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The open method of co-ordination and national parliaments: further marginalization or new opportunities?

Francesco Duina and Tapio Raunio

ABSTRACT Legislatures are central to national democracy. Yet, scholars examining the impact of the EU on national parliaments have concluded that integration undermines domestic legislatures. We call for a more nuanced analysis. We turn to the EU's new forms of governance and, specifically, the OMC. Our analysis reveals a complex picture. On the one hand, with regard to participation, by empowering governments through executive federalism the OMC risks further marginalizing national parliaments. On the other hand, when we consider its output, the OMC provides national legislators with opportunities that the traditional Community method of legislation cannot offer. First, the OMC gives national legislators access to insights and tools for producing successful laws. Second, the OMC gives those legislators grounds for criticizing the policies of government officials. The empirical record suggests that some of these contradictory effects are already at work. The conclusion reflects on whether national parliaments should, or if given the opportunity would in fact, opt to participate in the OMC.

KEY WORDS Democratic representation; executive federalism; legislative insights; national parliaments; open method of co-ordination; soft law.

INTRODUCTION

Legislatures are a central characteristic of the modern nation state. Locke, in his *Second Treatise of Government*, thought of the legislature as '*the soul that gives form, life, and unity, to the common-wealth*' (1980: 107–8). Generations of writers thereafter echoed his sentiments. Yet, modern accounts of European parliaments paint a much bleaker picture. They recognize that national parliaments (NPs) are central institutions in European systems of government: NPs elect and control the government, approve legislation, and – as the bodies responsible for amending the constitution – hold the ultimate power in society. At the same time, those accounts stress that such a constitutional perspective is divorced from reality: NPs are reactive institutions, casting rather modest influence on policy initiatives coming from the executive. The technicality of most legislation, strong party government, and the growing relevance of

external constraints – globalization, judicialization through the activism of national and European courts, and delegation of policy-making authority to various public or private agencies – all limit the real influence of parliaments (Strøm *et al.* 2003; Norton 1998; Raunio and Hix 2000).

European integration in particular appears to have put an enormous stress on NPs. Proponents of the ‘deparliamentarization’ thesis have convincingly argued that the European Union (EU) has largely weakened NPs by strengthening the executive branch and moving legislative activities to the supranational level. Subservient to higher powers, the scope and autonomy of NPs have been greatly curtailed. In this article, we examine and then challenge this thesis. Our claim is that the institutional and procedural complexity of the EU is likely to have multiple, and possibly contradictory, effects on NPs. This is especially so with the arrival of new forms of governance, mostly centred on soft law. Our attention turns to one of those new forms, the open method of co-ordination (OMC). Formally launched at the Lisbon European Council of March 2000, the OMC’s purpose is to spread legislative ‘best practices’ across the member states primarily in areas where the EU has no formal regulatory competence. Much attention has been given to the OMC’s *modus operandi*, the nature of various initiatives across policy areas, and the general impact on member states’ policies. The OMC’s implications for NPs specifically have, by contrast, gone almost completely unexamined, but for a few exceptions which summarily point to the lack of NPs’ involvement in the process. We call for a more sophisticated analysis of the OMC and NPs.

We propose, on the one hand, that the OMC indeed stands to marginalize NPs. As the Commission itself has noted, the OMC functions without the direct participation of national legislators (Commission of the European Communities 2002: 3, 14). Specifically, the OMC entails a move towards executive federalism and, with that, a channelling of authority towards the executive branch. We also argue, however, that the OMC generates outputs that give NPs new opportunities to strengthen their position. The traditional method of legislation in the EU leaves little room for national legislative initiatives. By contrast, the OMC provides national law-makers with a flexible and rich plethora of insights and guidance on successful legislation. In addition, the OMC gives national legislators munitions to undermine the programmes and policies of government officials. The empirical record shows that NPs have already felt the effects of marginalization and have leveraged the OMC’s insights and guidance to produce more successful laws on the domestic front. We conclude that the relationship between the OMC and NPs is complex and multifaceted.

The first section of this article reviews the current consensus on European integration and the weakening of NPs. The next section examines in detail the design of the OMC and its implications for NPs. The following section considers the empirical evidence. The last section explores whether NPs should, after all, increase their participation in the OMC and, if so, whether they actually would take advantage of whatever opportunities they were given.

THE CURRENT CONSENSUS: THE 'DEPARLIAMENTARIZATION' OF NATIONAL POLITICS

Much of the burgeoning 'Europeanization' literature has approached the impact of the EU on national politics from the perspective of changing opportunity structures. The establishment of a new set of institutions at the European level with legislative, executive, and judicial powers provides domestic actors with a new layer of access to political decision-making. Those institutions create new exit, veto, and informational opportunities. The ensuing dynamics empower certain groups or institutions while reducing the position of others (Bulmer and Lequesne 2005; Featherstone and Radaelli 2003; Goetz and Hix 2001).

NPs in particular have, in the view of most scholars, suffered from European integration. According to the liberal intergovernmentalist approach associated with Moravcsik (1998), European integration strengthens domestic governments as they, and not backbench parliamentarians, participate in decision-making at the European level. The key aspect behind these arguments is information. National executives use the European institutions in a two-level game to strengthen their autonomy *vis-à-vis* other national actors, primarily the representative bodies.

Proponents of 'multi-level governance' (MLG) theory offer a different account. In their view, the EU has diluted the power of all national level actors to the benefit of subnational and European level actors (Hooghe and Marks 2001). For example, the introduction of structural funds has strengthened the regional level in several member states. NPs, however, seem to have lost the most. After all, the Commission and Council rely on national bureaucrats and ministers working in hundreds of groups and committees. National legislators play instead no significant role (Hooghe and Marks 2001; Bache and Flinders 2004).

Most of the cross-national empirical literature validates these arguments about executive dominance (Rometsch and Wessels 1996; Bulmer and Lequesne 2005). There is almost universal agreement among scholars that power has shifted further to the executive at the expense of parliaments and that traditional mechanisms of parliamentary accountability have weakened (Auel and Benz 2005a; Bergman and Damgaard 2000; Kassim 2005; Maurer and Wessels 2001a; Norton 1996; Raunio and Hix 2000; Wessels *et al.* 2003). The overwhelming majority of both national members of parliament (MPs) and members of the European Parliament (MEPs), in turn, think that national parliamentary control of EU legislation is weak and needs addressing (Katz 1999).

To be sure, not all scholars of the 'deparliamentarization' literature depict a fully negative scenario for NPs (Duina and Oliver 2005). Some recognize that NPs have 'fought back' to a degree, thereby recouping some lost ground – but certainly not gaining a new one. In several countries the constitutional rights of the legislatures have been strengthened, and within parliaments both EU committees (each NP has a special European Affairs Committee) and specialized

committees are now performing a larger role in scrutinizing European issues (Norton 1996; Maurer and Wessels 2001b; Raunio 2005). NPs are also learning from each other about how to have a voice in EU affairs, above all through the Conference of the European Affairs Committees (COSAC). These are positive initiatives for NPs – something that the proposed constitution of 2004, if ever ratified and implemented, would further solidify (Cooper 2006). Even so, the conclusion reached by scholars remains one and the same. There are ‘continuous deficits in parliaments’ ability’ to ‘influence national deputies’ in Brussels: ‘the involvement of parliaments in the EU policy-cycle remains weak and largely reactive’ (Mittag and Wessels 2003: 433).

These are powerful and reasonable arguments. We contend, however, that they are based on a rather simplistic understanding of the relationship between the EU and NPs. NPs interface with the legislative process at various points, and in tandem with multiple EU and national actors. Newer forms of legislative processes have made matters more complex. Our attention in this article turns to the OMC.

THE OMC AND NPs: A COMPLEX RELATIONSHIP

The introduction of the OMC has brought further complexity to the relationship between NPs and the EU. In this section, we examine how the OMC interfaces with NPs: its architecture and its likely implications for NPs. In the next section, we consider the available empirical evidence.

Our focus is on two critical dimensions of the OMC: *participation* and *output*. The ‘deparliamentarization’ literature emphasizes that the EU has prevented NPs from participating in key decision-making bodies and processes, and that its outputs (policies, secondary laws, and so on) have deprived NPs of their role as regulators of society. We ask whether these observations apply to the OMC. We argue that the OMC indeed stands to marginalize NPs in terms of participation; in the case of outputs, however, it has the potential to prove quite beneficial.

Participation: executive federalism and the marginalization of NPs

The multi-level political system of the EU resembles the co-operative federalism characteristic of many federal states. The OMC in particular is a classic example of such federalism – with common objectives defined by member states together with the Commission and/or the Council, monitoring by the EU institutions (federal level), and implementation and choice of instruments for meeting the objectives delegated to the member states. As such the EU and the OMC suffer from the same drawbacks of co-operative federalism: namely, significant reliance on the executive branches of the member states at the cost of their legislative counterparts. Indeed, because of its intergovernmental character, co-operative federalism is often referred to as executive federalism.

Scholars have described how co-operative federalism concentrates power in the executive branch (Watts 1999: 57–9). For example, in Australia the system has resulted in a proliferation of intergovernmental committees and working groups. The ministerial meetings are characterized by low openness and transparency and reliance on informal, but still politically binding, procedures and decisions. State parliaments have often voiced complaints about being sidelined in the negotiations. Moreover, in order to make decision-making possible in the first place, decisions are increasingly taken by (qualified) majority voting, which further reduces the effective sovereignty of the states (Painter 1998). Germany provides another good example. The role of the *Länder* in the implementation of federal laws has resulted in extensive intergovernmental co-operation, with a total of over 1,000 working groups and committees. Again, the *Land* parliaments have seen their role weaken due to intergovernmental co-operation (Börzel 2002). These observations apply neatly to the EU's multi-level polity and, within that, the OMC.

Scholars have in fact argued that MLG in the EU (as well as beyond) involves the sharing of policy competencies by actors at different levels, muddled lines of accountability, and the marginalization of representative bodies that are sidelined from intergovernmental negotiations (e.g. Bache and Flinders 2004; Benz and Papadopoulos 2006). For example, Peters and Pierre (2004: 85) argue that 'multi-level governance, while tempting and attractive in its informality and orientation towards objectives and outcomes rather than focused on rules and formal arrangements, could be a "Faustian bargain" in which core values of democratic government are traded for accommodation, consensus and the purported increased efficiency in governance.' These words certainly describe the EU case where officials increasingly dominate the business of EU policy-making.

Turning to the OMC specifically, we see that its processes are on average characterized by more flexible rules and procedures, with strong reliance on voluntary co-operation by national governments. This means that NPs find it harder to 'get a grip' on the OMC, as such issues are not processed according to the familiar procedures used for scrutinizing EU legislation (COSAC 2005; Maurer and Wessels 2001a; Szalay 2005). The informal nature of the OMC also means that the negotiations are less transparent and open, with both the NPs and the media having weaker (legal) access to documents and information (Borrás and Jacobsson 2004: 197–8; Jacobsson 2005).

Interestingly, it is worth noting that the EU resembles executive federalism even when it comes to the more traditional method of legislation – supranational law-making via the 'Community' method (Dann 2004). Through their participation in meetings at the European level, cabinet ministers and particularly civil servants develop an extensive network of contacts with both fellow governments and other EU institutions (Eberlein and Kerwer 2004). Even when these actors operate under tight instructions from the government, NPs are excluded from the process. At the domestic level, governments defend policies agreed in the Council of Ministers and the European Council, with NPs

often entering the game too late. Yet, there are important differences between the OMC and supranational legislation. The negotiations that form part of the OMC are carried out behind closed doors, and the legal rules about information rights that apply to access to legislative documents do not cover non-legislative items. The processing of supranational legislation is on the whole much more transparent, particularly under the co-decision procedure where the European Parliament (EP) is actively involved.

Benefiting NPs: the OMC and the generation of useful output

From the perspective of who participates, it is fair to describe the OMC as exclusionary when it comes to NPs and to call, as many have done, for changes (de la Porte and Nanz 2004: 284; de la Porte and Pochet 2005: 360). Yet, the OMC interfaces with NPs in multiple ways. This section describes two potentially quite beneficial aspects of the OMC. Both are concerned with its output.

Insights and guidance for successful law-making

First, the OMC generates insights and guidance into legislative best practices which can, in principle at least, be leveraged by national legislators to produce more successful domestic legislation. The OMC has in fact introduced a new legislative dynamic into the EU. The traditional method of law-making is quite straightforward. The Commission and Council, with the help of the EP, produce laws (above all directives and regulations) that are binding on the member states. As such, those laws do not allow for much legislative creativity at the national level. The fundamental function of the OMC, by contrast, is to *expose* officials from any one member state to ideas, practices, and frameworks from other member states for the ultimate purpose of ‘policy’ improvement.

Crucially, the language of the OMC does not specify whether the term ‘policy’ refers to initiatives taken by the executive branch or the legislature. With Decision 50/2002 EC, for instance, the EP and the Council announce that the paramount objective of the Social Inclusion OMC programme is to ‘enhance the effectiveness and efficiency of policies to combat social exclusion’ (Article 10 of the Preamble). Nowhere in the text, however, do they detail what the term ‘policy’ is intended to cover. The use of terms such as national practices, approaches, and plans does little to clarify matters. Such ambiguity is rapidly resolved when we examine closely the four mechanisms at the heart of the OMC: *all four concern legislative*, as well as administrative, matters.

Consider, first, National Action Plans (NAPs). These plans offer a wealth of comparative data about good and poor legislative initiatives across the EU. Prepared by the member states on a given topic on a regular basis, these plans disclose every country’s legislative approaches and frameworks, along with that country’s progress towards achieving commonly agreed goals and its responses to recommendations from the EU. Illustrative examples abound. In the area of social inclusion, for instance, the Austrian plan discusses Parliament’s passage in late 2003 of the Act on Part-Time Work for Parents (*Elternteilzeitgesetz*).

The Act grants parents in companies with more than 20 workers the right to part-time work until the seventh birthday of the child, to change their working hours, and to return to full-time employment (Austria 2004: 6). This is an innovative plan with few parallels in the EU. A second example concerns the French plan and its discussion of a law (2003-47 of 17 January 2003) designed to increase hiring of lower skilled workers by reducing employer social security contributions for low and average salaries (France 2003: 16). Yet a third example comes from Finland and its promotion of a law that provides income support for immigrants and pensioner returnees (Finland 2003: 33).

If NAPs provide access to important data on law, Joint Reports (JRs) offer deep analyses of domestic and foreign legislative frameworks. Crafted by the Commission and Council, these reports evaluate national approaches, benchmark progress, and recommend good practices. Well-designed laws from across the EU are set against weaker laws. Strategies are examined, problems identified and solutions suggested – in most cases targeted to each member state. An example comes from the OMC on the European Employment Strategy (EES) and the 2004 JR. A section considers initiatives to increase adaptability and mobility in the labour market. The report praises the efforts of Spain and Portugal to introduce ‘legislation on dismissal which sets out a more transparent and reliable framework for both employers and employees’. In a different section, the report notes that Greek ‘legislation on immigrants has made major inroads towards combating undeclared work and towards promoting social protection’ (Commission and Council 2004: 34, 69).

We can make similar observations about indicators – recommended statistical tools, ratios and other numerical as well as qualitative measurements of existing situations and conditions on the ground, plus information on progress towards commonly agreed objectives. Devised by the Commission, they are as relevant for law-makers as they are for administrators; indeed, they are derived from an evaluation of existing indicators in domestic law and administrative practices. Consider, for instance, the 40 primary indicators for the EES published in 2003. Specifications for ‘long-term unemployment rate’, ‘employment growth’, and ‘transparency of job vacancies’, for instance, could certainly drive the formulation of new legislative initiatives in any given member state.

The last main component of the OMC, Peer Review Programmes allow for the direct spread of successful legislative measures. The programmes include a variety of sessions, conferences and exchanges in which national officials present, compare, and share information. They are hosted by a country selected for having best practices in a particular issue area. Some programmes focus more on administrative policies, others on law. Consider, for instance, the EES programme held by Ireland on 23–24 June 2005 in Dublin, hosted by the Department of Enterprise, Trade and Employment. With representatives from nine member states, it focused on migrant workers. Much time was spent analysing a new Irish proposal – the Employment Permits Bill – whose purpose is to codify into legislation practices traditionally under administrative oversight. In the words of Irish officials, the bill aims ‘to provide a *firmer legislative basis*

for the *current administratively driven system*, allowing more accountability, certainty and transparency' (Ireland 2005: 4; emphasis added) and, more specifically, 'to place the existing employment permit system on a sound legislative footing' (Murray 2005: 2).

The OMC, then, focuses at least partly on law. National legislators may not participate directly in the process, but the resulting information is easily available and in some countries, such as Denmark and Sweden, regularly reviewed in parliamentary sessions (Jacobsson 2005: 113). Traditional EU law leaves little room for domestic legislative initiatives. The OMC, by contrast, provides national legislators with insights and guidance that can prove valuable for the production of more cohesive and effective domestic laws.

Grounds for criticizing governments

There is a second venue through which the OMC stands to benefit NPs. In the traditional method of EU law-making, NPs often strive to criticize and challenge their respective governments. Their stance, however, is tempered by two factors. First, in many EU countries, particularly in the smaller member states, national integration policy is based on broad parliamentary consensus, with the opposition also involved in forming national positions (Bergman and Damgaard 2000; Hanf and Soetendorp 1998). Moreover, were the opposition to attack the government, the prime minister might blame the opposition parties for rocking the boat and jeopardizing the success of the government (and thereby the 'national interest') in EU negotiations (Benz 2004: 881; Auel and Benz 2005b: 379). In the OMC, by contrast, NPs are in a different position.

As discussed in the previous section, the OMC produces information about both administrative and legislative policies. This information is, moreover, comparative: observers in any given country can learn about policies undertaken in the remaining EU member states. The OMC in effect produces a public report card on the policy performance of any given country. Given that governments are primarily responsible for a country's administrative policies, and for initiating and (through their representatives in the parliament) adopting legislation, the OMC gives the opposition parties exceptional (and third-party and thus more 'objective') munitions for attacking the executive branch. The resulting dynamics are clear: parliaments can become the source of powerful criticism for both legislative and administrative government initiatives. Governments, in turn, cannot as easily dismiss such criticism as biased, uninformed, or irrelevant: the experience of other countries cannot be easily ignored. With the arrival of the OMC, as well as other new forms of EU governance, government officials must explain their choices, while justifying why they did not pursue alternatives (Sabel and Zeitlin 2006: 8–9).

The OMC, then, introduces new possibilities and dynamics in the institutional power struggles of the member states, generating what Sabel and Zeitlin (2006) call a 'democratizing destabilization effect'. At a time when national legislatures worldwide increasingly seem to lose relevance, the OMC can potentially give NPs new grounds for asserting themselves.

THE EMPIRICAL RECORD

The empirical record suggests that NPs have begun to feel some of the contradictory effects of the OMC's design. The most telling evidence concerns our claims about participation and the leveraging, by NPs, of the OMC's output for more successful domestic laws.

Participation and executive federalism

Research on the OMC and other forms of soft law instruments – or 'new modes of governance' – is already quite extensive.¹ The more important findings on NPs are those concerning the input of various 'stakeholders' in the process. The OMC has strengthened the leadership role of the Council and the European Council, intruding thus on the Commission's right of monopoly. On the other hand, the Commission has played a central role in setting objectives and issuing guidelines and recommendations to national governments. The EP has until now been effectively marginalized, and, more worryingly perhaps, the contribution of local and regional actors, often identified as the main stakeholders in these processes, has so far been quite disappointing. At the national level, in turn, the OMC seems to be the preserve of a fairly small circle of civil servants possessing expertise on the issues (Hodson and Maher 2001; Héritier 2002; Radaelli 2003; Régent 2003; Borrás and Greve 2004; Zeitlin 2005a, 2005b; Zeitlin *et al.* 2005).

As the OMC and all forms of soft law policy co-ordination are primarily inter-governmental in character, NPs are from a constitutional perspective in a strong position to influence the proceedings. However, this applies only if they are willing and able to control their governments in these matters. Significantly, the available evidence indicates that NPs have failed to make an impact on the OMC. Examining policy co-ordination in employment and social inclusion strategies, the country chapters in Zeitlin *et al.* (2005) testify that the various OMC documents, particularly NAPs, have largely escaped parliamentary scrutiny or debates (Jacobsson 2005: 112–13, 128; Visser 2005: 206; Büchs and Friedrich 2005: 257, 261, 269; Armstrong 2005: 300–2). To be sure, NPs were often informed about NAPs, but mainly after they had been sent off to Brussels. In some exceptional cases (Portugal, Ireland), national MPs did demand more information, and there were some examples – for example, in Sweden – of opposition parties using EU recommendations to support their own claims (Jacobsson and Schmid 2003; Jacobsson and Vifell 2007; López-Santana 2006: 491).

In the case of employment and pension policies, de la Porte and Nanz (2004: 278) also point to little parliamentary scrutiny. National legislators have had very little direct involvement in the OMC, playing at best a passive role by being informed of developments (de la Porte and Pochet 2005: 360). Visser's (2005: 208) observation on the Netherlands can thus be generalized to most, if not all, of the EU member states: 'the process has remained rather bureaucratic and isolated from parliamentary influence . . . the audience for learning [being]

almost entirely limited to the Ministry of Social Affairs and a handful of local, national and European civil servants.’ While there are no other studies detailing the contribution of NPs, it is noteworthy that domestic legislatures are hardly even mentioned in other publications on the OMC. It is therefore easy to concur with Radaelli’s (2003: 50) overall assessment of the OMC: ‘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.’

Indeed, national MPs themselves have become aware of their limited input. During the Convention a group of national parliamentarians stated:

The ‘open method of co-ordination’ occupies the middle ground between purely intergovernmental co-operation and common rules put in place at the Union level. This method should not just be the responsibility of the Council and the Commission; it should specifically involve national parliaments, who will then be obliged to account to citizens for decisions taken within the framework of the guidelines defined in this way. Is it seriously possible, for example, to envisage a co-ordination of national budgetary policies without consulting all the national budgetary authorities?²

EU officials themselves have come to similar conclusions. In a major report on the employment initiative by a Commission-sponsored High Level Group, chairman Wim Kok wrote that ‘national parliaments must take more ownership of Lisbon, interpreting it for their publics and by debating what to do or not to do, opening up the whole issue’ (Kok 2004: 40).

But what aspects of the OMC, exactly, seem to have done the most to marginalize NPs? Three seem especially important. First, the intergovernmental nature of the process, with civil servants primarily responsible for drafting national programmes and presenting them in Brussels, appears to have truly alienated NPs. National MPs are informed of these preparations, but far too often this happens much too late. Secondly, national MPs may find it hard to follow OMC processes. Unlike normal EU legislation, the OMC and other forms of policy co-ordination do not often have any fixed deadlines or even rules guiding the behaviour of the various actors. Given the intergovernmental or informal nature of the OMC, there is also (at least in some NPs) procedural ambiguity about how to process these things at the domestic level (Jacobsson and Vifell 2007). For example, what are the rights of the NPs to receive information and documents, and how are these to be processed? It might be the case, for instance, that NPs have simply not yet learned how to contribute to OMC issues, and that their contribution will become stronger over time.³ As Armstrong effectively summarizes in the case of the UK parliament:

The suspicion that the OMC is developing as a mode of governance acting outside the traditional scrutinising structures of representative democracy is, therefore, well illustrated in the UK. There is a sense that while structures

and mechanisms for scrutinising ‘hard law’ emanating from the EU have evolved, governance techniques which seek domestic influence by alternative means are slipping through the scrutiny net.

(Armstrong 2005: 302)

Thirdly, it appears that the actual impact of the OMC and other forms of informal policy co-ordination has so far been relatively modest in many policy areas. Importantly, the OMC does not produce binding rules, and this may result in MPs not taking the OMC as seriously as processes that result in laws. As a result, national parliamentarians have not found it worthwhile to spend their precious time on scrutinizing such processes.

Leveraging the OMC’s legislative insights and guidance

Lack of direct participation has not precluded national legislators from benefiting from the legislative insight and guidance that the OMC has produced. In this section we consider examples of how national legislators have used the OMC’s output to craft more successful domestic laws.

Researchers observe as much in a number of policy areas. Rubery (2005: 397–8), an expert on gender issues, praises the OMC for having helped member states to introduce impressive reforms. ‘It is precisely in those Member States without any significant tradition of gender mainstreaming,’ she notes, ‘where the EES may have done more to kick start a process . . . in the Southern countries of Greece and Italy [the EES] has had a significant impact on the approach to employment policy.’ Erhel *et al.* (2005: 234–5), in turn, conducted interviews of policy- and law-makers in France in the area of social exclusion: ‘the European Strategy and the guidelines,’ noted one official, ‘are useful in that they provide an orientation. This lends overall coherence that didn’t exist to such an extent before.’ A second official similarly observed that the ‘NAP is the first support of the fight against the social exclusion. It’s the document of reference, we follow the European rhythm.’ These comments echo those made by a German official working on labour market reform in 2002: ‘we were bombarded,’ the official noted, ‘with information from the EU’ (Boeseneker 2006: 27). Indeed, according to one close observer at least, the German reforms – unprecedented in their character – are difficult to understand without some reference to the OMC (Boeseneker 2006).

The member states themselves have produced, with the help of independent experts, regular reports on their assessment of the OMC’s impact on legislation. Though potentially biased in favour of the OMC (the Commission is the audience), some are especially unequivocal. Rubery’s observations on gender initiatives are confirmed for example, by several national reports. The Irish 2002 EES impact assessment report, for instance, states quite directly that

a review of Irish labour market and employment policy, in the context of the EU Employment Strategy and Guidelines, indicated that the Guidelines have played an important role in influencing the policy development process in

Ireland . . . [in a] small but significant number of cases EU Guidelines have influenced the content of Irish labour policy [in] Gender Mainstreaming.
(Ireland 2002: section 7)

The Italian report, in turn, recognizes that 'there has been an insufficient deployment of equal opportunities policies, to date'; it then adds that 'between 1998 and 2001, the EES has been gradually implemented, with the introduction of measures aimed at enhancing the opportunities of women in the labour market' (Italy 2002: 142). The resulting NAPs discuss a range of new and unprecedented legal initiatives.

The Irish 2002 NAP notes a number of key measures introduced right after the launch of the EES. These include the Employment Equality Act of 1998 barring discrimination on the grounds of gender and family status, the Parental Leave Act of 1998, and taxation reforms to eliminate disincentives for spouses to enter the labour market (Ireland 2002). All these represented significant advances in a new legislative direction, though of course they cannot be purely attributed to the OMC's influence. The 2002 Italian NAP points to a similar array of unprecedented legislative activity.

Assessment reports from other countries point to progress in other areas of employment. The Greek report is especially direct in its assessment. It states that 'the launch of the [OMC] process . . . changed radically the framework for employment policy . . . in Greece' (Greece 2002: 6). Much attention then goes to key legislative initiatives taken in response to the EES:

Law 2639/98 provides . . . updates and modernizes flexible working time arrangements (for annualized working hours), introduces territorial employment pacts, [and] introduces private employment services.

...

A further move towards modernization of employment policy legislation is made with Law 2874/2000, where much of the influence of the EES can be traced . . . maximum statutory weekly working time is cut from 48 to 43 working hours, the provisions for flexible arrangement of annualized working time are improved towards more involvement and responsibility of the social partners . . . [and] part time employment pay is given a premium of 7.5% for those employed less than 4 hours daily.

...

In 2001, a new policy mix was developed which includes . . . the provision of new legislation and financial resources for venture capital, risk investments and new economy enterprises.

(Greece 2002: 7–8)

Evidence suggests, then, that the OMC has influenced in a positive manner the activities of national legislators. We acknowledge that these improvements in domestic legislation could in theory have taken place even without the

OMC. But we take seriously the possibility that the OMC may have facilitated, if not caused, the production of these laws.

REFLECTIONS: DESTINED FOR IRRELEVANCE?

The EU is increasingly using the OMC and other forms of intergovernmental policy co-ordination. The impact of the OMC on NPs has until now escaped scholarly analysis. This is not surprising, given the general tendency in the literature to dismiss NPs as destined for irrelevance as European integration progresses. Given the OMC's young age, we cannot reach definitive conclusions. A close examination of the OMC's design and the available evidence can nonetheless provide us with important insights. This article suggests that the OMC is, in fact, having a multifaceted impact on NPs.

From a participatory perspective, the OMC, by adopting elements of executive federalism, is indeed marginalizing NPs. On the other hand, from an output perspective, we have argued that the OMC provides NPs with insights and guidance for successful law-making *and* gives national legislators tools for criticizing government officials for their policies. In this sense, the OMC can help NPs to assert themselves as viable and important domestic institutions. We have presented evidence that NPs have already begun to feel some of these effects.

Future research will certainly provide further evidence on these dynamics. Even if provisory, however, our findings raise two important questions that EU policymakers and scholars alike should bear in mind. The first concerns the extent to which NPs *should*, in fact, be a part of the OMC process. As we have seen, NPs are at the moment largely excluded from the process. Should they participate in it? With the issue of democratic representation in mind, Zeitlin has reflected on this:

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

(Zeitlin 2005a: 488)

Following these considerations, Zeitlin (2005a) concedes that they might be unrealistic. He thus argues that a better way to inject democracy into the OMC

would be through increasing transparency, openness, and the participation of all relevant actors. His opinion echoes those of others who view the EU as a new type of political entity that need not operate – in order to remain democratic – in traditional ways.

Others, including ourselves, would disagree. Considering the broad scope of the OMC and its use in highly salient policy areas, there are grounds to call for more involvement on the part of NPs (de la Porte and Pochet 2005: 360). This need not involve an actual, direct presence in OMC forums or a significant change in the function of NPs *vis-à-vis* the executive branch, as Zeitlin suggests might happen. NPs could instead monitor the OMC's activities as well as other 'soft law' matters by using the same procedure that is reserved for scrutinizing the Commission's legislative initiatives. This would mean that ministers would be forced to explain their actions before parliamentary committees and in the plenary, where such a requirement exists (de Búrca and Zeitlin 2003; Jacobsson and Schmid 2003). This solution would ensure a modicum of traditional democratic representation in EU affairs – which otherwise look set to be further and further removed from the purview of elected officials.

At the same time, we should recognize that setting up mechanisms and structures for involvement would not guarantee actual engagement on the part of NPs. This is indeed the second question raised by our analysis. The OMC may, in its design, stand to benefit NPs. Further changes may generate even more opportunities. But NPs may ultimately choose not to capitalize on many of those openings. Recent work on the Europeanization of the member states suggests that national level actors – and legislators in particular – have actually opted not to engage in EU level matters. In a detailed study of the Bundestag, for instance, Saalfeld has shown that German legislators have only sporadically scrutinized or taken action to influence EU policies despite having the power to do so. An example is the number of EU documents that the Bundestag receives for examination. It has steadily increased over time, but the percentage of those documents 'referred from committees back to the floor of the Bundestag has remained relatively small' (Saalfeld 2003: 88). A second example is the succession of largely inactive committees set up to oversee and shape EU legislation (Saalfeld 2003: 84).

Many reasons may account for this. Saalfeld (2003, 2005) suggests a rational calculus based on maximizing the chances of re-election. Others could point to more cultural or cognitive barriers. Yet others could point to more structural factors – such as limitations of time, the power of certain committees and bodies, or the complexity of rules (Cooper 2006: 293). The results are the same: opportunities do not always translate into action, and steps to aid NPs may turn out to be of little use. Those interested in ensuring more participation by NPs would do well to ask which initiatives might prove more promising and effective.

Taken together, these reflections highlight the OMC's complexity and the intricate nature of the EU–member states relationship. They stress the issue of democratic representation and trade-offs between efficient decision-making and procedural fairness. And they emphasize the need – so often neglected – to constantly revisit and reassess EU policies and institutions.

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NOTES

- 1 See the material available at the homepage of the OMC Forum at the European Union Center of the University of Wisconsin-Madison (<http://eucenter.wisc.edu/OMC>) and the literature mentioned in Borrás and Greve (2004) and Zeitlin *et al.* (2005).
- 2 'Joint Contribution on the Role of National Parliaments'. A draft written contribution on the role of NPs by Hubert Haenel and supported by Gisela Stuart, Henrik Dam Kristensen, Kimmo Kiljunen and Sören Lekberg, 17 January 2003.
- 3 Interestingly, COSAC has not debated parliamentary scrutiny of OMC issues. We are grateful to Morten Knudsen for this information.

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