

# **Introduction: The Open Method of Coordination in Question\***

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**Forthcoming in Jonathan Zeitlin and Philippe Pochet with Lars Magnusson (eds.),  
*The Open Method of Coordination in Action: The European Employment and Social  
Inclusion Strategies*, P.I.E.-Peter Lang, 2005**

## **I. The Open Method of Coordination as an Unidentified Political Object**

No development in European integration has aroused greater interest or greater controversy in recent years than the Open Method of Coordination (OMC). Since its announcement as a new and broadly applicable instrument of EU governance at the extraordinary Lisbon European socio-economic summit in March 2000, drawing on experience with the coordination of national economic and especially employment policies over the preceding decade, the OMC has been extended to cover an enormous range of policy fields. Beyond the Broad Economic Policy Guidelines (BEPG) introduced by the Treaty of Maastricht (1992), and the European Employment Strategy (EES) inaugurated by the Treaty of Amsterdam (1997), the OMC has become the central tool of EU social policymaking in the new millennium, with formal coordination processes launched for social inclusion and pensions in 2001-3, and further proposals pending from the Commission and the Parliament for the application of this method to health and long-term care. As part of the “Lisbon Strategy” aimed at turning the EU into “the most competitive and dynamic knowledge-based economy in the world” by 2010, the March 2000 European Council authorized the extension of the OMC to a host of other policy areas, such as research/innovation, information society/eEurope, enterprise promotion, structural economic reform, and education and training. Since then, OMC-type processes and approaches have also been proposed by the Commission and other European bodies as mechanisms for monitoring and supplementing existing EU legislative instruments and authority in fields such as immigration and asylum, environmental protection, disability, occupational health and safety, and even fundamental rights, as well as in areas like youth policy where the Union has few if any

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\* For helpful comments on the introduction and concluding chapter to this book, I would like to thank Philippe Pochet, David Trubek, Gráinne de Búrca, Anton Hemerijck, Jelle Visser, Gerben Kourthouwer, Birgitte Bentzen, Rob de Boer, Maurizio Ferrera, Mary Daly, and especially Chuck Sabel, with whom I developed many of these ideas. I am also grateful to Natalie Oldani for invaluable assistance in preparing the references and bibliography.

legal powers.<sup>1</sup> In addition, following recommendations from the Commission's High Level Group on Industrial Relations (European Commission DG EMPL 2002), the European social partner organizations have drawn inspiration from the OMC for the monitoring and follow-up of non-binding framework agreements and guidelines at both cross-industry and sectoral levels.<sup>2</sup>

The OMC was defined by the Portuguese Presidency at Lisbon and afterwards in terms closely modeled on the EES as involving a specific ensemble of elements:

- “Fixing guidelines for the Union combined with specific timetables for achieving the goals which they set in the short, medium and long term;
- 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 practices;
- translating these European guidelines into national and regional policies by setting specific targets and adopting measures, taking into account national and regional differences;
- periodic monitoring, evaluation and peer review organized as mutual learning processes” (European Council 2000: §37).

But actual OMC processes as they have evolved since Lisbon vary considerably in their modalities and procedures, depending on the specific characteristics of the policy field in question, the Treaty basis of EU competence, and the willingness of the Member States to take joint action. Thus, for example, the Commission and the Council are empowered to issue joint recommendations to Member States on the implementation of the EES and the BEPG, but not on that of other OMC processes, while consultation of the European Parliament is formally required only in the case of the EES. Although most OMC processes are based on common European

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<sup>1</sup> For overviews of the scope and applications of the OMC across different policy areas, see Borrás and Jacobsson (2004); Radaelli (2003a); de Búrca (2003); European Convention Secretariat (2002); Romano (2002). On the OMC in research/innovation, immigration/asylum, and occupational health and safety respectively, see Kaiser and Prange (2004); Caviedes (2004); Smismans (2003). For proposals that the OMC be used as a vehicle for the implementation of fundamental rights, see EU Network of Independent Experts in Fundamental Rights (2002); de Búrca (2003); Bernard (2003); de Schutter (forthcoming). A number of pre-existing European policy coordination processes have also been retrospectively interpreted as full or partial examples of the OMC *avant la lettre*, including the Cardiff Process for structural economic reforms, the Bologna Process for cooperation in European higher education, and the code of conduct against harmful tax competition: on these, in addition to the surveys cited above, see Foden and Magnusson (2002); Hingel (2001); and Radaelli (2003b), respectively.

<sup>2</sup> Agreements concluded so far have focused on the issues of teleworking and lifelong learning. For an overview of current developments, see European Commission DG EMPL (2004a).

objectives, only the EES and BEPG involve detailed guidelines for their realization by Member States. Common European statistical indicators or benchmarks have been established for economic policy, structural reforms, employment, social inclusion, and education, but not yet for pensions or health care. The BEPGs, backed by the Stability and Growth Pact, notoriously impose national ceilings on government deficits and public debt as a proportion of GDP; the EES has fixed European employment rate targets, disaggregated by age and gender, which some countries have translated into nationally specific objectives; and the Social Inclusion OMC calls upon Member States to set national targets for the reduction of relative income poverty.<sup>3</sup> Member States prepare National Action Plans (NAPs) for employment and social inclusion, and National Progress Reports on structural economic reforms, but so far only more limited “National Strategy Reports” on pensions.<sup>4</sup> These national plans and reports are subjected to mutual surveillance and peer review by Member State representatives in the Employment Committee (EMCO), Social Protection Committee (SPC), and Economic Policy Committee (EPC) respectively, while active programs for mutual learning through exchange of good practices (also confusingly termed “peer review”) have been organized within the framework of the EES and the Social Inclusion process. Other so-called OMC processes are more loosely structured, involving only selective elements of the broader method, such as scoreboards, peer evaluation, and exchange of good practices.<sup>5</sup> Hence as Belgian Minister Frank Vandenbroucke, who played a key part in launching the social inclusion and pensions processes during his country’s 2001 EU Presidency, has rightly observed: “Open coordination is not some kind of

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<sup>3</sup> The Barcelona European Council of March 15-16, 2002 also fixed national childcare and R&D investment/GDP targets for Member States as part of the EES and innovation policy OMC respectively, see European Council (2002). The new employment guidelines, adopted in July 2003, include additional quantitative targets at national level for combating early school leaving and promoting participation in lifelong learning, see Council of the European Union (2003).

<sup>4</sup> Initially, these OMC processes also followed different timetables, with an annual cycle for the BEPGs and EES, a biennial cycle for social inclusion, and a triennial cycle for pensions. But the EES and the BEPGs have now been “streamlined” and synchronized with one another on a triennial cycle, with guidelines fixed in the first year, followed by annual updates and implementation reports in years two and three. OMC processes in social inclusion and social protection (likely to include health and long-term care as well as pensions) are to be synchronized with this cycle of economic and employment policy coordination in 2006 European Commission (2002c, 2003c, 2004a); Social Protection Committee of the European Union (2003b). For a fuller discussion of the emergent architecture of social, economic, and employment policy coordination in the EU, see the chapter by Pochet below.

<sup>5</sup> These techniques are also used in policy coordination processes not formally designated as OMCs such as the code of conduct against harmful tax competition, see Radaelli (2003b) or the peer evaluation mechanism for national arrangements in the fight against terrorism Council of the European Union (2002a).

fixed recipe that can applied to whichever issue,” but instead “a kind of cookbook that contains various recipes, lighter and heavier ones” (Vandenbroucke 2001: 4; 2002: xxi).

The growing political salience, proliferation, and variety of OMC processes has elicited a bewildering array of contradictory assessments from both academic researchers and EU policy actors alike. On the positive side, the OMC has been touted as a “third way” for EU social policy between regulatory competition and harmonization, an alternative to both intergovernmentalism and supranationalism, which may open up a sustainable path between a fragmented Europe and a European super state (Larsson 2002; British and Swedish governments quoted in Jacobsson 2002). Some academic and political commentators have hailed the OMC as a new mode of EU governance, suitable for addressing common European concerns while respecting legitimate national diversity, because it commits Member States to work together in reaching shared goals and performance targets, without seeking to homogenize their inherited policy regimes and institutional arrangements (Hemerijck and Berghman 2004; Hemerijck 2002; Rodrigues 2001).<sup>6</sup> Others have emphasized the OMC’s promise as a cognitive and normative tool for defining and building consensus around a distinctive European social model and policy paradigm based on common objectives and values (Vandenbroucke 2002; Ferrera 2001). Still others have pointed to the OMC’s potential as a mechanism for promoting experimental learning and deliberative problem solving insofar as it pushes Member States to exchange information, compare themselves to one another, and reassess current practices in light of their relative performance. Certain of its proponents, finally, have seen the OMC as a possible vehicle for enhancing democratic participation and accountability within the EU by opening up the policy-making process to inputs from “civil society” and subnational actors (such as NGOs, social partners, and local/regional authorities), while obliging Member State governments to justify their performance in meeting common European objectives to a broader public (for both this and

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<sup>6</sup> While acknowledging the OMC’s merits in combining pursuit of common European objectives with respect for national diversity, some commentators nonetheless insist that without the capacity to impose binding sanctions this method is only likely to prove effective where Member States’ interests already latently converge, whether because of institutional similarities in regime type or the underlying characteristics of the issue at stake (e.g. absence of distributive conflicts or collective action problems): see Scharpf (2002, 2003); H eritier (2003).

the preceding view, see Sabel and Zeitlin 2003; Zeitlin 2003; Cohen and Sabel 2003; Telò 2002; Rodrigues 2001).<sup>7</sup>

On the negative side, the OMC has been criticized as a Trojan horse allowing the EU to encroach illegitimately into policy domains reserved by the Treaties entirely or primarily to the Member States through the adoption of common European objectives and performance indicators, backed up by peer pressure (Syrpis 2002; Szyszczak 2001).<sup>8</sup> Conversely, the OMC has also been presented as a potential threat to the “Community Method” of European integration through binding legislation and social dialogue agreements, a “soft law” option whose availability may displace the use of “hard law” instruments even in domains where the EU already possesses legislative powers (European Commission 2001a; Goetschy 2003).<sup>9</sup> Against those who have pointed to the deliberative-democratic potential of open policy coordination, another group of critics decry existing instances of the OMC as closed, opaque, and unaccountable processes dominated by transgovernmental exchanges between national civil servants and EU officials (Okma and Berghman 2003; Smismans 2004; de la Porte and Nanz 2004). Where proponents highlight the OMC’s contribution to rebalancing the EU’s social and economic objectives, its detractors discern instead a defensive adjustment to the constraints imposed on European social policy by the single market, EMU, and globalization – or worse still, a mechanism for “unlearning” the positive lessons of the postwar European model of “socially embedded” capitalism (Scharpf 2003; Offe 2003). But the most widespread criticism of the OMC concerns not its purportedly pernicious effects, but rather its alleged lack of substantive impact on the Member States. According to this view, the OMC in its present form amounts to little more than the European emperor’s newest clothes, an exercise in symbolic politics where national governments repackage existing policies to demonstrate their apparent

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<sup>7</sup> The original definition of the OMC by the Portuguese Presidency insisted that “the development of this method in its different stages should be open to the participation of the various actors of civil society” and that it “can also be an important tool to improve transparency and democratic participation”, see Portuguese Presidency of the European Union (2000). Cf. also the conclusions of the Lisbon summit: “A fully decentralized approach will be applied in line with the principle of subsidiarity in which the Union, the Member States, the regional and local levels, as well as the social partners and civil society, will be actively involved, using various forms of partnership” European Council (2000).

<sup>8</sup> This has been a particular concern of the German Länder, which fear that OMC processes may thereby erode their reserved competences under the Federal Constitution in fields such as education and social assistance. See the chapter by Büchs and Friedrich below.

<sup>9</sup> For a more extensive discussion, see the chapter by Trubek and Trubek below.

compliance with EU objectives (Chalmers and Lodge 2003; Radaelli 2003a; Scharpf 2002; 2003). Given such radically different interpretations, the OMC can thus be considered an “unidentified political object” *par excellence*, like the European Union itself in Jacques Delors’s famous phrase (quoted in Schmitter 1996: 1).<sup>10</sup>

## II. Constitutionalizing the OMC: The Convention Debate

This clash of interpretations has already proved politically consequential in the debate at the Convention on the Future of Europe over the incorporation of the OMC into the draft Constitutional Treaty. The Convention’s Social Europe Working Group endorsed the inclusion of the OMC in the draft Constitutional Treaty (as did three other Working Groups that considered the question) provided that, as one summary of its conclusions put it, “the provision would not replace existing normative procedures or make the open method of coordination rigid in cases where there is no specific legislative method of procedure.”<sup>11</sup> These provisos reflected contrasting fears among some members of the Social Europe Working Group that constitutionalization of the OMC could undermine its flexibility and among others that it could subvert the use of the EU’s existing Treaty powers to legislate in the social field. Hence a vocal minority within the Working Group and the wider Convention remained skeptical about the incorporation of the OMC into the draft constitutional treaty. The majority of the Social Europe Group insisted instead on specifying the scope and limits of the method, as well as the roles of different actors in the procedure, in ways that might have threatened its practical viability if enacted (Social Europe Working Group, 2002: §§ 37-45; see also the discussion of the Working Group debate in the Trubeks’ chapter in this volume).

These differences, as academic commentators and political actors proposed at the time, could have been reconciled by a generic provision of the Constitutional Treaty defining only the fundamental aims and basic elements of the OMC; declaring that OMC processes be determined flexibly, subject to review by Parliament and other actors, unless specified otherwise by the

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<sup>10</sup> For broad and balanced reviews of the debate so far, see de la Porte and Pochet (2003) and Borrás and Jacobsson (2004).

<sup>11</sup> Aoife Halligan, “Convention Debates Social Europe”, European Policy Center, <http://www.theepc.net/home.asp>, 21 February 2003. For a comparison of the various Working Group recommendations, see de Búrca and Zeitlin (2003).

Treaty; and disclaiming any intention to replace existing normative procedures by OMCs. To ensure the “transparency and democratic character of the OMC”, which the Social Europe Working Group likewise rightly deemed essential, this generic constitutional provision could also have included specific requirements for openness and broad participation of all relevant bodies and stakeholders (such as social partners, civil society organizations/NGOs, national parliaments, local and regional authorities) in accordance with national laws and practices (de Búrca and Zeitlin 2003).<sup>12</sup>

In the event, however, the Convention Presidium itself deadlocked along similar lines to the Social Europe Working Group, reflecting a *de facto* alliance of opposites between defenders of the Member States’ prerogatives against further intrusions by the EU on the one hand and those who feared dilution of the “hard” *acquis communautaire* by soft law processes on the other. Hence the Presidium decided not to bring forward a proposal to incorporate the OMC into the Constitutional Treaty. Instead, Article I-15 of the draft Constitutional Treaty (Intergovernmental Conference 2004) gives the Union general powers to coordinate the economic, employment, and social policies of the Member States (with explicit reference to guidelines in the first two cases). In addition, Article I-17 allows the EU to take “supporting, coordinating, or complementary action” in a series of other areas (industry; protection and improvement of human health; education, vocational training, youth, and sport; culture; civil protection) without harmonizing Member States’ laws or regulations. Part III of the Constitutional Treaty then sets out specific procedures for the coordination of national policies in different areas, incorporating the existing Treaty provisions for the Broad Economic Policy Guidelines and the European Employment Strategy. But this part of the Constitutional Treaty also provides for the application of key features of the OMC in social policy, research and technological development, public health, and industry, without referring to it by name. In these areas, the Commission (“in close contact with the Member States”) is charged with taking “initiatives aimed at the establishment of guidelines and indicators, the organization and exchange of best practice, and the preparation of the necessary elements for periodic monitoring

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<sup>12</sup> For related proposals, see Vandembroucke (2003); European Parliament (2003a).

and evaluation”, about which the European Parliament “shall be kept fully informed” (Articles III-213, 250, 278, 279).<sup>13</sup>

### **III. Assessing the OMC: An Empirical Deficit**

Despite the high political stakes involved, the debate surrounding the OMC is widely agreed to suffer from an empirical deficit. Many assessments of the OMC, including some that claim to conduct an “in vivo” rather than “in vitro” analysis of the method (e.g. Radaelli 2003a; Chalmers and Lodge 2003), rely in practice on a very limited range of often outdated evidence, onto which they project their own theoretical and normative assumptions. Empirical analysis of the OMC is extremely challenging, for a series of interrelated reasons:

- The variety of distinct processes subsumed under the OMC rubric.
- The relative newness of most OMC processes.
- The horizontal and vertical complexity of OMC processes, which typically integrate multiple policy domains, and involve multiple levels of governance (EU, national, subnational) across 15 (and now 25) Member States.
- The methodological difficulties of assessing the causal impact of an iterative policymaking process based on collaboration between EU institutions and Member State governments without legally binding sanctions. Since Member State representatives continuously participate in the definition of objectives, guidelines, and indicators for OMC processes, which do not necessarily result in new legislation or justiciable obligations, standard approaches to assessing the domestic effects of “Europeanization” based on “goodness of fit”, adaptational pressures, and compliance with EU law (e.g. Cowles, Caporaso and Risse 2001;

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<sup>13</sup> These provisions were added to the draft Constitutional Treaty at the last minute as a result of an intensive lobbying campaign orchestrated by Maria João Rodrigues, coordinator of the Lisbon Summit for the Portuguese presidency and the “mother of the OMC”: see Barbier (2003a). The European Parliament passed two resolutions calling for the OMC to be incorporated into the Constitutional Treaty and for an inter-institutional agreement with the Council and the Commission, “laying down rules for governing the selection of policies for open coordination”, together with “a procedure for developing the open method of coordination into the Community Method”, which could be formalized by the Intergovernmental Conference. See European Parliament (2003a, 2003b); Barbier (2003b). But the IGC did not reopen the compromise reached by the Convention on this subject. For a detailed and insightful analysis of the Convention debate on the constitutional status of the OMC and its outcome, see also de Búrca (2003).

Featherstone and Radaelli 2003) cannot be directly applied. Member State governments may also have political reasons for playing up or down the domestic influence of OMC processes in National Action Plans and evaluation reports, connected with strategies of blame avoidance and credit claiming on the one hand and efforts to present themselves either as “good Europeans” or defenders of the national interest against Brussels on the other. Hence statements about the sources of policy change in such official documents cannot be taken at face value but must be carefully contextualized and triangulated with other evidence.<sup>14</sup>

Despite these practical and methodological problems, there is now a very large body of material available on the empirical operation of OMC processes, particularly in the fields of employment and social policy. Such material includes numerous official reviews and reports, such as the National Action Plans, Strategy Reports, and Joint Reviews for employment (1997-2003), social inclusion (2001, 2003), and pensions (2003); the national reports (often supported by independent research papers) and Commission transversal studies produced for the five-year impact assessment of the EES (2002); and the ongoing reports of the Commission’s expert groups on Gender and Employment (EGGE) and Social Inclusion (all available on the DG EMPL website, [http://europa.eu.int/comm/employment\\_social/index\\_en.html](http://europa.eu.int/comm/employment_social/index_en.html)). But it also includes a wide range of studies and assessments produced by European social partner organizations (e.g. the European Trade Union Institute), NGOs (e.g. the European Anti-Poverty Network), local and regional authority networks (e.g. EUROCITIES), EU agencies (e.g. the Dublin Foundation for the Improvement of Working and Living Conditions in Europe), think tanks (e.g. the Observatoire Social Européen and the European Institute for Public Administration), academic research groups (e.g. the GOVECOR project on “Economic Governance through Self-Coordination”), and of course individual scholars.<sup>15</sup>

This book, which grows out of an international research network organized by the University of Wisconsin-Madison, the Observatoire Social Européen, and the SALTSA Joint

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<sup>14</sup> For discussions of these methodological problems, see in addition to the other chapters in this volume, Büchs (2003); Barbier (2004b); López-Santana (2004a); Borrás and Greve (2004).

<sup>15</sup> A select bibliography of more than 140 books, papers, and reports, including links to relevant websites, is available at the University of Wisconsin-Madison’s Online Research Forum on the Open Method of Coordination, <http://eucenter.wisc.edu/OMC/index.htm>.

Programme for Working Life in Europe, focuses on the two most developed examples of the OMC, the EES and the Social Inclusion process, about which empirical evidence is most abundant, though some chapters also refer to the Pensions process. It concentrates on one of the OMC's most controversial but least studied dimensions, its operation and influence at national and subnational levels, though some chapters also address the OMC's broader role in EU-level governance and policymaking (for more comprehensive reviews, see Jenson and Pochet 2002; de la Porte and Pochet 2003). The volume comprises a combination of national and comparative studies, covering eight countries (Denmark, France, Germany, Ireland, Italy, the Netherlands, Sweden, and the United Kingdom) and four transversal themes (hard and soft law, participation, gender equality, activation). These studies are framed by an historical overview of the OMC's place in the development of the European social and employment policy, and by a synthetic conclusion, which assesses the findings of the preceding chapters (and other available evidence on the OMC action) against the empirical and normative questions raised in this introduction.

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