

# **Open Coordination and Experimental Governance in EU Policymaking**

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# Plan of the Talk

- I. What Is the Open Method of Coordination?
- II. Theoretical Promise of a New Governance Instrument
- III. The OMC in Practice: Empirical Realities and Impact
- IV. Constitutionalizing the OMC?

# I. What is the Open Method of Coordination?

- An experimental approach to EU governance based on benchmarking of national progress towards commonly agreed objectives and organized mutual learning
- “Open coordination is a mutual feedback process of planning, examination, comparison and adjustment of the policies of [EU] Member States, all of this on the basis of common objectives.”  
(Vandenbroucke)

# Defining features of a variable method

- Joint definition by EU member states of initial objectives, indicators, priorities or guidelines, and sometimes targets
- National reports or action plans: assess performance against objectives and metrics; propose reforms accordingly
- Peer review of national plans through mutual criticism and exchange of good practices, backed up by recommendations in some cases
- Periodic re-elaboration of plans, and less frequently, of broader objectives and metrics in light of experience gained in their implementation

# Origins and development

- Rooted in new Treaty-based EU policy coordination processes introduced during 1990s:
  - Broad Economic Policy Guidelines (BEPG)
  - European Employment Strategy (EES)
- Defined as a broadly applicable governance instrument for EU policy making at the Lisbon Socio-Economic Summit in March 2000

# Fields of application (1)

- Social Policy
  - Social inclusion/fight against poverty
  - Pension reform
  - Health care/care for the elderly (not yet formalized)
  - Disability (proposed)

# Fields of application (2)

- Education/Training
  - Common objectives for national systems
  - Bologna Process: voluntary harmonization or ‘interoperability’ of tertiary degree structures
- ‘Cardiff process’
  - structural reform of product and capital markets
  - feeds into BEPG
- Other dimensions of ‘Lisbon Strategy’
  - R&D/innovation, information society, enterprise policy
- Immigration/asylum
  - OMC as a tool for monitoring/completing implementation of EU legislation

# Recipe or cookbook?

- Variations in modalities and procedures depending on:
  - the specific characteristics of the policy field
  - the Treaty basis of EU competence
  - the willingness of the Member States to undertake joint action
- Commission and Council powers
  - can issue joint recommendations to Member States on implementation of the EES and BEPG
  - but not (yet/ever?) on social inclusion and pension reform

# Format and periodicity

- Annual NAPs and guidelines for the EES and BEPG
- Bi-annual NAPs but no guidelines (yet?) for social inclusion
- European (and now national) targets for employment strategy; national targets for poverty reduction
- ‘National Strategy Reports’ every three years for pension reform, with annual updates for BEPG; guidelines unlikely
- Other OMC processes much looser and often include only some elements of method

## **II. Theoretical Promise of a New Governance Instrument**

- OMC as a promising instrument for identifying and pursuing broad common concerns while respecting national diversity
- Encourages convergence of objectives, performance, and policy approaches, but not of specific programs, rules, or institutions
- A powerful cognitive and normative tool for giving practical content to the idea of a distinctive European (or EU) social model based on shared values

# OMC as a mechanism for experimental learning

- A promising instrument for promoting deliberative problem solving and experimental learning across the EU
- Systematically and continuously obliges Member States to pool information, compare themselves to one another, and reassess current policies against their relative performance
- Diversity as an asset for learning rather than an obstacle to integration: the EU as “a natural laboratory for policy experimentation”
- Increasingly important in the face of EU enlargement

# Open participation: A vital ingredient

- Both the legitimacy and the effectiveness of the OMC depend on the participation of the widest possible range of actors in policy formulation, implementation, and evaluation at all levels (EU, national, regional/local) in order to:
  - ensure the representation of diverse perspectives
  - tap the benefits of local knowledge
  - hold public officials accountable for carrying out mutually agreed commitments

# OMC as a template for EU policy making

- OMC has rapidly become the governance instrument of choice for EU policy making in complex, domestically sensitive areas
  - where the Treaty base for Community action is weak
  - where inaction is politically unacceptable
  - where diversity among Member States precludes harmonization
  - where widespread strategic uncertainty recommends mutual learning at the national as well as European level

# OMC as an international policy model

- Complexity, diversity, and strategic uncertainty are defining features of public policymaking in all advanced democracies, not just the EU
- Hence OMC has begun to attract attention from academics and policy makers elsewhere, as a tool for:
  - improving multi-level governance in federal systems (e.g. US welfare reform – beyond block grants and federal mandates)
  - enhancing implementation of common commitments within international organizations (e.g. ILO core labor standards, UN regional ageing policy)
- Potential for two-way transatlantic learning
  - (e.g. horizontal coordination and experimentalist regulation in US states – health care, schooling, policing, environmental protection)

# III. The OMC in Practice: Empirical Realities and Impact

- How far has the theoretical promise of the OMC as a new mode of governance been realized in by ‘actually existing’ OMC processes?
- Jury still remains out on new OMC social policy processes (inclusion, pensions), each of which has so far completed a single round of NAPs/strategy reports and joint reviews
- But preliminary results are encouraging in terms of OMC’s capacity to build a normative consensus around common objectives, identify common challenges and promising policy approaches, and promote the involvement of NGOs and other civil society actors (esp. in social inclusion)

# **The European Employment Strategy as a test case**

- EES has been running on an annual basis since 1997, and has just been subjected to a thorough mid-term evaluation
- Despite serious methodological difficulties associated with this exercise, there is now a superabundance of empirical information on the operation and impact of the EES from Commission, Member State, and academic sources
- Verdict: mixed but on balance positive

# Structural improvements in EU employment performance

- 3% decline in EU unemployment rate 1997-2001
  - decline in both long-term and structural unemployment
- 3% rise in EU employment rate, 1.5% in participation
  - concentrated among women, youth, older people, and low skilled
  - not mainly attributable to favorable demographic trends
- Increase in job-intensity of growth relative to late 80s
  - employment growth/real GDP growth: 0.4 → 0.6 (eurozone)
- Improved responsiveness of employment to output, especially in the upswing
- But connections to EES complex and uncertain

# Positive achievements

- General increase in the salience and ambitions of employment policies at both European and national levels
- Enhanced national awareness of policies, practices, and problems in other Member States
- Administrative reorganization
  - better horizontal integration of interdependent policy fields (e.g. labor market policy, social assistance, unemployment insurance, pensions, taxation, education/training, child care)
  - more decentralization (especially of public employment services)
  - increased attention to vertical coordination between levels of governance

# Policy change: one-way impact or two-way interaction?

- Broad shifts in policy thinking of Member States
  - e.g. active and preventative approach to combating unemployment
  - focus on raising employment rates
  - lifelong learning and active ageing
  - reconciling work and family life
- Causal effects hard to determine
  - Member States' policy orientations had often begun to change before the creation of the EES, whose guidelines they also helped to define
  - Hence better to speak of two-way interaction than one-way impact
- Biggest influence in area of equal gender opportunities
  - EES able to raise new issues even for best performing Member States
  - e.g. occupational segregation in the Nordic countries

# Practical limitations: mutual learning

- Limited success of EES in identifying which types of active labor market policies or tax-benefit reforms were most effective under which circumstances, and revising the guidelines accordingly
  - But the evaluation process has now produced a great deal of evidence which could be used for that purpose
- Little tangible progress in drawing on crossnational learning at the level of local practice
  - e.g. about how best to integrate labor market activation with social inclusion, balance flexibility with security, or extend the scope of lifelong learning to a wider section of the population

# **Practical limitations: openness and participation**

- In most Member States, EES remains little known or is regarded as a narrow, technocratic reporting process involving mainly high civil servants in direct contact with EU institutions
- Most MS have sought with some success to involve unions and employers' organizations more fully in the NAP process.
- But few MS have sought to broaden participation in the EES to NGOs and civil society groups beyond the traditional social partners
- Many MS have also sought to involve regional/local authorities in the implementation of their NAPs, but rarely in their formulation and evaluation
- Helps to explain limits of bottom-up learning revealed by mid-term evaluation

# **Reforming the EES: content and procedures**

- Synchronize economic and employment policy coordination cycles (BEPPG, EES)
  - Align NAPs with national budget cycle
- ‘Streamlining’: reduced number of objectives and guidelines with reinforced medium-term orientation
- Greater emphasis on quantitative targets
- Review effectiveness of mutual learning mechanisms

# Reforming the EES (2): governance

- Mobilize all relevant actors and stakeholders
  - National parliaments
  - Civil society as well as social partners
  - Involve regional and local actors in development as well as implementation of strategy
  - All with due respect for different national traditions and practices (subsidiarity)
- Suggests that OMC procedures for ensuring full and open participation can be reformed by applying to them the same techniques of benchmarking and peer review that inform substantive policy judgements

# IV. Constitutionalizing the OMC?

- Should the OMC be incorporated into the draft constitutional treaty, currently being prepared by the Convention on the Future of Europe?
- Despite its increasingly widespread use as a governance instrument within the EU, the constitutional status of the OMC remains controversial for two symmetrically opposed reasons
- Some see the OMC as violating the principle of subsidiarity by bringing EU policy making into areas of exclusive national or subnational competence (e.g. social assistance or education)
- Others see the OMC instead as a threat to the classic ‘Community Method’ of EU policy making, based on binding legislation initiated by the Commission and enacted by the Council and the Parliament

# Two misconceived objections

- Both of these constitutional objections to the OMC are arguably misconceived
- Thus, for example, the OMC does not involve the subordination of one level of governance to another, but rather a mode of collaboration in which each level contributes its distinctive knowledge and resources to tackling common crosscutting problems, thereby extending rather than infringing subsidiarity
- Nor does the view of the OMC as a threat rather than a complement to the ‘Community Method’ of EU policy making stand up to careful empirical scrutiny

# OMC and the ‘Community Method’: conflicting or complementary approaches?

- OMC most often used where: EU Treaty powers are limited; there is insufficient consensus among Member States to enact binding directives; policy fields are too complex/diverse to be credibly harmonized at European level (e.g. employment, social protection)
- Hard-law directives themselves increasingly incorporate provisions for completion and periodic revision of standards through soft-law OMC procedures (e.g. hazardous waste, occupational health and safety)
- Often an “integral continuity” between legally binding norms embodied in EU framework directives and “soft” OMC guidelines (e.g. regulation of ‘part-time and temporary employment)
- OMC as one element in a larger system of experimental governance in the EU that blurs the distinction between hard and soft law

# Stalemate at the Convention

- Inclusion of OMC in the draft Constitutional Treaty endorsed by four Convention Working Groups, including that on Social Europe, provided that this “would not replace existing normative procedures or make OMC rigid where there is no specific legislative method of procedure”
- Reflected symmetrical fears that constitutionalization of OMC could undermine its flexibility on the one hand and subvert use of EU’s existing powers of social legislation on the other
- Majority of Social Europe WG therefore insisted on specifying the scope and limits of OMC, as well as the procedural roles of different actors, in ways that might threaten its practical viability if enacted

# Contours of a possible solution

- Define only the fundamental aims and basic elements of OMC in a generic clause of the Constitutional Treaty
- Include a declaration that OMC should not be used to undermine or weaken existing EU law, nor as a permanent substitute for Union legislative action permitted under the Constitutional Treaty
- Leave precise procedures to be worked out experimentally for each policy area, except where these are already specified in the Treaty (employment and economic policy coordination)
- Avoid prescribing in detail the procedural role of different actors
- Ensure the “transparency and democratic character” of the OMC by including within the Constitutional Treaty explicit requirements for openness and broad participation in all OMC processes

# Outlook cloudy

- Convention Presidium decided not to bring forward a proposal for incorporating OMC into the draft Constitutional Treaty
- Blocked by an unholy alliance between defenders of the Member States' prerogatives on the one hand and those who fear dilution of the hard *acquis communautaire* by soft-law processes on the other
- Left open the possibility of adopting a later proposal in response to the Plenary debate
- A number of amendments proposed by Convention members calling for inclusion of OMC in the Constitution
- Proposal supported by Employment Committee of the Euro Parliament
- But non-inclusion most likely outcome at this stage

# Would non-inclusion matter?

- First, do no harm
- Authority for EU policy coordination conferred by other articles in the draft Constitutional Treaty
- OMC would benefit from added legitimacy conferred by explicit inclusion in the Constitutional Treaty (cf. EES)
- But other OMC processes with a weaker treaty base (like social inclusion) have also taken off rapidly, eliciting broader participation from civil society at both national and European level
- And even where Member States remain reluctant to acknowledge the Europeanization of sensitive domestic policy areas by formally creating new OMC processes, they increasingly make use of its procedures in tackling urgent common problems (e.g. ‘policy cooperation’ in health care, peer evaluation of national anti-terrorism arrangements)