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This is the author's manuscript

Original Citation:

Availability:

This version is available <http://hdl.handle.net/2318/102608> since

Published version:

DOI:10.1111/j.1662-6370.2012.02067.x

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This is an author version POST PRINT

of the contribution published on:

M. Moschella and B. Guastaferra, "The EU, the IMF, and the Representative Turn: Addressing the Challenge of Legitimacy", Swiss Political Science Review, (ISSN:1424-7755), 2012, 18 (2), pp. 199-219.

The definitive version is available at:

La versione definitiva è disponibile alla URL:

<http://onlinelibrary.wiley.com/doi/10.1111/j.1662-6370.2012.02067.x/abstract>

The EU, the IMF, and the *Representative Turn*:

Addressing the Challenge of Legitimacy

1. Introduction¹

The legitimacy gaps that afflict international organizations (IOs) are widely recognized (Scholte 2011; Reus-Smit 2007). In its most pessimistic form, the argument is that international organizations are unlikely to gain legitimacy because they are detached from the principal arena of democratically legitimate policy making under representative government where citizens can participate in the policy decisions affecting their everyday lives (Dahl 1994). IOs operate outside the classic 'democratic circuit' (Schmidt 2006; also Heritier and Lehmkuhl 2011) and therefore lack what Jackie Smith (2008: 11) calls 'external legitimacy', meaning that they are not subject to popular consent and control.

In a less pessimistic fashion, the argument is that IOs are endowed with a stock of legitimacy that derives from the act of delegation of its principals. Over time, however, many factors may contribute to the erosion of IOs legitimacy. For instance, it has been found that legitimacy decreases if member states' perception is that they are controlled by the great powers (Johnson 2011) or if the IO fails in dealing with the problems it is meant to address, such as failing to adapt to new economic realities (Seabrooke 2007). Furthermore, no published record of activity and decision-making positions as well as limited public

¹ Although the paper is the result of joint efforts, each author holds primary responsibility for specific sections. In particular, Guastaferrro (section 2, 3, and 5) and Moschella (section 1, 2.2, and 4).

participation to the IO decision making often weaken perceptions of legitimacy (Karns and Mingst 2010: 549).

Decreasing levels of legitimacy constitute a serious problem for the effectiveness of the IO. That is to say, if the IO does not garner sufficient political support, the success of its actions is at risk. Indeed, as it is widely recognized, governing bodies must be viewed as legitimate institutions as effective government is dependent on people voluntarily obeying the law (Easton 1958; Tyler 1990). As a result, IOs that lack legitimacy tend to experience difficulties in implementing their policies (Backstrand 2008: 79; Zürn 2002).

These considerations have sparked an intense debate regarding the modalities through which the legitimacy of IOs can be improved even in the absence of the democratic mechanism of election. The purpose of this paper is thus that of analyzing the legitimacy-enhancing strategies that IOs have commonly adopted and to provide a theoretical assessment of these strategies as remedial measures to legitimacy deficits.

Based on a focused comparison between two prominent international institutions – the EU and the IMF – the paper will argue and illustrate that the process of enhancing IOs legitimacy has unfolded through the application of two main strategies among others. The first strategy has been that of expanding the number of participants to the EU and IMF decision-making processes. The second strategy is related to the process of delegation through which principals (member states) authorize their agents (the organizations) – a process that is based, among other factors, on the need for expert information to policy-makers (Epstein and O'Halloran 1994, 1999; Huber 1998). Indeed, the EU and the IMF have deepened their expertise over time in order to improve the benefits delivered to the principals. In short, legitimacy has been considered a function of the output produced by the 'expert' IO and has been related to the IO's problem-solving effectiveness (Scharpf 2003).

While both strategies certainly deserve merit for having explicitly addressed legitimacy-deficits, offering a useful blueprint for conceiving of legitimacy beyond the nation-state, these strategies suffer from some major weaknesses. On the one hand, participation is far from being representative of all relevant

interests but is still highly selective. As has been noted, one of the problems of legitimacy-enhancing strategies based on participation is that they do not guarantee equal access to the decision-making process, especially when some individuals or groups lack the conditions to participate effectively or to participate at all.² On the other hand, the increasing emphasis on expertise has allowed IOs to insulate themselves from political accountability even when the output of the decision-making is harmful of broad public interest.³

In short and here is the argument we advance in this paper, the problem with the legitimacy-enhancing strategies based on participation and expertise lies in the fact that they fail to ensure that IOs are representative of the interests of their members and responsive to them. It is possible to say that these strategies cannot ensure the bidirectional- link between rulers and ruled that that stands at the heart of the concept of representation (on the relational nature of representation see Mansbridge 2011). Seen from this perspective, we do not claim that the strategies based on participation and expertise are useless to enhance the legitimacy of IOs. More narrowly, we argue that these strategies are problematic to the extent that they lack the mechanisms through which member states can effectively authorize the IO in representing their interests and control the IO in the output it produces.⁴ Participation and expertise cannot be disconnected from the principle of representation if they are to achieve the legitimation of IOs.

In what follows, we illustrate these arguments by reviewing the ways in which the EU and the IMF have attempted to (re)gain or improve their legitimacy. Particular attention will be devoted to recent innovations in this quest for legitimacy. Indeed, both the EU and the IMF have recently turned to measures that aim at improving the principle of representation in their day-to-day activities. While it is probably too early to assess whether this 'representative turn' will redress the legitimacy deficits of the EU and the IMF, the measures adopted are nonetheless an interesting development because they demonstrate the limits of the two strategies pursued thus far. The comparison between the EU and the IMF rests on the observation that both organizations have faced serious protests and external criticisms. The anti-globalization

² See, for instance, the discussion in Rehfeld (2011: 634).

³ The criticism according to which delegation to expertise allows politicians to escape accountability for the public policy they adopt is not exclusively leveled against international bodies. Rather, the criticism has been developed with regard to domestic political systems (Schoenbrod 1993).

⁴ On the issue of accountability at the global level see, in particular, Grant and Keohane (2005).

demonstrators have signaled their concerns about the undemocratic character of both the Fund and the EU. Furthermore, the EU and the IMF are probably among the most influential organizations on the economic choices of its members and well-being of domestic societies, primarily because of the sanctioning and surveillance mechanisms they possess.

Before proceeding, two clarifications are in order. Firstly, it is important to clarify how this paper conceives the relationship between the concepts of legitimacy and representation, on the one hand, and democracy, on the other. Specifically, our view is that the former are to be conceived independently from democratic concerns. Indeed, as Andrew Rehfeld (2006) has convincingly argued, it is possible to think of many cases in which political representation is at play outside of the normal institutions of representative government which, in turn, is meant to achieve a democratic form (see also Rehfeld 2011 640).⁵ In short, we should not confuse legitimacy and representation with the conditions that make a society democratic. Forms of legitimation and political representation exist well outside democratic contexts, both in non-democratic systems (for instance, Urbinati and Warren 2008) and in the international context (Rehfeld 2006). Hence, in elaborating the concept of representation, we deliberately design it in a way that distinguishes it from democratic principles.

Secondly, although we analyze the legitimacy-enhancing strategies used by the EU and the IMF since their creation till present, the paper does not aim at providing an empirical measure of the size of the legitimacy deficits in the two organizations. Likewise, the paper is not meant to assess the causal factors behind the decisions to adopt specific strategies over the others. More narrowly, we are interested in identifying patterns of legitimacy-enhancing strategies and their implications for the legitimacy of IOs.

The paper is organized as follows. In the following section, we elaborate on the concept of legitimacy and representation as applied to international political institutions and analyze the strengths and weaknesses of the legitimacy-enhancing strategies that have been primarily followed by international

⁵ It is possible to conceive of legitimacy and representation in a way that is independent from democratic concerns in order to apply them to non-democratic context (Urbinati and Warren 2008).

bodies. Section 3 traces the evolution of the legitimacy-enhancing in the EU. Section 4 does the same for the IMF. Section 5 concludes by reflecting on the findings.

2. Legitimacy and legitimacy-enhancing strategies at the international level

Among the most debated concepts in the social science, the concept of legitimacy certainly occupies a special place. In Max Weber's reading, the validity of any kind of power depends on the social acceptance by those affected by it (Weber 1922). As Jürgen Habermas (1976) has sharply pointed out, the concept of legitimacy usually enters the analytical picture when it is deficient. 'Only when a regime or arrangement is being manifestly challenged by its citizens/subjects/victims/beneficiaries do political scientists tend to invoke lack of legitimacy as a cause for the crisis' (Schmitter 2001: 1). In this respect, legitimacy is an essential condition for the stability of political systems.

In David Beetham's reading, political power can be said to be legitimate to the extent that: 1) it conforms to established rules and it is exercised according to them (*legality*); 2) the rules can be justified by reference to beliefs shared by both rulers and ruled (*normative justifiability*); 3) the dominant actors holding a position of authority enjoy an express consent on the part of subordinates (*legitimation*). It follows that a breach of rules triggers *illegitimacy*, the absence of shared beliefs triggers *legitimacy deficit*, and the absence of the ruled's express consent triggers the *delegitimation* of the political system (Beetham 1991: 17-21).

While IOs have no difficulties in matching the *legality* criterion, insofar as they comply with the rule of law envisaged by international treaties, they suffer from both a *legitimacy deficit* and a *delegitimation* problem. To start with, in liberal democracies, the legitimacy deficit is avoided when the normative justifiability criterion is satisfied, i.e. when there are shared beliefs between rulers and ruled. This is possible thanks to performance, democratic accountability, and shared identity (Beetham and Lord 1998: 6-

7). Furthermore, in liberal democracies, the delegitimation problem is avoided when the legitimation criterion is satisfied, i.e. when there is an express consent by the ruled towards the political authority. This is usually possible thanks to the electoral authorization (Beetham and Lord 1998: 5). In contrast, IOs miss both democratic procedural requirements able to subsume the consent of the ruled and clear-cut political community able to foster identity-building processes.

In the following section, we review two legitimacy-enhancing strategies that IOs have widely employed to make up for the lack of democratic procedural requirements and of a supporting political community. These strategies, which figure prominently in the history of the EU and the IMF, are those that foster participation of societal actors and those that emphasize the expertise gains associated with the act of delegation. It is worth clarifying that the legitimacy deficit of the IOs under investigation are taken for granted, i.e. it will be neither empirically measured nor demonstrated⁶. Our focus will be on the process through which legitimacy is enhanced by the institutions themselves. Building on the two-sided nature of legitimacy theorized by Barker, we will thus understand of legitimacy as a 'claim made by *rulers*' rather than as a 'belief held by *subjects*' (Barker 1990: 59, emphasis added).

2.1 Participation and delegation to experts

The first strategy aims at expanding the social base of participation by favoring the inclusion of a wide numbers of affected parties to the decision-making process that takes place in international or supranational bodies. This strategy therefore includes several forms of procedural legitimacy such as participation of civil society groups, and deliberation through affected parties. The inclusion of an increased number of actors in the decision-making aims at addressing problems of exclusion. For instance, in the

⁶ It is worth specifying, anyhow, that this deficit is controversial in the literature. Keohoane, Macedo and Moravcsik (2007: 5-7) have argued that there are at least three conventional defences of multilateral organizations, all of them persuasive and widely accepted. Multilateral organizations: a) are indirectly accountable to domestic democracies (Grant and Keohoane 2005, Moravcsik 2002); b) are endowed with powers expressly delegated by Member States by unanimous consent (Buchanan and Keohoane 2006); c) are able to achieve policy goals that Member States could not achieve alone. These positions notwithstanding, our assumption is that IO still suffer from a legitimacy deficit.

issue area of finance, Mügge, Underhill and Blom (2010: 6) note that ‘only a limited range of [the] constituencies [affected by financial market governance] have been included in policy-making at either the domestic or international levels’. Given these shortcomings, the inclusion of different stakeholders in the policy-making process has been pursued as a mechanism to increase representativeness of supranational and international governance (Neshkova 2010). That is to say, if we accept the argument that ‘to gain legitimacy, public policies require the endorsement (or at least consultation) of all affected, then global policymaking needs to rely on the broadest possible participation on a global scale’ (Dallmayr 2002: 154-5).⁷ Legitimacy-enhancing strategies through participation have therefore been characterized by various forms of broadening the social basis of decision making, expanding the range of participants to the policy process.

The second legitimacy-enhancing strategy is related to the process of delegation to non-majoritarian institutions (Majone 2005). That is to say, it concerns the principal-agent relationship that stands at the heart of the creation of IOs (Thatcher and Stone Sweet 2002; Hawkins et al 2006). Indeed, the literature on delegation has identified several factors that help explain why politicians delegate powers to an agent, therefore justifying their existence and legitimacy. Several studies on delegation in domestic settings, for instance, have shown that agents are created and delegated powers largely in order to provide expert information to legislators (Epstein and O’Halloran 1994, 1999; Huber 1998). In addition to the demand for policy-relevant information, PA studies have singled out another important factor that helps explain the functions delegated to an agent: the demand for credible commitments.⁸ Given the high costs required to meet commitments, principals face a credibility problem. Therefore, they delegate enforcement commitments across the membership (Moravcsik 2002: 613).

The reasons that stand behind the creation of international agents shed light on some of the factors that contribute to their legitimacy. In particular, given the functions that the agents are expected to

⁷ For the argument in favor of greater participation in global governance see also Bevir (2010)

⁸ In order to ensure credibility, ‘agents no longer represent their principals’ own short term understanding of their interests and preferences...acting according to their own independent judgment as to where their principals’ first order interests and preferences lie in the long term’ (Bellamy and Castiglione 2011:114).

perform, they gain their legitimacy because of the results they achieve and the resulting confidence the public places in them (Majone 2001). In other words, international agents gain legitimacy by garnering public support for their substantive decisions (see also Caldeira and Gibson 1992; Mondak and Smithey 1997). Serving the common interest of the constituency (Scharpf 1999) agents rely on an 'output-oriented legitimacy' closely linked with the concept of effectiveness.⁹

Participation and delegation to non-majoritarian institutions, we submit, are important and viable tools to build the legitimacy of international actors. However, these tools may fail to reach the legitimacy goal. This happens not because they do not stand up to the national standard of legitimacy – this would require an (inexistent) institutional isomorphism between the domestic and the international political system. Rather, in our view, participation and delegation to experts are poor legitimacy-enhancing strategies because they do not stand up to the standard of representation.

2.2 Representation

For the purpose of this paper the principle of representation entails a bidirectional link between rulers and ruled based on: a) the possibility for the ruled to *authorize* their rulers to act, therefore making the rulers *representative* of the interests and needs of the ruled; and b) the possibility for the ruled to *control* their rulers, therefore making them *responsive* for their decisions.¹⁰ In other words, representation is an inherently relational concept in that it describes the activities of representatives and their constituents simultaneously as they relate

⁹ The link between output oriented considerations and effectiveness of the IOs is emphasized in Scharpf 2003. Echoing Scharpf's insights, Frank Vibert (2007) concludes that 'unelected bodies' such as central banks, environmental agencies, and an institution such as the European Commission generate a legitimacy of their own through the production of a specific output/good: the provision of information to citizens.

¹⁰ Our definition of representation borrows from what Pitkin (1967) defines as 'formal representation'. According to the formal understanding of representation, indeed, representation takes place through a double process of *authorization* and *accountability* between rulers and ruled. For a recent application of Pitkin's grid to EU governance see Bellamy and Castiglione 2011: 120-124.

to each other (Mansbridge 2003; 2011). Furthermore, the principle of representation posits equality among the represented, which finds its most comprehensive embodiment in the one-person-one-vote procedure.

Assessed against this definition, participation and delegation to experts present serious shortcomings. As far as concerns participation, this strategy cannot guarantee that the ruled authorize their rulers primarily because it does not guarantee equality in the policy-making processes. This problem has been widely recognized and several suggestions have been advanced to redress it, including the creation of citizens' juries (Warren 2008), the provision of small stipends to make public sessions accessible to the less affluent (Rehfelf 2011: 634), and the planning of forums on public policy and legislation – what have been called 'deliberation days' (Ackerman and Fishkin 2004). What these suggestions imply is that participation cannot guarantee the equal access and representation among the represented when it allows only those having the organizational structures and financial resources required to join and try to affect the decision-making process (Smismans 2008).

Nowhere are the limits of participation more evident than in international contexts. Indeed, several developing countries lack the organizational and analytical resources to actively participate and influence the decision-making processes of international organizations, especially when technical issues are debated. In this context, even some important transparency measures, such as the publications on the institutional websites of agendas and working documents, have failed to contribute to increase public participation to the IO decision-making because of the high level of technicalities of the published documents.¹¹ In short, the participatory strategies adopted thus far have not been able to ensure that the represented authorize the representative (the IO) to act.

As far as concerns delegation to experts, this strategy can be criticized in light of the second dimension identified above. That is to say, delegation to experts does not ensure the responsiveness of the rulers to the ruled. This can be explained on the basis of at least two set of factors. On the one hand, as has been noted and empirically demonstrated, IOs may end up pursuing goals that principals had not intended or to pursue goals with modalities that principals had not approved – i.e. agency slack (Hawkins *et al.* 2006;

¹¹ On the limits to participation posed by technical considerations and communities see Coleman and Porter 2000: 381.

Pollack 2003: 28). On the other hand, their expertise may shield them from any form of political accountability. That is, the increasing emphasis on expertise has allowed IOs to insulate themselves from political accountability when the output of the decision-making is harmful of broad public interest.¹²

A number of empirical observations further reinforce these normative considerations against delegation as a viable legitimacy-enhancing strategy for IOs. Firstly, most IOs tend to act beyond, rather than within, the terms of delegation therefore undermining their representativeness – the so-called problem of ‘mission creep’ (see Nielson and Tierney 2003; Hawkins et al. 2006). For instance, in the EU, the activism of supranational institutions such as the Commission and the Court of Justice has allowed the EU to act well beyond the competences conferred on it by the Member States, thus raising what has been referred to as a ‘creeping competencies drift’ within the European integration process (Weatherill 2004). Secondly, several IOs are not fully responsive to the whole membership either because voting rights are skewed towards certain groups of countries (as is the case in the IMF) (see Woods 2000) or because the ‘experts’ who run the operations of IOs (Barnett and Finnemore 1999) are only partly accountable to governments and citizens (see also Machida 2009: 376). In short, the delegation strategies adopted thus far are have not been able to ensure that the IOs are responsive to the representatives.

In what follows, we show how two prominent international organizations have used participation and delegation to experts to achieve legitimacy. Recently, however, both the EU and the IMF have started complementing these strategies by emphasizing the principle of representation in a variety of ways. This process is illustrated in the following sections.

3. The EU and the path towards legitimacy

¹² The criticism according to which delegation to expertise allows politicians to escape accountability for the public policy they adopt is not exclusively leveled against international bodies. Rather, the criticism has been developed with regard to domestic political systems (Schoenbrod 1993).

The European Communities have been facing legitimacy problems since the 1970s. In 1975, the Tindemans Report accused the European Economic Community to suffer from a 'democratic deficit', deriving from a significantly low involvement of citizens into the European decision making process, which was almost exclusively governed by national executives and distant European bureaucrats. Since then, the European Communities (and subsequently the EU) have followed a twofold path. On the one hand, they have attempted to gain standard democratic legitimacy by strengthening the powers of elective bodies. On the other hand, they have devised legitimacy-enhancing strategies 'alternative to the majoritarian avenue' (Dehousse 1995) which have been primarily aimed at strengthening participation of civil society and expert information.

During the 1980s, the legitimacy-enhancing strategies revolved around the place to be reserved to the parliamentary branch within the European institutional system. In 1979, the historic decision was taken to make the European Parliament (EP) directly elected by European citizens. Nevertheless, the limited powers accorded to the EP as compared to those of the Council of Ministers and of the European Commission did not satisfy the demand for legitimacy. As a result, the EP, which at the time of its establishment was only allowed to express non-binding opinions, was progressively endowed with the same legislative powers of the Council. Indeed, the Treaty of Maastricht of 1992 introduced the 'codecision procedure'. That is to say, the EU draft legislation could not be adopted without a shared understanding between the Council, representing Member States, and the EP, representing European citizens.

Delegation to experts and to non-majoritarian institutions also figures prominently in the list of strategies that the EU has pursued to gain legitimacy over time. In particular, by strengthening the powers of supranational, technical bodies, such as the Court of Justice and the European Commission, the aim has been to improve the performance of the Union, via expert information. Indeed, the members of these technical bodies are not elected by popular consent, but appointed by virtue of their legal expertise, in the case of the ECJ, and by virtue of their economic expertise in the case of the European Central Bank. Since non-majoritarian institutions manage technical policy areas, their insulation from any form of electoral participation is justified since they often deal with 'regulatory', rather than 'redistributive' policies (Majone

1996). Delegation has been particularly important in some technical fields, where common citizens are neither willing to participate nor able to, being 'rationally ignorant' with respect to the complexity of the policy issues under consideration (Moravcsik 2002: 614).

Participation as a legitimacy-enhancing strategy has been a late-comer in the European integration process and has been used as a strategy to reinforce the involvement of citizens within the EU decision-making process. The EU started to institutionalize a culture of consultation and dialogue with civil society especially in 2000, following the publication of the White Paper on Governance. Indeed, the Paper suggested that 'participation through-out the policy chain – from conception to implementation',¹³ was one of the five principles that the EU has to follow to reach the goal of good governance. In this connection, civil society's involvement was expected to offer citizens 'a structured channel for feedback, criticisms, and protest'.¹⁴ Following the White Paper's call for participation, the EU has quickly developed an inclusive approach in the development of its policies. In 2002, the Commission adopted a Communication establishing a coherent framework for consulting external interest parties and setting minimum standards for consultation.¹⁵

In spite of the attempts aimed at making the EU as inclusive as possible, the EU participatory strategies have mainly accommodated 'interested parties' rather than 'affected' ones. For instance, although in principle all groups and associations can participate in the consultations run by the Commission through the web portal 'Your Voice in Europe', since there is not a legal definition of the term 'civil society organization', civil society organizations are nonetheless required to clarify what interest they represent and what their mission is in order to be registered accordingly. In order to improve transparency in its participatory strategies, in March 2007, the Commission adopted a Communication on the Follow-up to the Green Paper 'European Transparency Initiative', which informs about the framework in which lobby groups and civil society organisations operate. Furthermore, in June 2008, the Commission launched a new

¹³ Commission of the European Communities, *European Governance. A White Paper*, Brussels, 25/07/2001, COM (2001) 428 final, p. 10.

¹⁴ *Ibid.*:15.

¹⁵ 'General principles and minimum standards for consultation of interested parties by the Commission' COM(2002)704, adopted on 11 December 2002.

voluntary register of interest representatives in order to alert and invite in the consultation process all those registered parties that have indicated their specific areas of interest. Despite these attempts to broaden the scope of participation and to make it more transparent, the kind of representation endorsed by the participatory strategies is still a selective one. Moreover, the unlikelihood that participating parties can affect the outcome of the decision-making process undermines the authorization/responsiveness mechanisms inherent in the principle of representation. The recent reforms to the EU institutional framework, however, signal an important departure from the 'representation of interests' pursued thus far towards a form of 'political representation', which aims at involving all citizens on equal grounds, thus giving a voice to all affected parties. To these reforms we now turn.

3.1 The EU Representative Turn

The Treaty of Lisbon has shifted the balance from alternative legitimacy-enhancing strategies to more traditional ones. Indeed, the Treaty shows a strong favor towards classic democratic channels based on representative democracy. In other words, the drafters of the Treaty of Lisbon have focused on: a) strengthening existing forms of representative democracy and of electoral accountability; b) introducing new *authorization* mechanisms so to making the EU more representative of its principals; c) introducing new *control* mechanisms so to making the EU more responsive to its represented. A number of examples help to itemize this trend.

a) Enhancing representative democracy

To start with, the Treaty establishing a Constitution for Europe, which never entered into force because of the failure of the 2005 referendums, dedicated its sixth title to the 'democratic life of the Union' which was

conceived as based on both ‘the principle of representative democracy’ (Art. I-46) and ‘the principle of participatory democracy’ (Art. I-47). In other words, the proposed Constitution attributed to the consultation and dialogue with civil society organizations the same pride of place reserved to the involvement of elective assemblies in the efforts of gaining democracy at the EU level. In contrast, the Treaty of Lisbon has significantly circumscribed the role of participation simply stating that ‘the functioning of the Union shall be founded on representative democracy’ (Article 10 (1) TEU). In other words, the Treaty does not dedicate, as the Constitution for Europe did, a specific article to the principle of participatory democracy.¹⁶

The increasing attention towards traditional forms of representation and away from alternative strategies such as participation can also be detected in the content of the provisions on the ‘democratic life of the Union’ that were part of the proposed Constitution. Indeed, the provisions included a reference to the importance of social partners and the autonomous social dialogue (Art. I-48), the European Ombudsman entitled with examining complaints about maladministration in the activity of the Union institutions (Art. I-49), the transparency of the proceedings of Union institutions, bodies and agencies in order to promote good governance and ensure participation of civil society (Art. I-50), the protection of personal data (Art. I-51) and the status of churches and non-confessional organizations (Art. I-52). That is to say, according to the proposed Constitution, the democratic life of the Union rested on a quite comprehensive mix of participation, democratic representation, pluralism, transparency, respect for fundamental rights, and social dialogue. Interestingly, however, none of these democratizing strategies has been included in the Treaty of Lisbon, at least not in the provisions dedicated to the ‘democratic principles’ that underpin the Union. By way of contrast, the Treaty of Lisbon contemplates a new provision on the role of national Parliaments as a building bloc of EU democracy. In short, it seems that the most recent Treaty amendment substantially narrows the concept of democracy and conceives of it as related with the

¹⁶ The Treaty of Lisbon provisions dedicated to participation are generic. See for example (Article 10 (3) TEU), according to which ‘every citizen shall have the right to participate in the democratic life of the Union’, and (Article 11 (2) TEU), according to which ‘the institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society’.

traditional representative channels. Indeed, the Treaty of Lisbon emphasizes both direct (through EP) and indirect (through national Parliaments) forms of democracy as legitimacy-enhancing strategies while de-emphasizing the role of participatory democracy.¹⁷

b) Enhancing authorization and representativeness

The Treaty of Lisbon also revises the provisions that touch on the delegation to non-majoritarian institutions, trying to bolster the link between those institutions and their constituencies, i.e. trying to make them more representative and responsive. To start with, the Treaty of Lisbon has significantly intervened on the 'principle of conferral' through which member states authorize the EU to act (Guastafarro 2012). Indeed, the European institutions have often exploited the terms of delegation according to which, 'every action by the Union is based on a general or specific Treaty provision empowering the Union—expressly or implicitly—to act' (Lenaerts and Desormer 2002: 385). European Community action, indeed, although grounded into express legal basis, has often encroached upon Member States' regulatory autonomy thanks to the extensive interpretation of those legal basis by the ECJ.

In order to put an end what has been referred to as the "competencies creep drift" of the EU, the drafters of the Treaty for the first time, the Lisbon version of the TEU envisages the possibility for the Member States to reduce the powers conferred on the Union. As stated by Article 48 TEU, proposals for the amendment of the Treaties 'may, *inter alia*, serve either to increase or *reduce* the competencies conferred on the Union in the Treaties (emphasis added)'. Moreover, the drafters' intention to limit the expansion of EU powers by expressly authorizing its actions is evident from the many provisions of the Treaty (see for example Article 5(2) TEU), according to which 'competencies not conferred upon the Union in the Treaty remain within the Member States'.

¹⁷ As far as concerns the EP, the Treaty of Lisbon has empowered its role in the decision-making process by generalizing the co-decision procedure and introducing the possibility for the EP to be involved, for the first time, in the revision procedures of the Treaties (in accordance with Article 48 TEU).

The authorization mechanisms of principals to their agents are also bolstered by the clarification of the vertical division of powers between Member States and the EU. The Treaty of Lisbon introduces a catalogue of “categories and areas of Union competence” (Articles 2-6 TFEU). Article 2 TFEU outlines the categories of Union competencies, divided into exclusive, shared, coordination and support competence. Articles 3 to 6 TFEU enumerate the areas of action encompassed by each of those categories. This is an important novelty since the absence of a catalogue in the previous Treaty often helped to blur the scope of EU competencies.

In short, the strengthening of the principle of conferral emphasizes the authorization model according to which the powers of the EU (acting as an agent) are exclusively those allocated to it voluntarily by the Member States (acting as principals and ‘Masters of the Treaties’).¹⁸

c) Enhancing control and responsiveness

The Treaty of Lisbon also increases the *control* mechanisms able to make the EU more accountable and more responsive to its Member States and to its citizens too.

Specifically, in line with the innovations introduced in the 1990s through the Treaty of Maastricht and the Treaty of Amsterdam, which required the Commission to be collectively responsible to the European Parliament, which was enabled to vote a motion of censure, the Treaty of Lisbon has changed the provisions dedicated to the President of the Commission. While before the latest Treaty revision the President was appointed by the Council with the consent of the EP, the Treaty of Lisbon states that ‘the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be elected by the European Parliament by a majority of its component members.’ (Article 17(7) TEU). In sum, the Treaty of Lisbon requires the Commission – a non-

¹⁸ For an assessment on the significant strengthening of the principle of conferral in the Treaty of Lisbon and on its impact on the vertical order of competences between the EU and its Member States see Guastaferro (2012).

majoritarian, expert institution – to be held accountable to the EP via the election of its President and confirms the possibility for the Parliament to vote a motion of censure to the Commission as a body.

Furthermore, the mechanisms of control over the EU have been strengthened by assigning an important role to national Parliaments. European institutions, indeed, are required to inform national Parliaments on the Union draft legislative acts, by regularly transmitting them (see Art. 12 TUE).¹⁹ This substantially strengthens EU's accountability to national legislative assemblies, which are endowed with the power to warn against the non-compliance of draft legislative acts with the principle of subsidiarity.²⁰ If reasonable doubts on the violation of the principle of subsidiarity are shared among a certain amount of national Parliaments, European institutions must review the draft in a way that is responsive to national Parliaments' claims.²¹

To conclude, the Treaty of Lisbon marks a significant departure from most of the legitimacy-enhancing strategies that have been pursued by the EU thus far. In particular, the most recent reforms to the EU Treaty aim at strengthening the link between decision makers and their constituencies by adopting provisions that ensure that the represented authorize their representatives and by making the latter more *responsive* towards their constituencies.

4. The IMF and the path towards legitimacy

¹⁹ According to Article 12 TEU, national Parliaments contribute actively to the good functioning of the Union by being informed by the institutions of the Union on draft legislative acts, by acting as the guardians of the respect of the principle of subsidiarity, by taking part in the revision procedures of the Treaties, by taking part in the inter-parliamentary cooperation between national Parliaments and with the European Parliament

²⁰ See Article 6 of the “Protocol on the application of the principles of subsidiarity and proportionality”, and, more generally, the “Protocol on the role of national Parliaments in the European Union”.

²¹ According to Art. 7 of the Protocol on subsidiarity and proportionality, where reasoned opinions on a draft legislative act's noncompliance with the principle of subsidiarity represent at least one third of all votes allocated to the national Parliaments, the draft must be reviewed and the Institutions may decide to maintain it only by giving adequate reasons for this choice.

Whereas in the EU the debate on how to legitimize the organization has included the debate on the place of the parliamentary branch in the EU institutional system, in the case of the IMF, strengthening the legislative-elected body has never been an option available because of the Fund's institutional structure. Indeed, the Fund does not possess a body made up of elected officials. Rather, two main bodies are in charge of the day-to-day policy-making: the Executive Board, where member states' representatives sit, and IMF staff members, who, based on their technical expertise, formulate policy proposals and implement the Board's decisions.²² Although the IMF Executive Board is the main policy making-body, being in charge of the day-to-day activities of the organization, the highest political authority is the Board of Governors, where each of the 187 member countries is represented and which normally meets twice a year. The Executive Board is instead a smaller body made up of 24 representatives and sits 'in continuous session'. Furthermore, it decides on virtually all aspects of the Fund's activities, from financial assistance programs to administrative and budgetary matters.²³

The composition of the Executive Board and its decision-making process have been a matter of controversy and a source of tension for the legitimacy of the organization. Although the IMF is a quasi-universal organization, with a membership of 187 countries, the Executive Board is made up by 24 Directors. Specifically, whereas some countries have their own representative (China, France, Germany, Japan, Russia, China, Saudi Arabia, UK, US), the other members are organized in constituencies. On top of the unequal representation, voting rights are primarily allocated by economic size – i.e. the quota system. As a result, the United States and the most economically advanced countries have long enjoyed a veto power in the organization.²⁴ Nevertheless, note should be taken that, in spite of the weighted voting system, the Executive Board decides almost exclusively by consensus in order to protect diversity of views

²² The staff of the IMF is a textbook example of well-developed and autonomous international bureaucracy. Its members, who are primarily recruited from Anglo-American universities, include almost exclusively PhD economists with a macroeconomics expertise (Momani 2005; also Chwierothe 2008).

²³ Some issues, however, some issues that remain within the responsibility of the Board of Governors. These issues include, for instance, the admittance of new members, compulsory withdrawal of members, and amendments to the IMF Articles of Agreement.

²⁴ To remedy this problem, the IMF has recently embarked on a extensive reform of its governance that will be extensively analyzed below.

and minority rights (Van Houtven 2002). However, the consensus rule does not eliminate all the disparities associated with the weighted voting system – in order to ascertain the consensus, the Managing Director has to assess whether a decision is supported by Executive Directors having sufficient votes to carry the question if a vote were taken.

As is the case in other international organizations, primarily the United Nations, the special position that some member countries occupy within the organization reflects the distribution of economic power at the time of the end of the Second World War, when the Bretton Woods system was created with the IMF as one of its key pillars. Over time, however, the distribution of economic power in the world has significantly changed, raising increasing concerns about the legitimacy of the Fund's internal governance (Woods 2000). In light of these concerns, and of the potential negative impact of the lack of legitimacy for the domestic implementation of IMF programs (Thirkell-White 2004, Best 2007), the Fund has engaged with a number of legitimacy-enhancing strategies. In particular, the Fund has attempted maintaining (and recovering) its legitimacy by expanding the number of actors involved in its decision-making process and adopting measures to improve its performance and, therefore, the benefits for its members.²⁵

As far as concerns participation, the IMF has progressively adopted a number of measures aimed at allowing exchanges not only with member countries' governments and central banks but also with civil society organizations, including NGOs, trade unions, and business associations. In particular, at the end of the 1990s, the IMF has established regular meetings, seminars, and consultations with civil society representatives both at Fund headquarters and worldwide on specific policy or country issues. A Civil Society Policy Forum, running in parallel with the Annual and Spring Meeting of the IMF and the World Bank, was created to permit formal and informal interaction between civil society representatives and IMF staff.²⁶ Furthermore, the IMF started inviting civil society organizations to provide comments to papers and

²⁵ Interestingly, although the Fund has attempted improving its performance since its creation in the 1940s, the legitimacy-enhancing strategies have been systematically pursued by the late 1990s as a result of the emerging market crises of the decade and the ensuing contestation of IMF policies that seriously threatened the Fund's legitimacy and effectiveness (Moschella 2010; Seabrooke 2007). The arm-twisting of the US Congress and the repositioning of major shareholders also favored the major changes that the Fund has followed in the attempt to reinforce its legitimacy.

²⁶ The first Civil Society Policy Forum was held during the 2008 Spring Meeting, with more than 200 civil society organizations in attendance.

policy reviews. The Fund has also established mechanisms to involve civil society in each member country, especially in the context of IMF-negotiated financial assistance programs (Scholte 2009).

The participatory strategy has been supported by the important measures undertaken by the Fund to increase the transparency of its activities and decision-making. In this spirit, since the mid-1990s, the Fund has started publishing the in-house produced policy documents, including country reports and Article IV surveillance report. A key step in this process has been the decision to open the Fund's Archives for outside access in 1996 with a stipulated time lag of 30 years. The time lag was shortened in three steps in 1999, 2002, and 2009 and the wait for archived documents is now 3 years for staff papers and 5 years for Board minutes.²⁷ In addition, in 1997, the Fund decided to make public the Executive Board's summary of the discussion for Article IV consultation – the so-called Public Information Notices (PINs). Another step in the path towards greater transparency, was the establishment of the Independent Evaluation Office in July 2001 (see, for instance, Weaver 2010). The IEO, whose reports and works programs are publicly available, is expected to provide objective and independent evaluations on issues related to IMF policies and operations.

Next to the measures aimed at expanding participation through the transparency of its operations, one of the key legitimacy-enhancing strategies pursued by the Fund has been that of improving its performance, and therefore the benefits it delivers to its member countries. Nowhere is this process more evident than in the continuous update of the IMF lending facilities. Indeed, since its creation, the Fund has kept expanding the repertory of measures it uses to govern currency and financial crises, creating stand-by arrangements, extended arrangements, more favorable terms for loans to cover commodity price shocks or loans to low-income countries, and other ad hoc facilities. In the aftermath of the global financial crisis, then, new modes of policy-making and new lending instruments have appeared which all aim at speeding up policy processes and rendering more effective Fund financial assistance programs. Although an analysis of the evolution of the Fund's lending facilities would require a paper on its own, what is worth noting here

²⁷ IMF, *Review of the Fund's Transparency Policy*, 26 October 2009, Washington DC, International Monetary Fund.

is that the Fund has created new facilities to accommodate the changing needs of its membership. For instance, it has created lending facilities specifically tailored to the development needs of its low-income countries. Likewise, it has developed facilities that are meant to satisfy the liquidity needs of emerging market countries in the event of systemic crises. In short, the Fund has created outputs that were meant to be beneficial for its membership and that could thus legitimize its activity.

In spite of the importance attached to participation and to the update of its activities as means to enhance its legitimacy, the IMF, like the EU, has recently taken new and more radical measures to enhance its legitimacy. These measures are meant to strengthen the bidirectional link between rulers and ruled as embodied in the mechanism of authorization/representativeness and control/responsiveness.

4.1 *The IMF's representative turn*

Although the Fund has continued to pursue legitimacy via participation and transparency, and the path of enhancing-legitimacy via the benefits provided to its members, the IMF has also started adopting a number of measures that move beyond these legitimacy-enhancing strategies by embracing the principle of representation. This move is well-illustrated by the debate on the 2008-2010 quota and voice reform, which has been regarded as 'crucial for increasing the *legitimacy* and effectiveness of the Fund'.²⁸ Specifically, similarly to what is taking place in the EU with the Treaty of Lisbon, the IMF has started focusing on a) the introduction of new *authorization* mechanisms so to making the Fund more representative of its principals; b) the introduction of new *control* mechanisms making the IMF more responsive to its represented. A number of examples help to itemize this trend.

a) Enhancing authorization and representativeness

²⁸ *Communiqué of the International Monetary and Financial Committee of the Board of Governors of the International Monetary Fund*, The International Monetary and Financial Committee, October 4, 2009 Istanbul (emphasis added).

The 2008 reform, which came into effect on March 2011,²⁹ contains important innovations in the mechanisms through which member states authorize the activities of the IMF: that is, the voting mechanisms within the organization. Indeed, the reform brought about a reshuffle in the relative shares of the advanced and developing countries, shifting shares away from over-represented to under-represented countries.³⁰ Specifically, the reform has strengthened the representation of emerging market countries through ad hoc quota increases for 54 members. Furthermore, the quota and voice reform has improved the representation of low-income countries through an almost tripling of basic votes – that is, the amount of votes that are assigned on an equal basis to all members independent of the quota-based shares. In short, the reform has marked an important step in the path towards a wider and more equal representation of the Fund’s membership, improving the degree of representativeness of the organization.³¹

Following the adoption of the 2008 quota and voice reform, the IMF has not abandoned the new path of legitimacy via representation. Indeed, following the burst of the recent global financial crisis and the G20 support for reforming IMF governance, on December 2010, the Board of Governors approved a major reform that aims at increasing the voice and representation of the emerging market and developing countries.³² While it is probably too early to claim that the reform is ‘the most fundamental governance overhaul in the Fund’s 65-year history’ as the former Managing Director Dominique Strauss-Khan put it,³³ it is nonetheless possible to identify some trends. In particular, it is possible to note that the 2010 reform is

²⁹ The quota and voice reform came into effect with the acceptance of the ‘Voice and Participation’ amendment to the Articles of Agreement by 117 member countries representing 85 percent of the total voting power.

³⁰ For an analysis of the strengths and weaknesses of the revised quota formula see, for instance Elson (2001: 182)

³¹ For an overview of the content of the 2008 quota and voice reform see, for instance, IMF, *Reform of Quota and Voice in the International Monetary Fund-Draft Report of the Executive Board to the Board of Governors*, 28 March 2008.

³² *IMF Executive Board Approves Major Overhaul of Quotas and Governance*, Press Release No. 10/418 November 5, 2010. Available at <http://www.imf.org/external/np/sec/pr/2010/pr10418.htm>.

³³ *Ibid.*

staked on the assumption that strengthening the representativeness of the Fund is a key input to its legitimacy.³⁴

Indeed, the core of the reforms is a doubling of IMF quotas that will produce a shift of around 6 percent of *quota* shares to emerging market and developing countries. Moreover, the total shift in *voting* share to emerging market and developing countries as a whole will be 5.3 percent, when combined with the 2008 quota and voice reform.³⁵ As a result, the 10 largest members of the Fund will now consist of the United States, Japan, the four largest European economies (France, Germany, Italy, and the United Kingdom) and Brazil, China, India, and the Russian Federation (the BRICs). In addition, the voice of the poorest developing nations within the IMF will be maintained by preserving their voting shares and reviewing the current quota formula.

In short, the revision of voting shares within the organization introduces important innovations in the authorization mechanism that stands at the heart of the process of delegation of powers to the Fund. With the voting shares rebalanced towards emerging and developing countries, the IMF should seek the authorization of a much wider segment of its membership to act than as been the case thus far.

b) Enhancing control and responsiveness

Next to making the IMF more representative by revising member countries' voting shares, the recent reform to the IMF governance also attempts making the Fund more responsive by clarifying the control mechanisms that member states can use to hold the Executive Directors to account for their decisions. This is well exemplified in the December 2010 proposed reform agreement according to which all the members of the Executive Board will be selected through an electoral process to which member states participate. In

³⁴ The link between the core of the reform proposal and legitimacy is immediately evident in the first paragraph of the blueprint of the agreement where it reads that 'the membership is converging on quota and governance reforms essential to the Fund's legitimacy and effectiveness as an impartial guardian of global economic stability'. IMF, *IMF Quota and Governance Reform - Elements of an Agreement*, 31 October 2010, Washington D:C., International Monetary Fund: 1.

³⁵ IMF, *IMF Quota and Governance Reform - Elements of an Agreement*, 31 October 2010: 5.

short, the proposed reform suggests introducing an *ex ante* control mechanisms to keep the Executive Board in check.³⁶

At present, the Articles of Agreement establish two categories of Executive Directors: those who are appointed, and those who are elected – given its current size of 24 Executive Directors, 5 Director are and 19 are elected. Instead, the proposed 2010 amendment of the Articles is meant to eliminate such a disparity of representation among of IMF members making the Fund’s responsive to the whole membership.³⁷ In order to establish an Executive Board consisting solely of elected Executive Directors, the proposed amendment requires the Board of Governors to adopt regulations (by a majority of the votes cast) that would govern the conduct of each regular election. These regulations will establish a limit on the total number of votes that more than one member may cast for the same candidate. This limit will be designed to avoid excessive concentration of voting power in multi-country constituencies, while allowing for adequate flexibility to enable members to form constituencies on a voluntary basis.³⁸

Furthermore, in the attempt to increase the responsiveness of the Fund towards its membership at large, part of the agreement includes a commitment to reduce the number of Executive Directors representing advanced European countries by two in favor of emerging market countries. In the words of the former Managing Director, ‘there will be two fewer seats for advanced European countries. They have agreed to do it, agreed to the metric to do it, and the timetable. When this will be completed, there will be two more emerging countries in the Board which will just reflect the change in quotas’.³⁹ Beyond the agreed tenets of the reform, progress is also expected in other related areas. In particular, improvements are expected with regard to the selection of Fund management based on an open, merit-based and transparent process.

³⁶ As of December 12, 2011, 38 members having 30.08 percent of the total voting power had accepted the proposed amendment to reform the Executive Board. IMF, *IMF Executive Board Reviews Progress Toward Implementation of the 2010 Quota and Governance Reform*, Press Release No. 11/486, 22 December 2011. Available at <http://www.imf.org/external/np/sec/pr/2011/pr11486.htm>

³⁷ IMF, *Fourteenth General Review of Quotas and Reform of the Executive Board—Report of the Executive Board to the Board of Governors*, 5 November 2010: 23- 43, in IMF, *IMF Quota and Governance Reform - Elements of an Agreement*, 31 October 2010.

³⁸ IMF, *Fourteenth General Review of Quotas and Reform of the Executive Board—Report of the Executive Board to the Board of Governors*, 5 November 2010: 29.

³⁹ IMF Survey, *IMF Board Approves Far-Reaching Governance Reforms*, 5 November 2010. Available at <http://www.imf.org/external/pubs/ft/survey/so/2010/new110510b.htm>

In conclusion, IMF governance, as much as global financial governance, has largely been perceived as neither representative of the diversity of the countries in the global system, nor particularly inclusive (Underhill and Zhang 2008). This perception has been compounded by the fact that the Fund has taken measures to improve participation and output as substitutes rather than complements of more profound strategies linked to representation. The latest reforms therefore represent an interesting novelty. In particular, although the 2010 reforms have yet to come into force, they signal an important shift from previous attempts at legitimizing the Fund through participation and transparency.⁴⁰ Indeed, the proposed reforms are staked on the principles of representation as conceived in this paper, requiring both authorization from principals to agents (to make the agent representative) and control over the agent (to make the agent responsive to its principals).

Conclusions

In recent years, the quest for legitimacy has become a key task for several IOs. Next to ethical considerations, this quest has been driven by the serious concerns over the effectiveness of IOs' activities as a result of the lack of legitimacy (Backstrand 2008: 79; Thirkell-White 2004; Zürn 2002). This paper has tackled the debate on IOs and legitimacy attempting to identify the major strategies that two prominent IOs have followed to redress their broken legitimacy. In this respect, we focused on participation and the production of beneficial output as two key strategies that the EU and the IMF have systematically pursued over time. While much scholarship criticizes these legitimacy-enhancing strategies based on the comparison with the standards of legitimacy that usually apply to domestic political systems, we argued that the problems of increased participation and improved output as legitimacy-enhancing strategies do

⁴⁰ For the realignment of members' quota shares and the moving to an all-elected Board to come into effect, the following conditions are required: (1) the proposed amendment to the Articles of Agreement on reform of the Executive Board needs to be accepted by at least three-fifths of IMF members representing 85 percent of the total voting power, and (2) members representing at least 70 percent of the total quotas on 5 November 2010 must consent in writing to their quota increases.

not lie on their decoupling from domestic-like electoral mechanisms. Rather, we argued that the problem with these strategy lie in the fact that they do not comply with the principle of representation, i.e. they do not ensure the workings of the bidirectional link between rulers and ruled (see Pitkin 1967, Mansbridge 2003, 2011). In particular, strategies adopted thus far have not been able to ensure that the represented authorize the representative (the IO) to act and that the IOs are responsive to the representatives.

Our normative argument in favor of the principle of representation is based on the fact that, absent the bidirectional link between rulers and ruled, both participation and delegation do not constitute legitimacy enhancing strategies. When both the strategies fail to comply with the principle of representation—i.e. detach the rulers from the ruled—they do not enshrine the relational quality which is inherent in the concept of legitimacy. Indeed, in its very essence, legitimacy is a “relational” concept since it represents the quality of a power relationship between governors and subordinates. Legitimacy converts power into authority – “*Macht in Herrschaft*” – and simultaneously establishes an obligation to obey and a right to rule (Weber 1922). In this reading, when the output of the agent is inconsistent with the will of its principals, then *performance* cannot provide the agent with what Beetham (1991) identifies as the *normative justifiability* of political authority, since it is not grounded in shared beliefs between rulers and ruled. Along not dissimilar lines, when participation does not allow affected parties to have a say and to influence the decision making process, it can not be considered a *legitimation* strategy, i.e. something that in Beetham’s reading subsumes the consent of the ruled.

Moving from the normative to the empirical level, the analysis of the legitimacy-enhancing strategies pursued by the two organizations suggests that, recently, both the EU and the IMF have adopted or are discussing measures meant to strengthen the bidirectional link between rulers and ruled. That is to say, the EU and the IMF have recently turned to measures that aim at improving the principle of representation in their day-to-day activities. While it is probably too early to assess whether this ‘representative turn’ will redress the legitimacy deficits of the EU and the IMF and whether is the rhetoric or the practice of representation that prevails, the measures adopted are nonetheless an interesting development because they demonstrate the limits of the two strategies pursued thus far.

Although we have emphasized the similarities between the 'representative turns' in the EU and the IMF, it is important to highlight some important differences between the two case-studies as a word of conclusion. Indeed, in spite of the common trend towards the adoption of measures aimed at enhancing representation, important differences exist in the way in which the EU and the IMF have developed the principle of representation. In particular, the institutional framework of the two organizations has certainly shaped the way in which representation has been brought back in. Whereas in the EU the 'representative turn' has mainly revolved around the role of the European Parliament and that of national Parliaments, in the IMF, where no legislative assembly exists, the emphasis on the principle of representation has been translated into a revision of the role of member governments into the organization, leaving outside national parliaments. These differences have led the EU to the most advanced experiment in enhancing legitimacy through the principle of representation as exemplified in the measures that aims at strengthening existing forms of representative democracy and of electoral accountability.

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