

# Democracy and Legitimacy in the European Union Revisited: Input, Output *and* ‘Throughput’

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Scholars of the European Union have analyzed the EU’s legitimacy mainly in terms of two normative criteria: output effectiveness for the people and input participation by the people. This article argues that missing from this theorization is what goes on in the ‘black box’ of governance between input and output, or ‘throughput’. Throughput consists of governance processes with the people, analyzed in terms of their efficacy, accountability, transparency, inclusiveness and openness to interest consultation. This article defines and discusses this third normative criterion as well as the interaction effects of all three normative criteria. It does so by considering EU scholars’ institutional and constructivist analyses of EU legitimacy as well as empirical cases of and proposed solutions to the EU’s democracy problems. The article also suggests that unlike input and output, which affect public perceptions of legitimacy both when they are increased or decreased, throughput tends to be most salient when negative, because oppressive, incompetent, corrupt or biased practices throw not just throughput but also input and output into question.

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Is the European Union democratically legitimate? This question has been hotly debated at least since the early 1990s (e.g., Beetham and Lord, 1998; Follesdal, 2006; Hix, 2008; Lord, 2004; Majone, 1998; Moravcsik, 2002; Scharpf, 1999; Schmidt, 2006; Williams, 1991). Democratic theorists tend to divide not only on their positive or negative responses to the question but also on the normative criteria by which to evaluate legitimacy. While certain theorists focus primarily on the quality of what goes on inside EU governance, such as questions of authorization, representation and accountability (Beetham and Lord, 1998), others are more concerned with the quality of what goes in or comes out of EU governance, judging legitimacy primarily on the basis of policy outcomes (e.g., Caporaso and Tarrow, 2008; Majone, 1998; Menon and Weatherill, 2008; Moravcsik, 2002) or on citizens’ active participation and deliberation (e.g., Bellamy and Castiglione, 2003; Hix, 2008). These latter two normative criteria for evaluation are our focus here. They have long been discussed in the language of systems theory, starting with Fritz Scharpf (1970), who divided democratic legitimation into *output*, judged in terms of the effectiveness of the EU’s policy outcomes *for* the people, and *input*, judged in terms of the EU’s responsiveness to citizen concerns as a result of participation *by* the people. Missing from this theorization of democratic legitimacy in the EU, this article will argue, is a third normative criterion for evaluation: *throughput*. Throughput legitimacy builds upon yet another term from systems theory, and is judged in terms of the efficacy, accountability and transparency of the EU’s governance processes along with their inclusiveness and openness to consultation *with* the people.

The article seeks to show that the quality of the governance processes, and not only the effectiveness of the outcomes and the participation of the citizenry, is an important criterion

for the evaluation of a polity's overall democratic legitimacy. In the case of the European Union, moreover, attention to the mechanisms of 'throughput' legitimacy, that is, to the efficacy, accountability, openness and inclusiveness of the governance processes, has not only been increasing among scholars but has long been among the central ways in which EU-level institutional players have sought to counter claims about the poverty of input legitimacy and to reinforce claims to output legitimacy. The purpose of this article, however, is not to attempt to evaluate the EU's empirical legitimacy against these normative standards or to make an argument one way or another about the EU's purported democratic deficit. Rather, it seeks systematically to conceptualize a new evaluative standard for EU legitimacy, building on established normative theory. There is in fact already a large body of work on various mechanisms of throughput legitimacy by democratic theorists of the EU, including on the efficacy of the institutional rules and processes (Menon and Peet, 2010; Risse and Kleine, 2007; Scharpf, 1988; 1999; Schmidt, 2009), their accountability (e.g., Beetham and Lord, 1998; Bogdanor, 2007; Bovens *et al.*, 2010; Harlow, 2002; H  ritier, 2003; Lord, 2004) and transparency (e.g., Cini and P  rez-Sol  rzano Borrag  n, 2011; Novak, 2011), as well as the inclusiveness and openness of the EU's interest intermediation processes (Greenwood, 2007; Kohler-Koch, 2007; 2010; Liebert and Trenz, 2009; Smismans, 2003). With throughput, this article seeks to bring these mechanisms together under a more general rubric in order to show better not only how they together contribute to the evaluation of the legitimacy of the EU's governance processes but also how throughput in its many guises may interact with the other two criteria of input and output in their many guises.

The article explores the nature, problems and interactions of output, input and throughput in normative theory about the EU, and assesses the ways in which all three criteria may be used in normative as well as empirical arguments about the legitimacy of the EU. It finds that in some cases arguments purportedly about output or input may actually be also or instead about throughput. As for the interaction effects of the three, the article suggests that whereas output policy and input participation can involve complementarities and trade-offs, where less quality in the one may be offset by better quality in the other, throughput does not interact with output and input in the same way. Although it too is an important component of the EU's democratic legitimacy, normative theorists would have a hard time persuading the public that better quality throughput offsets bad policy output or minimal input participation. But bad throughput – consisting of oppressive, incompetent, corrupt or biased governance practices – regularly undermines public perceptions of the legitimacy of EU governance, regardless of how extensive the input or effective the output. The multi-level nature of the EU system further complicates matters, since legitimacy is split between output and throughput at the EU level and input at the national level. In this situation, throughput may be used in legitimizing arguments as a kind of '*cordon sanitaire*' for the EU, ensuring the trustworthiness of the processes and thereby serving as a kind of reinforcement or, better, reassurance, of the legitimacy of EU-level governance.

This article begins with a theoretical discussion of the three democratic legitimizing criteria: 'output' *for* the people, 'input' *by* (and *of*) the people and 'throughput' *with* the people. It then briefly addresses in turn output and input – since these mechanisms are well

known – to follow with a more lengthy discussion of throughput legitimacy. The article illustrates its arguments using both scholarly analyses and proposed empirical solutions to the problems of EU legitimacy. With regard to the scholarly analyses, the article distinguishes between accounts focused on the institutional forms and practices of the EU – most of which tend to use historical and rational choice institutionalism to explore the historical logics of path-dependent institutions and the rationalist logics of calculation in the EU's institutions (see Bulmer, 1998; Moravcsik, 1998; Pierson, 1996; Scharpf, 1997; 1999) – and those concerned with the ideational and discursive construction of democratic legitimacy, most of which tend to use sociological and discursive institutionalism to explore the ideational logics of appropriateness and the discursive logics of communication in the EU's deliberative public sphere (e.g., Fligstein, 2008; Habermas, 1996; 2001; Risse, 2010; Schmidt, 2006, ch. 5; 2008). The article differentiates between 'institutional' and 'constructivist' scholarship to highlight the fact that even for the elaboration of any one legitimizing criterion, there can be contradictions and not just complementarities within, as much as between, approaches to legitimation. In expanding the normative criteria of legitimacy in the EU beyond input and output by adding throughput, moreover, the article offers scholars engaged in the empirical investigation of the EU a third measure for the evaluation of EU democratic legitimacy.

### **EU Legitimizing Mechanisms: Output, Input and *Throughput***

The concepts of output and input legitimacy as applied to the EU have their origins in the work of Scharpf (1970; 1997; 1999), who delineated 'output-oriented' legitimization as centering on the ability of EU institutions to govern effectively *for* the people and 'input-oriented' legitimization as involving political participation *by* the people. These normative definitions of legitimacy pick up on Abraham Lincoln's famous dictum about democracy requiring government *by* the people (political participation), *of* the people (citizen representation) and *for* the people (governing effectiveness) at the same time that the input-output terms themselves have been borrowed from systems theories. They appear in particular in the work of David Easton (1965), who defined input into the political system as consisting of citizens' demands and support (conferred not only through elections but also by citizen identity and sense of system legitimacy) and output as government decisions and actions, leaving what went on in the political system itself largely blank.

For Scharpf (1999, pp. 7–21), input legitimacy refers to the participatory quality of the process leading to laws and rules as ensured by the 'majoritarian' institutions of electoral representation. Output legitimacy is instead concerned with the problem-solving quality of the laws and rules, and has a range of institutional mechanisms to ensure it. Although Scharpf finds both input and output necessary for democratic legitimization, he concludes that, for the EU, one needs to focus on the problem-solving logics of institutional output because the EU lacks not only the majoritarian institutional inputs (direct elections for a government) but also its constructive preconditions (input as support), consisting of thick collective identity and a European demos. As for his views of institutional output, Scharpf has become increasingly doubtful even here about the EU's potential legitimization, whether due to the logics of interaction in the Council that produce sub-optimal policy

outcomes (Scharpf, 1999) or to the decisions of the Court of Justice of the European Union (CJEU) that lately seem to favor the Single Market over national social solidarity (Scharpf, 2010).

Scholars who have taken an output approach to EU legitimacy are not always as pessimistic as Scharpf about the EU's potential legitimization, whether they focus on the EU's institutional form and practices or on the EU's ideas and discursive construction. Institutional scholars who are more optimistic about the legitimacy of the EU's output effectiveness *for* the people identify mechanisms such as the policy-related performance of the EU's 'non-majoritarian' institutions (e.g., Majone, 1998), the balance of its institutional structures (e.g., Moravcsik, 2002) or the community-enhancing performance of the policies themselves (e.g., Caporaso and Tarrow, 2008; Menon and Weatherill, 2008). Constructivist scholars who take an output approach tend to concentrate less on the EU's policy performance than on to what extent such EU policies resonate with citizen values and build identity (Cerutti, 2008) as well as how they are legitimated (or not) in the 'communicative discourse' between EU leaders and the public (Schmidt, 2006; 2008), whether through elite narratives (e.g., Leca, 2010), media discourses (e.g., Eder and Trenz, 2007; Koopmans, 2004) or other 'communicative' actions of elites and citizens in the public sphere (e.g., Bellamy and Castiglione, 2003; Habermas, 2001; Risse, 2010, pp. 107–76).

A wide range of scholars, both institutional and constructivist, are instead more concerned – although often no more optimistic – than Scharpf about the EU's input legitimacy. Institutional scholars focus on the EU's 'majoritarian' institutions and the representation of citizen demands primarily through elections (e.g., Hix, 2008; Mair, 2006) although more recently some also consider the representation of interest groups and networks (e.g., Kohler-Koch, 2010). Constructivist scholars concentrate instead on the ideas and communicative processes involved in elections and other forms of discursive interactions with the public and civil society, and how these may contribute (or not) to the construction of a sense of collective identity and/or the formation of a collective political will in a European 'public sphere' (e.g., Lucarelli *et al.*, 2011; Risse, 2010, pp. 127–57; Steffek, 2003; Zürn, 2000).

Missing from this systemic theorization of legitimacy is a general theory about the practices that go on in the 'black box' of governance, and constitute what we will call, borrowing again from systems theory, 'throughput' legitimacy (expanding on Easton's concept, which is limited to bureaucratic practice). This conceptualization is intended to encompass not only the internal processes and practices of EU governance but also what Schmidt (2006) has previously termed, adding a preposition to Abraham Lincoln's phrase, interest intermediation *with* the people.

'Throughput' legitimacy concentrates on what goes on inside the 'black box' of EU governance, in the space between the political input and the policy output, which has typically been left blank by political systems theorists. It focuses on the quality of the governance processes of the EU as contributing to a different kind of normative legitimacy from both the performance-oriented legitimacy of output and the participation-oriented legitimacy of input. Throughput is process-oriented, and based on the interactions – institutional and constructive – of all actors engaged in EU governance. The point here is that the quality of the interaction among actors engaged in the EU decision-making process

– as opposed to the problem-solving ability of their products or the participatory genesis of their preferences – is also a matter for normative theorizing. And how that interaction proceeds contributes toward, or against, their ‘throughput’ legitimacy.

Curiously enough, with the exception of a small cluster of scholars mainly in Germany and bordering countries (e.g., Benz and Papadopoulos, 2006; Holzhacker, 2007; Risse and Kleine, 2007; Zürn, 2000), there has been little theorization about the ‘throughput’ legitimacy of governance processes taken as a whole, despite the fact that there is a vast literature focused on the legitimacy of individual aspects of such processes. These aspects, involving the quality of the governance processes as established by their efficacy, accountability, transparency, inclusiveness and openness to interest intermediation, can be seen as the mechanisms of throughput legitimacy.

For scholars focused on institutional form and practice, throughput legitimacy involves first of all the efficacy of the many different forms of EU governance processes and the adequacy of the rules they follow in policy making. These include the joint decision processes of the ‘Community Method’ that Scharpf (1988) considered to run the risk, as in Germany, of constituting a ‘joint decision trap’; the intergovernmental processes of the European Council and of the Treaties, which were expected to become more efficacious with the Lisbon Treaty reforms, but continue to suffer from the large number of EU member-state actors with veto powers due to the unanimity rule (Schmidt, 2009); the supranational processes of the EU’s non-majoritarian institutions, often discussed in terms of their policy outputs (e.g., Majone, 1998), but also to be considered in terms of the independent regulatory nature of their processes (Coen and Thatcher, 2005); and the ‘new governance’ methods mandated by the Commission, such as the ‘open method of coordination’ in employment and social policy, sometimes cast as improving input as well as throughput legitimacy because mandated to promote civil society participation (Sabel and Zeitlin, 2010; Zeitlin and Pochet, 2005).

Institutional throughput also encompasses the accountability and transparency of the governance processes. Accountability is generally taken to mean that EU actors are judged on their responsiveness to participatory input demands and can be held responsible for their output decisions (Harlow and Rawlings, 2007) as well as that policy-making processes meet standards of ethical governance, whether with regard to lobbyists (Cini and Pérez-Solórzano Borragán, 2011) or civil servants (Nastase, 2011). Transparency is often seen as a prerequisite of accountability but not as qualifying as accountability on its own because the latter also demands some form of scrutiny by a specific forum, such as EU Commissioners by the European Parliament (EP) (Fischer, 2004, p. 504; see discussion in Bovens *et al.*, 2010, p. 38). Transparency is generally taken to mean that citizens have access to information about the processes (Héritier, 2003) and that decisions as well as decision-making processes in formal EU institutions are public (Novak, 2011).

Finally, institutional throughput additionally concerns the quality and quantity of EU governance processes’ inclusiveness and the openness of the EU’s various institutional bodies to ‘civil society’ (e.g., Coen and Richardson, 2009). For the EU, this is mainly about interest intermediation as part of the Community Method of decision making in particular. Legitimacy here is generally linked to questions regarding the balance in access and influence among organized interests representing business versus those representing unions

or public interest organizations (Greenwood, 2007) although it can also be related to the kind of trust-based relationship demanded by the Commission of all participants in ongoing consultation processes (Coen, 2008). This kind of interest-based throughput is categorically different from interest group-based 'input', in which demands are articulated through interest group pressures, protests, demonstrations, letter-writing campaigns, social movement activism and the like in efforts to influence elected representatives, and which does not capture the ways in which interest articulation has become an integral part of the very throughput process of EU governance (see Kohler-Koch, 2007; Kröger, 2008; Liebert and Trenz, 2009; Smismans, 2003).

For scholars more concerned instead with ideational and discursive construction, throughput legitimacy involves the ideas and deliberative interactions of the agents involved in the wide range of governance processes outlined above, and how these promote efficacy, accountability, transparency, inclusiveness and access to civil society. Constructivist throughput encompasses, for example, the ways in which the Commission has defined ethics and accountability over time (Cini and Pérez-Solórzano Borragán, 2011) or its usage of the term 'civil society' to refer to functional interest groups, including business, as part of a discursive strategy to improve perceptions of its legitimacy (Schmidt, 2006, p. 26; Smismans, 2003). Constructivist throughput also emerges from the deliberations in the various governance processes that are seen as involving not just 'bargaining', as rational choice institutionalists might assume, but also 'arguing' (Risse, 2000) and persuasion, following Jürgen Habermas' (1996; 2001) arguments about the significance of communicative action. It is additionally embodied in the discursive interactions found primarily in the 'coordinative' discourses of policy construction among relevant policy actors, which include elected officials and civil servants along with the communities of experts, analysts, lobbyists and activists that influence them (Schmidt, 2006, ch. 5). These interactions may take place, more specifically, in the institutionalized deliberations of experts (e.g., Joerges and Neyer, 1997), in the debates of the European Parliament (Eriksen and Fossum, 2002), in the involvement of interest groups with EU institutions (Kröger, 2008; Liebert and Trenz, 2009; Smismans, 2003) as well as in *ad hoc* deliberative moments like the Constitutional Convention (e.g., Risse and Kleine, 2007). Constructivist throughput could even be conceived of in terms of informal supranational 'discursive representation' (Dryzek and Niemeyer, 2008), when INGOs (International Non-governmental Organizations) such as Greenpeace or significant personalities like Habermas articulate a discourse about what the EU ought to do that has an impact on policy makers and their deliberative processes.

Throughput, in short, encompasses the myriad ways in which the policy-making processes work both institutionally and constructively to ensure the efficacy of EU governance, the accountability of those engaged in making the decisions, the transparency of the information and the inclusiveness and openness to 'civil society'. As such, it constitutes a third and distinct criterion in the normative theoretical analysis of democratic legitimacy, alongside output and input.

Output legitimacy requires policies to work effectively while resonating with citizens' values and identity. Input legitimacy depends on citizens expressing demands institutionally and deliberatively through representative politics while providing constructive support via their sense of identity and community. Throughput legitimacy demands institutional and

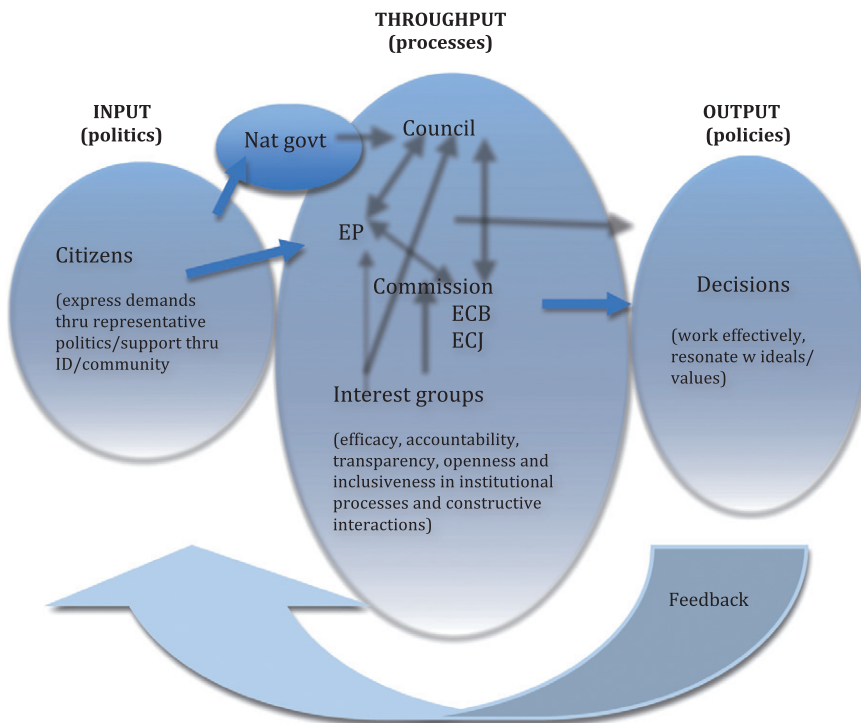


constructive governance processes that work with efficacy, accountability, transparency, inclusiveness and openness (see Figure 1).

The differentiation of these three processes is important for the theorization of their interaction effects. In the EU literature on democratic legitimacy, input and output tend to be presented either as complementary, say, where good output policies are seen to make up for a lack of participatory input or where citizen input makes up for mediocre output, or as involving trade-offs, where increasing the one necessarily leads to a decrease in the other – as when more politicized input via citizen participation in majoritarian institutions is seen to reduce output performance, or when greater regulatory output by non-majoritarian institutions is seen to diminish citizens' political input. These two criteria may also have interaction effects with throughput, since more politicized input can undermine the throughput efficacy of governance processes while more regulatory output can reduce the scope of throughput joint decision processes.

However, unlike input and output, where more input participation or better policy output normally is expected to have a positive effect on public perceptions of legitimacy, more EU-level throughput – whether through improved efficacy, more accountability and

**Figure 1: A Revised Systems Approach to the EU: Input, Output and 'Throughput'**



*Note: Dark arrows = direct effects; transparent arrows = less direct effects.*

transparency, or greater inclusiveness and openness – does not seem to matter much for public perceptions of legitimacy. Violating throughput efficacy, accountability, transparency, inclusiveness or openness, by contrast, can have a major negative impact on public perceptions of legitimacy (only after which their improvement may have positive effects on legitimacy).

Major scandals involving incompetence, corruption, abuse of office, embezzlement or other forms of official misconduct along with oppressive governance practices that violate the constitutional rules, that impose practices perceived as illegitimate, or involve bias or even exclusion with regard to access to interest intermediation can be highly delegitimizing, and not only for throughput. Such negative throughput can also cast a shadow over both input and output by devaluing even good output policy if it is seen as tainted and more input participation if it is seen as abused. Think of Prime Minister Blair with regard to Iraq: the key delegitimizing factor was not so much the contested (output) decision or the lack of parliamentary (input) agreement to invade alongside the US but the (throughput) process in which the lack of evidence for the presence of weapons of mass destruction (WMD) was obfuscated if not lied about. President Nixon and the Watergate scandal was similarly an issue of throughput: it was not so much that his men burgled Democratic headquarters but that he subsequently sought to cover it up, a procedural (throughput) violation that led to his impeachment and threw into question his entire range of (output) policy achievements (e.g., the vast expansion of environmental and social policy and the opening to China). For the EU, the scandal involving the Santer Commission, in which nepotism on the part of the Dutch Commissioner and abusive contracting on the part of the French Commissioner (Edith Cresson, who signed a large contract for her personal dentist to do research on HIV), among other peccadilloes, was seen as a major blow to the EU Commission's legitimacy, and provided grist for the mill regarding the EU's democratic (input) deficit while obscuring the Santer Commission's (output) achievements, such as its successful negotiations in the run-ups to the euro and enlargement.

Further complicating matters for the EU is its multi-level nature, in which these legitimizing criteria are largely split between the EU and national levels of governance. At the EU level, 'output' – governing effectiveness *for* the people – and 'throughput' – governance *with* the people – are the primary legitimizing criteria whereas 'input' – political participation *by* the people and citizen representation *of* the people – tends to be situated largely at the national level (Schmidt, 2006, pp. 21–9), raising a whole host of legitimacy questions related to the absence of direct EU-level input through an elected government (discussed below). It is because of this that EU throughput has come to be evoked by EU actors in normative arguments as a kind of '*cordon sanitaire*', to suggest that whatever the input that enters the system, the throughput governance process will ensure that it comes out as uncorrupted output. Good throughput in this sense seemingly makes the EU level disappear. By contrast, bad throughput can delegitimize everything, not only the throughput itself but also input participation via national leaders in the Council and the EP and output performance by EU non-majoritarian institutions.

My general definition of legitimacy here, as may already have become apparent in the previous discussions, builds on Weber (and Scharpf, 1999), and relates to the extent to which input politics, throughput processes and output policies are acceptable to and accepted by



the citizenry, such that citizens believe that these are morally authoritative and they therefore voluntarily comply with government acts even when these go against their own interests and desires. Determining what citizens actually accept or find acceptable is naturally another matter, however, since norms are not universal, and are based in citizens' culture, history and values. Normative arguments about what is legitimate, as much as empirical investigations into what publics find legitimate, can therefore be very varied indeed, given differences among EU member states in their conceptions of national democracy and their visions of the EU.

In what follows, therefore, I seek mainly to sketch out the broad patterns and major problems involved in the normative theory of legitimization of the EU, while only occasionally pointing to particular normative arguments or empirical problems and patterns, that is, whether citizens accept, value and/or are satisfied with their level of EU representation or participation (input), the delivery of EU public goods (output) or their access to, information about or perception of the efficacy, accountability or openness of EU governance processes (throughput). I begin with output because EU legitimacy was all about output way before EU officials and scholars became concerned about input, let alone throughput.

### **'Output' Legitimacy**

Only a few scholars defend the EU as democratic enough already, and they generally tend to base their defense on the output legitimacy of non-majoritarian institutions in form and/or in practice. In so doing, they make three questionable assumptions. Grounding output legitimacy primarily in institutional form or practice, whether through the EU's regulatory functions (Majone, 1998), its structural checks and balances (Moravcsik, 2002) or its functional performance (Caporaso and Tarrow, 2008; Menon and Weatherill, 2008) seems to assume, first, that output is necessarily good simply because it is produced by independent regulators – an assumption that Giandomenico Majone (2009) himself now questions; second, that its output cannot be bad simply because it has multiple vetoes; and third, that its policies intrinsically serve the general interest.

First, the problem with assuming that EU output is necessarily good because produced by independent EU regulators suggests that throughput processes insulated from political input are democratically legitimate. This fails to deal with the difference between non-majoritarian institutions at the EU and national levels. At the national level, the decisions of non-majoritarian institutions are accepted as legitimate not because they are entirely removed from politics but, rather, because they operate in the 'shadow of politics', as the product of political institutions, with political actors who have the capacity not only to create them but also to alter them and their decisions if they so choose – meaning that their non-majoritarian throughput processes are balanced by majoritarian input politics. At the EU level, there is no such balancing, given the EU's (throughput) decision rules that make it almost impossible to alter such decisions, let alone to alter the non-majoritarian institutions that produce those decisions, in the absence of any kind of (input) political government that could force the issue (Scharpf, 2010).

Second, as to the output benefits of the EU's multiple-veto institutional (throughput) structures, Scharpf (1988) has also convincingly argued that the 'joint decision trap' of the

EU's quasi-federal structure is even worse than that of Germany, raising questions about its output effectiveness or its output *tout court*, while the rationalist logic of its multiple veto structure often produces sub-optimal substantive policy outcomes (Scharpf, 1999). Throughput processes, in other words, undermine output effectiveness. What is more, a structural logic that sees checks and balances (or throughput processes) as in themselves democratic and legitimate (e.g., Moravcsik, 2002) is also problematic because it takes as a fundamental premise the thwarting of majoritarian expressions of the popular will, or input representation – something that may be accepted as legitimate in compound federal systems like Germany or the US but not in more simple unitary states like France and the UK (Schmidt, 2006, ch. 2).

Third, with regard to the blanket normative assumption that the EU's non-majoritarian output policies are legitimate because in the general interest, an increasing number of contested decisions by the EU Commission and the European Court of Justice (ECJ) throw this too into question empirically. These decisions include the Commission's services initiative that in its first iteration privileged home country rules, including pensions and wage rates for service workers in host countries, and ECJ decisions focused on freedom of movement that curtailed national unions' rights to strike in the *Laval* and *Viking* cases or struck down Austrian medical schools' quotas on German medical students. Although these could be seen positively from an EU-level normative perspective as promoting a Polanyian, market-correcting governance for all Europeans (Caporaso and Tarrow, 2008), they can just as readily be seen negatively from a national-level empirical perspective as a neo-liberal post-Polanyian destruction of national labor relations and welfare systems (Höpner and Schäfer, 2007).

These examples illustrate a fourth normative drawback to output, which takes us to the interactive construction of legitimacy. As Furio Cerutti (2008) has argued, the performance-based legitimacy of the 'output' variety is insufficient for legitimization, since outcomes also require a kind of 'Weberian legitimacy', by which he means the substantive values and principles guiding the performance, which make the performance valued. In other words, even if policy performance is optimal in normative institutional output terms, if the actual content of the policies clashes with national values and principles, as reflected in European citizens' perceptions of EU policies as acceptable and appropriate (or not), then its output legitimacy is empirically in question.

Constructive output legitimacy thus must also be considered in terms of how EU policies resonate with citizens' substantive values and identity as well as how they fit with their interests. This need not be a passive exercise. Political elites generally actively seek to legitimate policies as well as to build identity through communicative discourses with their citizens (Schmidt, 2006; 2008) as they seek to highlight the institutional output performance of, say, the single currency (Dyson, 2002), to foster certain kinds of EU norms and values such as the 'European Social Model' (Barbier, 2008) or cast the EU as a 'normative power' in the world (Laïdi, 2008; Manners, 2002). The empirical problem for legitimacy here is that national politicians in recent years have tended to engage in comparatively little *saying* about what the EU is *doing*, engaging instead mainly in blame shifting on unpopular policies or credit taking on popular policies, often without even letting on that the policy was generated in Brussels (Schmidt, 2006). Empirical studies of media discourse and debate

show that, with the exception of the big events like European Monetary Union, enlargement or the Constitutional Treaty, there has been relatively little increase in attention to EU policies over time other than by elites (Fligstein, 2008; Koopmans, 2004; Risse, 2010, pp. 128–33). Moreover, although a transnational ‘community of communication’ in a European public sphere has been developing, in which national publics by means of the media increasingly debate the same issues at the same time using the same frames of reference (Risse, 2010, chs 5, 6, 7; Trenz and Eder, 2004), there is nothing to guarantee that those debates will build citizens’ sense of EU output legitimacy, or instead promote anti-EU views.

In addition, no amount of constructive output via discourse can serve to legitimate the EU if words are not followed by actions, that is, by institutional output. After all, with regard to the principled discourse, what does ‘normative power’ Europe really mean if the EU cannot deliver, as in the Copenhagen Environmental Summit? Or the ‘European Social Model’, as inequalities rise massively between as well as within member states, in particular those in the Southern European periphery subject to the deflationary and recessionary austerity programs linked to their loans from the EU and International Monetary Fund (IMF)? But however many words and actions there are to legitimate EU-level output, it can still founder on the shoals of input legitimacy.

### ‘Input’ Legitimacy

Unlike output legitimacy, there are almost no scholars who think that the EU has sufficient input legitimacy. When it comes to the EU’s institutional input legitimacy, to begin with, most institutional scholars agree that it does not make the grade. They cite the fact that European Parliament elections suffer from high rates of abstention, and continue to be mainly second-order elections in which national issues are more salient than EU ones (Hix, 2008; Mair, 2006); or that the absence of a government that citizens could vote in or out makes it impossible for ‘the people’ to express their approval or disapproval of EU policies directly – also the reason why Scharpf (1999) does not see the EU as ‘democratic’ in the input sense.

Another empirical problem for robust input is that the EU has lacked the traditional kind of left–right politics to which citizens are most likely to relate. Instead, EU-level party differences and left–right political contestation have long been submerged by the general quest for consensus and compromise, promoted by institutional (throughput) processes such as co-decision procedures with the Council that are voted mostly by supermajorities in the EP and the Commission’s consensus-oriented, technical approach to policy initiation and development. In addition, European political parties remain weak, underdeveloped and not very cohesive, with an amalgam in the EP of different national parties with divergent agendas and ideologies in any given European party grouping (Ladrech, 2002; 2010; Mair, 2006).

As a result, policy making at the EU level can be characterized as *policy without politics*, which in turn makes for national *politics without policy*, as increasing numbers of policies are transferred from the national political arena to the EU, leaving national citizens with little direct input on the EU-related policies that affect them, and only national politicians to hold to account for them (Schmidt, 2006, ch. 4; 2009; see also Risse, 2010). This has already

had a variety of destabilizing effects on national politics, including citizen demobilization on the one hand or radicalization on the other (Mair, 2006). Moreover, all of these issues have led to a decline for the EU in the kind of diffuse support that Easton identified as a key factor in input legitimacy. This is because the 'permissive consensus' of the early years, in which citizens largely ignored the EU and its outcomes, has been replaced by a 'constraining dissensus' along with a rise in Euroscepticism (Hooghe and Marks, 2009). What makes matters worse is that new cleavages have developed between citizens whose ideas for Europe are more open, liberal and cosmopolitan in orientation and those whose ideas are more closed, xenophobic and nationalist or even EU-regionalist oriented (Kriesi *et al.*, 2008), leading to the specter of mobilization on EU-related issues in terms of identity politics, especially on the right (Hooghe and Marks, 2009), and the gradual awakening of the 'sleeping giant' of cross-cutting cleavages between pro-European 'cosmopolitans' and Eurosceptic 'nationalists' in mainstream parties of the right and the left (Franklin and van der Eijk, 2007).

For constructivist scholars, all the above problems are compounded by the thinness of the communicative processes that articulate citizen ideas and concerns in the European public sphere. The lack of a common European language, a European media or a European public opinion ensures that the communicative discourse comes largely by way of national political actors speaking to national publics in national languages reported by national media and considered by national opinion. Although the resulting fragmented communication is attenuated somewhat by the fact that there is a developing European 'community of communities' (Risse, 2010), this does not get around the institutional input reality that without a Europe-wide representative politics to focus debate, European political leaders have little opportunity to speak directly to the issues and European publics have little ability to deliberate about them or to state their conclusions directly, through the ballot box. This said, where debates have occurred during referenda or major EU initiatives, even where the empirical results for the EU's institutional input are negative and delegitimizing, some scholars see the results as nevertheless providing constructive input, as in the cases of the revision of the services directive that brought social movements into the consultation process (Crespy, 2010) and the Europe-wide debates following European political leaders' sanctions of the Austrian Conservative governing coalition's inclusion of the right-wing extremist party of Jörg Haider in 2000 (Van de Steeg, 2006) – although here one could argue that EU-level input at the same time undercut national input legitimacy, given that the coalition was the democratic expression of the preferences of the Austrian voters.

So is the answer to bring in more *politics with policy* at the EU level, as many scholars advocate, in the effort to diminish the EU's input 'democratic deficit'? Some have resisted this suggestion because they see politicization as deleterious to the EU's output governing effectiveness for the people while others worry that it is too soon for any such politicization given legitimacy problems related to the lack of citizen identity, collective will and a fully developed public sphere (Bartolini, 2005; Scharpf, 1999). But other scholars maintain that, whatever the normative arguments, empirically the cat is already out of the bag, so the question is how to politicize within the context of the current institutional set-up. Simon Hix's (2008) normative proposal for gradually adding a greater

majoritarian component to the politics of the Council and the EP in order to ensure more clearly demarcated policies of the left or right, while a step in the right direction, fails to deal sufficiently with the fact that EU political parties currently lack the kind of cohesion and EU citizens the kind of collective identity necessary for this kind of input politics. But at the very least, the EU needs greater input through citizen access to the EP, either directly or through the national parliaments, as well as greater national parliament involvement with the EU, either through national oversight committees or through direct links with the EP (Menon and Peet, 2010). But all of this also demands better working EU institutions to respond to input and to produce output, which is the domain of throughput legitimacy.

### **‘Throughput’ Legitimacy**

Throughput legitimacy covers what goes on in between the input and the output. Because it has not usually been part of normative theorizing about EU legitimacy, throughput has sometimes been discussed in output terms, where particular institutional or discursive processes are seen as preconditions for better output performance, and occasionally in input terms, where certain institutional processes or deliberative interactions are preconditions for better input participation. This is sometimes difficult to disentangle in normative arguments or empirical cases, since individual scholars and/or political cultures may have preferences for certain types of output or input that demand certain types of throughput – say, monetarists and Germans with a preference for price stability in output performance will prefer independent central banks with a stability mandate, in contrast to Keynesians and the French prior to the mid-1980s, while federalists and Germans with a fear of input majorities imposing their output preferences will favor institutional checks and balances, in contrast to the British and the French. There are also numerous illustrations of these entanglements in the previous sections, when scholars make normative arguments linking independent regulatory or veto structures to better output performance, or produce empirical studies attributing worse input support or participation to the thinness of the communicative processes.

But disentangling throughput from output and input in normative theory is nonetheless extremely useful for analytic reasons. Normative theorizing can show that throughput also stands on its own, and not only because it refers to different mechanisms of legitimation such as efficacy, accountability, transparency, openness and inclusiveness. It is also because, unlike with input politics and output policies, where more of either is likely to increase the public’s sense of democratic legitimacy, with throughput processes, more of it may have little effect on public perceptions of legitimacy, while less of it via corruption, incompetence and exclusion may bring down the whole house of cards. For this reason, in the multi-level EU, better throughput can be seen to serve as a *cordon sanitaire*, to make the EU disappear from public view, leaving front and centre both national input politics and EU output policy.

### ***Institutional Throughput***

For institutional scholars, throughput legitimacy includes not only the workings of the decision-making processes as a whole – that they work efficaciously in an accountable and

transparent manner – but also the intermediation processes through which citizens organized in interest groups have a direct influence on policy making. This latter kind of legitimacy has been theorized not only by the pluralist political scientists of the 1950s and 1960s in America such as Robert Dahl and David Truman to normatively legitimate interest group participation in policy making but also by theorists of 'associative democracy' who have also identified interest group access – in this case of public interests – as another form of democracy in its own right, as well as a corrective to representative democracy (e.g., Cohen and Rogers, 1992). For the EU, throughput governance *with* the people through pluralist-type consultation – mainly as part of the joint decision-making process commonly known as the Community Method – has deliberately been encouraged as a way of counterbalancing the paucity of input governance *by* the people through political participation. The result has been an explosion in interest representation and lobbying at the EU level, first focused on the Commission but increasingly, as its powers have grown, on the EP (Greenwood, 2007). It is only in recent years, however, that such 'functional representation' through interest groups has come to be seen as an additional form of democratic legitimization in the EU (see Kohler-Koch, 2007; Kröger, 2008).

The Commission in particular has consciously sought to remedy the democratic (input) deficit by finding ways to make (throughput) policy making 'more inclusive and accountable' to 'civil society' – defined as including special interests like business and labor along with activist citizens – as well as more transparent, as per the EU Commission's (2001) *White Paper on European Governance* (Kohler-Koch, 2007; 2010; Kröger, 2008; Smismans, 2003). Following accusations of one-sidedness in its openness to business in the late 1980s and early 1990s, the Commission made a concerted effort to bring in more interest representation from under-represented groups, although how effective it has been is open to question (see Kröger, 2008). This has included creating 'grass-roots' interest groups (e.g., of women and consumers) at the EU level to counterbalance the more powerful, already present business groups, with the resulting networks ones in which mutually suspicious actors can ensure more demanding forms of reciprocal accountability (Héritier, 1999). Moreover, the EU has given voice to a whole range of public interest groups which may be marginalized in their national polities, and whose common interests are better expressed at the EU level, such as in gender equality and sexual harassment laws (Zippel, 2006). In addition, with regard to interest intermediation, rather than competition among interests the EU Commission has sought to foster cooperation in its consensus-based policy formulation process, with rules of the game which entail that in order to play, participants must gain and maintain credibility as trusted actors providing accurate technical information (Coen, 2008). Even social movements have been able to exercise informal influence (Crespy, 2010; Della Porta, 2009).

But regardless of how open to public interest consultation *with* the people the EU may be, the problem for national citizens is that this kind of supranational policy making is very far from the kind of representative democracy *by* the people they tend to see as the most normatively legitimate. And throughput governance processes are in any case not open to most of them in practical terms, given the difficulties of transnational mobilization for most citizens (Della Porta, 2009; Imig and Tarrow, 2001). Moreover, the more access there is through lobbying, especially if unequal, the more questions can be raised about transparency



and accountability, in particular given the long road to establishing even a voluntary registration scheme and code of conduct for lobbyists (Cini and Pérez-Solórzano Borrágán, 2011).

Accountability itself became a major issue following the scandal and resignation of the Santer Commission, as noted above. The new Commission's response was to impose much tighter controls on expenditure procedures (to the point of creating massive inefficiencies in contracting and reporting) as well as by seeking to increase transparency. Transparency was to be ensured through greater access to EU documentation for the media and interest groups (Héritier, 2003) as well as through the internet and the development of e-government – although the massive volume of EU-generated information has also led to information overload, perversely making it all less transparent. As for accountability and transparency in the decision-making processes themselves, these are often difficult given the secrecy of much of the process, whether in the Commission, the COREPER (Committee of Permanent Representatives) or in the Council, despite an increasing number of publicity-related reforms. For example, although Council meetings are broadcast through live video streaming (since 2006), the president can always suspend recording (usual for debates on controversial issues) and, where debates must be public (because of co-decision with the EP) negotiations take place over lunch or in the corridors (Novak, 2011).

Accountability, understood as being subject to scrutiny by a specific forum, is also problematic. The decision-making processes of the Council, Commission or comitology in particular suffer from a lack of accountability with regard to the EP (Bovens *et al.*, 2010; Lord, 2004). The EP has little influence over initiation, no connection to comitology and so far also little connection to national parliaments (Menon and Peet, 2010). This said, increasing the oversight by the EP, while in principle making the decision making more accountable, could also insert input politics into the process and thereby undermine throughput efficacy via more conflicts with the Council. And this in the end could even undermine accountability, given the tension between the European parliamentary groupings and national parties resulting from EP party aggregation (Rose and Borz, 2011). As it is, however, corresponding efforts to improve the efficacy of the co-decision process through the growth of fast-track legislation via early agreements – which went from 28 per cent in 1999–2004 to 80 per cent in the last parliamentary term, in which 'trilogues' among a handful of individuals representing the EP (mainly the larger party groupings), the Council and the Commission negotiate compromise – come at the expense of transparency and accountability as well as input, in particular through the short-circuiting of parliamentary debate and smaller party groupings' voice (Dehousse, 2011; Héritier and Reh, 2011).

Equally problematic for efficacious institutional throughput is the unanimity rule for treaties, in which the ability of any member state to veto any agreement can lead to treaty delays, dilution or deadlock (Schmidt, 2009, pp. 28–32). There are certainly good input and output arguments with regard to keeping the unanimity rule, that is, that it respects member-state preferences and autonomy, but this cannot deny the throughput problems, or the fact that the rule also frustrates other input and output goals or values. The failure of the Constitutional Treaty following the French and Dutch referenda, and the myriad delays on the Lisbon Treaty, are object lessons for why many find that the EU needs another way of reaching binding agreements for the member states. One remedy, proposed by former

Commissioner Mario Monti among others, would be to do away with the unanimity rule and replace it instead with supermajorities (whether two-thirds, four-fifths or even more) plus opt-outs agreed, say, by Council vote, so long as the opt-out does not negatively affect the functioning of the proposed political community (e.g., as in fiscal harmonization, where an opt-out might vitiate its very purpose) (Schmidt, 2009). In the interim, however, the member states have other ways around this, such as through the enhanced cooperation mechanism of the Lisbon Treaty, in which nine or more member states can move forward in areas in which agreements have proven difficult to reach (as in the case of divorce). Another way is through multiple bilateral (intergovernmental) agreements outside the Treaties. An early example of this was Schengen. The most recent was the European Financial Stability Facility (EFSF), created over the weekend of 9–10 May 2010 in the attempt to stop the contagion effect of the Greek crisis on other Southern Mediterranean countries. In this case, however, the German political leadership insisted on a quick return to the unanimity rule – worried about the national input-oriented rulings of the German Constitutional Court – with the creation of a new facility, the European Stability Mechanism (ESM), to begin in 2013, ratified unanimously by Treaty amendment.

### ***Constructive Throughput***

Throughput legitimacy requires not just accountable, transparent and accessible institutional processes that also get beyond the unanimity trap. It additionally requires productive deliberative interrelationships among actors in the wide variety of throughput governance processes that make up the coordinative discourse of the policy sphere. For this, constructivist scholars generally cite formal deliberative processes, starting with Habermas (1996) on the quality of the deliberative procedures as a 'counter-steering mechanism' ensuring that citizens' community power is adequately channeled in societal and administrative decision making, thereby improving accountability (see Bekkers and Edwards, 2007, p. 53).

EU examples include discussions of Commission-led, consensus-focused intermediation with experts in the comitology process, which are sometimes described as a form of 'supranational deliberative democracy' (Joerges and Neyer, 1997) or 'directly-deliberative polyarchy' (Gerstenberg and Sabel, 2000). These particular examples, however, seem to blur the boundaries between throughput processes and input participation, raising the question: is involving experts in deliberations with policy makers really about input democracy or is it not rather about providing for better (throughput) development of output policies? More recent work by Charles Sabel and colleagues (Sabel and Zeitlin, 2010, pp. 12–17) provides an answer to this question by focusing more exclusively on what they see as the more dynamic (throughput) accountability of new forms of governance – by contrast with the (rationalist) rule-compliance accountability of the old. They find these in the deliberative processes of peer reviews, whether in fora, networked agencies, councils of regulators or the open method of coordination. The mechanisms for accountability here include public justification requirements in food safety regulations, the right of challenge and the duty to explain in the new EU competition policy regime, and the penalty default mechanism that makes non-agreement so costly that it pushes all parties to information-sharing regimes, as in the Florence Electricity Forum. Transparency, similarly, is not just about publishing rules

and information but also about ensuring that networked governance establishes procedural requirements for active participation by a broad range of stakeholders in regulatory decision making (Sabel and Zeitlin, 2010, pp. 18–20).

There are also more *ad hoc* deliberative processes of throughput legitimization. One of these was the Constitutional Convention, described by Thomas Risse and Mareike Kleine (2007) as a throughput process in which the debates were arguably the first (and only) creation of a close to ideal EU deliberative public sphere of communication, in particular in contrast to the closed-door bargaining routine of the intergovernmental conference (IGC) that followed. Other informal processes of discursive interaction that contribute to throughput legitimacy ‘from below’ include the role of social movements (Eder and Trenz, 2007, pp. 171–2), as in the case of the European Social Forum (ESF), which improved the deliberative quality of communication among its own grass-roots activists in European assemblies in ways that also contributed to output legitimacy by increasing these social activists’ identification with Europe despite their continuing suspicion of the EU’s overly neo-liberal policies (Doerr, 2009).

All this may make it appear that constructive throughput legitimacy is assured. But serious problems remain here, too, in particular as they interact with the problems of input and output legitimacy related to the EU’s *policy without politics*. Generally speaking, the Commission has consciously sought to depoliticize EU policy formulation by presenting its initiatives in neutral or ‘reasonable’ language, and by using communications techniques such as its ‘Plan D’ for democracy (Barbier, 2008, pp. 231–2). National leaders, moreover, have been perfectly happy with this depoliticized language because this leaves them free in their national capitals to put any kind of political ‘spin’ of the left, right or center on EU policies. This serves to ensure that, even as the EU Commission in particular seeks to make EU policy-making processes more legitimate via accountability, transparency, inclusiveness and openness, these processes tend to disappear from national public view – so long as, of course, they avoid any negative throughput via oppressive rules, scandals, corruption, bias or even simple incompetence, as discussed earlier. The problem is what Anchrit Wille (2010, pp. 84–5) has called the ‘accountability paradox’, in which increasing attention to internal accountability by the Commission, which, Christopher Lord (2004) has suggested, makes it the most controlled executive in the world, has done nothing to solve ‘the problems of rendering accounts externally’, which continues to leave the EU invisible to the public, remote and seemingly unaccountable.

To remedy some problems of constructive throughput legitimacy, in addition to continuing with efforts to improve mechanisms of accountability and transparency, EU-level governance processes would need to find more ways to include citizens, say, by having national governments do more to bring civil society into national formulation processes focused on EU throughput decision making as well as doing more to ensure that disadvantaged interest groups and social movements make their views heard (Schmidt, 2009). Importantly, however, stakeholder democracy, even if improved, is not necessarily public interest-oriented democracy. And however much the EU and national governments seek to promote *policy with pluralist politics* to enhance throughput legitimacy, this cannot be a substitute for input legitimacy, although it can be a supplement to it as well as a way of ensuring better output legitimacy.

## Conclusion

The normative criteria for democratic legitimacy, in sum, consist of institutional and constructive throughput processes as well as of input participation and output policy. What distinguishes throughput processes from the other two criteria is that input and output can involve trade-offs, where more of the one may make up for less of the other, whereas more (and better) throughput does not make up for problems with either input or output while less (and worse) throughput can delegitimize both input and output. The multi-level nature of the EU complicates this set of interaction effects further, since more EU-level input or output can negatively affect national-level input legitimacy. The EU's answer to this problem has been largely to improve throughput processes of converting input into output (through efficacy, accountability, transparency, openness and inclusiveness) to make up for loss of national-level input and for national problems with EU output. But this fails to recognize that no amount of throughput can make up for a dearth of input or deleterious output. A brief illustration using the case of the Eurozone sovereign debt crisis beginning in 2010 should help demonstrate how adding this normative criterion to the study of democratic legitimacy is also useful for empirical analysis.

In the first phases of the Eurozone crisis, national leaders' decisions to set up the EFSF and the ESM can be seen as increasing supranational input legitimacy, given that they were acting as the representatives of their member-state electorates along with EU institutional actors such as the European Central Bank (ECB) and the Commission to deepen integration in response to the crisis. This followed a protracted (inefficacious) throughput process of negotiation as the German Chancellor Merkel dragged her feet while the Greek crisis got worse and the threat of contagion to other peripheral member states spread. In the end, though, EU leaders did produce enhanced supranational output, to save the Eurozone. The specific austerity-based output policies for Eurozone members in need of a bail-out (Greece) or protection under the EFSF (Ireland and Portugal), however, involved a trade-off with national input legitimacy, since those governments signing up for the strict budgetary regime had to give up economic autonomy to the EU-IMF teams of experts. That trade-off has for the moment been accepted as legitimate by much of these countries' electorates, although not without movements of protest, under the belief that the bitter (output) medicine will be effective in curing the disease. Subsequently, as the crisis rolled on and EU leaders contemplated further economic integration, they also became increasingly focused on throughput processes as a way to build trust along with compliance with the austerity budgetary policies agreed in May 2010. These processes have largely involved rule-compliance accountability – including numerically targeted automatic mechanisms, 'golden rules' and technocratic rules-based oversight – and seem to lack any elements of the more dynamic deliberative accountability. But were such elements to be added, these would in any case be no substitute for an input-based *gouvernement économique*, in which the Eurozone countries were, say, to have ongoing deliberations about managing the economy, involving not only the Council and the ECB but also the European Parliament and national parliaments. Moreover, even if there were to be more supranational input governance, public perceptions of illegitimacy would appear if member states did not follow the

throughput rules – although even if they did, this would not help legitimacy in any way if the output austerity policies turned out to be the wrong kind of medicine.

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