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A new governance architecture
for the European Union?

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PREFACE

Sieps, the Swedish Institute for European Policy Studies, conducts and promotes research, evaluations, analyses and studies of European policy issues, with a focus primarily in the areas of political science, law and economics.

Sieps has commissioned a number of reports relating to issues that, in the opinion of Sieps, will be of importance in the upcoming intergovernmental conference. The reports will be dealing with a range of constitutional, procedural and material questions. Each report will outline the key principal problems of the issue area, the work and the proposals of the Convention and analyse these proposals from clearly stated assumptions or aims and finally to be firmly grounded in the academic debate. The reader shall consequently be able to get an overview of the state of the art as well as a comprehensive introduction to the issues in question.

One of the missions of the Institute is to act as a bridge between academics and policy-makers and one of the primary aims of these reports is to build this bridge. Furthermore, in a broader sense the reports shall contribute to increased interest in current issues in European integration as well as increased debate on the future of Europe.

Tomas Dahlman
Director
Sieps

ABOUT THE AUTHOR

Claudio M. Radaelli is Professor of public policy analysis and director of the Centre for European Studies at Bradford University, UK. He is currently on leave as Part-time Professor and co-director of the European Forum at the European University Institute, Florence, on “International regulatory competition and cooperation”.

He has published extensively on the role of knowledge in the policy process, the politics of international taxation, regulatory reform in Europe, and the public policy of the European Union. He is the author of *The Politics of Corporate Taxation in the European Union: Knowledge and International Policy Agendas* (Routledge 1997), *Technocracy in the European Union* (Longman 1999), and *The Future of Tax Policy in the EU* (Ceps Publications, 2000).

He is the co-editor of *The Politics of Europeanisation* (with Kevin Featherstone, Oxford University Press, 2003) and the editor of *Governing Regulation: Regulatory Impact Analysis in the OECD Countries and the EU* (Rubbettino, 2001). He co-authored a report for Ceps on *EU Corporate Tax Reform* (2001). His current projects deal with international regulatory competition, regulatory impact analysis, the Europeanisation of the Italian political system, the impact of the EU Convention in the South of Europe, and the interplay between discourse, Europeanisation, and policy change. Contact: c.radaelli@bradford.ac.uk.

THE OPEN METHOD OF COORDINATION: A NEW GOVERNANCE ARCHITECTURE FOR THE EUROPEAN UNION? *

1. INTRODUCTION

1.1 Research question

When the European Convention began its work, the open method of coordination (OMC) was not one of the central issues. However, open coordination cropped up in different working groups of the Convention, slowly but steadily. The working groups on Economic Governance, Simplification, Complementary Competencies (renamed ‘supporting measures’), and above all Social Europe have examined open coordination and formulated proposals. There is no doubt that the OMC, although initially somewhat neglected by the Convention, will be a key issue in the discussion leading to the next Inter-Governmental Conference of the European Union. This report addresses the following questions:

- To what extent (and how) does the open method of coordination represent a new mode of governance? Where does it come from? What is the ‘master discourse’ providing political meaning and direction to the OMC?
- How far can the method go in terms of ‘better governance’?
- What does empirical evidence tell us? Is the method an efficient way to encourage policy learning? Is open coordination effective?
- What is the legitimacy of the method?
- What are the main suggestions for improvement?

* I wish to express my gratitude to Caroline de la Porte, who kindly discussed with me the ‘state of the art’ literature on the subject of this report and commented on an early draft. I appreciate her time and enjoyed our discussions. Kerstin Jacobsson kindly sent me a number of perceptive comments and suggestions. I am responsible for all inaccuracies and mistakes.

1.2 Outline

The report illustrates the essential features of the method (Section 3). It discusses the emergence of the OMC within the long-term attempt to make Europe more competitive. The so-called Lisbon agenda is therefore situated in its wider historical context (Section 4). The report makes a distinction between the ideal-typical features of open coordination – that is, the rather abstract template described in the conclusions of the 2000 Lisbon summit (and other official documents) and the reality of open coordination. Section 5 reaches the conclusion that the case for the abstract OMC template as new mode of governance based on learning can be made. However, the potential of the OMC is constrained by a number of contradictions. Accordingly, Section 6 looks into the issue of endemic tension. The conclusion is that open coordination – in its abstract, ideal-typical form – has considerable potential for ‘better governance’, but endemic tension limits what it can achieve.

The report then turns to an empirical and comparative analysis of open coordination across policy areas (Section 7). On the basis of the existing knowledge of ‘real-world’ OMC processes, the report raises the issues of policy learning, effectiveness, and legitimacy (Section 8). Although it is too early to make a definitive assessment of a method devised to reach its goals by the year 2010, the gap between theoretical inspiration and reality is wide, especially in terms of learning, participation, overall coherence, and legitimacy. This is enough to set an agenda for improvement of the OMC within the context of the new Inter-Governmental Conference and at the micro level of specific policy areas. The conclusion (Section 9) is that a number of reforms are needed – otherwise open coordination will remain a discourse but not an effective and legitimate new mode of governance.

2. SUMMARY AND CONCLUSIONS

2.1 Summary

A legitimising discourse

Today, the open method of coordination (OMC) is eminently a legitimising discourse. It provides a community of policy-makers with a common vocabulary and a legitimising project – to make Europe the most competitive knowledge society in the world. As legitimising discourse, open coordination enables policy-makers to deal with new tasks in policy areas that are either politically sensitive or in any case not amenable to the classic Community method. The result is that practices that up until a few years ago would have been simply labelled ‘soft law’, new policy instruments, and benchmarking are now presented as ‘applications’ if not ‘prototypes’ of ‘the’ method.

One method or several?

The reality is that the method varies markedly across policy areas. Accordingly, one should not refer to ‘the’ method but to different policy practices that take inspiration from the Lisbon conclusions as legitimising discourse.

If the OMC is the solution, competitiveness is the problem

The OMC is not just a discursive invention, however. Firstly, there are structural reasons for the appearance of the method in the EU policy process, most notably the long-term attempt of European policy-makers to get to grips with the problem of competitiveness. This report argues that open coordination is embedded in the master discourse of competitiveness. The latter limits what is politically feasible in terms of the ‘European social model’. One should not see the constrained nature of the OMC in purely negative terms. The constraints provide a culture of macro-economic stability within which social protection and employment policies are still feasible.

Open coordination as abstract template: a better way forward

Secondly, although there are variations in the usage of the OMC, the latter can be examined as an ideal-type to understand its

mechanisms and potential. In its ideal-typical form, the OMC is a new mode of governance. This is due to the main features of the method, such as participation, the approach to problem-solving, the ways in which knowledge and learning are created and diffused across countries. Open coordination may work like a radar searching for solutions and new usable knowledge. Some commentators argue that the method searches and diffuses local knowledge – and in doing so creates the pre-conditions for bottom-up learning. Other commentators think that learning is more hierarchical and that open coordination is a methodology to get Member States in line with the EU policy. Be that as it may, the OMC *in vitro* – that is, in its ideal-typical format – has considerable potential. It can deliver ‘better governance’. In this sense, it is not a second-best option to hard legislation. It is a better way forward. The lack of sanctioning mechanisms is not a problem in a governance architecture based on incentives for learning.

Endemic tension

Open coordination contains elements of endemic tension, however. On the one hand, it works on innovation and improvement on a case-by-case basis. This should keep politicisation at low levels. On the other, the aim in the OMC is to promote convergence and coordination at the highest political levels, notably at the European Council. This makes politicisation unavoidable. Open coordination encourages cooperation and imitation, but it also promotes diversity and competition. It is a means to achieve competitiveness, but there are many participants in the Convention working groups that see open coordination as a way to balance the economic logic with the values of ‘the European social model’. Tension and contradictions are an essential component of political life. However, they make some of the grandiose expectations of the OMC architects less realistic than they seem at first glance. One task for the next Inter-Governmental Conference is to spell out these contradictions and discuss how they can be resolved.

*From the template to policy practice:
variations around a common theme or different melodies?*

Turning to ‘real-world’ open coordination processes, empirical evidence is still preliminary. This report reviews the evidence available in economic policy, employment policy, social inclusion, pensions, innovation, and direct taxation. There are elements of similarity across policy areas. But the devil is in the details, as ever. Benchmarking, peer-review, and learning mean different things in different policies. Policy-makers make reference to the OMC as legitimising discourse, but they deal with different mechanisms and logics. There are lighter and harder versions of the method. Most processes are political, but others are governed by the logic of expertise and bureaucratic goals. The ideal-typical sequence of ‘guidelines-indicators-national plans-evaluation’ is subverted in some policies.

Limited results

What has been achieved so far? One disappointing result is that cross-national and bottom-up learning has been limited. This report argues that the poor results in terms of learning reflect the lack of bottom-up participation, the under-estimation of the peculiarities of learning in a political context, and the limitations in the current use of benchmarking.

Ideational convergence

One successful result (yet confirmed only by very preliminary evidence) is convergence at the level of ideas in some policy areas (ideational convergence). This means that policy-makers converge in their assessment of causal mechanisms at work in policy areas, definitions of desirable and unacceptable policies, and beliefs about how policies work. This convergence goes beyond the superficial convergence on the OMC as legitimising discourse. However, ideational convergence is still embryonic, and in some cases fragile. It does not go as far as to produce convergence in decisions at the domestic level and convergence in policy implementation. Indeed, it is reasonable to expect that even a ‘perfect’ application of the OMC will result in a more diverse Europe.

The issue of overall coordination and policy direction

The method has not achieved much in terms of coordination across policies. But something has been achieved. The employment guidelines have been decided jointly by Ecofin and the Social Affairs and Labour Council. The eleven objectives of pension policy have been agreed jointly by the Social Protection Committee and the Economic Policy Committee. The recent initiative to coordinate employment policy and economic policy should improve on the status quo, but it does not answer two questions. First, is the European Council the most efficient venue for policy coordination? Secondly, if policy-makers still disagree on the ultimate direction of open coordination (to simplify: social Europe versus the economic logic of competitiveness) how can they coordinate policies successfully?

2.2 Conclusions

Back to the drawing board? The role of micro-reforms

The potential of open coordination is still there, ready to be exploited. This leads to the question of how to make better use of the method. One argument in this report is that a number of claims about the OMC are exaggerated. Accordingly, the debate should be more realistic. This is important for the macro-reforms that will be discussed in the next IGC. But the micro level should not be ignored. Indeed, the discussion should be cast in terms of a realistic diagnosis of the instruments and methodologies *policy by policy*.

Contextualising the OMC

One problem in the current debate is that open coordination has been examined *in vitro* instead that in context. This has three implications. The first implication is that one should have a clear idea of when and how the OMC should be used, when other new modes of governance should be used, or when the 'old' Community method is the most appropriate approach. This is where the proposals arising out of the European Convention working groups are most useful. The second implication is that we need to understand and assess the performance of different

modes of governance interacting within the same policy areas. Most policies reviewed in this report show that the OMC is used in conjunction with other modes, but we do not know much about the overall policy coherence achieved. We do not know whether various modes of governance reinforce each other or pull in different directions. The third implication is that the end result of proposed reforms should not be how to improve the OMC but how to improve policies by making European and domestic institutions more intelligent.

The macro level of reforms:

Constitutionalisation of open coordination?

One way to relate the OMC debate to the whole question of EU governance is the proposal – which cropped up in different working groups of the European Convention, such as the ones on ‘Economic governance’, ‘Complementary Competencies’, ‘Simplification’, and above all ‘Social Europe’ – to insert a treaty article defining the OMC. Some participants in the European Convention went so far as to argue for a specific reference to the ‘social market economy. A Constitutional article may help in demarcating the territory of the OMC. It should respect the flexible and experimental nature of the relation between open coordination and legislative competence. Accordingly, the Constitution should not restrict open coordination to areas where the EU does not possess legislative competence. It should define the process of open coordination in general terms (participation and transparency as general features of the whole process; guidelines, indicators, national plans, peer review, monitoring and feedback as key steps of the process). It should also state that open coordination should not be used to attack the *aquis* (put differently, constitutional protection of the *acquis* from possible degradation via open coordination). Finally, a generic article on the method should not be applied to the BEPG and the European Employment Strategy, where there are already specific articles. Turning to the question of whether the EU Constitution should make references to the social market economy, it is most unlikely that the European Convention will subvert the master discourse of competitiveness in which the OMC is embedded.

Reforms should go beyond treaty revisions

An inter-institutional agreement clarifying the role of the European Parliament and the Committee of the Regions is needed.

So far the method has been managed by the Council and the Commission without real involvement of other EU institutional actors.

Learn how to learn: the importance of lesson-drawing

Arguably, the most effective reforms are those at the level of policies. The room for improvement here is impressive. There is much to learn from intelligent benchmarking – as opposed to the a-critical usage of this technique. This report also argues that benchmarking should not be the only show in town. Methodologies and suggestions for learning from positive and negative lessons are available, but somewhat neglected in the OMC processes reviewed here. The suggestion is to seek a balance between benchmarking and context-sensitive lesson-drawing.

Political learning

OMC analyses have so far treated learning as if policy-makers were seeking truth. But learning in a political context is eminently (albeit not exclusively) about power. Indicators, peer reviews, and reformulation of guidelines produce hierarchies of models and differential adaptational pressures on Member States. The under-estimation of learning within a political context explains the poor results achieved so far.

Opening up the OMC

Limited participation is another major cause of poor results. Peer review and reporting should become more incisive and more participatory. National plans are provided by governments, hence they tend to be over-enthusiastic about the current situation. It is of course essential that national plans are prepared by governments because this creates political commitment, but more independent reporting from the Member States would enhance both learning and participation. Thus, the method should

be opened up to the relevant actors for each OMC process. This could also mean additional reporting (and not just scrutiny) on specific areas from these actors. One clear lesson from the current experience is that to increase participation within the OMC requires a re-orientation of policy processes at the domestic level. This is not something that can be decided in Brussels. The institutional architects of the OMC have neglected the issue of how to create a structure of incentives for participation at the local and national levels.

The biggest challenge: legitimacy, accountability, and democratisation of the method

Participation is just one dimension of the whole issue of accountability, democratisation, and legitimacy of new modes of governance. Democracy goes much further than deliberation in technocratic circles. The democratisation of the method is an extremely complicated exercise. It boils down to an attempt to change domestic policy practice and policy styles. Accountability is not ensured by the fact that the OMC choices are taken by national leaders. Instead of launching yet another discussion on the abstract properties of new modes of governance it would be more useful to take stock of the negative lessons and re-think about democracy pragmatically. The OMC has considerable potential for 'better EU governance' but the effort to exploit this potential has just begun.

3. BACK TO BASICS: THE PROPERTIES OF THE METHOD

Although policy processes embodying several features of the OMC emerged throughout the 1990s, the method was established by the Lisbon European Council (23–24 March 2000). The Presidency conclusions preface the discussion of the open method by stating that ‘no new process is needed’ and that the European Council ‘will take on a pre-eminent guiding and coordinating role to ensure overall coherence’ (Presidency Conclusions, points 35 and 36). There is a bit of a paradox in that a ‘new’ mode of governance was not originally recognised as such by the summit which launched it. The Council looked at the OMC as an instrument to be used within the existing Cardiff, Cologne, and Luxembourg processes.

The statement on the ‘guiding and coordinating role’ of the European Council (the reference is to Spring Council, which is in charge of coordinating the Lisbon strategy) is also somewhat paradoxical. It is well-known that the European Council is good at launching new policy ideas and at stitching up political compromises, but no-one would have ever thought of the summit as a suitable forum for policy coordination. As will be argued below, one of the main problems of the OMC is that the overall level of coordination remains low.

After this paradoxical start, the Lisbon conclusions gain in clarity by presenting the ‘new open method of coordination’ as a means of spreading best practice and ‘achieving greater convergence towards the main EU goals’. The method – the European Council added – is ‘designed to help Member States to progressively develop their own policies’. The method is not a means to achieve harmonisation. Member states use it to develop their own policies and to achieve coordination. Both ‘coordination’ and ‘open’ were not defined at Lisbon.

One can of course submit that coordination of domestic policies is needed to achieve EU goals, given certain conditions. Indeed, Lisbon used the word ‘convergence’ which presupposes more political determination and stronger end-results (in terms of po-

policy outcomes) than simple coordination. One problem with this definition of the method is that EU leaders differ in their definition of these ‘main EU goals’ in politically sensitive areas such as employment policy, social policy, and tax policy. The Lisbon conclusions are significantly silent on how these EU goals should be reached and coordinated across policies.

Let us carry on with the properties and instruments of the OMC. Lisbon added that the OMC involves:

- ‘fixing guidelines for the Union combined with specific time-tables for achieving the goals (...) in the short, medium and long terms;
- establishing, where appropriate, quantitative and qualitative indicators and benchmarks against the best in the world and tailored to the needs of different Member States and sectors as a means of comparing best practice;
- translating these European guidelines into national and regional policies by setting specific targets;
- periodic monitoring, evaluation and peer review organised as mutual learning processes’ (Presidency Conclusions, point 37).

This provides an illustration of the most complete form of the method. Although some of its elements such as indicators should be included only ‘when appropriate’ (note that there is no clue on how to assess this appropriateness), the ‘method’ in its most sophisticated form includes the following components:

- Guidelines
- Benchmarking and sharing of best practices
- Multi-lateral surveillance
- Indicators
- Iterative process
- Implementation through domestic policy and legislation (this means that no EU legislation is needed).

Before we examine the OMC as new governance architecture, there are three general remarks to bear in mind. To begin with, although the OMC academic literature has now become a thriving cottage industry, our empirical knowledge of the OMC at work in specific policy processes remains limited. Table one indicates that there are almost 80 studies of the OMC reported in the University of Madison – Wisconsin EU Centre’s ‘Forum on the open method’¹. However, the vast majority deal with the general features of the method and with employment policy. It is simply too early to make bold assessments of the method as ‘new mode of governance’ – especially in areas different from employment policy. Further, Lisbon set goals for the year 2010, so one should not rush assessments before the deadline is at least in sight.

Table 1 – Texts (that is, articles, book chapters, conference papers, unpublished papers) on the open method of coordination listed in the ‘OMC forum’ website of the University of Wisconsin, Madison

General	29
Employment	29
Social inclusion	9
BEPG – macroeconomic policy – Cardiff process	5
Immigration	1
Education	1
European research area	1
Environmental policy	1
Taxation	1

Source: our calculation based on the list published by the EU Center at the University of Wisconsin, Madison, <http://eucenter.wisc.edu>. Accessed on 17 February 2003.

Note: PowerPoint presentations listed in the University of Madison website were not included in the table.

Secondly, although the Lisbon leaders coined the term ‘open method of coordination’ and described its features, the story of the OMC did not start at Lisbon. True, in some areas Lisbon was the first step towards coordination. However, most policies had already been the object of coordination. The Broad Economic Policy Guidelines (Tepsa 2002; Hodson and Maher 2001), the European Employment Strategy (Goetschy 1999; 2003; Trubek and Mosher 2003), the soft law approach to social inclusion (Ferrera, Matsaganis, Sacchi 2002), and the code of conduct in business taxation (Radaelli 2002) – to name four areas in which the OMC has been employed – did not originate at Lisbon. Other policy applications of the method were entirely new, however.

To understand this mix of new and old one has to think of the OMC as legitimising discourse². In a sense, Lisbon was more a focal point for bringing together existing (yet scattered) policy practices in a new discourse – although policy areas such as taxation were not even mentioned at that summit – than ‘day one’ of the new method. As such, the March 2000 European Council was instrumental in forging the open method as discourse. The OMC as discourse yielded political coherence to existing practices. But it also generated task expansion: some policies mentioned in the Lisbon conclusions – such as education – had not experimented any form of real coordination up until then.

The third remark is that although it is useful to examine the OMC as ideal type, its features vary considerably across policy areas. We will turn to this issue in a moment, when we will discuss the specific policies in which the method is currently being used. But it is useful to bear in mind that the OMC:

¹ The Forum contains a selection of OMC studies based on several criteria. It is a representative selection, but not exhaustive.

² The reference is to legitimacy within the circle of EU leaders. See Section 6 for a wider notion of legitimacy.

'is not some kind of fixed recipe that can be applied to any issue- (...) Policy co-ordination and open co-ordination together constitute a cookbook that contains various recipes, lighter and heavier ones' (Vandenbrouke 2002:9).

If it is wrong to focus on Lisbon alone, then in order to understand the OMC one needs to look for structural reasons behind its emergence. In this vein, one question is how did we get there? Lisbon is a snapshot that has to be put in the context of a more dynamic film.

4. A METHOD EMBEDDED IN THE MASTER DISCOURSE OF COMPETITIVENESS

The argument presented here is that the OMC is an attempt to get to grips with long-standing problems in the search for competitiveness in Europe. ‘Lisbon Europe’ (this is the term used by Laffan 2002) launched the challenge of making the EU ‘the most competitive and dynamic knowledge-based economy in the world, capable of sustaining economic growth with more and better jobs and greater social cohesion’ (Presidency Conclusions). However, the problem of competitiveness was one of the main motivations behind the Single European Act (1986), which indeed was presented as a way out of political and economic Euro-sclerosis. With the Treaty provisions on Economic and Monetary Union (EMU) Europe tried to achieve more competitiveness by undertaking the project of a single currency. The White Paper on growth, competitiveness and employment (1993) linked explicitly economic growth, infrastructural projects, and employment, trying to demonstrate that the goals of economic and employment policy were complementary. The idea of large infrastructural projects did not fly. But the White Paper prompted the decisions taken at the 1994 Essen Council concerning a Europe-wide response to unemployment.

In the second half of the 1990s EU policy-makers tried to identify a strategy for competitiveness by dint of the ambitious projects of technological convergence and the information society, following the Bangemann report of 1994. Towards the end of the 1990s, the ‘information society’ turned into the ‘knowledge society’, to reflect the role of society and education policies in the context of technological change (Rodrigues 2002).

Throughout the 1990s, one obstacle to the formation and implementation of a EU strategy for competitiveness was the lack of shared beliefs on what the European model of capitalism should be. There is plenty of evidence of markedly different beliefs on European capitalism. Think of the political vicissitudes of the White Paper on growth, competitiveness, and employment the recent disagreements about the functioning of EMU, the concept of public service, the appropriate reach of competition

policy, and the role of the European Court of Justice in sensitive policy areas. Scientific research has indeed demonstrated that there are different models of capitalism in Europe³. These models are based on different norms, work through different institutions, and produce different responses to the challenges of increased competition in an integrated world economy.

Add to this the fact that, in order to achieve competitiveness, substantial policy reforms are needed in politically sensitive areas, such as labour market and pensions. The puzzle for European leaders is how to produce these policy reforms without confronting the deep normative, perhaps even ideological, fracture over the model of capitalism most suitable for the EU. History has shown that it is simply impossible (and ultimately illegitimate) to make national models converge around a single EU template.

The solution that gradually emerged in the second half of the 1990s – and was then embodied in the Lisbon conclusions – was to ‘de-couple’ complex policy problems and to some extent ‘mute’ the most acute political controversies by devising a new method. The term ‘de-coupling’ is well-described by Laffan (2002). Suffice here to notice that one characteristic of the OMC is to make progress in politically sensitive areas by ‘avoiding’ politicisation. How is this possible? Essentially, by seeking to tap knowledge, specific ways of improving on the status quo, and innovations that can be diffused from one system to another. This micro-orientation breaks down political complexities into smaller compounds that are more manageable. It also brackets political conflict. In the ideal-type of the OMC (the reality may well differ), there is no attempt to forge a European ‘vision’ of capitalism.

This does not mean that there is no hierarchy of policies. Indeed, competitiveness acts as ‘master discourse’ for the OMC in the

³ On models of capitalism see Hall and Soskice (2001). Ferrera, Hemerijck, and Rhodes (2001a) report on different types of welfare states in Europe. Crouch (1993) explains how state traditions in Europe have shaped industrial relations systems.

sense of providing a set of shared beliefs on the main problems and priorities of the EU economy. The emphasis on competitiveness appears in the pivotal position of the Broad Economic Policy Guidelines (BEPG) in relation to the other policy areas in which the OMC is used. The master discourse allows for sufficient political space to debate employment policy and social policy in relative isolation from harsh ‘high politics’ confrontations. Thus, the OMC can be described as a ‘political space’ wherein sensitive policies can be made without clashing over the norms and values of models of capitalism.

This solution has its own limits, however. Indeed, the more the OMC produces results and gets closer to the formulation of clear EU goals (as stated in the Lisbon conclusions), the more it is difficult to avoid politicisation. This tension is endemic to the OMC. It demarcates the perimeter of the non-conflictual political space. It is aggravated when national elections produce radically different governing coalitions in Europe. It may become a key issue with the increasing differentiation produced by enlargement.

Arguably, the challenge of competitiveness is the strongest structural force behind the identification of new modes of governance for the Union. But there are at least other three reasons leading to new modes of governance:

- 1) The policy process of the EU has changed. On the one hand, legitimate diversity and subsidiarity are firm points in the process. On the other, EMU has increased the level and complexity of policy interdependency. Think of the link between EMU, macroeconomic policy, and social policy (Begg and Berghman 2002:187-188; Mayes 2002). In order to deliver, EMU needs reforms of the European labour markets, especially in the context of enlargement. Additionally, EMU-induced growth will not solve social policy problems; simulation exercises show that the coordination of social policy may attenuate these problems (Mayes 2002). One implication is that ‘coordination’ in the OMC refers both to the level of specific policies (coordinated among the Member States) and

to coordination between economic and social policies. The more the latter is achieved, the more the benefits of the OMC as a technology capable of muting politics and de-coupling issues will disappear. This is yet another tension endemic to the OMC. It is indeed impossible to handle coordination between social and economic policies without shared beliefs on the roles of the state and the market in Europe.

- 2) New policy paradigms have exposed the limitations of traditional legal instruments and harmonisation. The reference is to the impact of new public management and new regulatory paradigms. New policy instruments based on alternatives to traditional regulation have been used both at the EU and domestic level. The verdict on how far they can go and what they can achieve is mixed (Zito, Radaelli, and Jordan 2003). However, their impact on policy-makers' ideas of governance, public administration, and government has been vast. New paradigms have provided the background wherein the OMC can be seen as a better way forward. 'Better' in the sense that soft law is no longer seen as a second-best option in cases wherein legislation cannot be produced. Rather, the soft approach embodied in the OMC is seen as superior to traditional approaches because it fosters learning and provides flexibility to the policy process.
- 3) The third reason has something to do with legal constraints. In education policy or direct taxation there is a thin or non-existent treaty base. In these areas, the obstacles to legal harmonisation come from the Treaties. New regulatory paradigms may make legal harmonisation look obsolete (see point two above), but in the first place there are legal constraints that are difficult to overcome. The relationship between the OMC and legal constraints has more dynamism than one would think, however. True, legal constraints should not be underestimated. However, in employment, social policy, and pensions the OMC has emerged neck to neck with (proposed) directives and regulations. In direct taxation, the soft-law mechanisms of the OMC are nested into a wider package containing two directives. In pensions, an embryo-

nic form of OMC has been accompanied by the draft occupational pensions directive presented by the Commission in 2002. And in employment policy, the OMC is thriving on nothing less than the treaty articles inserted at Amsterdam. To conclude on this point, legal constraints play a role, but more in defining a dynamic relation between the OMC and EU law than in making soft-law the only show in town.

5. THE OMC AS NEW MODE OF GOVERNANCE

One of the key questions in this report is to what extent is the OMC a new governance architecture for the EU? As shown above, structural change creates momentum for new modes of governance. But is the OMC a form of new governance? The issue has been discussed by several authors, such as Odervest (2002), Scott and Trubek (2002), and Trubek and Mosher (2003). Some of them (Scott and Trubek 2002) note that the OMC is just one example of new modes of governance. Accordingly, it should be examined in the context of other methodologies used in the EU policy process to forge new governance architectures for public policies⁴.

Other authors have gone even further than ‘new governance’ in general: they have addressed the OMC as ‘deliberative governance’ (Jacobsson and Vifell 2003), drawing on the description of ‘directive-deliberative’ governance provided by Cohen and Sabel (1997, see also Cohen and Sabel 2003 on the comparison between the US and the EU). The case for the OMC as new mode of governance rests on six characteristics of the method:

- 1) New, and more limited, role of law. The role of law is different than in traditional governance (Scott and Trubek 2002). In the OMC, there is no real demarcation between rule-making and rule-implementation. Another difference is that courts do not provide the main mechanisms of accountability. Parenthetically, this explains why the criticisms of the OMC often focus on accountability.
- 2) New approach to problem-solving. In its ideal-typical format, the method works by dint of iteration, mutual cooperation (across levels of government and between public and private actors), and standard-settings. There is a lively discussion on the nature of learning in OMC problem-solv-

⁴ Heritier (2001) has produced preliminary evidence of how different ‘new modes’ are used in the EU.

ing. Authors such as Jacobsson argue that learning is top-down. Member States have to implement the guidelines set at the European level. By contrast, American authors (such as Trubek, Cohen and Sabel) are more inclined to stress the potential of open coordination for bottom-up learning. The idea – they argue – is that there is a solution somewhere, but it cannot be provided by hierarchy. Therefore, the OMC activates a network that searches the solution. As such, the OMC works like a radar. The similarities with governance in systems based on networks (instead of hierarchy) are clear. The text of the Lisbon conclusions contain evidence for both schools of thought. On the one hand, there is a reference to EU goals, convergence, and guidelines that Member States are supposed to meet – a reference that sounds like top-down dynamics. On the other, the text insists on mutual learning processes and development of domestic policies at a pace that is not dictated by Brussels – something close to bottom-up dynamics. If Lisbon contains the template of the OMC, it is fair to conclude that the template leaves the question of the relative weight of local knowledge versus top-down learning open.

- 3) Participation is a key feature of the process. ‘Power-sharing’ is higher than in traditional legislation (Scott and Trubek 2002:5). Both different levels of government and the civil society participate. Participation is essential for two reasons. One is obvious, that is, legitimacy. The other is less obvious: effectiveness. The method can work like a radar searching solutions only if it involves many different actors. According to Zeitlin, the OMC radar must tap the benefits of local knowledge and local experimentation (Zeitlin 2002). Accordingly, participation should not be limited to those who operate in EU-level committees, but it should be extended to local-level actors. As explained above (point 2), the different emphasis on local or EU-level actors reflects the way different authors look at bottom-up or top-down learning.
- 4) Diversity and subsidiary – as explained above – are in-built. The open method acknowledges diversity up front. It is

based on the assumption of different models of capitalism which find their own solutions to the problems generated by the challenges of complexity and competitiveness. More traditional modes of governance point to harmonisation, instead.

- 5) New ways to produce usable knowledge. The OMC is supposed to work like a network looking for usable knowledge at all levels. The specific instruments are coherent with the goal of learning – at least in principle (see below on real-world problems). Think of benchmarking, peer review, multi-lateral surveillance, scoreboards, trend-charts and other mechanisms for *trans-national* policy diffusion. It is less clear whether the design of the open method contains specific and coherent instruments for *bottom-up* learning.
- 6) This leads to the final point, that is, policy learning. The greatest advantage of the open method is that it has considerable potential for policy learning. By learning from local knowledge and by generating trans-national diffusion, policy-makers can improve at their own pace.

To conclude: the case for the open method as new governance architecture can be made. But it must be stressed that all the six points, and especially the last one, refer to the ideal-typical characteristics. The emphasis here is on ‘potential’ for learning. Whether the open method has actually generated considerable learning across countries, across levels of governments, and across policies is another question, to be addressed later on in this report.

6. NEW GOVERNANCE UNDER PRESSURE: THE PROBLEM OF ENDEMIC TENSION

The fact that there is a new mode of governance in the EU does not mean that it will work. Indeed, there are several elements of tension in this mode of governance. The argument aired in this report is that tension is endemic. This generates an in-built limitation to what the OMC can achieve. Although at the level of specific policy areas tension can be attenuated, depending on a number of circumstances, a number of in-built contradictions (put differently, endemic tension) define some trade-offs and limitations from which policy-makers experimenting with the OMC cannot escape.

To begin with, as argued above, there is an element of tension in that the OMC seeks to de-couple issues, promote diversity, and mute politics. But policy interdependency and the need to coordinate policies (within the 'master discourse' of competitiveness) push towards politicisation and conflict over the EU 'model(s)' of capitalism. There is a contradiction between the emphasis on the method as an instrument used by Member States to develop 'at their own pace' and the objective need to steer the process of policy change in the direction of 'convergence towards the EU goals' (both appear in the Lisbon conclusions). Both the official rhetoric and academic studies are somewhat ambiguous on this issue of diversity versus convergence. Moreover, it is not clear what type of convergence one has in mind: convergence of goals, convergence of discourse, or convergence at the level of policies? There are expectations in terms of convergence of policies, as Biagi reported three years ago (2000:159):

'Consistent application of the Luxembourg exercise might lead to a convergence of Member States' employment and labour policies, not dictated by Brussels but based on a growing consensus on effective solutions through a process of trial and error'.

However, it seems that the main result so far is convergence at the level of ideas, concepts, norms defining good and bad

practice, and ultimately policy discourse – an issue to which we will turn when discussing the achievements.

Another contradiction arises out of the fact that the OMC is cast in the strategy to make Europe the most competitive knowledge society in the world. As argued above, the OMC is the most recent step in the struggle for competitiveness that started with the single market. At the same time, a good deal of policy-makers and academics look at the open method as an instrument to build ‘social Europe’. Although at the general level the recalibration of the welfare state and the challenge of competitiveness are not mutually exclusive (Ferrera, Hemerijck and Rhodes 2001b), empirical evidence from employment policy, social policy, pensions, and taxation points to conflicts between those organisations and policy-makers that put a premium on competitiveness and those who make ‘social Europe’ their ultimate goals. Occasionally, this element of tension re-surfaces in the discussion between the advocates of the method as a learning tool (that is, the OMC as cognitive instrument) and those willing to bring norms and values back into the process (with the consequence of aggravating the conflict over models of capitalism). The following quote from a prominent Belgian politician is quite clear:

‘The open method of co-ordination is both a cognitive and a normative tool. It is a “cognitive” tool, because it allows us to learn from each other. In my opinion, this learning process is not restricted to the practice of other Member States, but also extends to their underlying views and opinions, an area that is no less important. Open co-ordination is a “normative” tool because, necessarily, common objectives embody substantive views on social justice. Thus open co-ordination gradually creates a European social policy paradigm’ (Vandenbrouke 2002:9).

Add to this the fact that the advocates of ‘the European social model’ have to reconcile their claims with the considerable diversity of welfare state models in the European Union (Begg et al. 2001) and that enlargement will certainly increase the

amount of diversity. The question is how can one speak of one 'European social model' when evidence from employment policy points to a conflict among models, so much so that the real politics of the OMC in this area is all about finding out which models are under pressure (de la Porte 2002) and which models are more suitable (in new hybrid forms, perhaps, see Bertozzi and Bonoli 2002) as possible templates for the European Employment Strategy? A final element of complexity for those willing to use the OMC to create 'social Europe' is that recent research (Wincott 2003) demonstrates that:

- (i) the 'EU social model' is more a discourse sponsored by some political elites in some countries than reality;
- (ii) EU social policy has been so far more 'American' in style and content than 'European'. Wincott (2003) argues that it is perfectly possible that even in the future EU social policy 'will serve to reinforce the influence of US style approaches (by way of the British government) to social and employment policy (workfare and labour market flexibility)'.

Concluding on this point, if and when there is tension between competitiveness and 'social Europe', the task is easier for those pushing for competitiveness. Not only is competitiveness the master discourse which led to Lisbon, but the notion of 'the European social model' brings in a number of contradictions that make this 'social values' project structurally weak. With an important qualification, however. This report will argue (in Section 8, footnote 15, and in the conclusions) that one way to limit this tension is to look at social and employment policies that, by increasing the flexibility of labour, increase competitiveness and provide social protection.

Be that as it may, the list of contradictions contains a final item, that is, the tension between competition and cooperation. Some of the elements of the OMC, notably benchmarking, are used by companies in the private sector to become more competitive. The notion of learning contemplates the possibility that a country acquires new knowledge from other countries, de-

ciphers the lessons to be drawn, adapts innovation to the domestic context, and ultimately becomes more competitive. At the same time, the emphasis on information-sharing, common guidelines, performance indicators for the whole of the EU, and coordination among policy areas pushes in the direction of cooperation. For the actors involved in the OMC, the challenge is to find the right balance between cooperation and competition. This is not an impossible task, because one can think of a cooperative policy regime within which Member States find their own ways to enhance competitiveness, but the balance is delicate, and not easy to sustain in time. On this front, arguably the most problematic area is taxation, where Member States are competing for capital, yet they acknowledge the benefits of cooperation against extreme forms of tax competition.

7. COMPARING THE METHOD ACROSS POLICY AREAS

After having looked at open coordination as new mode of governance and its contradictions, the next step is to discuss how the method is used in specific policies. One result will be that the ideal-type of the OMC allows for considerable variability of formats, rationales, and results across policy areas. Perhaps the closest one can get to the ideal-type described in the Lisbon conclusions is the European Employment Strategy. Other policy areas either do not contain all the elements of the OMC (in a sense, they represent lighter versions) or deviate from the template in one respect or another. The list of policy areas is rather long, and varies from one official document to another. One can group policies in three categories. The first group includes policies where there is a deliberate attempt to use the OMC as the main ‘working method’. This group includes:

- Broad Economic Policy Guidelines
- European Employment Strategy
- Social Inclusion
- Pensions⁵.

The second group includes areas where EU policy-makers have manifested their intention to use the OMC, but – so far at least – only a minimal component of the instruments and practice at work in these policies correspond to the ‘method’. This group includes:

- Innovation and RDT policies
- Education
- Information society
- Environmental policy
- Health care.

⁵ The use of the OMC in pensions is still embryonic. See Pochet (2003) on what has been achieved so far.

Finally, direct taxation is the only case wherein policy-makers have used an innovative combination of OMC instruments and practices, but without any deliberative intention to use the method. Accordingly, one can label this group ‘open coordination in disguise’.

The list of policies covered by the three categories is quite long. However, the list of policies making use of the full template described in the Lisbon conclusions is short, and arguably does not go much further than employment policy and the BEPG, with social inclusion close to the template but not yet quite there. This is not a paradox. Simply, it is an implication of open coordination as discourse. Thus, there are grandiose references to the ‘use of the OMC to develop policies’ in the official websites of the EU covering innovation policy and education policy. The reality is that it is still difficult to find traces of the template in the current development of these policies. Open coordination is a very attractive discursive bandwagon. It provides a politically useful label to various policy initiatives; it helps policy-makers and academics to make sense of complex realities; it justifies task expansion in areas where hard law is an unattainable goal.

With this caveat in mind, and perhaps at the cost of being subjugated by the OMC fascination that makes different things look similar, let us examine some policy areas comparatively. In order to analyse these policy areas in a coherent comparative fashion, it is useful to consider a sample of policies from all the three categories. The policies selected for this exercise are the BEPG, the European Employment Strategy, Social Inclusion, Innovation, Pensions, and Direct Business Taxation. Table two provides information on a range of dimensions used for this comparison. To begin with (column one), one can see that the OMC is being used both in policy areas where there is a solid treaty base (employment) and in areas where the treaty base is thin or non-existent. In addition, the relationship between the OMC and hard law is quite dynamic. As observed above, in pensions and taxation new modes of governance hinge crucially (in a sense, they are nested into) on traditional instruments such as

Table 2 – The open method of coordination in different policy areas

	Treaty base (*)	Specific objectives and indicators	Per review	Benchmarking	Recommend.	Relevant Council formation	Political or technical nature of the process	Participation of social partners
BEPG	Art. 99	Yes: guidelines and indicators	National plans	Yes	Yes	EPC reporting to Ecofin	Political	No
European Employment Strategy	Art. 128–130	Yes: guidelines and indicators	National action plans and specific reviews	Yes	Yes	Employment Committee reporting to SALC	Political	Social partners
Social inclusion	Art.136-137	Yes: objectives and indicators	National action plans	Yes	No	Social Protection Committee reporting to SALC	Political	Participation of social actors and NGOs
INNOVATION	No	European Innovation Scoreboard	Review of good practice	Yes (****)	No	Competitiveness	Technical	Stakeholders and 'innovation enterprises'
PENSIONS	Art.140	11 broad objectives. Indicators currently discussed (**)	National strategy reports (***)	Limited benchmarking exercises	No	SPC and EPC reporting to SALC. Ecofin as pivot (so far at least)	Political	Business community has participated more than social actors
TAXATION	No	No indicators. Criteria define harmful tax competition	Review of specific tax regimes	Yes, but the benchmark is worst practice	No	Primarolo group reporting to Ecofin	Political	No

(*) The Treaty articles of BEPG and EES design a OMC process (that is, guidelines, indicators, national plans, peer review, re-formulation of guidelines), whereas in the other areas Treaty articles – when they exist – define the EU goals and competence, but do not refer to OMC processes.

(**) The indicators currently being discussed borrow from the set of indicators of the EES.

(***) National Strategy Reports are different from National Action Plans in that NAPs contain the 'actions' supposed to meet the EU goals, whereas NSRs so far have simply described the dynamics of pension policy and the main reform trajectories in Member States.

(****) Member States use the trend-chart and other instruments to find out their own benchmarking strategy. In the BEPG, EES, and Social inclusion benchmarking is more specifically connected to EU guidelines and indicators.

directives. As mentioned, in tax policy the code of conduct against harmful tax competition is a component of a tax package containing directives. Member States thus bargain at the code's table with an eye to the progress made in the negotiation of the directive on the taxation of savings and the directive on the cross-border taxation of interests and royalties.

The second column shows guidelines and specific sets of indicators. The OMC as process starts with the formulation of guidelines, followed by the agreement on a list of indicators. National plans are then developed by using the agreed lists of indicators and benchmarks. They are used to compare national results and to identify best or good practice. The final step is the 'monitoring, peer-review, and evaluation' stage of the process. This should provide learning opportunities that feed-back into the development of national policy and the re-formulation of guidelines.

There are not many processes that follow this template, apart from the BEPG and employment. Social inclusion comes close, although indicators are less precise than in employment policy. The crucial link is the one between indicators and national action plans. Indicators guide policy if they inform domestic decisions. Otherwise they are still useful for benchmarking, but do not really provide orientation to the preparation of national policy. In social inclusion up until 2001 the Member States could use any set of data, but starting with the plan for 2003 they were requested to use the primary and secondary indicators agreed by the Social Protection Committee. A third range of indicators (optional tertiary indicators) can be used flexibly to accommodate the peculiarities of each Member State (Ferrera, Matsaganis and Sacchi 2002:233).

Indicators are currently discussed in pension reforms, but here the process has been subverted. National pension strategy reports have been presented by Member States without previous agreement on indicators. Accordingly, these plans do nothing more than describing the trajectories of domestic policies. Indeed, they are not called national action plans – arguably an

acknowledgement of the fact that they do not contain a list of actions that are supposed to meet the guidelines and the indicators agreed in Brussels. The term ‘strategy report’ is more elusive than ‘action plan’. However, eleven ‘broad common objectives’ for pensions were agreed by the Social Protection Committee and the Economic Policy Committee – an example of fine balance between economic and social policy logic (SPC-EPC 2001: 6-7). So far the main function of the pension OMC has been to feed information and strategies into the formulation of the BEPG. For this reason, commentators like de la Porte (2003 forthcoming:9) do not consider this OMC ‘a process in its own right’.

The main instruments used in innovation policy are the European innovation scoreboard, the European trend-chart on innovation, surveys of innovation policy measures, reviews of policies, and workshops on trans-national policy learning (<http://trendchart.cordis.lu/be>). The scoreboard contains 17 indicators on knowledge creation, technology transfer, innovation finance, and innovation outputs. The Commission has made the suggestion that Member States use the results of the scoreboard ‘to define, where appropriate, national targets or policy priorities’⁶. This is an extremely light use of the indicators when compared to the use in the European Employment Strategy. There are no indicators in tax policy, but Member States use a set of criteria to identify harmful tax competition.

The examination of guidelines and indicators has revealed a substantial diversity within the OMC ‘template’. The next column in table two refers to peer review. Here again at first glance the OMC template seems coherent, but the reality is that peer review means different things in different policies. Peer review in pension policy has been quite light so far, with short presentations of descriptive national plans followed by some questions prepared in advance (de la Porte and Nanz 2003). Peer review in innovation policy is more oriented towards the review

⁶ See http://trendchart.cordis.lu/AboutUs/pg_04.htm.

of successful policies than towards the evaluation of national plans. In taxation, there is no review of national policies, but target review of specific tax regimes included in a list of potentially harmful measures. The list is compiled by asking for submissions from Member States⁷ and by including entries suggested by the Commission.

Benchmarking is widely diffused, but in this case again one has to be aware of the different context and political goals in which this technique is used. Taxation, for example, provides a curious case of benchmarking, that is, Member States benchmark their tax systems against ‘worst’ or unacceptable practice. In this policy, the difference of opinions in terms of what is a ‘good’ tax policy model is such that Member States managed to agree only on what is harmful practice. This mirror-image of best practice shows that tax policy-makers are more engaged in avoiding policy failures (the lack of tax policy coordination at the international level has been described as a prisoner’s dilemma in which all participants lose revenue) than in learning from ‘best’ or ‘good’ practice.

One way to put pressure on Member States is to use the instrument of recommendations, although their effectiveness is still debated (see Hodson and Maher 2001 on the Irish case). Only the BEPG and the employment OMC use recommendations. It would be a mistake, however, to translate the presence or absence of ‘sanctioning’ mechanisms such as recommendations in terms of effectiveness of the OMC. The latter works eminently by dint of learning and convergence of beliefs about ‘good policy’. The logic, therefore, is not one of command and control. Rather, it is a logic of experimentation, incentives, perhaps even deliberation (Eberlein and Kerwer 2002; see however the issues raised by de la Porte and Nanz 2003). Sanctioning mechanisms play a limited role in this logic.

⁷ Hence, a country can ask the Council group in charge of the code of conduct to look into a tax regime of another Member State. For this reason the Council group was literally snowed under almost 300 suggestions of potentially harmful tax regimes.

The column on ‘Council formation’ in table two shows that in pension policy the Social Protection Committee and the Economic Policy Committee have to strike a balance between the economic-fiscal logic of pension reforms and the social policy aspects. This has brought together different types of actors, although so far social partners have participated less than the business community and Ecofin has steered the pension process. But the pre-conditions for a more balanced participation of actors are there, and the situation may change in the future (Pochet 2003). The Social Affairs and Labour Council is obviously the main formation involved in the employment and social inclusion processes, although the results achieved by the European Employment Strategy have to be consistent with the macro-economic policy designed by Ecofin via the BEPG.

The ‘innovation policy’ open method has been so far a process managed by DG enterprise, with limited involvement of the Council. The Commission has sought to work as a platform for policy transfer and learning at the level of experts from different ministries and ‘innovation enterprises’ (agencies, often funded by governments but not entirely, that assist in the diffusion of applied knowledge).

It is difficult to assess the ‘nature’ of the various OMCs portrayed in table two. Are they more political or more technical? The terms ‘political’ and ‘technical’ lead to confusion. In a sense, all open methods are technical. Indicators are discussed by experts, national plans are drafted by civil servants, and peer reviews have a technical nature. However, there is a difference between processes in which the discussion involves high-level policy-makers and deals with political issues and processes where the role of politics is more limited. Judged from this perspective, almost all processes are political, with the exception of innovation policy. Although more research – and more precision – on this issue is needed, the tentative conclusion is that the OMC is not muting politics.

Participation – last column in table two reports on social partners – is an important component of the OMC as new mode of

governance. It is striking to observe how little has the OMC delivered on its promises. Participation is minimal in taxation (the code of conduct group can be described as a cartel of Finance Ministers) and the BEPG. In employment, participation of trade unions, business organisations, and social movements reflects national styles of participation. Put differently, society participates in the OMC when domestic policy styles are already tuned towards participation. The implication is that (at least up until now) the open method has not changed participatory patterns in Member States.

In innovation policy participation is not at high political levels, but – as mentioned earlier on – at the level of stakeholders (civil servants from national ministries and the business community) and bodies promoted by governments to diffuse innovation (so-called ‘innovation enterprises’, innovation centres, companies providing seed capital, and so on). The loose and technical nature of open coordination in this area has enabled participation of the main stakeholders.

In pension policy the business community has seen an opportunity to enter a wider European market for pension funds and other products. Social partners have not been the primary actors, although they are increasingly involved. Finally, in the case of social inclusion, both NGOs (one example is the European Anti-Poverty Network) and more traditional social partners have found a favourable structure of opportunities for participation. This is an area where open coordination has partially matched the ambition of the Lisbon architects to provide mechanisms of participatory governance.

However, national parliaments, regions, and local governments have played a marginal role in *all OMC processes* described in table two (Zeitlin 2002). This is a serious deficiency for a method that draws heavily on the possibility to tap the benefits of local knowledge (Zeitlin 2002). Finally, the European Parliament has not been able to be involved beyond mere consultation – a point that the new Inter-Governmental Conference should address.

8. A PRELIMINARY ASSESSMENT OF THE OMC

It is still too early to provide a comprehensive assessment of the OMC. The problem is compounded by the fact that the large majority of studies published on the method is either normative or interested in the analysis of the ideal-typical characteristics of this new mode of governance. Good-quality empirical analyses including an assessment of the impact on domestic beliefs, decisions, and policies are still scarce. Consequently, this Section provides only a tentative and preliminary assessment of the method by raising the following three questions:

- Does the method provide an efficient platform for policy learning?
- Is it effective? What do we know in terms of actual results? What has been achieved so far?
- How can one assess the method from the point of view of legitimacy?

Put differently, having established that the OMC has the potential to provide a new governance architecture (albeit with endemic tensions), the question arises whether this architecture fosters learning, is effective, and legitimate. It is to these issues that we now turn, commencing with learning.

8.1 A platform for learning?

In its ideal-typical form, the OMC has considerable potential for learning in at least two directions. The emphasis on participation and local knowledge should provide a platform for bottom-up learning, whereas peer review and benchmarking – if properly used – can generate cross-national policy diffusion and learning. Turning to the metaphor of the method as a radar, the idea is that the network structure of the OMC enables policy-makers to detect innovative solutions – wherever they are produced at the local level.

However, where are the mechanisms that foster bottom-up learning and cross-country innovation? There is a large litera-

ture on policy transfer and policy learning. There are also some studies on benchmarking in the EU (Lundvall and Tomlinson 2001;2002). To review this literature here would simply add another layer of abstract and non-empirical conceptualisations to our knowledge of the OMC. It is more useful to distil some results of these studies that shed light on how the OMC actually works in the areas examined above.

The scant empirical information on learning in OMC processes (especially in employment policy, but there is also preliminary evidence in innovation policy) directs us towards a problem acknowledged by the Commission itself: up until now, the amount of learning ‘from the bottom’ and across-countries has been limited. One explanation for this is that participation falls short of the ideal-type of participatory governance designed at Lisbon. If the OMC is all about tapping the benefits of local knowledge, poor participatory governance is a serious hindrance to learning. One key mechanism envisaged by the Lisbon architects is simply not working.

The second explanation suggested here is that learning in the context of the OMC is a political exercise. Policy-makers are not seeking truth, but power. They may be open to reasoned argumentation, but not to the point of overcoming the basic fact that they are engaged with politically-sensitive policies such as the re-calibration of the welfare state, industrial policy, and taxation.

Let us make some examples. To choose a set of indicators, to designate an innovation as ‘good practice’, to undertake a benchmarking exercise, and to write guidelines are all political processes. They establish hierarchies of domestic solutions, they put pressure on some versions of the ‘European social model’ but not on others, or, in the case of taxation, they alter the comparative advantage of all Member States⁸. To assume that a depoliticised, positive-sum game learning is the most common feature of the OMC is simply wrong. To repeat, the point is that

⁸ Tax-competitive countries using harmful practice lose from coordination, whereas others may gain.

learning in the OMC is almost always political, often hierarchical, and invariably based on a mix of cooperative and conflictual attitudes. Consequently, some of the OMC mechanisms work differently (that is, more politically) than one would expect.

A third reason may have something to do with the limitations of benchmarking and best practice (Radaelli 2004). Let us look at the limitations of benchmarking first and then raise the question whether they really matter in the OMC processes examined here.

Instruments such as benchmarking have been adopted enthusiastically. Benchmarking in a political context may act as an obstacle to learning, however. It may reduce diversity and heterogeneity – two essential properties of evolutionary learning systems (Lundvall and Tomlinson 2002:208). It may focus policy-makers on specific micro-innovations, thus ignoring the holistic components of success and the systemic nature of policies. By focusing on success, benchmarking may not reflect enough on the lessons provided by failures (the so-called negative lessons). If based on best practice, benchmarking may ignore the simple fact that in the public sector the definition of success is problematic. Benchmarking may encourage imitation, but successful competitive strategies are more based on distinctive and unique aspects. Both in the private and in the public sector, it is customary to distinguish between a cooperative and a competitive form of benchmarking. Given its emphasis on imitation (together with adaptation, of course), OMC benchmarking is certainly more cooperative than competitive⁹. This may be a problem if one wants to enhance the degree of competition among EU countries.

Professor Porter from the Harvard Business School once told the Financial Times that:

‘Companies focus on the latest trend, the newest technologies and what their competitors are doing – and they are constantly trying to emulate best practice. It is important to be operatio-

⁹ See also Lundvall and Tomlinson (2002:211).

nally efficient to be competitive, but it is not enough. There is a crying need for a distinctive strategy' (*Financial Times*, 'Crucial importance of clear business goals', Interview by Rod Newing, 5 June 2002).

As the Commission (2000) duly acknowledged with reference to innovation policy, OMC aims at diffusing good practice, thus creating convergence. But benchmarking should also respect the diversity of national systems of innovation. Can EU policy-makers have the cake and eat it? As Lundvall and Tomlinson observe (2002:227), 'a more explicit reflection on how to reconcile the two sets of ideas in operational terms would have been useful'.

Finally, benchmarking may hinder learning by bracketing the institutional context. A number of institutional, political, and institutional circumstances are often neglected in benchmarking exercises in the public sector because of the assumption of total fungibility of best practice (Rose 2002). However, in all processes of policy innovation there are elements that cannot be transferred from one country to another without taking into account institutional legacies, state traditions, and the dominant legal culture.

For these reasons, it is useful to contrast the benchmarking approach with a more context-sensitive 'lesson-drawing' approach, based on an explicit acknowledgement of the role of institutions and legacies, and open to both positive and negative lessons¹⁰.

Do these criticisms really matter? The answer is 'yes, but the situation is improving'. There is a continuum of options (not a black and white choice) between de-contextualised benchmarking based on 'best practice' and context-sensitive lesson drawing. Although the Lisbon conclusions seem to ignore lesson-drawing, the reality is that the OMC processes have started with a-critical uses of benchmarking but are moving

¹⁰ For an illustration of lesson-drawing see Rose (2002). See Radaelli (2004) on the contrast between lesson-drawing and best practice.

towards context-sensitive methodologies. For example, instead of assuming that totally fungible best practices exist, the OMC often works with ‘good’ practices (‘worst’ practice in the case of taxation) to be adapted to specific institutional contexts. Recent EU workshops on innovation policy have explicitly addressed the notion of lesson-drawing¹¹. Discussions on intelligent benchmarking in the OMC (Lundvall and Tomlinson 2002) have begun, although we are still waiting for the results generated by these discussions. It is fair to say that the reflection on intelligent benchmarking and how to draw usable lessons from other countries is still limited to innovation policy. One recommendation to be presented at the end of this report is to encourage an open acknowledgement of the advantages of lesson-drawing and of the limitations of benchmarking.

To conclude on learning, open coordination has potential for learning, but it has not delivered, due to limitations in terms of participation, the political aspects of learning, and the still insufficiently critical discussion of benchmarking and possible alternatives such as lesson-drawing.

8.2 An effective instrument?

Let us turn to the question of effectiveness. This is a tricky question. It is too early to assess this dimension. And it is not clear whether one should assess it across policy areas (i.e., is the method effective in providing coordination across policy areas?) or policy by policy. The issues of overall policy direction (what kind of Europe is currently being forged by open coordination) and coherence (how coordinated is the open method?) are important. Let us leave the ‘1 billion-dollars’ question of direction to the end of this Section.

What about coherence? If one considers all the OMC processes listed in the previous Section (that is, the three categories of open methods), one has to say that there has not been much

¹¹ See the 27–28 November 2002 workshop on ‘Improving trans-national policy learning in innovation’ (<http://trendchart.cordis.lu/benchmarking>) organised by the European trend chart on innovation (DG Enterprise).

coordination. Not yet, at least. However, in 2002 the Commission released a communication – well received by the 2002 Barcelona Council – on streamlining the annual economic and employment processes (Commission 2002). The aims in this communication are to synchronise the cycles of BEPG and employment, to give the Spring Council the chance to coordinate different processes, to focus on policy implementation, and to provide a medium-term strategy to the processes. The communication does not include social inclusion policy¹² and pensions. The proposals formulated by the Commission re-affirm the pivotal role of the BEPG – in line with the master discourse of competitiveness. This may be a sensible way to produce coordination, although social inclusion and the fiscal aspects of pension reforms should not be neglected. In this vein, the Convention working group on ‘Social Europe’ made a recommendation to extend synchronisation to ‘all other aspects to which the OMC is applied’ (European Convention 2003a:21).

This negative assessment of low coordination across policies should be qualified¹³. The fact that the OMC has not achieved much does not mean it has not achieved *anything!* Both employment policy and pension policy shows examples of effective coordination. In the EES, the guidelines have been set jointly by Ecofin and the Social Affairs and Labour Council. Pension policy shows an interesting example of integrating the logic of economic goals and the logic of social protection in the objectives agreed by the Social Protection Committee and the Economic Policy Committee (SPS-EPC 2001). Finally, the GOVECOR project (www.govecor.org) has provided evidence of increased policy coordination at the national level (Jacobsson and Vifell 2002; see Linsenmann 2003 for a preliminary assessment of ‘coordination of policy coordination’).

If one looks at the level of policy areas, preliminary research indicates that the effects of the OMC differ according to policy

¹² Note that the employment OMC has an annual cycle, whereas the social policy process is biennial.

¹³ I am grateful to Kerstin Jacobsson for having pointed out this to me.

area, welfare regime, country, and the position of key political actors at the domestic level (de la Porte and Pochet 2002:17). And within individual policies (notably, the European Employment Strategy) some ‘pillars’ (employability) are stronger than others.

One result that employment policy and taxation have achieved is (limited but significant) cognitive convergence¹⁴. The OMC has been instrumental in creating common beliefs in these two policy areas, and there is preliminary evidence of a similar phenomenon in other processes, specifically in social inclusion. Cognitive convergence refers to the identification of a common set of beliefs about the main problems and the causal mechanisms at work in a policy area. There is also evidence of embryonic yet important convergence at the level of norms: notions such as ‘harmful tax competition’ imply shared norms of what is acceptable and unacceptable behaviour in public policy. In employment policy, Bertozzi and Bonoli (2002) describe the characteristics of an emerging ‘EU desirable model’ which is a hybrid of Anglo-Saxon and Scandinavian instruments. They note that this emerging model has been able to trigger a change in the policy paradigm used by German policy-makers. We do not know whether learning has taken place in other countries as well, however. In the pension OMC, there has been agreement at the level of beliefs about necessary reforms. However, this agreement may be contested in the future, if some actors manage to break down the ‘economic’ discourse on pensions by injecting more elements relating to ‘social’ considerations.

To sum up then, the main result of the OMC – limited to some specific policy issues, some countries, and still to be confirmed by more systematic evidence – is ideational convergence. This is extremely important as convergence at the level of ideas, and perhaps desirable models, may alleviate the endemic tension described above by delineating the contours of a possible ‘EU social model’ and by suggesting how the latter may fit in with the master discourse of competitiveness. Two qualifications are in order, however.

¹⁴ For empirical evidence see Bertozzi and Bonoli (2002) and Radaelli (2002).

The first is that these elements of ideational convergence are embryonic. It remains to be seen whether the OMC process will make them more solid. The institutionalisation of ideas is a problematic process. The second consideration is that communities of discourse may produce symbolic policies. A common vocabulary is used in Brussels, but domestic policy proceeds along different tracks.

Indeed, following Brunsson (1989), one should not assume that people or organisations belonging to the same community of discourse take the same decisions. Convergence in ‘talk’ may not produce convergence in decisions. Neither does it produce the same actions: even if a decision is taken, implementation may differ. Pollitt (2001:940) adds that even when there is convergence in action the actual results may differ: ‘even determined implementation (actions) does not necessarily lead to uniform or expected results’. The previous considerations of the limited amount of policy learning so far achieved by the OMC, together with the misalignment between national plans discussed in Brussels and real policy decisions taken in national capitals, provide evidence that the risk is real. Recent progress made in terms of tightening up the evaluation of national plans, making them more evaluative, and the proposals of the Commission for the synchronisation of different processes may reduce this risk in the future. At the moment of writing this report, we still do not know enough about the impact of the OMC on domestic decisions and policy outcomes.

One way – albeit somewhat speculative – to have a sense of what the OMC policy impacts may be is to draw on the literature on Europeanisation (Featherstone and Radaelli 2003). The latter suggests the following:

- OMC as Europeanisation has two main effects. One is the socialisation of elites (so far by dint of a common discourse, although discourse is more contested in some areas than in others). The other is the change in the domestic opportunity structure. Some actors are objectively empowered by Europeanisation. The impact of the OMC depends on whether

these actors (arguably within coalitions for reform) have the will and capability to use the resources provided by the OMC.

- Europeanisation produces differential effects, due *inter alia* to the fact that domestic institutions refract European policy. Hence one should not expect the OMC to produce convergence at the level of policy results. Indeed, if open coordination is used by Member States to learn how to become more competitive, and if some countries learn better and faster than others, the final result may well be increasing differentiation in the EU.
- Europeanisation works through different mechanisms. One is adaptational pressure (the pressure to adapt to EU models, see B(ryzel and Risse 2003). To understand where the OMC has more potential for policy change, one should look at countries under adaptational pressure. South European countries are under adaptational pressure in employment and social inclusion, whereas the UK and Ireland need to adapt to social inclusion and taxation guidelines. Most pillars of the European employment strategy put key elements of the German model in jeopardy. Whether these domestic policy systems will really change as a result of adaptational pressure is a moot point. If the divergence between the EU model and domestic arrangements is too high, chances are that there will be no change: inertia or even retrenchment will be the most-likely outcome. Change is most probable when adaptational pressure is at medium level. Further, adaptational pressure is somewhat socially constructed: policy-makers may argue that their system is fully compatible with EU guidelines whereas most of their peers would think that there is considerable adaptational pressure¹⁵. Finally, the more the identification of fundamental EU goals remains vague, the least likely is that governments will really have to adapt and ‘Europeanise’ their policy.

This leads to the final question about effectiveness. It makes sense to talk about results only if the overall direction is clear. The master discourse on competitiveness is a component of the overall direction, but both policy-makers and academics are still

in disagreement about the ultimate goals of the OMC exercise. What does 're-calibration' of the welfare state really mean? What is the specific range of actions that would make 'the European social model' compatible with the economic logic of market integration and competitiveness? Can the BEPG provide sufficient guidance to the overall process? Is the OMC an alternative or a complement to hard regulation? Does the EU want to become more or less tax competitive?

Those are NOT impossible questions to answer¹⁶, but politically they certainly are hard nuts to crack. Perhaps the OMC is the best way to tackle these questions, but it is fair to say that the overall direction is not clear at the moment. In the absence of overall direction, one cannot say if the 'goals' of the OMC are being achieved or not.

¹⁵ A good example was provided by the initial reactions of national delegations to the criteria against harmful tax competition. Most national delegations said they had nothing to fear from these criteria, although most commentators thought that some countries had more to change than others.

¹⁶ See de la Porte and Pochet (2002). Some would argue, however, that they cannot be answered by looking at the OMC alone. Scharpf (2002) has observed that even assuming perfect functioning and 'optimal learning', the open method will never put the logic of social protection in the driving seat. The logic of economic efficiency and market integration – he argues – will remain dominant. Member States have to respect the legal and economic constraints of integration whether they act unilaterally or under the umbrella of OMC guidelines (Scharpf 2002:655). The OMC does not provide a sufficiently strong 'balancing test' that compensate economic policy considerations with social protection. However, one different way to look at the question is to argue that economic and legal constraints provide a culture of economic stability within which welfare states can be calibrated in different ways. Scharpf seems to make the assumption that deficit spending, taxes on capital, short-term demand management, the use of public utilities for regional policy are the most important resources of the welfare state, and seems to disregard supply-side policies as 'neo-liberal economics'. But there are other ways to produce social protection, and they are compatible with competitiveness as master discourse. Ferrera, Hemerijck and Rhodes (2001b) provide a systematic account of how one can approach this issue.

8.3 Whither legitimacy for the OMC?

The legitimacy of the OMC is still contested. New modes of governance based on soft-law raise the issue of the rule of law and how Courts should handle processes such as the OMC (Scott and Trubek 2002). Further, participation of local actors, regional governments, social actors, and parliaments is limited. This creates a problem of legitimacy and – as argued above – a problem of effectiveness. So far the OMC has not been very ‘open’. The core of the OMC is a network of civil servants and experts. This may increase the technocratic nature of the EU policy process, rather than opening up pathways for more democratic decisions. In cases where the OMC managed to involve trade unions, the business community, and social actors, this is more the result of domestic practice than of the changes brought about by the method. It seems that the potential of the OMC in terms of changing the opportunity structure for participation has not been fulfilled, perhaps with the exception of social inclusion.

To be clear on the democratic content of the OMC: there is nothing (or very little) in the current practice that resembles participatory democratic governance, democratic experimentalism based on bottom-up learning, or directly-deliberative polyarchy¹⁷. This empirical statement stands in contrast with the official political rhetoric trumpeting the virtues of the method. It is also at odds with the optimistic – yet abstract – assessments provided by academics interested in the potential of the open method. The democratic components or real-world OMC are weak in terms of participation, domestic salience of the process (as shown by media coverage and political interest), transparency of the discussions (only dedicated researchers have an idea of how indicators were chosen and agreed), communicative rationality, and democratic deliberation.

¹⁷ As defined, *inter alia*, by Gerstenberg and Sabel (2002), Cohen and Sabel (2003). See also Eberlein and Kerwer (2002) on democratic experimentalism in the European Union.

This does not exclude a priori that the method may enhance learning and deliberation at the level of bureaucrats, politicians, and experts. This type of technocratic deliberation, however, has nothing to do with democracy. The empirical evidence reviewed in this report shows limited learning so far. But this should not be underestimated. Preliminary and limited evidence on cognitive convergence sheds light on how the method may assist the re-orientation of policy-makers' beliefs and their convergence around 'EU paradigms'. This is technocratic and political deliberation, not democracy.

As mentioned, in employment policy, the German paradigm has been re-oriented in a direction consistent with the emergent beliefs at the OMC table. In tax policy, convergence around the paradigm of fair tax competition is slow and problematic, but progress in this direction cannot be denied. However, this achievement is also the product of other forces at work, such as the presence of proposals for directives, the pressure on domestic policy-makers coming from state aid policy directed at fiscal regimes, and the intensification of the OECD campaign against harmful tax competition. The lesson here is that future research should contextualise the OMC. Otherwise the risk of pre-judging the role of the method looms large. Too much research has been done on the method *in vitro*, too little on the OMC in the context of other modes of governance (both new and old) applied to the same policy area.

To conclude, the whole question of legitimacy and accountability is the biggest Damocles' sword hanging over the open method. Although there is some preliminary evidence of limited- technocratic-political learning, the potential in terms of participation, openness, real transparency, increasing visibility in the domestic media and parliaments – in a word, the democratic aspects of the process – has not been fulfilled.

9. CONCLUSIONS AND RECOMMENDATIONS

Instead of ‘the’ open method, one should talk of different methods at work in a large number of policy areas. The fact that official documents refer to the OMC even in areas where there has been almost no progress in terms of methodologies consistent with the Lisbon template suggests that the insistence on ‘the’ method is deliberate. Indeed, the OMC has now become a legitimising discourse. It provides a community of policy-makers with a common vocabulary and a legitimising project – to make Europe the most competitive knowledge society in the world. Academics have shed a very positive light on the OMC as new mode of governance. This enhances the role of the open method as legitimising discourse. The result is that policy practices that up until a few years ago would have been simply labelled ‘soft law’, declarations, voluntary codes, and benchmarking exercises have now been adroitly ‘framed’ as ‘applications of the method’.

The OMC is not just an invention, however. There are structural reasons for the appearance of the method in the EU policy process, most notably the long-term attempt of European policy-makers to get to grips with the problem of competitiveness. An implication is that the OMC is embedded in the master discourse of competitiveness. The latter defines the perimeter of what is politically feasible in terms of the ‘European social model’. The legal and economic constraints of integration limit the role of EU social and employment policy in any case, whether member states are acting alone or in the context of the open method (Scharpf 2002).

One should not see the constrained nature of the OMC in purely negative terms, however. The master discourse of competitiveness and legal-economic constraints are there to provide a culture of macro-economic stability within which a whole range of supply-side social-employment policies are still feasible¹⁸. The master discourse limits the use of deficit

¹⁸ Moreover, the strongest constraints on the welfare state have nothing to do with economic-legal integration, but with demography and domestic institutional choices (Ferrera, Hemerijck, Rhodes 2001b).

spending, types of state aid and forms of public procurement that distort competition, ‘cultural’ policy used as a barrier to trade, and rent-seeking behaviour in the shadow of public monopolies of the utilities. It is not clear whether these policies really produce welfare and social protection: most social scientists would answer negatively. The advocates of ‘Social Europe’ should think more about the integration of employment and social protection with the logic of competitiveness and less about how to limit, ‘balance’, or revert this logic.

It is possible to detect an ideal-type of the method. In its ideal-typical form, the OMC is a new mode of governance. This is due to the main features of the method, such as participation, the approach to problem-solving, the ways in which knowledge and learning are created and diffused within networks of political, bureaucratic, and social actors. In its ideal-typical format, open coordination has considerable potential: it can deliver ‘better governance’. In this sense, it is not a second-best option to hard legislation. It is a better way forward. The lack of hard sanctions is not a problem in a governance architecture based on incentives for learning.

Open coordination contains elements of endemic tension, however. On the one hand, its aim is to de-couple issues and to mute politics. On the other, it should promote convergence and coordination at the highest political level, such as the Spring Council. It encourages cooperation and imitation, but it also promotes diversity and competition. It is a means to achieve competitiveness, but some advocates of ‘the European social model’ see it as a way to balance economic logic with the logic of solidarity and protection¹⁹.

Our review of the OMC across policy areas has shed light on elements of similarity. The devil is in the details, as ever. Benchmarking, peer-review, and learning mean different things in innovation policy and employment policies. Most OMC pro-

¹⁹ Actually, the argument among those advocates is that the OMC is not enough to provide such a balance.

cesses are political, but innovation policy takes place at the level of DG enterprise and stakeholders, with politicians so far relatively at bay. The ideal-typical sequence of ‘guidelines-indicators-national plans-evaluation’ structures the European Employment Strategy, but in pension policy national strategy reports have appeared in the absence of agreed indicators. Taxation has no national plans, but selective and thorough reviews of specific tax legislation. By contrast, reviews in pension policy are quite light and much less evaluative.

Assessing real-world open coordination is not an easy task. Only preliminary and incomplete evidence is available. With this qualification in mind, this report has addressed the questions of learning, effectiveness, and legitimacy. On learning, the real-world applications of the method have not generated considerable amounts of trans-national and across-levels learning. There is evidence of learning in the sense of cognitive convergence. This may become extremely important in the future, if cognitive convergence goes as far as to alleviate the endemic tension of the OMC – for example, by creating convergence at the level of beliefs on what ‘the European social model’ should be. This report has argued that the poor results in terms of learning reflect the lack of bottom-up participation, the under-estimation of the peculiarities of learning in a political context, and the problems of producing usable knowledge via benchmarking.

Turning to effectiveness, the method has not achieved much in terms of coordination across policies. Recent proposals should improve on the status quo, by relating the Employment Strategy to the BEPG and by giving the Spring Council the opportunity to coordinate the whole Lisbon strategy – with the exceptions of social inclusion pensions. The question remains whether the European Council is the most appropriate body to cater for policy coordination.

In specific policy areas, so far the main results of the OMC as discourse has been to gain momentum for previously neglected or politically sensitive policy initiatives. As mentioned, there is also evidence of results in terms of ideational convergence.

Whether this will lead to convergence in decisions and actions is a moot point. Be that as it may, our knowledge of Europeanisation suggests that the impact of the OMC will be differentiated across countries and will depend on factors such as the domestic opportunity structure and socialisation effects²⁰. Overall, the results achieved fall short of the grandiose expectations launched at Lisbon. But the potential of open coordination is still there, ready to be exploited.

This leads to the question of how to make better use of the method. One argument in this report is that a number of claims about the OMC are exaggerated. Therefore, the future discussion should be more realistic about how far the OMC can go in achieving the goals set at Lisbon. It would be useful to cast the discussion in terms of a realistic diagnosis of the instruments and methodologies policy by policy.

One problem in the current debate is that open coordination has been examined *in vitro* instead that *in context*. More research on the empirical aspects of the method and on the relationships between the method and other forms of governance (old and new) is needed. One should have a clear idea of when and how the OMC should be used, when other new modes of governance should be used, or when the ‘old’ Community method is the most appropriate approach. Most crucially perhaps, one should have criteria to understand and assess the performance of different modes of governance interacting within the same policy areas²¹. Most policies reviewed in this report show that the OMC is used in conjunction with other modes, but we do not know much about the overall policy coherence achieved. The choice to introduce one new mode has been often haphazard and dictated by short-term political opportunities.

²⁰ Socialisation may turn ‘local’ domestic policy-makers into ‘cosmopolitans’ who feel some sense of belonging to a common European elite. This socialisation effect would certainly enhance the impact of peer pressure on domestic policy choices.

²¹ For example, self-regulation or co-regulation. Knill and Lenschow (2003) have sought to analyse open coordination in relation to other modes of regulation.

An important implication of the ‘contextualisation’ of open coordination is that the end result of proposed reforms should not be how to improve the OMC but how to improve policies by making European and domestic institutions more intelligent. This suggestion is not limited to research on the OMC but, more broadly and more importantly, to how policy-makers approach the method. This is where the current emphasis on the OMC as legitimising discourse is dangerous because it encapsulates open coordination in a world of its own.

One way to relate the OMC debate to whole question of EU governance is the proposal – which cropped up in different working groups of the European Convention, such as the ones on ‘Economic governance’, ‘Simplification’, and above all ‘Social Europe’ – to insert a treaty article defining the OMC. The final report of the working group of Economic Governance (European Convention 2002:6) argues that ‘there is a large measure of support within the group for including, for the sake of clarity, the basic objectives, procedures, and limits of the open coordination method, where the European Parliament and the European Commission should also have a role to play, in the Constitutional treaty, but in a manner which does not undermine the flexibility of the method’. The group on ‘Social Europe’ (European Convention 2003a) suggests a treaty provision in the chapter on the instruments which constitute non-legislative measures. This horizontal provision²².- the final report of the Social Europe working group continues – should specify ‘that the method can be applied only where no Union legislative competence is enshrined in the Treaty and in areas other than those where the coordination of national policies is governed by a special provision of the Treaty defining such coordination (in economic matters, article 99 and in the area of employment article 128 in particular)’ (European Convention 2003a:18).

The ‘Social Europe’ working group sought to resolve the tension between the logic of competitiveness and the logic of

²² For specific proposals, see Vandenbrouke (2002; 2003).

solidarity by proposing that article 3 of the future Constitutional Treaty include a reference to the promotion of full employment, social inclusion, a high degree of social protection, efficient and high quality social services of general interests, and, most controversially, a 'social market economy' (European Convention 2003a:12). Another idea aired by this working group was to state explicitly that no specific policy should be subordinate to another, with reference to the status of employment policy in relation to the BEPG. The current wording of art.128(2) is that the Employment Guidelines should be 'consistent' with the BEPG. The 'Social Europe' group was unable to make a recommendation on this matter, as some members were in favour of the current wording, whereas others wanted the 'non-subordination' principle explicitly inserted in the treaty. It seems that even the group in charge of the definition of 'social Europe' did not find enough consensus for an explicit balancing test between employment and macro-economic goals.

Where do we stand now? The draft text of art.3 circulated by the Praesidium of the Convention (European Convention 2003b) does not contain references to the 'social market economy'; it contains a reference to the 'free single market', instead. However, the draft treaty clarifies that the Union 'aims' at full employment and 'balanced economic growth and social justice'. The Union also 'encourages' 'solidarity between generations and between states'. The choices of the verbs 'to aim' and 'to encourage' illustrates the cautious approach of the Praesidium.

Turning to the specific areas in which the OMC should or should not be applied, our review of policies shows that the relation between open coordination and legislative competence is flexible and experimental. Flexible, because the OMC is used in areas where there is legislative competence of the EU, but also in areas of Member States' competence and in 'supporting measures' – a point duly acknowledged by the Complementary Competencies working group in its final report. Experimental because the OMC can be used to forge consensus on topics to be later addressed by directives, a sort of first step in the jungle of political complexity. But it may well be that the OMC reveals

more potential than hard legal commitments and therefore there is no need to advance towards hard law – if the experiment with open coordination produces better results.

Flexibility and the ‘experimental nature’ of open coordination suggest that a possible Constitutional article on the OMC should not limit its application to areas where the EU has no legislative competence. A more generic definition of open coordination seems more appropriate, with the following qualifications:

- The article – a generic OMC provision – should simply define open coordination and its process, not the results ; there is no need to create a ‘rigid’ OMC. The process would not contain instruments that are used only in some areas, such as the recommendations, but should include transparency, participation (as general features of the whole process), joint objectives, the formulation of guidelines and indicators, country reports, peer review of national plans, monitoring and feedback. Consultation of the European Parliament should be a fundamental part of the process, although one has to appreciate that the BEPG do not contemplate this.
- This leads to the next point. The generic provision on the OMC should not apply to employment policy and economic coordination, where there are already specific treaty articles.
- It may be useful to state that the *acquis* is in any case ‘protected’ by possible degradation via open coordination.

But reforms should go beyond treaty revisions. An inter-institutional agreement clarifying the role of the Committee of the Regions is needed. The institutional agreement could also strengthen the constitutional provision of consultation of the European Parliament suggested above. So far the method has been managed by the Council and the Commission without real involvement of other EU institutional actors. There is also a need to clarify the relationship between the OMC and the rule of law. This is an old question for scholars of soft law, but so far the way courts have looked into new modes of governance has been disappointing (Scott and Trubek 2002).

One task for the next inter-governmental conference is to work on the tensions behind the OMC. On the one hand, work in this direction will be influenced by the political constellations of governments in 2004. But on the other, the IGC should draw on the positive and negative lessons arising out of what has been attempted (and sometimes achieved, sometimes missed) in the various policy processes in which new modes of governance operate. The IGC has the opportunity to add clarification of the meaning, constraints and expectations surrounding ‘the European social model’ and its role within the Lisbon agenda. Suggestions have been made – such as the idea of enhancing the social protection logic of the OMC with framework directives or the proposal to insert a ‘balancing test’ provision in the treaties (Vandenbrouke 2002; Scharpf 2002). This test should create an obligation to look at costs and benefits both in terms of economic integration and in relation to social protection.

Arguably, the most effective reforms are those at the level of policies. The room for improvement here is impressive. There is much to learn from intelligent benchmarking and how to draw lessons from positive and negative experience. Up until now, the adoption of benchmarking has been too a-critical and eminently influenced by experiences in the private sector. Benchmarking needs to be re-defined, and used in relation to other instruments for trans-national and across-levels learning (see Lundvall and Tomlinson 2002; Rose 2002; Radaelli 2004). Peer review and reporting should become more incisive. The national plans are provided by national governments, hence they tend to be over-enthusiastic about the current situation. It is of course essential that national plans are prepared by governments because this creates political commitment, but more independent reporting would enhance both learning and participation.

In this vein, the method should be opened up to NGOs, social partners, regions, and local authorities. This could also mean additional reporting (and not just scrutiny) on specific areas from these actors. One clear lesson from the current experience is that to increase participation within the OMC requires a re-orientation of policy processes at the domestic level. This is not

something that can be decided in Brussels. The institutional architects of the OMC have neglected the issue of how to create a structure of incentives for participation at the local and national levels.

Participation is just one dimension of the whole issue of accountability, democratisation, and legitimacy of new modes of governance. The visibility of the OMC in the media is rather low – without an attentive public the method can be captured by technocrats and vested interests. Democracy goes much further than deliberation in technocratic circles. The democratisation of the method is an extremely complicated exercise. It boils down to an attempt to change domestic policy practice and policy styles. Accountability is not ensured by the fact that the OMC choices are taken by national leaders. Instead of launching yet another discussion on the abstract properties of new modes of governance it would be more useful to take stock of the negative lessons and re-think about democracy pragmatically. The OMC has considerable potential for ‘better EU governance’ but the effort to exploit this potential has just begun.

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Sieps ●●●

Swedish Institute for European Policy Studies

Universitetsvägen 10 F
SE-106 91 Stockholm
Office: Stockholms universitet,
Frescati, House F, 6th floor
Tel: +46-(0)8-16 46 00
Fax: +46-(0)8-16 46 66
E-post: info@sieps.su.se
www.sieps.su.se