

The open method of co-ordination and new governance patterns in the EU

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ABSTRACT The aim of this article is to establish an analytical framework for studying the impact of the open method of co-ordination (OMC) on three levels of political action within the EU, namely the policy, politics and polity. First, the article examines the novelties of the OMC *vis-à-vis* the soft law tradition in the EU, and looks at how the three dominant logics of co-ordination are linked to diverse modes of the OMC. The subsequent sections focus on the potential impact of the OMC on the policy and politics dimensions of the EU. Theoretically inspired assumptions about policy learning and partial delegation of power are the driving forces behind the inquiry. The article then scrutinizes the potential constitutional dimension of the OMC. Finally, it discusses the theoretical challenges that the OMC poses for our understanding of the EU as a polity and the concept of integration.

KEY WORDS EU; governance; institutionalism; open method of co-ordination (OMC); policy co-ordination; polity; soft law.

INTRODUCTION¹

It is not possible to grasp the dynamics of the European Union (EU) during the past two decades without looking back to the events of 1989. The end of the Cold War has reshaped Europe's understanding of itself fundamentally. In practical terms, the prospect of increased intra-EU diversity after enlargement has been the central concern of the institutional reforms enshrined in the Maastricht, Amsterdam and Nice Treaties. These reforms have been mainly related to the balance of power among the European institutions, to the member states' representation within them, and to flexibility caveats such as 'reinforced co-operation' or the pragmatic opt-outs. Whereas this institutional accommodation is an unavoidable result of including ten new member states into the EU machine, there seems to have been an unspoken political agreement that these are not enough for addressing the new challenges posed to common EU action. Further debates have moved beyond this macro-institutional perspective, examining the actual world of policy-making in the EU. In fact, the outlook of future decision-making gridlocks has spurred the

fears of paralysing action within the EU. Here, the debates have revolved around the issue of how to find a feasible balance between the need to respect diversity among member states, and the unity – and meaning – of common EU action. By focusing on process flexibility rather than on macro-institutional flexibility, the open method of co-ordination (OMC) is a practically oriented policy instrument that provides very concrete mechanisms in order to address this balance.

The creation of the OMC in the late 1990s also needs to be understood against another kind of background, namely, the socio-economic contents of EU politics. Despite the formal completion of the Single Market project in 1993, economic disfunctionalities have continued to exist in non-integrated or partly integrated areas, for instance in the domains of technology and innovation. Moreover, it has been asserted that the features of the globalized economy, with significantly increased world-wide competition, have put the sustainability of the 'European model(s)' of capitalist social regulation under strain (Ferrera *et al.* 2000; Telò 2002). As a result, the EU has continued to integrate different policies under pillar one, particularly in areas of (de- and re-) regulatory market-making and macro-economic stability. Yet, two political considerations have been emerging in relation to that. The first one is the question of political co-ordination in the economic policy areas, partly as a result of old and unresolved economic disfunctionalities, and partly as a result of new co-ordination requirements (as in economic and monetary union (EMU)). The second political consideration deals with the intensified efforts to build up a social dimension in the EU, an eminently Social Democratic project, which has also required new forms of political co-ordination. Member governments have acknowledged that improved competitiveness whilst preserving the European model(s) of welfare capitalism may require common responses in areas where legal competences rest with the member states. Arguably, this situation (that the integration process is approaching the core areas of the welfare state, but that member states are not prepared to compromise their sovereignty over social policy areas) has accentuated the need for alternatives to the Community method. The OMC aims to unleash the EU's social dimension from the constraints of the Community method. In this sense, the OMC has so far been able to link, in both substantial as well as in procedural terms, the social and economic aspects of the (renewed) politics of European integration.

The establishment of the OMC has also been strongly associated with a third general challenge to the EU, namely the legitimacy crises of the 1990s and early years of the 2000s. The aftermath of the Maastricht Treaty expressed the large gap existing between the European political élites and the publics, a gap concerning the most appropriate contents and tempo of European integration. Shortly after, another legitimacy crisis arose at EU level. The Commission, seen by many as the 'engine' of the integration project, went through a crisis of confidence in relation to the corruption and food safety scandals that hallmarked the political events of 1998 and 1999. The democratic deficit of

the Union was no longer primarily a matter of popular representation and the role of the European Parliament, it was also a matter of transparency, accountability and openness. The legitimacy crises have been as much a question of political goals as of the means to fulfil them. In the subsequent high level discussions about shaping the new governance of the EU (including the White Paper on governance (CEC 2001)), the OMC has been seen as a new and flexible instrument able to introduce more democratic parameters in decision-making, and to regain the lost popular confidence in the European integration project by inducing further political action complementing the Community method (Scott and Trubek 2002).

The OMC seems to bring a breath of fresh air into the mechanisms of common EU action, allowing for a novel way of unfolding the co-ordination of national areas of public action which does not involve a formal or full-fledged transfer of competences.

The aim of this article is to set up an analytical framework for the study of the impact that this new method might have on the *policy*, *politics* and *polity* dimensions of the EU. The special nature of this method might result in important transformations in the patterns of EU governance that have existed hitherto. It perches on the fence between the Community method and the international method, it coaxes member states into co-ordinating their national public actions within a collectively decided framework, it spreads widely into different policy areas, and it cuts across the national–EU borders using persuasion but not coercion. The first two sections of this article conceptualize the OMC, examine critically its novelties and principles *vis-à-vis* the soft law tradition in the EU, and look at how the three dominant logics of co-ordination are related to diverse modes of the OMC. The subsequent three sections deal respectively with questions about the ability of the OMC to foster policy learning processes, about the OMC and the nature of the partial delegation of power, and about the formal and informal constitutional aspects of the OMC. On the basis of this triple analytical strategy, the article argues that the OMC qualifies as a new pattern of EU governance, which questions the understanding of the EU hitherto as a regulatory state. Finally, it discusses the theoretical challenges that this poses for our understanding of the EU as a polity and the concept of integration.

WHAT IS THE OPEN METHOD OF CO-ORDINATION, AND HOW NEW IS IT?

The OMC has developed over time, so that its precise procedures have been delineated in a gradual manner. The notion of an open method of co-ordination materialized first in the conclusions of the Lisbon Summit in March 2000. Yet such a method was already envisaged in the procedures for co-ordinating national economic policies under the EMU established in the Maastricht Treaty, and in the employment chapter of the Amsterdam Treaty. In Lisbon, the Portuguese presidency successfully gave a name to this new

method, while linking it to the new agenda for socio-economic development which was the fruit of a political compromise aligning the visions of parties both to the Left and Right. The main procedures of this method are: common guidelines to be translated into national policy, combined with periodic monitoring, evaluation and peer review organized as mutual learning processes and accompanied by indicators and benchmarks as means of comparing best practice (European Council 2000: 12).

Taken at face value, the OMC is a collection of mechanisms previously developed under the broad 'soft law' tradition in the EU, such as collective recommendations, review and monitoring, and benchmarking, which also bear similarities with the Organization for Economic Co-operation and Development (OECD) practices (Marcussen 2003). Nevertheless, contending that the method brings nothing new under the sun would misrepresent its novelties, as compared to the hitherto use of soft law in the EU and to the previous Community and international methods (see also Jacobsson, forthcoming).

There are at least seven different points that make the OMC distinct from the old soft law procedures and contents (see Table 1). *Firstly*, the essentially intergovernmental oriented approach of the OMC differs from the previous supranational oriented approach to soft law in the EU. In the latter, the Commission and the Court in interaction have largely determined the role and meaning of soft law. The willingness of the European Court of Justice (ECJ) to consider Community soft law as a source of law has been decisive for the inclusion of this non-binding form of regulation within the *acquis communautaire* (Snyder 1993; Landelius 2001). Contrasting with this, the Court has no role to play in the OMC. Instead, the Commission and the Council (or European Council) in interaction determine the development and content of the OMC, relying to a larger extent on a political logic rather than

Table 1 Differences between the OMC and the traditional soft law

<i>The open method of co-ordination</i>	<i>The traditional soft law</i>
Intergovernmental approach: the Council and the Commission have a dominant role	Supranational approach: the Commission and the Court of Justice have a dominant role
Political monitoring at the highest level	Administrative monitoring
Clear procedures and iterative process	Weak and ad-hoc procedures
Systematic linking across policy areas	No explicit linking of policy areas
Interlinking EU and national public action	No explicit linking of EU/national levels
Seeks the participation of social actors	Does not explicitly seek participation
Aims at enhancing learning processes	No explicit goal of enhancing learning is stated

on a legal logic. *Secondly*, noteworthy in the OMC is the high level of political participation. This refers as much to the policy formulation phase, through the input of the Council of Ministers and the European Council (Begg *et al.* 2003), as to the monitoring phases (cf. the European Council spring summits). This makes the OMC clearly different from the peer review process of the previous soft law in the EU, and those of an organization like the OECD, where the monitoring phases are typically managed at an administrative level. *Thirdly*, the clear procedural mechanisms and the high-level political participation (including the monitoring phases) entail more mutual commitments and peer pressure mechanisms than the ad-hoc and weak procedures of previous soft law mechanisms in the EU. The same can be said about the iterative character of the process, which reinforces the possibilities of peer pressure and individual commitment. Deliberation and problem-solving processes are cyclical instead of sequential, strengthening the political exposure of non-compliers and of best/worst performers. *Fourthly*, while soft law has previously been used mostly ad hoc within the confines of particular policy areas, the OMC entails a systematic linking of policy areas and orientation of policies towards a common goal. The OMC seeks the goal of strategically bridging policy areas in a double horizontal way, by linking national policies with each other, and by linking functionally different policies at EU level. *Fifthly*, the new method explicitly seeks a further interlinking of domestic policy-making and co-operation at EU level, combining common action and national autonomy in an unprecedented manner. The intention with the OMC is to integrate action at various levels of governance; this opens up the possibility for truly bottom-up political dynamics, which differ from the top-down structures of the previous soft law-making. *Sixthly*, the OMC seeks to mobilize the participation of a wide range of actors, public as well as private. In terms of actor constellation, the OMC is multi-level, involves other actors than state actors, and is designed to foster co-operative practices and networking. Those open participatory aspects were largely absent in the soft law tradition of the EU. *Seventhly*, similar to the practices of the OECD, the new method is designed to support learning. It builds on, and encourages, mutual co-operation and exchange of knowledge and experiences. It also entails an element of mutual correction, through peer governance or 'collective self-co-ordination' (GOVECOR 2000), exerted in various types of peer group review bodies and in media. Yet, rather than operating by sanction, the method seeks to foster incentives to learning and consensus-making (Jacobsson, forthcoming).

Therefore, the OMC is based in the following principles (Jacobsson 2001; Jacobsson and Schmid 2003; Scott and Trubek 2002): voluntarism, subsidiarity, flexibility, participation, policy integration, and multi-level integration.

WHAT CO-ORDINATION PROBLEMS?

The so-called 'Lisbon strategy' sets two goals for the Union: to improve European competitiveness and to develop the European modes of social

protection, living up to the expectations of economic growth and of social cohesion. Hence, the issue areas chosen for unfolding the Lisbon strategy fall under the category of either 'competitiveness-fostering' policies or 'welfare-fostering' policies. These are, so far, information society, research and development policy, enterprise policy, internal market policy, macro-economic policy, on the one hand; and renewed European social model (investing in people, activating social policies), education policy, employment policy, modernizing social pension systems, policy against social exclusion, on the other.

It is important to underline the truly double nature of the Lisbon strategy addressing both the issues of competitiveness and social cohesion. This Janus nature of the new EU goals has tended to be underestimated in analyses because of the generalized tendency of the growing literature about OMC to look at the prospects of this new method with respect to the social dimension.² The Lisbon strategy, and the OMC designed to implement it, represent as well an important turning point in the traditional EU-level political strategies towards competitiveness. In the late 1980s, at the peak of the Delors era, policy towards competitiveness was based on the triple strategy of creating a single market (by de-regulating at national level and re-regulating at EU level), by generating common European technical standards (of voluntary nature), and by funding cross-national scientific and technological projects. The combination of this 'market-making' strategy and technological endeavours was based on the rationale of lowering transaction costs and achieving economies of scale. However, in the mid- and late 1990s, a consensus seemed to emerge which understood that these efficiency-improving economic strategies are necessary conditions, but not sufficient in themselves for fostering competitiveness. The acknowledgement of the complexity of the knowledge-based economy has made European élites in readiness for further action along new policy lines, which include further co-ordination of national policies, where the OMC is the main (but not the sole) instrument.³

The 'social dimension' too is changing its contents to be in line with the Lisbon strategy and the OMC procedural novelty. Traditionally focused on granting individual/collective rights to the workers/citizens of the Union, the social dimension had arrived at a stalemate. Moving beyond that point was politically impossible, because more EU rights would have invariably undermined the socio-economic agreements and social contracts upon which each national welfare arrangement has been historically built. The logic of EU harmonization by law clashed with the blatant reality of highly diversified welfare state models in Europe (Scharpf 2002), and with a highly diversified understanding of the scope and forms of social protection. There was simply no political support for the further transfer of legal competencies to the EU in these areas.

For both these objectives, competitiveness and social cohesion, the OMC is a convenient formula for placing issues high on the EU agenda whilst preserving national autonomy. The OMC is compatible with the subsidiarity principle, but can, in effect, also be seen as a way to bypass this principle by

allowing the EU to initiate co-ordinated action in areas where authority rests exclusively with the member states. If the EU is no longer to pursue public action by single and homogenizing instruments, the new method has to provide solutions to problems of co-ordination. However, not all problems of co-ordination are the same. The specific policy areas where the use of the OMC has been envisaged can be classified into three groups depending on the kind of co-ordination problem they address.

The first group is composed of policies where previous attempts to develop stronger forms of co-ordination failed during the past decades owing to strong national political sensitivities. A (further) transfer of competences from the national to the EU level was not viable, and a strong form of co-operation involving a single harmonized solution was too problematic. This is the case with areas of social policy such as public pensions or social inclusion, since they represent the core of the welfare state. For reasons mentioned earlier, the national social contract embedded in each welfare state renders any attempt to harmonize these areas a highly delicate political subject. Equally sensitive was the issue of research and technological development (R&TD) policy, but for different reasons. The 'technonationalism' of the 1960s and 1970s was only moderately transformed by the creation of the EU's own R&D policy in the mid-1980s (Sharp 1991; Grande and Peschke 1999). In the early 1990s, there were futile attempts by the Commission to co-ordinate national R&D policies with one another and with the EU initiatives in order to avoid the duplication of efforts. The member states, particularly the large ones, were committed to maintaining their own national technological sovereignty and national champions. In both cases, social policy and technology policy, the OMC might offer viable ways to overcome a long-standing political stalemate. Solutions to this problem may become more impelling with the growing pressure from globalization.

A second group of policy areas is that of relatively new fields of public involvement, where traditional regulatory/distributive instruments are not an obvious choice. Yet, failure to co-ordinate would represent a failure of public actors to make a true impact on society and the economy. This is the case with employment policy and policy concerning the information society. The traditional EU initiatives in the employment field dealt mainly with 'working conditions' (in its widest sense), but not with the creation of new jobs or with getting the unemployed back to work, which employment policy deals with today – as enshrined in the Amsterdam Treaty. Arguably, this new goal for employment policy at EU level has to be understood in relation to three phenomena: firstly, as a political counterbalance to the inflation-fighting spirit of the EMU; secondly, by the fact that technological change requires the continuous development of new skills (a lifelong learning and 'adaptable' workforce); and thirdly, against the background of demographic changes which make increased employment rates imperative. In other words, the 'new' active employment policy moves further than the 'old' focus on worker protection, which was mainly anchored in regulation (hard and soft law). As to the

information society, policy-makers agree that information and communication technologies (ICTs) have much to offer in terms of economic growth. The point for public action relates to promoting their use while avoiding their negative effects (social divide, privacy problems, ownership rights). Regulation at EU level might mitigate some of those negative effects, but it will certainly be unable, on its own, to achieve the political goal of bringing the information society to all EU citizens. Likewise, the objectives related to employment (lifelong learning and social inclusion) can only partly be targeted by regulations and directives. Achieving them requires the mobilization of social partners and subnational authorities, and more generally the mobilization of knowledge and resources, which, again, may not be best achieved by legal instruments.

The third group of policy areas, are those showing very strong functional interdependencies with the EU level. The most obvious case here is the national economic policies and their relation to the monetary policy implemented by the European Central Bank. Even if the EMU broke the Keynesian 'policy mix' of fiscal and monetary policy (placing the latter in the hands of an EU institution while the former remains in the hands of national governments) both policies are intrinsically related to each other for the attainment of a stable economy in Europe. This strong functional interdependency between both required innovative procedural solutions for fine-tuning, despite the fact that one is kept at national level (and hence, there are twelve of the kind) and the other one at EU level.

In the first and third categories of policy areas using the OMC, failure to co-ordinate might generate important tensions derived from socio-economic dynamics. As to the second category this is less obvious. True, with the loss of the instrument of monetary policy and with the limits set on fiscal policy by the Stability Pact, labour market policy as a policy instrument has gained in importance. Also, to some extent, with highly integrated economies, labour market policy failures in one country may generate externalities for others.⁴ Nevertheless, co-operation in the second category seems to be based on a logic of mutual support and pressure for the development of national policies and the mobilization of national resources rather than a response to true co-ordination problems.

The various rationales of co-ordination together with the degree of sensitivity of the areas in question explain why policy co-ordination has developed differently in different areas in terms of reach, compliance mechanisms, voting rules, involvement of actors, Treaty base, and the degree of preciseness of targets and objectives (Hartwig and Meyer 2002). This intra-OMC procedural diversity is illustrated in Table 2. While aware of the internal diversity of the policy co-ordination method, we are, in this article, mainly concerned with the archetypical OMC as outlined in the Lisbon presidency conclusions.

The question to consider now is that of how to design an analytical strategy that allows understanding the implications of the OMC in the EU. One way of doing so would be to examine the three interrelated dimensions of the EU, namely, the potential impact of this new method in the *policy-making* and in

Table 2 Features of the OMC in different policy areas

<i>Policy area</i>	<i>Budgetary policy</i>	<i>Macro-economic policy</i>	<i>Employment policy</i>	<i>Social inclusion policy</i>	<i>Pension reform</i>	<i>Information society</i>	<i>Research and innovation</i>
Treaty basis	Art. 104, Protocol, Regulations 1466/97, 1467/97	Art. 99	Art. 125–130	Art. 136–137, 144	Art. 140	Indirectly	Indirectly from Art. 165 TEC
Co-ordination procedure	Stability and Growth Pact (since 1997)	Economic policy co-ordination (since 1992)	Luxembourg process (since 1997)	OMC (since 2000)	OMC (since 2001)	OMC. The eEurope action plan endorsed in 2000	OMC. The European Research Area plan endorsed in 2000. Process labelled OMC in 2003
Instruments	Quantitative targets, stability or convergence programmes	Broad economic guidelines (including quantitative targets), national reports, indicators	Employment guidelines (including quantitative targets and benchmarks), national action plans, indicators	Objectives (qualitative), national action plans, indicators	Objectives (qualitative), strategy reports, indicators discussed	Objectives with clear deadlines. Qualitative and quantitative indicators and benchmarks are set up. 'Best practices' identified	Guidelines. Quantitative and qualitative indicators set up in scoreboard, benchmarks. 'Best practices' identified in reports
Policy goals	Avoidance of spillover and free-riding	Co-ordinated economic policy-making in EMU, as defined in Art. 98 and 99	Increased employment rates, lowered unemployment	Avoidance of social exclusion, fight poverty	Sustainable and fair social protection systems	Foster competitiveness and ICT access to citizens	Foster competitiveness and innovation

Table 2 Continued

<i>Policy area</i>	<i>Budgetary policy</i>	<i>Macro-economic policy</i>	<i>Employment policy</i>	<i>Social inclusion policy</i>	<i>Pension reform</i>	<i>Information society</i>	<i>Research and innovation</i>
Sanction mechanisms	Peer pressure and negative publicity by individual recommendations, fines in case of excessive budgetary deficits	Peer pressure and negative publicity by individual recommendations	Peer pressure and negative publicity by individual recommendations, benchmarking	Peer pressure	Peer pressure	Peer pressure	Peer pressure and negative publicity by scoreboard and map of research excellence
Learning mechanisms	Information exchange, committee peer review and deliberation	Benchmarking, information exchange, scoreboards, committee peer review and deliberation	Benchmarking, peer review programme, information exchange, committee peer review and deliberation	Benchmarking, information exchange, committee peer review and deliberation	Information exchange, committee peer review and deliberation	Benchmarking, information exchange. Expert deliberation in working groups	Benchmarking, information exchange
Voting procedures, policy cycles	Annual reporting and review, QMV	Annual reporting and review, QMV	Annual reporting and review, QMV	Two-year cycles. Unanimity	Three-year cycles. Unanimity	Annual reporting. Unanimity	Annual reporting. Unanimity
Role of Commission, EP	Commission drafts reports and monitors	Commission drafts reports and monitors	Commission proposes reports and monitors. EP consulted	Commission drafts reports and monitors. EP consulted	Commission drafts reports and monitors	Commission drafts reports and monitors	Commission drafts reports and monitors
Involvement of non-governmental actors	Not directly	Not directly, informally. The Cologne process involved social partners	Social partners at EU and national level	Social partners at EU level, in practice also Platform of Social NGOs. Consultation encouraged at all levels	Not directly	For eEurope initiative: industry and public actors are involved in specific areas	Not directly

the *politics* of the EU, and then move up to the *polity* dimension where governance patterns are defined. This is, as we will see in the coming sections, an aggregative analytical exercise, but also a theoretical one.

CO-ORDINATION AND NATIONAL POLICY CHANGE: BEAUTY CONTEST OR LEARNING PROCESS?

The Lisbon Presidency's conclusions envisaged that the implementation of the two strategic goals would be facilitated by applying a new 'open method of co-ordination' as the means of spreading best practices and achieving greater convergence towards the main EU goals. The political expectation of a 'mutual learning process' relies on the assumption that co-ordination will be achieved through changes in national policies conveyed by the explicit political commitment to common goals, by the increase of the knowledge and comparability of each country's national policies and structures, and by the periodical review of the achievements. The OMC, thus, features a series of specific mechanisms to trigger such processes, namely, the systematic *diffusion of knowledge and experiences; persuasion* supported by practices of peer review and dialogue; *knowledge work* including the development of a common policy discourse, comparable statistics, and common indicators, *repetition*, and *strategic use of policy linkages* (see Jacobsson 2001, 2002). However, criticisms have been raised against this political expectation of learning processes from some political circles expressing the risk that the OMC might become a mere 'beauty contest' or an 'exercise in statistics'. Fear has also been raised about the risk of mere symbolic action (Keller 2000).

The scholarly literature about policy change and about international relations does not reflect a unanimous understanding of these issues. On the contrary, these alternative political expectations can be contrasted with different academic theoretical frameworks and empirical findings, which provide diverse perspectives concerning the OMC. Therefore, it could be interesting to examine the way in which the OMC can be interpreted in the light of these theoretical and analytical debates.

The key question is whether it is possible to have national policy change driven by mimetic and normative processes, in the absence of clear coercive mechanisms. The answer to this question varies greatly among different fields of research, namely, EU studies, comparative politics and international relations. In the field of EU studies, it has been argued that the rapid development of soft law in the EU has been linked to the existence of alternative and stronger instruments of policy action. This is what has been termed 'the shadow of hierarchy', which has indirect coercive mechanisms as the failure to succeed will invariably unleash stronger policy instruments, namely, hard law, with binding and sanction mechanisms (Scharpf 1999; Héritier 2002). Such a 'shadow of hierarchy', understood as the likely use of stronger instruments, is not at all obvious for the development of the OMC

owing to the explicit political statement of avoiding transferring further powers to Brussels in the fields where the OMC operates.

Scholars in the tradition of international studies, concerned with issues of international co-operation and compliance, have regarded the issue of coercion as a key factor for change (Börzel 2002, for a review). The generalized assumption is that international co-operation is only possible because the partners have decided to bind each other by mutually coercive mechanisms. Compliance would be guaranteed if the costs of free riding are high. This means that a credible commitment requires clear procedures for compliance control and sanction mechanisms. In other words, no credible international co-operation is successful without a certain degree of mutual coercion (Hasenclever *et al.* 1997).

In contrast, among scholars of comparative public administration, there is a widespread understanding that not only is policy change in the absence of coercion possible, but there is plentiful evidence that such processes are taking place worldwide (Dolowitz and Marsh 2000). This is also the case for the EU. Looking at the three sources of institutional isomorphism defined by DiMaggio and Powell (1991), namely, coercion, mimetic and normative isomorphism, Radaelli asserts that even if the first is not dominant in the EU, the other two are widely found.

Given the level of uncertainty that pervades EU policy-making, it can be argued that policy transfer should follow the path of mimetic isomorphism in many circumstances. Finally, a variant of normative isomorphism can occur in those policy-making processes dominated by cognitive resources, expertise and even technocratic aspects of political life.

(Radaelli 2000: 29)

The cognitive dimension of policy learning has also been stressed by authors working in the tradition of discourse analysis, emphasizing the role of collective cognitive frameworks for policy change. Here it has been argued that the development of common discourses, establishing certain key concepts as well as policy principles and understandings of causal linkages, has been instrumental in the development of the new policy co-ordination processes (Jacobsson 2002; Jacobsson, forthcoming; Sciarra 2000). The cognitive frameworks provide a substructure underpinning the common political strategy, and are an example of indirect policy learning.

The cognitive but also normative dimension has been stressed by authors focusing on the role of administrative networks and policy communities in fostering policy change. The networking generated by OMC occurs at several levels: first, the co-ordination processes require co-operation by many ministries at national level. Second, the co-ordination procedures require input from social partners and civil society actors (see below). Third, a number of new committees have been established for the monitoring of the co-ordination processes (see below) and where representatives of the member states and the Commission interact and exchange ideas and experiences as well as exert peer

pressure on one another (Jacobsson and Vifell 2003; Trubek and Trubek 2003).

We have argued that the OMC functions differently from the previous uses of soft law in the EU in, *inter alia*, being a political rather than a legal process, building on a different set of actors, and being an ongoing process entailing a refined system of monitoring and follow-up. In the absence of a 'shadow of hierarchy' and of coercive mechanisms, albeit in the presence of mechanisms of shaming and peer pressure, how might the OMC actually work to achieve its goals? Future empirical research would have to look at the impact and effectiveness of the following mechanisms: shared discourses, administrative and political networking, shaming practices, diffusion of knowledge and experiences, and their respective roles for policy learning. It would also have to take account of the type of learning involved where mimicking is merely one type of learning and probably not the most important one (see Hemerijck and Visser 2001).

THE OMC AND EU POLITICS: NEW RULES OF THE GAME?

In formal terms, the OMC leaves intact the subsidiarity principle, by which competences are to be kept at national level whenever possible. The OMC does not involve any further transference of competences from the national to the EU level. However, the OMC has obviously 'uploaded' to the EU arena the task of defining collective goals. Setting up these goals at EU level involves a preliminary political commitment from the member states, and the definition of a clear set of instruments attached to it. This double feature means that it is possible to consider, along with Helen Wallace, that the OMC entails a 'partial delegation of power':

forms of delegation are being made from the member governments to the EU arena, but only partial delegation. Governments are so far mostly relying on each other to act as mutually supporting agents, rather than handing over policy-shaping powers to an independent institution, although more extensive delegation is being made of some technical and operational tasks.
(Wallace 2001: 592)

This notion of 'partial delegation of power' seems to capture successfully one of the most important characteristics of the OMC arrangements, namely, that in formal terms the division of tasks between the EU and its member states remains unchanged, but beneath this formal surface, a series of apparently minimalistic changes (underpinned by a new understanding of collective action) might have deep effects on EU politics, particularly regarding the institutional set-up and the mechanisms of accountability.

The advent of the OMC has had an impact on the institutional set-up of the EU. This is to acknowledge that the newly established OMC procedures are not neutral, and of course, there are potential winners and losers. Admittedly, the diversity of OMC procedures, as shown in Table 2, implies that this

inter-institutional impact differs across policy areas. For instance, in the Treaty-based processes around the Employment Strategy and the broad economic guidelines, the member states have delegated the right to propose guidelines and recommendations to the Commission; these are eventually decided in the Council on qualified majority voting, whereas in the fields of social inclusion and pension reform, the Commission does not enjoy such a prerogative. Recalling our intention to analyse the 'softer' variant of the OMC along the interpretative lines of the Lisbon conclusions, the OMC might be regarded as an atypical distribution of roles among EU institutions.

The OMC has strengthened the role of the European Council, particularly after the Lisbon summit, where this EU institution was granted clear political leadership in its co-ordinating and guiding role (most notably expressed in the institutionalization of the spring summits). Nevertheless, the impact of this on the Commission is a matter of dispute. On the one hand, the heads of states have increasingly taken the lead as regards policy initiatives, and therefore the Commission's formal monopoly on initiatives has subsequently vanished. On the other hand, the role of the Commission as a broker is evident in the OMC, and this 'mediation' may easily involve indirect policy guidance. The OMC has allowed the Commission to take initiatives and to expand co-operation to new areas belonging to the legal competencies of the member states; hence, it has been able to bypass the subsidiarity principle. It is thus not obvious that the OMC has weakened the Commission.

Rather, the OMC builds on a close co-operation between the Commission and the member states, which is particularly evident in the recently established committees (Employment Committee, Social Protection Committee, Economic and Political Committee, and Economic and Financial Committee). These committees are unique in the sense that they hold a position *in between* the Council and the Commission. The Commission handles the secretariat and is also a full member of each committee, and the committees are to supply opinions on the request of *either* the Council or the Commission. This is different from both the implementation committees which are under the Commission (the Comitology) and the preparatory committees which are under either the Commission or the Council. Arguably, this illustrates the, to some extent, new division of power between the Community and the member states, and the need for co-operative relations and complementary measures at Community and national levels. These committees have proved to be instrumental in the confidence-building among the member states as well as between the Commission and the member states, which is necessary for policy co-ordination in these sensitive areas (Jacobsson and Vifell 2003). The new committees, being the only preparatory bodies before the Council level, have an important role in the policy process of the OMC (Jacobsson and Vifell 2003). Moreover, since the OMC is not a legislative process, usually there are no Commission working groups preparing the proposals and no Council working groups involved. It is also significant that the Committee of Permanent Representatives (COREPER) is also largely left outside the process.

One of the features of the OMC is that there is no clear demarcation between decision-making and implementation (Radaelli 2003). This makes the OMC potentially susceptible to problems of judicial and political accountability. As for judicial accountability, in contrast to the use of soft law in the supranational method, the European Court of Justice is not implicated in the OMC, neither in the definition of the contents of this kind of soft law, nor in its practical interpretation/implementation. The Court is marginalized basically owing to the OMC's strong political logic. Nevertheless, it is political accountability that matters most. The role of the European Parliament has so far only been considered in strict advisory terms. Likewise, national parliaments have also been marginalized. The problems of political accountability (owing to the marginalization of representative bodies) might possibly be partly compensated by other democratic mechanisms. The OMC's explicit intention to involve a wide range of actors denotes a wider understanding of democracy as a participatory mechanism. Social partners have been consulted during the spring summits. Informal social summits have been held since 2001 and the first 'tripartite social summit for growth and employment' was held in March 2003.⁵ Yet, empirical research shows that the OMC's openness to various types of actors has not been fully exploited, especially not within the member states (Jacobsson and Schmid 2003; de la Porte and Nanz 2004). Specific formal requirements for involving social partners only exist in the area of employment policy and social policy co-ordination. Regarding the broad economic guidelines, no formal consultation takes place even if informally the social partners have a say (Foden and Magnusson 2002). As can be seen in Table 2, inclusion and consultation of non-governmental actors is weakly developed in the other policy areas where the OMC is being currently used.⁶

The OMC might indicate a novel way of doing EU politics because it is based in a significantly distinct organization of common political action. Common action at EU level is no longer synonymous with further formal transfer of competences, and with the development of homogenous and binding political solutions. In fact, the OMC has been designed as a flexible, politically driven, non-regulatory instrument, which is based on a partial delegation of power. This partial delegation of power affects the conventional way of EU politics in three interrelated ways:

- 1 The division of tasks between the member states and the EU remains unchanged in formal terms, but has in reality changed in an important way. The task of defining collective goals has been 'uploaded' to the EU arena, although remaining formally in the hands of national governments. Most obvious in the treaty-based processes of the economic and employment OMCs, a principle of complementarity has developed where power is shared, not divided, between the Union and the member states, building on a new combination of subsidiarity and common European action. Even if the notion of 'shared competences' already exists in specific areas of the EU under the Community method (i.e. in the field of new trade issues

within trade policy, such as services or intellectual property rights), the political tensions and practical difficulties implementing such shared competences are likely to be absent in the OMC. This is not just because of the notorious lack of the 'shadow of hierarchy' in the OMC political game, but mainly because of the fact that the costs of failure are rather low (particularly in the areas with low functional interdependencies).

- 2 The inter-institutional arrangements are formally unchanged, yet the OMC has partly reshuffled the conventional balance of power between EU institutions. The method relies on the political leadership of the Council/European Council, but also on the close co-operation between the Commission and the Council ensured by new committees. This political visibility of actions, centred in those two institutions, has resulted in an exclusion of other EU institutions, most notably the European Parliament and the European Court of Justice.
- 3 Partial delegation of power also implies a new understanding of participation in EU policy-making. The prominent transnational and multi-level dimensions of the OMC decision and implementation procedures might transform the basis for participation beyond representative parliamentary mechanisms, by opening up new mechanisms of 'voice' and political involvement. New networks of social partners, non-governmental organizations (NGOs), sub-national governments and other important political stakeholders, might constitute strong pressure groups as well as a solid democratic platform for decision-making and implementation. This is what some authors have referred to as the 'democratic experimentalism' of the OMC (Eberlein and Kerwer 2002, drawing on Dorf and Sabel 1998), a positive view not shared by everyone (Bergham and Okma, forthcoming).

In spite of these institutional novelties, the question that future empirical research will have to answer concerns the extent to which this 'partial delegation of power' of the OMC, in all these three dimensions, is able to generate stable political outcomes that are relevant, effective and politically legitimate.

THE OMC AND POLITY: THE EU GOVERNANCE PATTERNS

The previous two sections have examined the way in which the OMC has the potential to transform the existing patterns of policy-making and politics in the EU. It has done so by pinpointing some of the novelties that the new method seems to have installed in the EU. Nevertheless, the fundamental question is to what extent these changes affect the polity dimension of the EU. In its traditional understanding, the notion 'polity' relates to the constitutional/structural aspects that shape the contours and define the nature of the act of governing (Jachtenfuchs 2001). Hence, the notion 'polity' goes well beyond the written constitution, extending as well to all the widely accepted rules, norms and procedures that have a central character for the functioning of the system and that have been formalized by explicit political

agreements and/or by praxis. The constitutional character of the EU legal system means that the EU polity comprises the EU arena and the national arenas of policy and politics. In other words, the EU is a unified, yet not necessarily consistent and homogeneous, political, social, legal and economic system with different levels.

If the previous two conditions are fulfilled, namely, if the OMC shows that policy change takes place through voluntary learning, and if the OMC shows that this 'partial delegation of power' generates stable frameworks for relevant and legitimate public action in the EU, it can be said that the OMC is contributing in an important manner to the changing governance patterns of the EU, understood as 'polity development', in the following four ways:

- 1 Firstly, by overcoming the functional boundaries of formalized EU integration. The formal Treaty provisions regarding the areas of EU action only mention the use of OMC in the employment paragraph and the broad economic guidelines. However, the use of the OMC in many central elements of the Lisbon strategy (March 2000) means that the EU has become involved in other areas than those formally enshrined in the Treaty. This informal *functional expansion* has to be partly understood as a solution to the gridlock between the political limits of the further transfer of competences, on the one hand, and the pressures for further national co-ordination in competitiveness-fostering and welfare-fostering areas, on the other. But it has also to be understood partly as the result of the high level of functional interdependency of socio-economic issues in the current advanced capitalist societies.
- 2 Secondly, the OMC develops the EU polity by contributing to (and steering) the growing *transnationalization* of the EU as a political system. The high density of issues that characterizes the EU does not just refer to those that have been transferred to Brussels, but also the multitude of policy areas at national level. By means of the OMC, these areas might become subject to systematic and constant exposure (both to the public and to the EU members) in a way that the conventional processes of national policy-making will be transformed, generating a trans- rather than supranational policy dynamics. In contrast with the vertical dimension of supranational policy-making, transnational policy dynamics might be understood as an extensive process of mutual functional influence across national policies, in a horizontal dimension.
- 3 Thirdly, the OMC might strengthen the *multi-level nature* of the EU polity. The roles of the different levels of government are in a constant state of flux and deeply intertwined, as opposed to the image of a 'two-level game' where national–EU spheres are static and clearly delimited by Treaty reforms. The OMC might enhance this mutual multi-level dependency because the participation of social, sub-national and local actors becomes essential for a successful definition and implementation of national plans, as for example in the case of employment.

4 And fourthly, the OMC might contribute to new governance patterns by *accommodating diversity* within a single political project. The European project has traditionally chosen to pursue the goal of harmonization, and seen diversity in some aspects as problematic. With the extensive transfer of competences to the EU the objective of harmonization is reaching its limits, and new ways have to be chosen. The OMC ushers in a change of attitude about the question of intra-EU diversity. To put it in another way, diversity is no longer antagonistic to the European integration project, but a positive asset that can unleash mutual learning and change affecting in a constructive way the overall European project.

CONCLUSION: THEORETICAL CHALLENGES AHEAD

The previous account of the possible transformations that the OMC might convey in the policy, politics and polity dimensions of the EU is anchored theoretically in the supranational governance paradigm of EU studies. This section explicitly brings to the fore some theoretical considerations and the analytical challenges that the OMC brings to this paradigm.

Based on the previous sections of this article, it can be argued that the OMC contains sufficient elements to be considered a significant event in European integration around which much of the inter-paradigmatic theoretical debates have revolved. This is mainly so because, if successful in achieving its own goals, the OMC will expose the limits of conceptualizing the EU as a 'regulatory state' along the traditional 'Community method', and might also unleash new dynamics in the process of regional integration in Europe. Since these two points convey important theoretical considerations, we will examine them one by one.

The historical centrality of 'integrating by law' (Armstrong 1998; Shaw 1999) is based on the fact that the construction of the EU as a supranational system of governance has been strongly linked to the co-evolution of two mutually adapting institutions, namely, the extensive use of formal and soft law regulation as a low cost policy tool at supranational level on the one side (Majone 1996a, 1996b), and the definition and gradual political acceptance of the EU as a hierarchical system of law on the other (anchored in the principle of supremacy, as defined by the European Court of Justice). The essential political nature of the OMC, and its decidedly non-hierarchical, non-coercive mode, gives a breath of fresh air to the 'first pillar' of the EU, so previously dominated by the Community method. The enshrinement of the OMC in the Lisbon conclusions formalizes the process of 'integration by co-ordination', by which integration is no longer a calculated transfer of competences to the (semi-federal) supranational level and subsequent mandatory adaptation of national institutions and rules, but essentially a rapprochement of national policy and political designs into a single collective reality that reflects the increasing complexity and strong interdependency of the European society and economy. The innovative procedure of the OMC, as the main

instrument of integration by co-ordination, reinforces and articulates the already existing transnational political dynamics and cognitive dimensions in the system of EU governance. And it does so by strengthening the organizational capacity of common and co-ordinated action in some policy areas both by the formal procedures and institutions of governance developed, and by its contribution to a normative order of common visions and shared causal beliefs. Policy actors have begun to rethink national policy in the sensitive welfare-fostering and competitiveness-fostering areas in the light of 'common problems' and redefine it in terms of 'common concerns', but not transforming it in 'single-minded common action'. Therefore, it might embody a structuration (constitutionalization) process where new modes of collective action are framed in an increasingly flexible political context.

This leads to the second point that was raised earlier, namely, that the OMC might unleash new integration dynamics. The definition of what integration is has been a much debated issue in EU studies in several ways, mainly, whether integration is a process or an outcome, and how the political and economic aspects relate to each other (Rosamond 2000). Arguing that the OMC might unleash new integration dynamics is to say that the OMC might foster new political dynamics at national and subnational levels, which might have an impact upon the EU level itself. This impact does not necessarily need to be further EU regulation (generating formal institutions), but a process where integration is essentially the process of generating informal institutions (ideas, routines, unspoken norms of conduct) in a political space characterized by formal diversity.

All this indicates the need for further theoretical considerations about the integration process and governance patterns in the EU. Johan Olsen has suggested that the main question in EU studies should relate to how systems of governance emerge, are maintained and changed. Therefore, for this author, 'The challenge is to model the dynamics of change in ways that make the simplifying assumptions behind various definitions [of Europeanization] accessible to empirical tests. The way ahead lies in integrating perspectives on institutional dynamics, rather than choosing among them' (Olsen 2002: 944). Olsen identifies five clusters of theoretical understanding about 'Europeanization', namely, changes in external boundaries, developing institutions at the European level (mainly the ability to make and enforce binding decisions and to sanction non-compliance), central penetration of national systems of governance (involving the division of responsibilities and powers between different levels of governance), exporting forms of political organization, and a political unification project. It is remarkable that none of these five forms includes direct theoretical considerations about Europeanization in terms that could consider the new modes of transnational co-ordination. In other words, previous institutionalist theories of integration seem ill-equipped to explain this new phenomenon, which is 'not well captured by a definition of institutionalization in terms of "supranational" governance or "legalisation"' (Armstrong 2003: 172). Nevertheless, the four points mentioned earlier in

this article concerning the *potential ability* of the OMC to transform the EU polity (namely, informal functional expansion, fostering transnationalization, strengthening the multi-level dimension, and the accommodation of diversity) are *hypotheses* anchored in an understanding of European integration as a process guided by material and cognitive dimensions of actors' interaction. Therefore, this understanding follows Olsen's plea for the need for 'integrating perspectives on institutional dynamics', where change is the result of both the purposeful choice of actors and their deliberation/mutual accommodation.

A research agenda based on these assumptions needs to provide empirically testable answers to the main question about how far the OMC is transforming the EU system of governance. Conceptualizing the EU as a system of governance among others, and not as a 'sui generis' phenomenon, implies that such a question leads to a comparative research strategy with other complex and multi-level governance systems, such as federal or semi-federal systems, and/or international governance systems. Hence, a way of approaching analytically the potential impact of the OMC would be, first, to take the two levels examined earlier, namely, the policy and politics dimensions of the EU, and compare their dynamics with other governance systems. The point of departure could be to ask whether the strongly defined procedures of the OMC have a different impact in terms of the degree and forms of cross-national or cross-constituencies' learning processes when compared with other procedures (perhaps less formalized) existing in international organizations like the OECD or the United Nations Conference on Trade and Development (UNCTAD), or in federal systems like Germany or the US. Similarly, an analytical angle would be to explore the contents and effects of the partial delegation of power between the members and the political 'centre' in a comparative manner, particularly the de facto changes in the roles of political institutions within the governance system and their gradual adaptation to the need to provide solutions sharing competences between different levels in the absence of a clear 'shadow of hierarchy'. Comparative analysis between the EU dynamics and federal and/or international governance systems might help us to understand the conditions under which the partial delegation of power is an effective problem-solving mechanism, and when it does not generate any clear positive outcomes. Last but not least, research results from the policy and politics level of analysis would shed light on the singular constituent effects of the OMC or not as compared to other (less or more) formalized forms of co-ordination in complex, multi-level, and functionally interdependent governance systems. This will be the polity dimension of the comparative study. Whereas some pioneer comparative analyses are being undertaken in some policy areas, particularly employment and social policy (Zeitlin and Trubek 2003), more empirical research in this area needs to undertake a decidedly comparative turn, not across EU member states' differential implementation of the OMC, but mainly between the EU and other systems of governance.

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NOTES

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- 2 Articles produced on the various OMC processes have been collected and made available by the EU Center at the University of Wisconsin, Madison (<http://eucenter.wisc.edu>).
- 3 The new innovation policy agenda is a linchpin of the new competitiveness strategy.
- 4 The importance of functional interdependencies and spillover in the case of employment policy is disputed. Van Riel and van der Meer (2002) argue that functional spillover from monetary union to employment policy did not play any role in the argument for a common employment policy. However, interdependencies of national employment policies *are* used as argument for policy coordination, as exemplified by the following Commission statement on the Amsterdam treaty: 'Embedded throughout the approach set out in the Treaty is a recognition of the inter-dependence of employment policies pursued in Member States, and the need for co-ordination to ensure that measures to support employment in one Member State do not negatively affect progress in others. The notion of employment as a matter of common concern stresses that Member States, in pursuing their own employment policies, should be contributing to a "positive sum game" across the Union' (URL: www.europa.eu.int/comm/employment_social/empl&cesf/amst_en.htm).
- 5 Moreover, the establishment of the macro-economic dialogue in 1999 provides a forum for the exchange of views between the European Central Bank, representatives of finance ministries, the Commission and the European social partners.
- 6 Some authors have expressed the wish that the Convention could demand in its draft Constitution a firm requirement to fulfil the democratic potential of the OMC by formalizing the consultation procedures with non-governmental actors (De Búrca and Zeitlin 2003). However, although it suggested enshrining the use of the OMC in some de facto operating areas (like industry, health, research, EMU, employment and social policy), the draft submitted by the Convention in July 2003 did not formulate any requirement to include social actors, only that the European Parliament should be informed.

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