliaments' role in democratic polities as authoritative principals delegating detailed implementation of legislation to administrative agents, whose behaviour they seek to control through a combination of ex ante incentives and ex post sanctions. Effective participation by parliaments in OMC processes [...] would require them to develop new roles in passing framework legislation embodying commitments to broad goals (such as OMC objectives); establishing administrative infrastructures to stimulate decentralized experimentation about how best to achieve these goals, monitor the efforts of local units to improve their performance against them, pool the resulting information, and set provisional standards in light of what they have learned; and reviewing the results and revising the framework objectives and administrative procedures accordingly«.

Considering the somewhat sobering findings outlined above, such far-reaching ideas seem futile at the moment. A few incremental approaches may instead

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<sup>54</sup> Only those who either downplay the importance of open coordination or truly consider it irrelevant for policy-making in the EU will not bother with its parliamentary dimension.

<sup>55</sup> Its final report argued for a stipulation that »the Commission would have the power to make recommendations to Member States' governments and to inform national parliaments directly of their opinions« (CONV 516/1/03, para 45).

be more suitable for the current *modus operandi* of open coordination, as it applied in the *Lisbon* policy areas. At the same time, lack of constitutional momentum requires that reform impulses have to come from below. Regarding both input and throughput, national parliaments could independently do two things for fast and simply improving their ownership.

First, parliaments could hold regular debates on NRPs as well as their implementation (see also Collignon et al. 2005, 18). They could scrutinize governmental reform strategies (all three years) and then hold the executive accountable by reviewing/discussing the progress (every year). Such regular activity would raise the saliency and publicity of NRPs. But it also requires these documents to be rather future-oriented, while there currently is some parliamentary »suspicion that in several cases NRPs consist simply of a repackaging of existing measures« (Pisani-Ferry 2006, 10). However, this retrospective character does also result from low parliamentary attention. On this account, national legislatures could secondly improve their ownership of NRPs through enhancing their involvement in the early drafting process. This does not necessitate the creation of new bodies as in Latvia and Lithuania; instead, existing mechanisms for scrutinizing EU affairs could easily be adjusted. Resolutions or amendments could be adopted after thorough analysis of the draft document at committee level. This, of course, requires governments to allow reasonable time for scrutiny. But first and foremost, it needs interested and alert parliamentarians.

Their apathy appears to be one of the most serious problems for open coordination. While few parliaments indeed report on being merely informed about NRPs, others simply do not exhaust their possibilities of participation. As the case of the German *Bundestag* shows, much of this can be attributed to the lack of effectiveness that parliamentarians ascribe to the OMC. This assessment is a self-fulfilling prophecy: As argued above, low parliamentary involvement can be considered an important reason for such effectiveness deficiencies. Put differently, »to the extent that soft co-ordination processes are perceived as governments' processes, they will remain without much impact in the member states« (Jacobsson & Vifell 2007, 70).

This applies to input and throughput of open coordination – in this case, reduced to the drafting, adopting and monitoring of NRPs – as much as to the use of OMC outputs. Their instrumentalization is inherent in the logic of open coordination. In practice, however, guidelines, recommendations and Joint Reports seem to fall on deaf ears in member state parliaments. Neither are they used to add authority to political claims nor is there evidence for the claim that these documents trigger any learning processes. It is questionable whether a treaty clause that stipulates the supply of all OMC documents to national parliaments would change the situation. As one interviewee (A4) put it, »ownership can not be imposed from above«. And, as Raunio argues, the information is already easily available to them. It is therefore up to the parties.

This is not to say that all responsibility for improving the functioning of open coordination should be shifted on national parliaments or parties. As de Rooter (forthcoming a) shows for the Netherlands, the degree of parliamentary involvement depends on the visibility of the respective OMC. The streamlining of all Lisbon Strategy-related coordination procedures has resulted in lower attention. Regarding the OMC partly studied in this thesis, the EES, Zeitlin (2008, 444-445) concurs that it »has lost visibility, monitoring capacity and participatory impetus under the relaunched Lisbon Strategy«. He therefore calls for reviving the autonomous EES »accompanied by broad opportunities for participation by non-state and subnational actors«. Next year's tenth anniversary of the Lisbon Strategy provides an excellent opportunity for discussing this or other measures to create further incentives for national parliaments to participate in open coordination.

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## 7 List of interviews

<b>Code</b>	<b>Interviewee</b>
<i>Bundestag</i>	
A1	Opposition party employee responsible for the Economics & Technology committee
A2	Opposition party employee responsible for the Labour & Social Affairs committee
A3	Opposition party employee responsible for the Labour & Social Affairs committee
A4	Governing majority party employee responsible for EU Affairs committee
A5	Governing majority party employee responsible for Lisbon Strategy
A6	Representative from the EU Affairs committee secretariat
<i>Länder/Bundesrat</i>	
B1	State representative (Governing majority party) concerned with NRP drafting
B2	State representative (Governing majority party) concerned with NRP drafting
B3	Representative from the EU Affairs committee secretariat