

***THE OPEN METHOD OF CO-ORDINATION IN THE EUROPEAN  
CONVENTION: AN OPPORTUNITY LOST?***

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**Introduction**

In the last few years, the open method of co-ordination (OMC) has been the most intensely contested and the quickest to spread among the ‘new’ modes of governance in the EU. The European Convention was faced with the question of whether or not it should be constitutionalised; and if so, how. Several members of the Convention would have wanted to see the open method of co-ordination explicitly mentioned in the draft Constitution as a distinct mode or instrument of EU governance, independently of its being mentioned in the context of the specific policy areas to which it is meant to apply. Such acknowledgement would have endowed it with its own independent status and legitimacy in the Union’s governance. Yet, this did not happen. The draft Constitution makes reference to the use of the method in the articles concerning economic policy (CONV 850/03, Art. III-71) and employment (CONV 850/03, Art. III-100) as well as to the possibility of using the method in the articles concerning social policy (CONV 850/03, Art. III-107), trans-European networks (CONV 850/03, Art. III-145§3), research and technological development (CONV 850/03, Art. III-148§2), public health (CONV 850/03, Art. III-179§2 ), and industrial policy (CONV 850/03, Art. III-180§2). It dedicates no specific article to the open method of co-ordination as a policy instrument.

Following a brief description of open co-ordination and an account of what actually took place in the Convention debate on open co-ordination, the method's advantages and shortcomings in terms of efficiency and democracy, as well as the tensions they give rise to are discussed and some thoughts on how these tensions could be addressed are put forward. It is argued that before deciding on whether and how to constitutionalise the OMC, deeper reflection on how the method could be improved and what its role really is in EU governance would have been called for.

### **The open method of co-ordination: a brief overview**

In EU jargon, 'open co-ordination' is a term used to describe all 'soft' policy co-ordination governance processes at work in the European Union, including not only the 'official' Lisbon open co-ordination processes operative in information society policy, enterprise policy, economic reforms, education policy, research policy, social inclusion and pension reform (Presidency Conclusions 2000), but also the Treaty-based and more actively pursued Broad Economic Policy Guidelines process and the European Employment Strategy (Hodson and Maher 2001, Vandembroucke 2002, Radaelli 2003).

While since Lisbon there have been proposals to extend open co-ordination to health care and care for the elderly (Vandembroucke 2002: 15), common asylum and immigration (COM 2001a,b) and aspects of defence policy (Wallace 2001), elements of the method can be identified in the Lamfalussy Report's proposals concerning the regulation of an integrated securities market (Final Report 2001), in the joint action plans concerning the preparation of accession countries' jobs markets for EU membership (Hodson and Maher 2001: 725-6), as well as in the concept of

‘Environmental Policy Integration’, meant to insure horizontal integration of environmental policy objectives in the different areas of Community policy (Scott and Trubek 2002:5).

Without underplaying the differences between the various OMC processes, which are indeed considerable, for the purposes of this discussion one can put forward an ‘ideal type’ of the method (Radaelli 2003), that may be described as follows:

- The member states periodically (in some cases annually), set common policy guidelines, often translated into (more or less) specific objectives, the achievement of which is measured by (more or less) specific indicators or benchmarks, in a specific policy sector or area.
- Guidelines and benchmarks are incorporated into national action plans that member state governments are meant to formulate with the involvement of national parliaments, experts, (and where appropriate), subnational authorities, civil society and the social partners, in accordance with the particular institutional, social, legal, and political characteristics of each national reality.
- member states’ performance, as reflected in national action plans, is periodically subject to public joint evaluation and comparison against that of the best performers in the Union and in the world, at the European level, which is conducted (to the degree that it is) mainly by the Commission.
- A high level Council-Commission committee (eg, the Employment Committee for employment, the Social Protection Committee for social exclusion) plays an important co-ordinating role, while around this Committee, widespread processes of consultation with the European level social partners, civil society, etc, are meant to develop.

- Public joint evaluation is meant to lead to member states' exchanging best practices and learning from each other, as well as to providing them with incentives to strive to achieve the common goals. However, at the end of the day, bad performers do not face sanctions: it is 'peer review' that is meant to provide incentives for member states to strive to do better, not the application of penalties.

The emphasis in open co-ordination is on process, not on substance: it involves continuous evaluation and feedback rather than legislation or a series of hallmark decisions (Hodson and Maher 2001:739). According to some commentators, the long term aim of the exercise is meant to be gradual, voluntary policy convergence, as opposed to harmonisation (Jacobsson 2001: 8). For others, the aim is not policy convergence, but to 'limit divergence, or even bring about a degree of convergence in some cases' (de la Porte and Pochet 2002: 15). Member states can profit from open co-ordination for improving their own policies, while co-ordinating with others (Radaelli 2003: 14, Vanderbroucke 2003:9).

Open co-ordination has been described as a new mode of multi-level governance, (Marks, Hooghe and Blank 1996, Hooghe and Marks 2001), as it reflects a distinct type of 'interplay between different levels of governance' (Jacobsson 2001:4), as well as a distinct set of horizontal interactions between governmental and non-governmental actors, operating at different levels (Jacobsson 2001, de la Porte et al 2001, Eberlein and Kerwer 2002, Keiser and Prange 2002, Heritier 2002).

The central actors in the process of open co-ordination are the member states, which draw the actual guidelines, the Commission, which is meant to play a facilitating (rather than agenda-setting) role, by 'presenting proposals on the European guidelines,

organising the exchange of best practices, presenting proposals on potential indicators, and providing support to the processes of implementation and peer review' (Ardy and Begg 2001: 10, Hodson and Maher 2001: 729), as well as the high level Committees mentioned above, which are meant to co-ordinate the process among levels of governance, and in some cases, can act on their own initiative (Jacobsson 2001).

A minor role is reserved for the European Parliament, similar to that assigned to the Committee of the Regions, which ranges from the right of information to consultation. Guidelines are not amenable to judgements by the European Court of Justice (Ekengren and Jacobsson 2000: 8,10). Finally, open co-ordination is meant, at least in principle, to actively involve and consult European level social partners, civil society, NGOs, as well as national parliaments, civil society, subnational authorities and experts at the national level, in the policy-making and implementation cycle.

### **Open Co-ordination in the European Convention**

In the first few sessions of the European Convention, a number of participants raised the possibility of mentioning open co-ordination in the draft constitutional treaty that the Convention was meant to come up with (CONV 60/02, 8). In what followed, no less than four out of the Convention's eleven Working Groups (WGV on Complementary Competencies, WGVII on Economic Governance, WGIX on Simplification of Legislative Procedures and Instruments, WGXI on Social Europe) debated the issue. Two questions were central: should open co-ordination be included in the Treaty? If so, how? As friends and critics of the OMC seized the opportunity to

exchange their fire, both questions turned out to be highly controversial at Working Group level and in the plenary meetings.

*In or out?* After the end of Working Group level discussions, most participants seemed to be in favour of including open co-ordination in the Treaty. Putting open co-ordination on the constitutional map (CONV 375/1/02 REV1, CONV 357/02, CONV 424/02, CONV 516/1/03 REV1), by means of a general clause that would outline its main features as a policy instrument and then leaving particular applications of the method to the provisions in each policy area ('double anchoring') (Vandenbrouke 2003: 8-12), so as to guarantee its operational flexibility, seemed like a good idea to most people. A solution of the kind was thought appropriate for the purpose of endowing the method with legitimacy and clarity, such that only constitutional acknowledgement could have bestowed upon it. Nonetheless, open co-ordination did not make it into the Constitution. This is because a heterogeneous but persistent minority remained strongly opposed to the constitutionalisation of open co-ordination, finally managing to block it.

Some people, attached to the Community method or to classic federalism, were set against it because they were unhappy with the method as such. The method was said to blur the lines of responsibility between levels of governance, making the Union look as if it is doing things that in fact member states are responsible for, and/or for actually representing an overall danger for Community competence, thereby being a hindrance to further integration (WGXI/1: 64-7, WGXI/42 REV1: 124). Others, coming from an inter-governmentalist perspective, were happy with the method as it stood, but did not want it to be formalised as they were afraid that it would lose what

they consider to be its greatest advantage, which is its flexibility (WGXI/6: 17). Their real fear was that open co-ordination would be no more than a step in the direction of communitarisation and that it meant bad news for member states' ownership of the policy areas concerned. It seems that persistent opposition to communitarisation of the OMC was (at least partly) about competence and power; *not* a matter of principle concerning the desirability of open co-ordination as a mode of governance.

*As it is, or improved?* The merits of open co-ordination, according to most participants in favour of constitutionalising it, were considered to be its capacity to enable European level co-operation in policy areas where there would otherwise only be national action, as well as its advantages in terms of respecting and accommodating national diversity. Nonetheless, few participants would have claimed that the open method is a magic formula. In general terms, most people would subscribe to the idea of improving the efficiency of open co-ordination and rendering it more democratically legitimate. However, in practice, it turned out that few Convention members were prepared to take radical steps in this direction: in constitutionalising it, they would rather have kept open co-ordination roughly as it is at the moment, introducing only minor improvements.

A number of proposals for substantive changes concerning mainly the method's inefficiencies or its shortcomings in terms of democratic legitimacy were put forward by a few members who took the view that the constitutionalisation of open co-ordination would have been a good opportunity to address its weaknesses. Concerning the improvement of the method's efficiency, the radical proposal was to make the process more like fiscal policy co-ordination, that is, provide for more specific targets,

attach sanctions to under-performance, and thus make the co-ordination process more binding, in order to ensure greater commitment on the part of member states to the process (WGVI/07:54-5). The Commission, in a more moderate fashion, argued that more importance should be given to the implementation and monitoring of policy, where the Commission's role should be strengthened (WGVI/08:1), and to making the process more effective through measures like longer reporting cycles, greater co-ordination between the different co-ordination processes, and greater peer review (WGVI/07:63-4).

A number of proposals were put forward concerning the improvement of the method's democratic legitimacy. Some of them, mostly coming from the centre-left side of the European Parliament, expressed the view that democratising open co-ordination (the Broad Economic Policy Guidelines process), would require 'communitarising' it. This ought to be achieved by (a) giving the Commission formal right of proposal on policy guidelines (WG VI.3 rev: 3) in order to better take into account the common European interest (WGVI/05:2), (b) upgrading the EP's role by involving it in the preparation of the Broad Economic Policy Guidelines (WGVI/9:2), (c) by subjecting the guidelines to the EP's 'avis conforme', or by establishing a version of the co-decision procedure, in order to ensure some degree of democratic accountability (WGVI/07:44-45), and/or (d) by upgrading the involvement and consultation of the Social Partners by making special reference in the Treaty (WGVI/14:3). Against giving the European Parliament any substantial role in the open method of co-ordination were the Commission and UNICE, both of whom argued that this would make no sense as the OMC is not a legislative process (WGVI/9:7-8, WGVI/9:20). Another proposal was to include the method in the Treaty, adding a clause stating an

obligation for as much transparency and participation as possible in the process of open co-ordination (de Burca and Zeitlin 2003). While proposals to attach sanctions to the process or to communitarise it did not fly with most people in favour of constitutionalising open co-ordination, more moderate proposals like improving it technically and adding a transparency and participation clause did not meet with opposition.

### **Efficient and Legitimate?**

Before the Convention open co-ordination's vocal supporters took every opportunity to point out the method's numerous normative advantages. Open co-ordination was presented as a magic formula for addressing the EU's governance shortcomings. It was, first of all, said to be 'efficient', in the sense that it offered an attractive mechanism for member states to take the first step in European level co-operation in policy sectors or areas where there would otherwise have been no co-operation, because the Community Method would be unacceptable, while inter-governmental co-operation would not suffice (Hughes 2001). These are mainly politically sensitive areas like economic and social policy, where member states have 'divergent problems, institutions and policy legacies' (Scharpf 2001: 8), and/or where there is no political consensus or an agreed ideological basis for reform among them (Ardy and Begg 2001: 22, de la Porte, Pochet and Room 2001: 299); areas like education, where the obstacle to communitarisation would not only be radical institutional, ideological or social diversity, but also national (or subnational) cultural diversity; and finally, second and third pillar policies where in some cases it might be felt that state sovereignty was at stake (Keiser and Prange 2002).

It was also claimed that open co-ordination could be expected to be 'efficient' in the sense of producing results. First, because it works as a confidence building mechanism: structure and regular repetition over time create 'trust and co-operative orientations' among participants (Ferrera, Matsaganis and Sacchi 2002: 1). In such a context, peer review mechanisms can put pressure on member states to do better, and thus succeed where legislation would have been likely to fail. Second, because it is flexible: it allows for different speeds in reforming policy while moving in the same direction (Mosher 2000: 7); it leaves member states the room to 'weigh their policy packages appropriately' (Ardy and Begg 2001: 11-2); it can be implemented without great - and potentially contested - legislative change (Ardy and Begg 2001: 11-2). It can, and does, take many forms, depending on the policy sector or area in question. Third, because open co-ordination facilitates mutual learning and policy experimentation, which makes it likelier for member states to find suitable solutions to common problems in situations where they are uncertain about which course to take (Sabel and Zeitlin 2003, Trubek and Mosher 2003, Zeitlin 2003).

Open co-ordination was not only argued to be desirable in terms of efficiency, but also in terms of 'legitimacy'. It was said to respect and accommodate the diversity of national (and sub-national) arrangements, which reflect 'legitimate differences of social philosophies and normative aspirations' (Scharpf 2002: 663). What the Union should and is legitimately doing through open co-ordination, is enabling member states to develop their own national solutions, appropriate to deal with their own particular problems, policy legacies and institutional realities (Scharpf 2001), rather than trying to impose a single one-size-fits-all best solution.

Open co-ordination is also to be considered legitimate because (at least in principle) it provides for the participation of 'a multitude of economic, social and political actors at various levels (supranational, national, regional)' in the policy-making and implementation process (Goetschy 2000: 5), and also because it is meant to promote greater transparency (de la Porte et al 2001: 293). Information becomes publicised, and so are the evaluation and comparison that take place on a regular basis, as this is essential to the practice of mutual learning and information exchange (Hodson and Maher 2001: 730).

Yet, open co-ordination had not only friends. There were also sceptics: suspicions were raised particularly about the open method's efficiency in bringing about any notable results. The open method does not involve formal sanctions against states that do not adhere to the commonly agreed guidelines (Jacobsson 2001: 9, Goetschy 2001). As important as peer pressure and finger pointing may be, they may not be sufficient to enforce compliance and therefore achieve concrete results. Results essentially depend on the political will of member state governments and on the general social and economic context. The danger here is that when difficulties or adverse general conditions arise, 'the absence of hard law will mean that common aims are abandoned or watered down' (Begg and Berghman 2002: 13). Seen in this light, open co-ordination may amount to no more than an exercise in 'symbolic politics' (Mosher 2000: 8), or a 'talking-shop' (Hughes 2001). The open method may be used by member state governments as a cover for being 'seen to do something' (Ardy and Begg 2001) about unemployment and other politically sensitive issues, while in reality doing nothing more than repackaging their national programmes in the

light of European policies without making any substantial changes (de la Porte and Pochet 2002: 14-5).

But the critics have been most severe on the question of democratic legitimacy: it has been argued that the open method is extremely opaque. The institutional framework of open co-ordination is very complex, and there are many open co-ordination processes (Goetschy 2003: 78, Hodson and Maher 2001: 730) - not to mention that each open co-ordination process differs from all others in many respects, for example, how often guidelines are drawn up, how closely each is pursued, and how specific the targets to be reached are (see Hodson and Maher 2001, de la Porte et al 2002, Ferrera et al 2002). Undoubtedly, transparency is limited to a core of elites that participate in the system (Jacobsson 2001: 9), as it is extremely difficult for the non-specialist, non-insider eye to follow the process (Hodson and Maher 2001: 730). Because it is not transparent, open co-ordination not only does little in the way of promoting participation, it ends up discouraging it.

Open co-ordination defies the logic of clear allocations of competences between levels of governance (Cohen and Sabel 2002: 351, de Burca 2003: 15). It creates confusion about where ultimate responsibility lies (Arday and Begg 2001: 10) for crucial issues, like reducing unemployment, reforming pension systems or dealing with immigration, which makes accountability for policy making and implementation impossible. Such confusion could damage rather than bolster legitimacy. If unpopular measures have to be taken national governments might once again be prone to shift the blame to the EU, undermining its legitimacy. The EU would in other words

become more of a scapegoat than it already is (Mosher 2000: 8, Ardy and Begg 2001: 12, de la Porte, Pochet and Room 2001: 295, 300-1).

Above all, the open method has been criticised for not being sufficiently informed by democratic scrutiny and public debate at both national and European levels (Jacobsson 2001: 9). The substantive political choices regarding the drawing of guidelines, the goals to be achieved, what can be considered 'one best way' outcomes against which benchmarking can take place (Terry and Towers 2000: 243-4), and even the choice of indicators to be benchmarked, which is argued to be a normative choice (Tronti 1999: 9, 12, Amitsis et al 2003: 169), are not openly debated and questioned.

These were the assumptions, reasons given and (sometimes explicit) arguments that surfaced in the Convention debate in one form or another. The overall assessment of the method that most Convention members concerned with the desirability of open co-ordination arrived at, can be summarised as follows: open co-ordination is an efficient mechanism in getting member states to co-operate in the first place, given its 'soft' and flexible nature, but there are serious questions about how efficient it may be in clocking up actual results. Furthermore, while open co-ordination seems to be a legitimate method of governance for the EU, as it respects and accommodates diversity, there are doubts about how democratic it is. This is because it may not be as transparent and conducive to participation as is often thought; it may blur the lines of responsibility between levels of EU governance and thus block accountability; it may, finally, lead to policy decisions whose formulation crucially lacks democratic scrutiny and public debate.

### **What could be done with the open method of co-ordination**

It seems that most Convention members quickly became well aware of the tensions at the heart of open co-ordination. One of these is that the more binding open co-ordination gets, the less flexible. As Ardy and Begg have put it: 'The more strictly any targets are monitored, the less the discretion available to a member state in shaping programmes' (Ardy and Begg 2001: 12). If member states are being forced to conform to a particular standard at a mode, time and pace which is not of their own choosing, they are most likely to be pushed to do as best performers do, regardless of whether or not what best performers do suits their national institutional reality. On the other hand, the less binding open co-ordination is, the less it can produce results and solve problems: 'if there is no sanction (or, as was the case for the EMU convergence criteria, a reward) for failing to adopt suitable measures, let alone meeting targets, the attempt to co-ordinate could prove to be empty' (Ardy and Begg 2001: 12).

The second tension is between democratic legitimacy and respect for diversity. The more diversity open co-ordination accommodates, the more complex it becomes, and therefore the more participation and transparency become difficult to achieve. Furthermore, it would seem that diversity works against the possibility of democratic debate and public scrutiny in the context of open co-ordination. At the European level, debating and monitoring the implementation of *one* best alternative is out of the question, because there are said to be *several* legitimate alternatives, according to the needs and particular circumstances of each diverse unit. At the same time, at national level, where *one* such best alternative could be legitimately subject to democratic choice, it is easy for governments to avoid democratic debate and control through

appeals to European priorities and European competence (Jacobsson and Schmid 2002: 7).

Probably, the choice that Convention members had to face was between the possibility provided by open co-ordination as it stands (or as it roughly stands) for member state co-operation in the first place, even if that meant few concrete results and little democracy (at least for the moment), or no co-operation at all. In these terms, participants made the first choice. That they did so is obvious from the fact that proposals to make the OMC more like fiscal policy co-ordination or to effectively communitarise it were quickly and without much discussion put aside, as their realization would probably have put member state governments off co-operation altogether. However, participants did not dedicate enough time – which was altogether lacking in the Convention – and energy – they spent most of their energy fighting over competence – to consider a third option. They could have discussed the best possible version of open co-ordination, a version allowing for all normative concerns (bindingness, flexibility, democracy, diversity) to be addressed and reconciled and only afterwards think about whether and how to constitutionalise it. What might such a formula look like?

One can provide only a very rough sketch here. Fritz Scharpf has come up with the proposal to combine open co-ordination with what he calls ‘differentiated’ framework directives, which has the potential to ensure both bindingness and flexibility.

Discussing European social policy, he envisages a new type of directive that would ‘set differentiated standards for the stabilisation and improvement of national social protection systems’, taking account of ‘differences in countries’ ability to pay at

different stages of economic development and of the existing institutions and policy legacies of member states'. Such directives could be combined with open co-ordination: the Guidelines would provide the necessary direction for the realisation of directives; nationally appropriate solutions would emerge through the formulation of national action plans; benchmarking, exchange of best practices and peer review would be used with all their advantages; evaluation could continue regularly. Were such evaluation to reveal problems, the framework legislation could be reconsidered and modified. Were implementation problems to emerge, the Council could authorise the Commission to use normal Community avenues to enforce the law. In the social field, benchmarking and exchange of best practices could be much more effective if they were used particularly among countries with similar welfare systems, according to Scharpf (Scharpf 2002: 662-5). Open co-ordination in this light would be a flexible instrument for implementing framework legislation.

Yet this formula would still be subject to the tension between diversity and democracy. It would still be too complex, which would mean a lack of transparency and participation. It would also continue to mean little possibility for democratic debate and public scrutiny, as it would neither allow for substantive discussion of alternatives, nor hinder member state governments' 'two level' games. What is missing? For one thing, ensuring co-ordination and coherence *between* the various processes of open co-ordination that have been established in the social and economic policy fields in recent years (Dehousse 2002: 16) would go a long way towards simplifying things. Secondly, and most importantly, the open method of co-ordination, which at the moment reflects a 'depoliticised', 'technical' approach (de la Porte, Pochet and Room 2001: 296, Raveaud 2002: 13-14), could be turned into an

opportunity for political debate at both national and European levels, in a way that would not be considered threatening for diversity, were a strengthening of the parliamentary dimension at both national and European levels of governance to be seriously considered. Politicisation would mean that policy options would be clearer and therefore more accessible to citizens at large, rather than only to experts and NGOs (Magnetite 2001). They might still not be able to follow the procedure, but they would be clearer about what is substantively at stake. Both participation and democratic control would become more likely.

National action plans could be adopted after special – possibly parallel - debates in the national parliaments (Jacobsson and Schmid 2002: 13). Such debates could be based on what de la Porte, Pochet and Room call ‘bottom up’ benchmarking, which would involve each member state benchmarking other member states by reference to its own policies. Since targets, indicators and procedures would be chosen by national authorities, national responsibility would be clear and public scrutiny concerning national performance *vis à vis* others’ national performance would not be so easily avoided (de la Porte, Pochet and Room 2001: 299-302). But national governments would need to justify not only their performance but also their substantive policy choices with comparison to those of other countries, before national publics and opposing political forces.

While national level political debate would take a national perspective, European level political debate would take a European perspective. The EP would need to respond to proposals to change European (differentiated) framework legislation and in order do so it would need to monitor the situation and discuss it. For more regular

monitoring purposes, the high level Council-Commission committees that are central to the co-ordination of the process at European level, could include two members appointed by the EP's competent committee. Joint evaluation reports and proposed Guidelines could be discussed in a special (Spring, for social affairs) EP plenary session, where overall assessments of the situation in the EU could be made (Telò 2001: 17). Public exchange of best practices would be more profitable and mutual learning more likely, if public comparison was also made among and between what would be argued to be sets of ideologically akin policies. European political parties, party families and coalitions would be able to develop policy 'repertoires' and facilitate policy borrowing appropriately, as policies would need to be publicly justified in the context of a more comprehensive framework. Political confrontation and realignments could well be triggered by such a process, given that policies for sensitive areas like social policy and immigration would be discussed. Seen in this light, open co-ordination could be an instrument of democratic control as well as of political innovation.

## **Conclusion**

In a last, ultimately unsuccessful attempt to reach agreement on an appropriate formulation that could curb persistent objections to the constitutionalisation of open co-ordination, the Final Report of the Working Group on Social Europe affirmed that the open method 'cannot be used to undermine existing Union *or* member state competence', it being 'an instrument which *supplements* legislative action by the Union, but which can under no circumstances *replace* it'. The approach chosen to make the case convincing involved an attempt to address the issue of competence: it was proposed that open co-ordination should be applied only where the Union does

not have legislative competence; where Union competence in the area of sectoral co-ordination is not enshrined in the Treaty; and where the Union has competence only for defining minimum rules in order to go beyond these rules (CONV516/1/03 REV1, WGXI/9).

This would in any case have been the wrong way to go in light of the above discussion. Distinguishing Treaty-based from non Treaty-based open co-ordination processes would not do much for simplification. While one certainly could not expect the political dimension as described above to be 'constitutionalised', as the practice of open co-ordination increasingly shows, 'soft' and 'hard' regulation are and should be even more mutually supportive (de Búrca 2003, Trubek and Trubek 2003).

Opposition to the constitutionalisation of the OMC, which came from a discussion on power, rather than one on principle, practically blocked serious consideration of combining the OMC with EU legislation, and of examining it seriously as an instrument for implementation.

The Convention debate on open co-ordination was an opportunity to re-think the method, whether that would have led to its constitutionalisation or not. It cannot be said that the opportunity was completely lost, as there was a lively debate on matters of principle raised by OMC. But on the one hand, the debate did not go far enough. Not enough effort was put into figuring out how open co-ordination could be turned into an instrument that addressed all the normative concerns discussed above: how it could be flexible and produce results; accommodate diversity while promoting democracy in the EU. Discussing constitutionalisation of the OMC would have been profitable only after good answers to these questions had been given. On the other

hand, even if such answers had been provided, and even if these answers had pointed towards constitutionalisation in one form or another, it is doubtful that advocates of open co-ordination could have been successful in getting their views across. There were two parallel debates on open co-ordination rather than a single debate. One was concerned with the desirability of open co-ordination as a form of governance in the EU. The other was about the effect that open co-ordination actually has on the horizontal and vertical allocation of powers in the Union. It seems that the latter overshadowed and undermined the former.

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