

Soft Governance and Democratic Deficit: Lessons from the Open Method of Coordination in Bulgaria

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Abstract

The Open Method of Coordination (OMC) has attracted considerable scholarly attention ever since its introduction. Since the method aims at improving the democratic quality of the process of policy-making in the European Union, there are normative expectations attached to its performance in that respect. This paper aims at establishing whether the OMC covers these expectations nowadays by analyzing its implementation in one of the new member states, Bulgaria. In order to achieve this, the present paper uses a methodological framework that derives criteria for assessment from theories on liberal and deliberative democracy. The framework was first used in the initial years of implementation of the method for analyzing its performance in two old member states, France and Germany. By using the same methodology the present paper traces the evolution of the OMC and whether there is a significant difference in its democratic quality more than a decade after its introduction. The findings are discouraging, as the case of Bulgaria proves little difference with those of Germany and France, where the democratic benchmarks derived from the methodological framework were not met. Thus, by way of conclusion, this paper briefly outlines opportunities for improvement on the OMC framework.

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To my family and friends, it is “open”, not “overt” and it is “coordination”, not “cooperation”, “concentration”, “consultation” and “communication”. But thank you for putting up with me whenever I was willing to talk and that you were willing to listen.

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Introduction

The process of policy-making in the EU has always been accompanied by debates on its legitimacy. The discussions on the alleged democratic deficit started back in the 80s and grew stronger in the next decade, with a significant peak in the mid-90s, when support for the EU project dropped down dramatically. In the following years the Union tried to address the flaws pointed out by Eurosceptic, mainly with the Lisbon Treaty, which main purpose was improving the institutional framework in the EU and the balance of powers in the intra-institutional dialogue. However, these efforts seem to be insufficient. In the actual context of economic and political crisis, the debate is very much alive and relevant¹ and there is one particular model of the European policy-making that, even though relatively new, raises some significant questions and inflames the discussion in new directions, namely the Open Method of Coordination (OMC).

The OMC was introduced in the context of a crucial shift in the priorities of the Union. While debates on the democratic nature of the EU have always been present, the 1990s and the early 2000s were also marked by intensive economic development throughout the member states. This rapid growth naturally led to significant changes in the EU goals, with the Lisbon strategy being the culmination of this shift. The strategy envisioned an ambitious EU that aimed "to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion."²In order to achieve this goal, the strategy relied on three major policy measures: transition to a knowledge-based economy;

¹e.g. Cheneval, F., & Schimmelfennig, F. (2013).; Occhipinti, J. D. (2013). Regelmann, A. C. (2014).

²See European Council. (2000)., p. 1

sustaining growth; and modernization of the European social model that would include combating poverty and social inclusion. All measures in the strategy were to be implemented "by improving the existing processes, introducing a *new open method of coordination* at all levels, coupled with a stronger guiding and coordinating role for the European Council to ensure more coherent strategic direction and effective monitoring of progress."³ Most notably, the execution of the new method was to be achieved through a decentralized approach, in accordance with the principle of subsidiarity, so that all relevant stakeholders, such as the EU, the member states, their respective local levels, as well as social actors and civil society, would be actively involved. As at the time the Amsterdam Treaty was the current legal basis, there was no explicit division of competences between the Union and the member states. Thus, the three-pillar system, introduced by the Maastricht Treaty was still in power and there was an intricate balance between the supranational and national level within each of these pillars. While at the time all three policy measures outlined in the Lisbon Strategy were within the European Communities pillar, whose organizational structure was dominated by the supranational principle, the introduction of the OMC marked the beginning of what would later be called in the Lisbon Treaty shared competences between the member states and the Union.⁴

In this context, it is obvious that the Union was ambitious to move forward fast. The optimistic sentiment about the integration project and the future of the Eurozone was so high that the Laeken Declaration on the future of the European Union proclaimed the intention of the Council to move "towards a constitution for European citizens."⁵ The OMC was reflection of these hopes. It relied

³Ibid, p. 3

⁴See European Union. (2014c).

⁵See European Council. (2001), p. 23

on the presumption of close cooperation on three levels: between all actors within the member states; among the member states; and between the member states and the Union. In this outset framework the OMC was the token of the European democracy, where member states have the discretion to act upon their will, but in doing so they also work closely with the European institutions.

That is why ever since its introduction, the OMC has been the subject of numerous scholarly works. Its attractiveness stems from the fact that is not legally binding to the member states, a significant difference from the traditional Community method, which was the only model of governance before the introduction of the OMC. The Commission described the method as a tool aimed at helping Member States progress in necessary reforms they need to undertake in order to reach the Lisbon and now Europe 2020 goals. The method includes four elements⁶:

Fixing guidelines and timetables for achieving short, medium and long-term goals;

Establishing quantitative and qualitative indicators and benchmarks, tailored to the needs of Member States and sectors involved, as a means of comparing best practices;

Translating European guidelines into national and regional policies, by setting specific measures and targets;

Periodic monitoring of the progress achieved in order to put in place mutual learning processes between Member States.

⁶See European Commission. (2012).

It is not surprising that there are certain normative expectations attached to the method in regard to its democratic quality and its potential to enhance the transparency of the European governance, as pointed out by Dawid Friedrich.⁷ For example, Caroline de la Porte and Patrizia Nanz describe OMC as a non-legally binding and repetitious model of policy-making, which is used mainly in areas not included in the Community action outlined by the Treaties⁸. The main purpose of the OMC is to support the “Lisbon strategy”, which has the ambitious task of rendering Europe the world’s most competitive region, both in economic and social terms. Thus, the OMC was created to provide the member states with ideas for reforms through mutual learning and without the pressure that legally-binding measures bring. Similarly, in his analysis of OMC, Claudio Radaelli puts an emphasis on the legitimizing quality the method can have with its purpose of creating common vocabulary for policy-makers throughout Europe.⁹ Simon Hix goes even further in his study of the model, predicting a rather optimistic future for it and his possible effect on the coordination between member states, drawing a parallel between the novelty of the OMC and the case of coordination in social policy before the Single European act.¹⁰ Implicitly, these three analyses assume that all interested actors will take part in the dialogue and will have a significant role in the policy-making in the OMC framework. That is also seen in rhetoric used by the European Council: “the Union, the member states, the regional

⁷See Friedrich, D. (2006)., p. 3

⁸See De la Porte, C., &Nanz 2, P. (2004)., p. 267

⁹See Radaelli, C. M. (2003)., p. 4

¹⁰See Follesdal, A., & Hix, S. (2006).

and local levels, as well as the social partners and civil society, will be actively involved, using varied forms of partnership.”¹¹

At the same time, the very same EU rhetoric points out that “the Commission's role being limited to surveillance. The European Parliament and the Court of Justice play virtually no part in the OMC process.”¹² Thus, the burden of performance falls mainly on the shoulders of the member states and only in areas where they have exclusive competence, such as social protection, social inclusion, employment, education. This characteristic of the OMC depicts well the notion of EU governance in the early 2000s. There was in fact a shift in the Commission`s rhetoric on its role in the EU policy-making process. Most evident in this shift was the White Paper on European Governance, where the Commission justified the need to make its decision-making transparent, less top-down and more effective.¹³ Ironically, this paper declared the intention of the Commission to harmonize two contradicting agendas. On the one hand it states that “many Europeans feel alienated from the Union`s work and do not understand who takes the decisions that affect them.”¹⁴ On the other, it states that “Europeans expect the Union to take the lead in seizing the opportunities of globalization for economic and human development.”¹⁵ In short, the Commission recognized the need for change in the process of policy-making, but decided to realize this change by further enhancing the role of the Union, more particularly its own role, while at the same time being more open to the inclusion of civil society stake-holders. Thus, the OMC was designed mainly to win

¹¹See European Council. (2000).

¹²See European Union. (2014a).

¹³See European Commission. (2001).

¹⁴Ibid

¹⁵Ibid

over the European citizens, while enhancing the legitimacy of the EU institutions. In a long-term perspective the success of this strategy is not a straight-forward one, because of the aforementioned contradiction in the OMC framework, which diminishes its transparency and accountability. The ambiguous effectiveness of the method and the new concept of EU governance as a whole stems from the fact that it aims at attracting citizens to a public debate, when there is no unified effective European public space, involving media, social partners and national institutions on a grand scale. As Susana Borrás and Kerstin Jacobsson point out in their work, “transparency is limited to a core of elites that participate in the system”.¹⁶ This view is also shared by Hodson and Mahler, who state that “it is extremely difficult for the non-specialist, non-insider eye to follow the process”.¹⁷ This constitutes a significant challenge to transparency of the method. Furthermore, neither the Commission’s White Paper, nor official documents on the OMC state who are the actual actors in the process, what do they do and how do they do it. In other words, responsibility is omitted, which presents yet further evidence that there is a significant problem in terms of transparency and legitimacy and puts into question the democratic nature of the method. To put it more broadly, the significant question behind the OMC is whether it amounts to the democratic deficit so often quoted as one of the characteristics of the EU, even though the official rhetoric on the method explicitly states it is aiming at the opposite.

The topic has been addressed in a plethora of analyses in the last decade, within the paradigm of liberal and deliberative democracy. An especially interesting case study in that respect is Sandra

¹⁶ See Borrás, S., & Jacobsson, K. (2004)., p. 200.

¹⁷ See Hodson, D., & Maher, I. (2001)., p. 734

Kroeger`s work on the OMC in Germany and France, conducted in the years immediately after the introduction of the method, which makes it one of the very first comprehensive analyses on the democratic nature of soft governance and the OMC in particular. Kroeger uses criteria derived from theories on both liberal and deliberative democracy, which distinguishes the research from other works that only take into account only one of the sets of theories. All of the analyses so far, however, are focused on Western Europe. No just depiction on the method and its characteristics can be made without an analysis on its performance in Eastern Europe and the newly acceded countries. The process of policy-making there is rather different than the one in Western Europe, due to a number of factors, from the Soviet past to the varying democratic quality throughout this part of the continent. General statements on the OMC and its features are bound to be obsolete if case-studies cover only the EU-15. That is why the present research will address the question of the democratic quality of the OMC in the context of the performance of one of the newly acceded member states, Bulgaria. Not only is Bulgaria both an Eastern European country and a new member state, but it is also the worst performing member state in the realm of social policies. An analysis on the democratic quality of OMC in this country provides for a valuable comparison with the performance of old member states that also have long-standing traditions in social policy and welfare. It will also shed some light on the development of the method, whether certain flaws, discovered by previous case-studies, have been addressed or process of policy-making in the OMC framework is similar throughout the Union.

Chapter I: The grand picture

Numerous case studies on the democratic quality of the OMC have been conducted in the past. The topic has been approached mainly through the framework of deliberative democracy, as it provides criteria for the assessment of its democratic dimension.

In their case study Patrizia Nanz and Carolin de la Porte distinguish three types of deliberative democracy: the procedural deliberative democracy in Jurgen Habermas' theory, the deliberative supranationalism in Joerge's theory and Sabel and Cohen's deliberative polyarchy.¹⁸In the supranationalist model an emphasis is put on the role of expert committees that seek consensus among the actors. Habermas stresses the need of public debate and fundamental values that would guide the process of deliberation. Lastly, Cohen and Sabel focus on direct participation of all actors concerned. Each of these models provides for the development of the five criteria the authors use for assessing the democratic quality of the OMC later on. Similar approach is used in Stijn Smismans' work on the EU's employment policy on the OMC framework. Here the analysis is conducted again in light of the theory of the directly deliberative polyarchy.¹⁹In the same paradigm, Friedrich analyses the performance of the OMC in social inclusion in Germany from the normative perspective of both deliberative democracy, where "an ideally democratic procedure gives equal weight to the interests of each in arriving at binding collective decisions"²⁰, and Habermas' view on the role of the civil society as a mediator between political institutions and the citizens. Sandra Kroegeer's analysis on the OMC performance in Germany, France and the EU-

¹⁸See De la Porte, C., & Nanz 2, P. (2004).

¹⁹See Smismans, S. (2004).

²⁰ Joshua Cohen's definition (as cited in Friedrich, 2006)

level²¹ goes further in that respect, as it is based on theories on both deliberative and liberal democracy. It is also one of the first comprehensive case-studies on the OMC that not only analyses the method in two different member states, which provides from a valuable cross-comparison and depth of the analysis, but also addresses the OMC performance at the EU-level, thus capturing the method and its democratic quality in all possible dimensions.

Kroeger's research examines the drafting process of the National Action Plans (NAPs) on the European employment strategy in France and Germany, concluding that in both countries venues for participation were limited. Careful examination of the interaction between stake-holders on the national level and the Commission shows that there are virtually no participation rights and inclusion in the process of policy-making happens upon invitation. The implications of this conclusion are obvious: the public debate is destined to be dominated by limited number of actors, who are recognized either by the national governments or the EU bodies, this discrediting the very essence of the method. For example, in the French case only the state administration was included in the drafting of the plan. After a number of reviews on the draft at different governmental branches, the final document is sent to the parliament, the Senate and the French Council on Economic and Social Affairs. However, there are no further possibilities for discussion on the document, as the plan is sent to the Commission at the same time as it is sent to the parliament. Furthermore, according to Kroger the plan was drafted in only three meetings, with the second and third one taking place shortly before the final version was sent to the Commission. There was no parliamentary debate, no consultations with regions and departments were conducted, which discredits the fundamental principle of subsidiary and points to poor transparency. In addition to

²¹See Kröger, S. (2007).

that, NGOs demands to be included in the drafting process with a working group were to no avail, as they did not receive any answer from government officials.

The German case does not differ much, even though it should be noted that there was an opportunity for presentation of written proposals on the draft and German *Laender* (states) had the opportunity to express their concerns about a possible intrusion into their competences both by the federal and the European institutions. At this initial stage, which took place as early as year 2003, there was no parliamentary debate. However, later on the situation was just the opposite: no consultation with stakeholders took place, but there was a parliamentary debate, this time before the document was handed over to the Commission.

Unfortunately, the case of participation seems even more vague and hard to trace at the EU-level, as it happens behind closed doors and media publications or official reports on debates are rarely published. However, Kroeger distinguishes three types of venues for participation and consultation at the EU-level: formal consultation of the member states and the Commission; semi-formal consultation with external academic or statistical experts (such the OECD); and mostly informal consultations with NGOs. According to Kroeger, participation is dominated by the formal type of consultations, as the member states and the Commission have regular meetings and even have a treaty basis for their cooperation. Thus, at EU-level the Commission is the main driving force of the OMC. As for the other two types of consultation, it is fair to say that there were several attempts by the EU to increase transparency and the degree of participation over the years. During the Belgian presidency of the Union in the second half of 2001, the then Belgian federal minister of Social Affairs and Pensions, Vandenbroucke, demonstrated interest in the development of indicators for participation, which led to creation of the Atkinson group, whose task was to draw a report on social inclusion at the EU-level. In addition, during the Luxembourg Presidency in the

first half of 2005, there was renewed interest towards academic advice. The Presidency commissioned Eric Marlier to draft a report on the development of the famous Laeken indicators, statistical indicators on poverty and social exclusion that were agreed on in 2001. However, Kroeger`s research shows that apart from these two major reports, academic consultations on the OMC framework are a rarity on EU-level.

Participation of NGOs on EU-level is even rarer, due to the lack of formal rules for participation. Additionally, in the case of poverty, for example, there are no regular venues for participation of excluded groups. There have been attempts to include a wider spectrum of societal interests through annual European Round Tables on Poverty and Social Exclusion, but it remains unclear what was the impact of these conferences on the general debate on OMC, as activities are not published. This enhances further the notion that on EU-level the framework seems to be dominated by the Commission. The question whether its role is strictly regulatory also remains unanswered, as transparency is marginalized by the isolated nature of the meetings between member state officials and EU officials.

A similar conclusion was made by Caroline de la Porte and Patrizia Nanz, who conducted a broad case-study on the democratic quality of the OMC in employment and pensions.²² Unsurprisingly, in the sphere of EES, the Labor and Social Affairs Council and the European Commission are the main participants. These actors have major influence on the process in the Employment Committee (EMCO), which is composed of two delegates per member state and two members from the Commission. A few important details should be noted here:

²²See De la Porte, C., & Nanz 2, P. (2004).

Under EMCO, there is a technical working group which discusses and proposes quantitative indicators for the EES. At both the European and national level, representatives of labor and management have a Treaty-based mandate to participate in the EES. No other set of actors has such a mandate within the EES.²³

The analysis also shows that the parliamentary debate on the EES, both at European and national levels, has been quite low key. Although the European Parliament (EP) should be consulted on the EES, in practice its role is marginalized, due to the lack of time to prepare positions or opinions that could be influential. This feature of the debate surrounding OMC amounts to the general perception of low democratic quality, as the only democratically elected EU body has virtually no say in this method of EU governance.

Kroeger's research manages to capture well the paradigm in which the method is analyzed. It also makes one important distinction in regard to democracy in the EU: it matters whether one analyses the Union as a state with a supranational characteristics, which would therefore lead to following criteria for nation-state democracies, or a *sui generis* entity, which requires additional, extraordinary criteria. In terms of the OMC, the important question against what standards its legitimacy could be assessed arises and Kroeger gives a rather suitable answer with her methodology. That is the reason why the present paper will be placed in the same paradigm, concentrating and borrowing particularly the methodology used by Kroeger in her analysis on the OMC performance in Germany and France on social inclusion.

²³De la Porte, C., & Nanz 2, P. (2004)., p. 274

Democracy and soft governance within the EU: the methodology for assessment

Since there is no consensus on the nature of the EU and the policies it conducts, Kroeger develops criteria deriving from both traditional notions of democratic legitimacy and alternative notions, such as inclusiveness and participation, which address major weaknesses in the aforementioned case-studies that have a one-dimensional approach to EU governance. A key issue in Kroeger's analysis is the question of legitimacy in the OMC. For Kroeger legitimacy is constituted by participation and involvement of all relevant actors, as it is the ambition of the method itself to involve all interested stakeholders. Thus, the four used criteria address this issue by putting it in different dimensions. These criteria are, as follows:²⁴

Participation. This criterion is borrowed by the analysis made by de la Porte and Nanz in 2004 and refers to the citizen's right on participation. Kroeger explores two different dimension of the notion. From a liberal perspective, participation describes the process through which the sovereign (the citizens) elect their representatives and hold them accountable for their actions. From a deliberative perspective, participation also refers to any form of expression of interests by the citizens, be it through elections or through decentralized participation. In the context of the OMC then, it is of utmost importance to assess the participation of those citizens who are interested in the final results of the method

²⁴See Kröger, S. (2007)., pp 569-570

Representation. In Kroeger's analysis representation refers to "what types of societal interests participate in the political process".²⁵ Subsequently, three types of representation can be distinguished: territorial, functional and technical. Territorial representation ensures that representatives elected through territorial election will be part of the policy-making process, thus ensuring its legitimacy. Functional representation rests on the perspective that individuals represent different societal identities and groups and thus ensures that all these groups are involved in the political process. Lastly, technical representation refers to scientific expertise.

Deliberation. A key feature of the deliberative approach is the search for a solution that would benefit all groups in the society.²⁶ Kroeger takes into account the aforementioned different types of deliberative democracy. In the OMC context assessment of deliberation is especially difficult, as the decision-making is usually elite-driven, as already mentioned, and happens behind closed doors. Moreover, the OMC vocabulary is rather technical and difficult to follow, which constitutes another obstacle for the inclusion of all interested parties. In this context Kroeger focuses on whether the institutional and organizational setting of the OMC allowed for deliberation to happen at all. In terms of practicality, the author puts emphasis on the time schedule for the drafting of the national plans on the OMC and whether this schedule allowed open deliberation and enough time for reasoned opinion to be presented by interested actors.

Accountability. This is a classic feature of democracy. In its essence it refers to the demand of public representatives being controlled by the sovereign (the citizens). Accountability includes

²⁵Ibid, p. 569

²⁶See Héritier, A. (2003).

responsiveness by the politicians to criticism, sanctions in case of breach of law, transparency, which refers to accesses to information, and public debate.

Thus, the outlined methodology, normative perspective and empirical studies rest on the assumption that the OMC has high democratic quality if it constitutes a policy-making process that includes relevant stake-holders, both from the institutions and civil society. An interesting point is made by Friedrich in that respect. According to his analysis, “the OMC possess democratic potential, and fulfils the normative expectations, if the actors from the ‘top’ initiate structures that provide access and include CSOs as a necessary element of the process, and if the CSOs are actively partaking and stimulating a bottom-up process.”²⁷ The present work argues that the presence of a bottom-up process is not mandatory for the OMC to live up to high democratic standards. It is true that the method itself was introduced with the ambition to include all relevant stakeholders and this is the essence of its democratic quality. However, as long as avenues for participation are provided, the OMC is as democratic and transparent as it claims to be. The essential question is not whether the provided opportunities are exhausted by civil society actors, as this refers to features of the member states, their specific process of policy-making and the degree of participation overall. Rather, the quintessential element in the assessment of the OMC is to see whether the top-down approach cited by Friedrich is inclusive and open.

²⁷Friedrich, D. (2006). p. 8

The missing pieces of the puzzle

The present analysis will be based on a case study on the process of writing of the National Social Reports on social inclusion (NSRs) and discussions on these and other strategic documents related to different policy measures within the OMC in one member state, Bulgaria. There are two reasons for focusing on the national level and choosing this particular case.

Firstly, the OMC template puts strong emphasis on the member states as the main actors in the process, as already demonstrated by the review of the official documents on the method. The member states have the freedom to choose their strategy for action in achieving the relevant benchmarks, with the NSRs being the central document representing the policy actions.

Secondly, the existing scholarly literature on the OMC covers mostly the EU-15. Few studies have been conducted for the newly acceded member states, perhaps because the actual implementation of the method started in the years after their accession, while the nations were still more in a learning phase and were struggling even with implementation of the traditional Community method. According to a research conducted by De la Porte, “within the EU- 15, there is a very strong representation of the Nordic Member states (Denmark, Sweden, Finland: 23 studies) and Germany (20 studies), while France and the United Kingdom are also well covered. Belgium, Italy, the Netherlands, Poland and Spain are addressed in five to seven studies.”²⁸ Furthermore, there has been no comprehensive study on the effects of the OMC since 2009/2010, which makes the available data outdated. Thus, there are still missing pieces in the OMC puzzle: what is the approach to it in the new member states, former communist countries in need of or undergoing

²⁸See De la Porte, C. (2010)., pp. 7-8

radical social reforms; does the cited poor democratic quality in older case-studies²⁹ still apply or newly acceded countries have taken into account the mistakes of their peers and addressed the issue of legitimacy more effectively? In order to address the existing gap in the research field, the study will focus precisely on Bulgaria, which is not only a new member state and an Eastern European country, but also one of the worst performing members in the Union in terms of economic growth, social and political reforms.

Some methodological remarks

It should be noted that the National Strategic Reports have been introduced in 2010 with the Europe 2020 strategy. Prior to 2010 the main documents related to the OMC were the National Action Plans (NAPs). Those are the documents analyzed by Kroeger in her case-study of the French and German performance in the OMC. Along with the new National Strategic Reports another set of documents was also introduced- the National Programs for Reforms. These programs are also relevant to the OMC, as they cover all five strategic goals of the Europe 2020 strategy and thus cover social policies as well. However, the present research will not engage extensively with the Bulgarian reform programs for a reason. The reform programs are drafted and coordinated by the Ministry of Finance in Bulgaria and do not cover exclusively social policy practices. They are related to the OMC, but only somewhat related. Furthermore, a comparison between the reform programs and the strategic reports shows that the social policy sections in the plans are almost identical to the social reports, thus it is safe to say that the analysis of the drafting process for one set of documents depicts well the democratic quality of the OMC in Bulgaria. The National Social Reports and not the National Reform Programs are considered to be the successor of the National

²⁹See for examples Kröger, S. (2007).; De la Porte, C., & Nanz 2, P. (2004); Friedrich, D. (2006).

Action Plans, the main documents in the OMC. They are the documents explicitly related to the OMC. Analyzing documents that only partially cover social policy and are not related only to stakeholders interested in those policies already goes out of the scope of the OMC and does not give a just representation on the democratic quality of the OMC solely.³⁰

Lastly, the empirical assessment of the OMC is challenging. The most fundamental problem is the methodological difficulty of assessing the causal impact of a continual process based on collaboration between EU institutions and Member States, without legally binding sanctions. In addition to that, the selection of one country for a case-study significantly diminished the strength of any theoretical argument, but at the same time it allows for a more in-depth empirical analysis of the specifics of the chosen case, thus providing a broader and more accurate picture on the OMC performance throughout the Union.

³⁰It should be noted here that throughout the conducted interviewees with Bulgarian NGO representatives working in the sphere of social services, all of them stated that the drafting processes for both the NSRs and the NRPs are quite similar and have the same weaknesses.

Chapter II: The OMC in a new member state: the case of Bulgaria

The OMC instruments were first introduced in the Bulgarian social policy in the years prior to the country's EU accession, in the period 2004-2006. On February 3rd, 2005, Bulgaria signed a Joint Inclusion Memorandum, which outlined the major challenges in the field of social policy at the time. The first report was introduced in 2006. Since then the Bulgarian Ministry of Labor and Social policy has been designing NSRs every two years, in accordance with the general OMC timetable. The chapter will focus on the strategic reports from 2008 onwards, as the report for the 2006-2008 covers years when Bulgaria was still an observer in the OMC process. Before the case-study is presented, however, a few remarks on features of the Bulgarian social policy need to be made.

One of the most important characteristics of policy-making in Bulgaria is the presence of numerous consultative bodies within the Council of Ministers and its subsidiary state agencies. These bodies are usually under the name National Council and deal with diverse issues, from ecology to European affairs, to medical expertise. The councils consist of members of the government, members of state administration, local representatives, representatives of the trade unions and civil society representatives. In 2009 a new council, the National Council on Social Inclusion, was established. As evident from its name, its main focus is on problems of social inclusion, which makes it an extremely important partner in the OMC social inclusion process. At first glance, it seems that this plethora of consultative bodies is a guarantee for transparency and public debate. However, according to a report on the stakeholders' involvement in the implementation of the OMC in Bulgaria, membership in the councils usually puts civil society organizations in a dependent position, since available resources for funding are concentrated in the public

administration.³¹ Thus, the most active organizations are those included in the different national councils, as they have better access to official documents and government and public administration representatives, but the effectiveness of their participation is still questionable. The present chapter will address this issue through analyses of protocols from the meetings of the aforementioned National Council on Social Inclusion, the NSRs, analyses of minutes of the meetings of relevant parliamentary commissions, minutes of plenary sittings of the National Assembly, conducted on-line interviews with representatives of NGOs that are members of the National Councils. It will also analyze the accessibility of relevant documents to the broader public, an important prerequisite for the participation of all interested stakeholders in the OMC.

Still, prior to introducing the case-study, the reader should bear in mind that there is no established process for stakeholders' involvement in the process of policy-making in Bulgaria. Even though there are number of National Councils, each of those operates on its own terms, with its own interior regulations. Most of the time, a number of additional ad hoc intra-institutional groups are created for the design of a single document. This constitutes a significant challenge for the present research, as there are significant discrepancies in the development of different policy measures in the three OMC strands.

Participation

As pointed out by Kroeger, participation refers to the provided opportunities to all stakeholders to articulate their opinion on the OMC policies. Ideally, these opportunities should be provided at every stage of the decision-making process, but the stage of drafting of the NSRs is of utmost

³¹See Bogdanov, G. (2009).

importance, as this is when the policy measure for the next period are decided. For the Bulgarian case, opportunities for participation varied from one stakeholder to the other. The Ministry of Labor and Social Policy and its Department on Social Inclusion are responsible for the drafting of the NSRs. According to the official documents and a government official interviewee, during the drafting process “the participation of all interested sides- ministries, agencies, social partners, the National Association of Municipalities, NGOs, representatives of the academia- is an established practice.”³² The NSRs for 2011-2012 and 2013-2014, for example, explicitly state that “(...)an intra-departmental working group with participation of all stakeholders: ministries and agencies involved, social partners, NGOs and representatives of the National Association of Municipalities in the Republic of Bulgaria, was established within the Ministry of Labor and Social Policy. The Report has been prepared on the basis of the joint meetings and materials prepared by members of the working group.”³³ However, according to the aforementioned government official, there are no records on the work of these groups. Nor there is a listing of the consulted stakeholders attached to the official documents. Thus is it impossible to trace the actual drafting process, relying solely on the NSRs.

According to an NGO interviewee, the reports and other documents are sent as projects to NGO representatives, members of the National Council on Social Inclusion and other typical institutions. A working group on the document is formed and after that there is a meeting of the relevant group for the first draft. After this meeting, usually some, but not all of the recommendations of NGO

³²Government official interviewee, two online interviews conducted on 24 April and 7 May, 2014; from here on: Interviewee 1

³³See Ministry of Labor and Social Policy. (2012), p. 5; Ministry of Labor and Social Policy. (2014), p. 5

representatives are taken into account and a second draft is prepared. The procedure is repeated once again and after that a final version of the document is presented at the National Council on Social Inclusion. Overall, there are between one and three meetings for a NSR or other strategic documents. Another NGO representative, however, reports quite a different experience. Interviewee 1 has participated only in meetings of the National Council on Social Inclusion, which, as already mentioned, is a body different from the working groups and discusses only final versions of the draft. The available protocols of these meetings (four protocols for the period 2010-2013) show that all participants were given the opportunity to comment and make proposals, but all interviewees reported that the majority of their proposals were not in the final texts. At the same time, as pointed out by Interviewee 2, there are no formal rules for participation of the NGO sector in the drafting process, there is no clear outcome of the meetings of the National Council, and the general sentiment is that they have a formal character.

Another interviewee put emphasis on the acute need of round tables and “profound discussions on the main topics in the reports.”³⁴ There are also discrepancies in the drafting of the policy measure documents for the different OMC benchmarks. For example, according to an assessment report on the implementation of the European Commission Recommendation on Active Inclusion, the issue was addressed “in a rather intransparent way with insufficient involvement even of the social partners.”³⁵ The same report further states that as much as there has been an improvement in the dialogue between civil society organizations and the public administration, the discussions have not have significant impact on the decision-making process. At the same time, the report indicates

³⁴NGO representative interviewee, two online interviews conducted on 5 May and 8 May, 2014; from here on: Interviewee 2

³⁵See Zahariev, B., & Bogdanov, G. (2013a)., p. 12-13

the positive development on the Bulgaria 2020 strategy, which outlines the Bulgarian policy-measures for achieving the goals of the famous Europe 2020 Strategy, where the social OMC is introduced as a tool in the framework of the strategy. According to the report, until the summer of 2012 (the strategy was officially adopted in February, 2013) there were three meetings between the expert group and civil society organizations. This is a significant step forward from the statement made in the report on the 2008-2010 “National Reform Programmes for Growth and Jobs”, which pointed out that the stakeholders did not take part in the designing of the programme. Another negative example is the evaluation report for the Bulgarian performance in the European platform “Investing in children, according to which, “the National Strategy for Demographic Development has been updated for the period 2012–2030. We are not aware of any consultative process being undertaken, which implies that it was launched through the website of the respective authority, but no proactive and proper consultation has taken place.”³⁶ It should be noted that the reports are based on interviews with Bulgarian NGO representatives and thus are a just representation of the general opinion of the civil society organizations. The outlined differences point to insufficient transparency in the Bulgarian decision-making process in the OMC framework. This conclusion is further enforced by the analysis of the participation opportunities provided for deputies and representatives of the vulnerable groups themselves.

After their drafting, the reports are presented to the Bulgarian Council of Ministers for a final vote. There are reports before relevant parliamentary commissions, such as the Commission on Labor and Social Policy on the activities and policy measures within the OMC framework, but an extensive research shows that the reports are not presented as documents, they were only

³⁶See Zahariev, B., & Bogdanov, G. (2013b)., p. 10

mentioned as an activity throughout the present year or as a strategic document that was taken into account during the reporting of the annual activities. The OMC is mentioned during two reports on the Annual Programs for the Bulgarian participation in the European decision-making process³⁷ before the aforementioned Commission, but there were no debates on specific documents or the NSRs specifically. It should also be noted that during those reports the deputies in the Commission are only introduced with the priorities of the government and after a Q&A session give their consent for the program and vote on which strategic documents should be under the monitoring of National Assembly. Thus, the participation opportunities are diminished to monitoring and formal reports, without the active involvement of deputies in the drafting process. In addition to that, there are no records of parliamentary debates during plenary sittings of the National Assembly on the NSRs or any of the strategic documents on the different policy measures in the OMC framework.

As for local representatives and participation of the Bulgarian municipalities, members of the National Association of the Bulgarian Municipalities participate in the meeting of the National Council on Social Inclusion, where the NSRs and other strategic documents are discussed. However, the aforementioned problem on the nature of the discussion and the common perception that the meetings of the Council are a formality, still stands. An analysis of the NSRs shows that the municipalities are beneficiaries in the different programs for the implementation of the policy measures. They also have the discretion to create local strategic reports on social inclusion. It should be noted that these reports have to be consistent with the NSRs, which imposes further restrictions on the drafting process for the local reports. Thus, not only the participation

³⁷See Parliamentary Commission on Labour and Social Policy. (2010); Parliamentary Commission on Labour and Social Policy. (2013a)

opportunities for local representatives are limited on the national level, but the principle of subsidiarity is not fully respected and gives the municipalities limited opportunities to define their own social policy. There are number of examples in this respect. One of the most recent is the definition of the adequate minimum income in 2013. According to the report on the implementation of the recommendation for active inclusion for the European Commission, the opinion of local authorities was not sought even though there are significant discrepancies between the income levels in the municipalities and the definition affects directly such indicators as poverty and employment. A similar conclusion can be made about the participation of interested citizens, with the exception of Roma organizations. The later have also been “an active participant in the process of consultations especially for projects funded by the ESF but also for the pilot programme for social housing in 4 municipalities”³⁸ The case of Roma-related policy measures seems to be a general exception of the rule for the Bulgarian performance in the OMC, as further demonstrated by the analysis of the representation opportunities in the next section. On a broader scale, however, people suffering of poverty are not given the opportunity to participate in the process of decision-making.

The meetings of the National Council on Social Inclusion are not open to the public. There are no formal rules for participation of citizens in the drafting process, nor are there round tables or public discussions on the NSRs and other strategic documents while they are still at the drafting stage. There are number of public discussions and round tables on social inclusion, but they do not result in a unified public opinion presented to the relevant government officials, nor do they lead to following discussions. After the drafting process is concluded, the NSRs are uploaded on the

³⁸See Zahariev, B., & Bogdanov, G. (2013a)., p. 13

website for public consultations where citizens have access to the full text and can make comments and proposals for a period of two weeks. However, there are no records on whether proposals and comments were taken into account and the updated documents are not uploaded on the website after they had been adopted by the Council of Ministers. At present only two of the NSRs after 2008, when Bulgaria became a full member of the EU and started its participation in the OMC, are published and both documents (the NSR for 2008-2010 and the NSR for 2013-2014) are in their draft versions.³⁹ There are no records on the 2011-2012 NSR.

Representation

As already mentioned, the criterion for representation relates to who took advantage of the presented opportunities for participation. There are three core types of representation: territorial, functional and technical.

In the Bulgarian, case territorial representation in the OMC framework is marginalized. According to reports and minutes, a limited number of members of parliament have been given the opportunity to discuss the NSRs within the parliamentary Commission for Labor and Social policy and the parliamentary Commission for European affairs and control of European funds. From those reports and minutes, which cover all meetings of the commissions from 2007 until 2014, only three mention explicitly the reports,⁴⁰ with the first one stating that the recommendations of the commission are taken into account in the drafting process for the report for 2006-2008 and the second and third one stating the consent of the commissions with the report for 2008-2010.

³⁹See Ministry of Labor and social Policy. (2008).; Ministry of Labor and Social Policy. (2014).

⁴⁰See Parliamentary Commission on Labour and Social Policy. (2013).; Parliamentary Commission on European Affairs and Control of the European Funds. (2012).; Parliamentary Commission on Labour and Social Policy (2008a).

However, there is no record of the aforementioned recommendations. One minute of a meeting of the Commission for Labor and Social policy mentions the report for 2011-2012, during a report from a government official on Bulgaria's future annual activities in the process of decision-making in the EU for 2011/2012. However, this report took place before the drafting of the NSR and there are no further records on its development.

During the same meeting one of the members of the Commission mentions the OMC and the obligations of the member states to present NSRs, stating that "perhaps the Commission will be engaged with those documents too, so that Bulgaria, as a unitary state, with all its powers engaged in the process, will have a solid performance."⁴¹ This quote shows a solid understanding of the OMC process and the drafting of the reports, but it is more of an outlier in the general lack of debate in the parliament. It should also be noted that the comment is made by one of the former Ministers of Labor and Social policy, which suggests some expertise in the OMC process due to the fact that this particular ministry is responsible for the drafting of the NSRs. There were no further discussions on the future 2011-2012 NSR or the OMC during the meeting. In addition, during the time of writing of this paper there were no records of discussions on the NSR for 2013-2014, even though the document was in the drafting stage in April and was published on the website for public consultations on April 4th, 2014.

More extensive research on the drafting of the 2008-2010 NSR and its significance for the Bulgarian social policy is made within the Economic and Social Council, which reports regularly for its annual activities to relevant commissions in the parliament, such as the Commission for

⁴¹See Parliamentary Commission on Labour and Social Policy. (2008b).

Labor and Social policy, as it is financed by the national budget. This Council is often regarded as “the civil parliament of Bulgaria,”⁴² but the annual reports have an informative character and only outline briefly the activities of the Council, without elaborating in detail on the position of the Council on the NSRs.⁴³ The only report that engages more extensively with one of the NSRs is the report from 2009, when the Council also published a thorough analysis on one the 2008-2010 NSR.⁴⁴ In all four annual reports the Council points out to the same opinion published in 2009, as there are no opinions published for the NSRS for 2011-2012 and 2013-2014. Unsurprisingly, minutes of the meetings when the reports took place show that parliamentary representatives were not interested in further debates on the NSR or the Council’s opinion on its content.

There are no records of debates on the NSRs in plenary sessions at the National Assembly from 2007 until 2014. The NSRs are mentioned twice during sittings of the National Assembly, once in a response by the Minister of Labor and Social policy to a question on conducted reforms⁴⁵ and a second time during the presentation of a bill for update of the National Strategy for the Youth, which only states that the existing NSRs⁴⁶ are taken into account. It should be noted that both times there was no further elaboration on the NSRs or follow-up questions on their content by deputies. At the same time, there are records on debates on another strategic document related to the OMC-

⁴²The Council itself states on its official website: “The Economic and Social Council (ESC) is “the civil parliament” of Bulgaria. It unites a variety of Bulgarian civil society organizations of similar interests.”

⁴³See Economic and Social Council. (2012)., p. 31; Economic and Social Council. (2011), p. 66; Economic and Social Council. (2010)., p. 70;

⁴⁴See Economic and Social Council. (2009a).; Economic and Social Council. (2009b)., pp 8-16

⁴⁵See National Assembly.(2012a)., p. 6

⁴⁶See Parliamentary Commission on Labour and Social Policy. (2014).

the National Strategy for Roma Inclusion (2012-2020). There are numerous minutes from meetings of different parliamentary commissions and one minute from a plenary sitting of the National Assembly, dedicated solely to this document.⁴⁷ Within this plenary sitting, chairs of all relevant parliamentary commission made their reports on the positions of the commission on the draft document and expressed their recommendations. This is followed by Q&A session by deputies on the draft document, the attached to it plan for achieving the goals of the strategy an discussion on the role of the National Assembly in that respect. Two details should be considered in this context: first, as much as some deputies acknowledge the fact that the strategy is drafted in accordance with Bulgaria`s obligations as an EU member, there is mention of the OMC as a tool for good practices and a framework for the implementation of social policies; second, the presented strategy is merely a new text, it is in fact an adjustment of a document from 1999. Thus, the outlined debate is not about the Bulgarian activities within the OMC as an EU member. It is a long-standing national debate, which not only does not have its roots in the OMC, but also does not acknowledge the method as means of achieving the goals of the strategy- the is no mention of the OMC in text itself, nor there is mention of the NSRs, even as a context for the drafting of the document. Thus, it is questionable to what extent the high degree of participation and representation on this document is a success for the Bulgarian performance in the OMC.

Functional representation was limited and occurred through NGOs. As evident from interviews conducted on-line with NGO representatives and the evaluating reports on the 2008-2010 NSR, this type of representation is rather marginalized, mainly due to “misunderstanding of the OMC

⁴⁷See National Assembly. (2012b).

process, the role of reporting, the NGOs' role".⁴⁸ Furthermore, according to all of the interviewees, the majority of their recommendations did not find place in the final versions of the NSRs. At the same time, one of the interviewees reported that there were number of meetings within the National Council on Social Inclusion regarding the NSRS. According to another, "the problem is not in the number of the meetings, but what happens after them. The consultations are formal and a façade, seeking to compile a list of participants, not a meaningful representation."⁴⁹ These examples show that though avenues for participation and representation have been covered, there is a significant problem in terms of the deliberation criterion, which will be further discussed in the next section.

The technical or bureaucratic representation was dominating the drafting process, as also became clear from the conducted interviews and the aforementioned reports on governance and inclusion of stakeholders in the Bulgarian OMC activities. As for academic representation, there is only one representative of the academia in the National Council on Social Inclusion. As far as careful studying of the protocols of the meetings of Council goes, he did not use the opportunity for participation in the discussions. Within the Social Commission of the Economic and Social Council there are no academia representatives. There is no record of academic contribution to the OMC debate or the drafting of the NSRs in Bulgaria. The aforementioned reports evaluating the NSRs and different policy measures within the OMC framework are written for the Commission by NGO representatives and therefore cannot be considered as academic work.

⁴⁸Interviewee 2

⁴⁹NGO representative interviewee, one online interview conducted on 9 May, 2014; from here on: Interviewee 3

Deliberation

If the first criterion refers to the provided opportunities to all stakeholders to be included in the drafting process and the second one refers to who actually took advantage of these opportunities, the deliberation criterion refers to the nature of the public discussion, a feature of special importance in the Bulgarian case, as evident by the conducted interviews with NGO representatives. As outlined in the previous chapter, the deliberation criterion is met if the institutional setting allows for all interested stakeholders to have a fully-fledged, meaningful participation in the debate. The first indicator in that respect is the time schedule for the drafting of the NSRs and the time stakeholders are given to articulate their opinion.

As already mentioned, the drafts of the documents are uploaded on a website for public consultations, where comments and suggestions can be made for a period of two weeks. According to this Kroeger`s research, the same period is provided in the French case, which she assesses as “scarce.”⁵⁰ Interestingly, all NGO representatives pointed in the conducted interviews for the Bulgarian case that the provided two weeks are enough for reading the drafts and forming an opinion. According to them, the main problem is not the time schedule, but the way they are involved in the process and given access to the documents- mainly through the aforementioned website for public consultations and the website of the Ministry of Labor and Social Policy. Thus, there is a significant difference between the French and the Bulgarian case in the perception whether one crucial precondition for deliberation was met. A second precondition is the provision of sufficient time for the exchange of reasons within the relevant consultative bodies. According to the protocols of the meetings of the National Council on Social Inclusion, one sitting lasts

⁵⁰See Kröger, S. (2007)., p. 575

between hour and a half and two hours and the agenda is not always dedicated to the NSRs solely. However, one interviewee reported that there were a number of meetings on the NSRs and other strategic documents, thus the discussion took place in more than two hours every two years, which is the case in the French example provided by Kroeger. All protocols also include the written recommendations of those members of the National Council who expressed their opinion during the meeting. The main obstacle here is that “the authorities are not obliged to react on the recommendations, not all of the written positions are sent to all members of the Council and the documents might remain in the politically preferred form after all.”⁵¹

Finally, the last precondition for fully-fledged deliberation in the process of policy-making is that all interested stake-holders are present and take advantage of the participation opportunity. The outlined analysis on the participation and representation criteria above shows that this precondition was not met in the Bulgarian case. Local authorities are given a rather limited mandate to define their local social policy and are hardly consulted in the process of defining national policy measures. Parliamentary representatives hardly discuss the NSRs, be it because of lack of knowledge on the subject or lack of opportunities to discuss the documents during reports. There are no official records on consultation with excluded groups and NGO representatives point out that they are not sufficiently involved in the process of drafting.

Accountability

The last criterion is the most often connected to democracy and its quality. It is also closely associated with the issue of transparency. In that regard, the limited degree of mobilization of all

⁵¹NGO representative interviewee, one online interview conducted on 16 May; from here on: Interviewee 5

relevant actors significantly discredits the Bulgarian case. However, when it comes to public control and the accessibility of the documents, Bulgaria proves to be one of the countries that takes into account direct accountability, at least to some extent. All NSRs are available online, either on the official website of the Ministry of Labor and Social Policy, the website for public consultations or the official page of the EU Commission. It is true that the documents are scattered and some research is required to find them all, but it is still a significant improvement in comparison with the French and German cases, presented in Kroeger's research, where the official documents are available for a short period of time or not at all. Furthermore, while most of the relevant stakeholders in the German and French cases do not provide minutes or protocols of their meetings, most of the actors that have discussed the OMC and the NSRs in some form, provide online protocols and minutes of their meetings. The most significant breach of the transparency standard here is that not all of these documents are available, for example the National Council on Social Inclusion has four protocols on its website, while NGO representatives report that there were at least six meetings of the Council where NSRs and OMC policy measure were discussed. When it comes to local authorities, there are no relevant documents for the NSRs on the webpage of the National Association of Municipalities, while some local social reports for different municipalities can be found after extensive research. Interestingly, the majority of NGO positions on the NSRs and other strategic OMC documents are also not published on the respective websites.

As for responsiveness, which Kroeger also relates to the level of accountability, the Bulgarian case does not offer the best practices in this respect. It is true that in the formulation of all NSRs a special attention was paid to the close cooperation with all interested actors, but interviews with NGO representatives show that only "suggestions of minor importance were taken into account

and included in the official documents.”⁵² In addition, the documents mention good practices and programs conducted by NGOs, but there is no evidence that these practices were conducted in partnership with the Ministry or that the Ministry will engage with them further on.

Finally, there are no established mechanisms for sanctions. This does not come as a surprise, as the OMC framework formulated by the EU excludes sanctions as a possibility. It should not be forgotten, however, that the member state have full discretion to decide how to implement the method in their respective policy-making. In the Bulgarian case the choice is still in favor of the practices establishing democratic deficit. There are records on reports before the National Assembly and relevant parliamentary commission on the implementation of policy measures (although it should be noted that these reports are usually on the National Programs for Reforms and individual strategies, such as the National Strategy for Roma inclusion), but there is no mechanism for sanctions, should these measure have not fulfilled the established goals.

Clear outcome?

Does the Bulgarian performance in OMC live up to democratic standards? The most obvious answer, derived from the present case-study, would be “no”. The analysis shows that there are number of features of the OMC performance in Bulgaria that need improvement. These also speak volumes about the democratic quality of the process of policy-making in the country overall. At the same time, there are obvious improvements in the OMC implementation, when compared to the French and German cases presented by Kroeger. Both these improvements and the

⁵²NGO representative interviewee, one online interview conducted on 16 May, 2014; from here on: Interviewee 4

disappointing features of the method and its implementation in Bulgaria will be discussed in the next chapter.

Chapter III: Lessons and discussion

The present paper has so far argued that the democratic quality of the OMC needs to be assessed by criteria deriving from theories on liberal and deliberative democracy. These criteria capture different dimension of the legitimacy of this method of soft governance, as legitimacy is one of the key indicators for the democratic quality of a political process. Kroeger`s criteria, outlined in chapter I, analyzed the OMC on the national level, concentrating on one particular member state that has not been studied in this respect so far, Bulgaria. What does the empirical data show for the OMC performance in Bulgaria?

First of all, the Bulgarian case does not live up to the normative expectations attached to the OMC. The most severe breach of legitimacy occurs with the analysis of the representation criterion, where bureaucracy is clearly dominating the whole process of policy-making. It is especially alarming that territorial representation is marginalized and that so few representatives within the National Assembly and the relevant parliamentary commissions are familiar with the strategic reports and the role of the OMC in the social policy realm. This fact occurs in the context of the Lisbon Treaty, which had the ambition of involving the national parliaments more broadly in the process of decision-making in the EU with a new clause that sets out their duties and rights, among which are the rights to information and monitoring of subsidiarity.⁵³ The question emerges to what extend are these rights exercised in the context of the OMC. The analysis of the available minutes and protocols shows that there were neither reports on the main strategic documents related to the method, nor questions from deputies on the nature of these documents when they were mentioned in relation to other social policy measures and national plans. Thus, neither were deputies given

⁵³See European Union. (2014b).

the information they have right to by both the Lisbon treaty and the OMC template, nor did they seek to acquire this information. This speaks poorly not only for the democratic quality of the OMC implementation in Bulgaria, but for the process of policy-making related to the EU in this country overall.

However, the present research does seek to assess the merits of the Bulgarian democratic regime and, as earlier stated, it argues that as long as avenues for participation and representation are provided, the OMC is as democratic and transparent as it claims to be. Clearly, this was still not the case or at least not for all strategic documents related to the method. Some credit should be given to the Bulgarian national representatives when it comes to discussions on the National Strategy for Roma inclusion, but, as already mentioned, this issue has been the subject of a long-standing national debate, which does not have its roots in the OMC and does not recognize the method as means of achieving the goals of the strategy. Thus, it is highly questionable to what extent the degree of participation and representation on this document is a success for the Bulgarian performance in the OMC. Furthermore, this isolated case makes the lack of discussion on the national strategic reports even more staggering, as clearly there is expertise on the problems of social inclusion in the National Assembly.

A second disappointing fact is the lack of representation of excluded groups and people suffering from poverty. Here, one important lesson emerges in terms of legitimacy: if a policy that claims to be open to all relevant stakeholders is clearly detached from arguably the most important actors, the citizens, it does not live up to its own claims of openness and inclusiveness, and its legitimacy is diminished. This claim is further enforced by the lack of representation of relevant actors from

municipalities and the limited opportunities they are given when it comes to the formulation of local social plans. This uneven representation then casts into question the accountability in the OMC. Bureaucratic domination in the process of policy-making suggests intransparency. Perhaps the most alarming feature of the method in this respect is the lack of documents presenting the debates within the intra-institutional working groups, cited in all of the conducted interviews as the most important consultative bodies during the drafting process of the reports. The available minutes and protocols from the meetings of other consultative bodies, such as the National Council on Social Inclusion, present only the final stage of the discussions and in addition, there are no records on whether this discussion contributed for significant changes in the draft documents. Such quasi-accountability puts into doubt the legitimacy of the OMC once again.

But the most disappointing feature of the Bulgarian case is the nature of the public discussion, which was pointed out as the main problem in the intra-institutional dialogue by all NGO representative interviewees. Two major problems arise from the superficial nature of the discussion and the limited opportunities for deliberation. First, if only recommendations with minor significance are taken into account, as reported by one the interviewees, then it is obvious that criticism is not welcomed in the Bulgarian implementation of the OMC. This discredits the method and casts into question its alleged novelty as a policy tool meant to increase the transparency of the process of policy-making throughout the Union. On a broader scale, the lack of responsiveness to recommendations and criticism is the very opposite of a democratic political process. Second, the limited deliberation is symptomatic of the effectiveness or the ineffectiveness of the method. Issues of great public interest and with significant impact on the life of the most vulnerable threaten to be distorted into technical and bureaucratic matters with no clear outcome in the long run. This threat is further enforced by the aforementioned lack of parliamentarian

control and the limited venues for participation, which took place under obscure circumstances in the majority of cases. This varying degree of clarity and democratic quality is another weakness of the Bulgarian case.

There is no unified procedure for participation within the different consultative bodies. While there is no information on the participation rules within the infamous intra-institutional working groups, participation in the National Council on Social Inclusion happens by invitation, according to interviewees. The same varying degree of transparency occurs in the drafting process of different documents and their availability after their adoption. For example, while there is a lot of information on the strategic report for 2008-2010, including NGO opinions, independent assessment of its implementation, etc., there are virtually no records on the 2011-2012 report, besides the published document on the website of the European Commission. The same conclusion emerged after research on the drafting process for other strategic documents. For example, while the update of the National Strategy for Demographic development took place without consultations, at the same time there has been an extensive consultative process for the drafting and implementation of number of Roma-related strategies. Last, but not least, all these documents are scattered through the Internet and although available, they can be found only after extensive research.

The conclusion here is not a straightforward one, however. While there is obviously much room for improvement on the Bulgarian implementation of the OMC, the method is still not a lost cause. These varying degrees of participation, transparency and responsiveness are the evidence that the Bulgarian authorities responsible for the implementation of the method are aware of the good practices and the canon of policy-making that is supposed to be enshrined in it. However, it is debatable whether the implementation of these good practices in isolated cases demonstrates will

to follow them on a grand scale. The poor performance in the drafting process of the main documents demonstrates the opposite. The essential question here is does this varying degree of performance have broader implications for the OMC, not just for Bulgaria, but for all member states? The answer might be found in tracing the changes in the OMC features throughout the years, with a comparison between Kroeger's findings and the conclusions established by the present research.

The evolution of the OMC: a cross-country comparison

Kroeger's research findings can be summarized with one quote: "this OMC clearly does not live up to the demands of liberal democracy."⁵⁴ In the immediate years after the implementation of the method it seemed that the Commission's effort was a full-fledged failure. Kroeger's findings did not differ dramatically, with both the French and the German cases demonstrating lack of participation rules, limited to non-existing representation, very limited responsiveness in the deliberation process, practically no accountability, with the official documents not being published.

A factual cross-country comparison shows that there has been a certain development in the implementation of the process, at least at the outset. Firstly, according to Kroeger's findings in the period 2004-2005 there were between one and two consultative meetings with NGO representatives per document.⁵⁵ Furthermore, participation in both cases was conditional and upon invitation, with insufficient time provided for argumentation and opinions on the drafts. The Bulgarian case presents an evolution in that respect, with its plethora of consultative bodies and

⁵⁴See Kroeger, S. (2007)., 578

⁵⁵The reader should be reminded that during this period the strategic documents are called National Action Plans and they are the only official documents on the OMC.

even the establishment of the National Council on Social Inclusion. According to one NGO interviewee these consultative bodies were created in Bulgaria with the peer pressure of the EU Commission,⁵⁶ which indicates willingness to learn from past mistakes, at least on the EU level. Furthermore, as already mentioned in the previous chapter, there were between two and three meetings dedicated to the strategic documents within the intra-departmental working groups. Bulgarian NGO interviewees themselves report that “there has been minimal, but constant improvement on the social dialogue in Bulgaria ever since 2007.”⁵⁷

Secondly, there is a certain improvement with regard to accountability, considering that the majority of relevant actors in the Bulgarian case publish minutes and protocols from their meetings, while the German and French authorities remained behind closed doors back in 2004-2005. The most significant problem in this respect is that in the Bulgarian case the available sources still do not shed enough light on the drafting process, as the relevant actors hardly ever discuss the strategic reports. Often the reports are only mentioned in relation to other activities and other strategic documents. Still, the publishing of these sources is progress from the lack of transparency in the early years of the OMC. With this, however, the differences between the then-OMC and the now-OMC are exhausted.

Kroeger`s most alarming findings are practically duplicated in the Bulgarian case, starting with the lack of efficient parliamentary control and the inclusion of all relevant stakeholders being far from reality. The outlined progress gives the false impression that the OMC has been significantly reformed. But if currently NGO representatives in Bulgaria feel the need to form an Alliance for a

⁵⁶Interviewee 5

⁵⁷Interviewee 4

consolidated opinion on the strategic reports, hoping that a united voice is a stronger voice, as pointed by one of the interviewees⁵⁸, then obviously the OMC is still in the realm of bureaucracy and the infamous openness of the method is still not guaranteed, just as Kroeger concluded back in 2007. Most notably, just as then, there are still calls for the establishment of some form of accountability, either thorough sanctions or through a more open public debate. Here, the most debatable feature of the OMC framework shows through. As Kroeger points out, in the years of the initial implementation of the OMC, it seemed that the benchmarking process would facilitate an avenue for soft pressure by the Commission, which would be further enforced by the peer reviews among member states and the possibility of naming and shaming. However, it was soon proved that this would not be the case. In her analysis Kroeger relates this phenomenon “to the OMC’s clandestine character”⁵⁹ and the member states opposition to the eventual pressuring role of the Commission. A decade after Kroeger’s research, it seems that the OMC’s biggest flaw remains intact. NGO representatives in Bulgaria put accent on the acute need of accountability for the bureaucracy, as at the moment “they have full freedom to make the decision they want and they are not obliged why they did this instead of that.”⁶⁰ The exact same sentiment lies in Kroeger’s findings and the cited quasi-accountability.

The evolution of the OMC at the European level

In context of the presented cross-country comparison one important question on the nature of the OMC emerges: how effective is the monitoring role of the Commission at the moment and is the established democratic deficit related to it and thus symptomatic for the method as a whole? With

⁵⁸Interviewee 5

⁵⁹See Kroeger, S. (2007)., 578

⁶⁰Interviewee 4

regard to this question, it should be noted that the Commission's role in the OMC and the method itself have undergone reforms throughout the decade. In 2005 a highly critical report on the Lisbon Strategy's performance from a High Level Group, chaired by Wim Kok, characterized the overall performance of the strategy as "disappointing"⁶¹ and demanded strengthening of the naming and shaming element in the OMC⁶², as the method was not fulfilling its goals so far. The new Commission, chaired by President Barroso rejected this recommendation, but updated the Lisbon Strategy, with the OMC being left out of the core process of policy-making. The coordination in the social realm happened through streamlining, which ultimately unified the three pillars of the OMC, social inclusion, health care and pension, into one single OMC, with the Commission's hope that these issues would be addressed simultaneously and coherently from there on. Twelve common OMC objectives were identified in 2006⁶³ and reintroduced for the period 2008-2010. In accordance with these objectives, a new monitoring mechanism was introduced again in 2006.⁶⁴ It consisted of one general portfolio for assessment of the single OMC and separate portfolios for the three former pillars. These indicators and targets, however, did not have the role of official policy goals, which was the main weakness of the method and the monitoring. In this context the member states produced the strategic documents, which have been discussed at large in both Kroeger's and the present research. After the submission of these strategic reports the Commission prepared the Joint Report on the Social Inclusion and Social protection, which was based on the submitted national documents, assessment reports prepared by independent expert networks,

⁶¹See High Level Group. (2004)., p. 11

⁶²Ibid, p. 44

⁶³ See European Commission. (2005)., p. 5

⁶⁴See European Union. (2006).

national responses on thematic questionnaires. The Commission also prepared country profiles for each member state, which was aimed at assessing the national reports. However, despite this extensive production of documents, the Commission never provided formal recommendations to the member states after the assessments. The Bulgarian implementation of the OMC started in this particular context and it is evident that the monitoring mechanism did not prove to be efficient. As much as there were critical expert assessments (with the majority of them being cited in the present work) and country reports, Bulgaria still duplicated much of the malpractice exercised by Germany and France in the early years of the OMC. Not much has changed after the reform in 2010 and the introduction of the Europe 2020 Strategy.

The strategy does make an effort, at least on paper, to address some of the crucial flaws of the method. Special attention is paid to "sustainable and inclusive growth"⁶⁵ and among the ten adopted integrated guidelines one is dedicated to social inclusion. Initially, implementation of the OMC under this strategy happened through the European Semester⁶⁶ - a new timeframe, according to which the Commission first adopts the Annual Growth Survey, which is then used by the Council for the endorsing of the annual EU-priorities. In the next stage the member state submit their National Reform Plans, which cover all priorities, including the one on social inclusion. These national plans, as already mentioned in the first chapter, should not be mistaken with the strategic reports. With the introduction of the Europe 2020, member states were no longer obliged to submit these reports, as report on social inclusion was supposed to be included in the national plans. However, in 2011 the Social and Protection Committee reintroduced regular strategic reporting,

⁶⁵See European Commission. (2010).

⁶⁶See European Commission. (2014).

aiming at "reinvigorating the social OMC."⁶⁷ These changes and reintroductions of documents and plans prove to be nothing but perplexing for the actors, with all the strategic documents being practically the same in content. This conclusion was reinforced by the conducted interviews, with one NGO representative even voicing her doubts that these changes are “politically convenient, as there is no base for a long-term comparison of policies.”⁶⁸ Thus, instead of facilitating the implementation of the method, these reforms prove it to be technocratic, hard to follow and as clandestine as in 2004-2005, during Kroeger`s research. Another novelty in the monitoring process introduced by the Committee was the Social Protection Performance Monitor, which essentially imitates the monitoring system prior the introduction of the Europe 2020 Strategy, with indicators for assessment of all three strands of the OMC. Perhaps the most significant development in that respect is the intensification of peer review and mutual surveillance, which are conducted throughout the year.⁶⁹ Most notably, the monitoring presents recommendations to the member states in the form of Country Specific Recommendations. But what was the impact of this reform and monitoring on the member states` performance?

It seems that the proclaimed goals of reinvigorating the OMC and broader inclusion of stakeholders⁷⁰ have not been reached yet. The monitoring process does not influence substantially the key issues with regard to the social dialogue in the member states, as evident by the interviews

⁶⁷See Social Protection Committee. (2011).

⁶⁸Interviewee 5

⁶⁹Barcevicius, E., Weishaupt, J. T., & Zeitlin, J. (2014)., p. 35

⁷⁰Social Protection Committee. (2011)., p. 7

conducted for this study. The recommendations introduced by the Social and Protection Committee have a political character and do not any way remedy the lack of responsiveness, quasi-accountability and intransparency established in the German, French and Bulgarian cases, with a decade between the two Western European cases and the later Eastern European one. Thus, the democratic deficit in the OMC framework is not a function of the democratic quality of the regimes in the member states. It might enforce certain flaws of the process of policy-making in the country, but this phenomenon occurs only because of the weak normative power of the method. This is also evident by the conclusions made in this research: the Bulgarian case proves that there is an ongoing learning from past mistakes and there are minor improvements, but as long as there is no significant change in the overall framework for policy-making of the method and not just the last stage of monitoring on the EU-level, democratic deficit will always remain. However, the essence of the method deserves admiration and not all is lost: as long as public debate and inclusion of relevant stake-holders are ensured, the OMC might prove to be the road to new, successful EU policy-making, where social dialogue and partnership bring policies closer to citizens.

Conclusion: the way forward

Although the OMC was introduced as a method to cope with Eurosceptic realities, it has further diminished the democratic quality of EU governance. Poor transparency, lack of participation rights and vague accountability amounted to the already growing criticism towards the Union. The method does not live up to the normative expectations attached to it, even a decade after its launch. It still fails to guarantee the inclusion of all relevant stakeholders- a claim that was meant to be the novelty that distinguished this new mode of governance from the old ways of the EU. Instead, the OMC performs poorly both in Western and Eastern Europe, regardless whether there is a presence of long-standing traditions in the social policy realm (as in France and Germany) or the member state is a young democracy with social system that is still undergoing reforms (as in the Bulgarian case, presented in this research.) The most alarming finding of this research is that the method remains bureaucratic-dominated within the member states, unresponsive to demands for intensive dialogue and recommendations from relevant actors and thoroughly non-existent in the agenda of crucial policy-makers, such as deputies. Of course, further research on the OMC is needed, as only a thorough comparative base on its performance in all member states presents comprehensive evidence on its democratic quality. At the time of writing of this paper, a new book on the method, with five case-studies on its performance in different member states, was published. However, all of them focus on Western European countries. Eastern Europe remains insufficiently analyzed, which provides opportunities for further analyses.

Nevertheless, a complete dismissal of the OMC would equal dismissing the aforementioned EU ambitions on improving its models of governance. Such Euroscepticism damages the integrity of the European project and is completely unnecessary almost fifteen years after the launch of the OMC model. Furthermore, the intention of improving policy practices across the Union by mutual

learning among member states is admirable. Thus, instead of completely scrapping the OMC project, the Commission needs to introduce effective changes in order to improve the democratic quality of the method.

The most important reform in that respect would be the introduction of legal basis for the method. Even though the OMC is designed to be a legally non-binding method of governance, a legal basis should be included in the outlining of the benchmarks and the timeframe for fulfilling them. The European Semester addresses this issue to some extent, but only with regard to the timeframe for the introduction of the national reform programs. The strategic reports are still presented upon the will of the member states. The reports and their voluntary nature clearly do not compensate for the limited involvement of civil society actors, excluded groups of citizens and even national representatives. Thus, a legal basis addressing the reports will further enhance transparency, as interested civil society stake-holders will have access to relevant OMC documents and will be aware of the stages of the process, which encourages further action.

Secondly, the European Parliament should have a vital role in the OMC debate. At present, in the framework of the European Semester, the Parliament only has the discretion to issue one resolution on the Commission's Annual Growth Survey at the beginning of the semester and one resolutions on the whole semester at its very end. This exclusion proves counterproductive and further diminishes the democratic quality not only of the OMC, but of the whole process of policy making in the Union. The acute need of broader involvement of MEPs was emphasized only recently by the 2014 European Elections. The rise of Euroscepticism in old member states, such as France and Britain, is a clear call for reforms and Europe's drawing closer to its citizens. In the wake of the election results, it seems that the electorate is voting against austerity measures and "they don't

want to be led anymore from outside, to submit to laws."⁷¹ The European Parliament, however, can still prove to be the bearer of pro-European sentiments, as the four biggest party families still hold 70 percent of the seats in the Parliament. A reform in the role of the only directly elected EU institution would enhance the image of the Union and will improve significantly the democratic quality of policy-making process. The OMC not only does not make an exception in that regard, but have special importance, given its ambitions in the social policies realm. MEPs already have the expertise to comment on social matters and have proven their determination to participate in this sphere. The latest evidence on that is the heated EP debate on the multiannual financial framework for 2014-2020 and debates on the European Social Fund.⁷² It seems only natural to include the Parliament on debates on employment strategy, social inclusion and education. Furthermore, national parliaments are traditionally dominated by local agendas and there is a threat that debate on OMC will remain marginalized, as shown by both Kroeger's and the present case studies. Thus, it seems ineffective to expect twenty eight national parliaments to participate in a project that is not even discussed by their counterparts in the European Parliament. Discussions on the OMC agenda in Strasbourg would also increase the visibility of the method and will contribute to the improvement of the public debate on it, which would then further enhance involvement of relevant stake-holders on the national level.

Last but not least, clear incentives should be outlined. At the present moment the OMC agenda is lost in bureaucracy, as there is no clear outcome of the method, which discourages both national

⁷¹The Telegraph. (2014).

⁷²See EuroActiv.(2013).

governments and civil society stake-holders to be active and further diminishes the democratic quality of the method. A possibility in that respect is the outlining of financial incentives.

One thing is clear: at the moment the OMC is operating on a dual basis, being both a policy tool in the Europe 2020 strategy and an independent process of policy making with its own time framework, methods of implementation and assessment. This twofold nature proves to be ineffective and leads to intransparency that could easily be avoided in a long-term perspective, if the method is here to stay.

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