

National Parliaments in the European Union: Are There Any Benefits to Integration?

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Abstract: *Scholars and observers alike agree that the European Union has weakened national parliaments. This article posits that such a view, while generally accurate, ignores ways in which the EU has helped national parliaments in their function as regulators of society. It identifies two key mechanisms: precedent setting and policy transfer. First, the EU has produced laws on topics considered beyond the traditional remit of national parliaments. The EU's intervention has justified the production of unprecedented domestic laws that go well beyond the incorporation of EU principles. This has expanded the legislative reach of national parliaments. The article considers the experiences of Italy and The Netherlands in the area of antitrust. Second, the EU has fostered an environment conducive to cross-national lesson drawing. The resulting knowledge has helped the design of more effective domestic legislative frameworks. This has confirmed the viability of national parliaments as regulatory institutions. The article examines the Open Method of Co-ordination and its application to the areas of employment and social inclusion. It concludes with a discussion of parliaments in future Member States and in Mercosur.*

I Introduction

The consensus among scholars and observers alike is that the European Union has weakened national parliaments. Numerous scholars have noted that national parliaments must accept EU law, which is mandatory and superior to national law, without having participated in its formulation. They have thus described a process of decommissioning of national parliaments, or of 'deparliamentarisation' of the Member States (Schmidt, 1999). Other scholars, somewhat critical of this interpretation, have noted that amendments to EU treaties and a series of domestic initiatives have recently helped national parliaments to increase their control over the production of EU law (Raunio, 1999; Raunio and Hix, 2000). Yet, in arguing that national parliaments have gained

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back some lost power, these critics have also subscribed to a negative evaluation of the impact of the EU on national parliaments.

In this article, we propose that the current consensus on the EU's impact on national parliaments, though generally correct, ignores ways in which the EU may have in fact helped those parliaments to function as regulators of society. We identify two distinct venues through which this may have happened: precedent setting and policy transfer. In the case of precedent setting, we observe that the EU has produced laws on topics considered beyond the traditional remit of national parliaments. We then argue that national legislators, along with government officials, have used the EU's intervention to justify the production of new domestic laws in those areas that not only incorporate but also build upon EU law. As more issues areas become subject to legislative control, the reach of national parliaments has expanded. In the case of policy transfer, the EU has facilitated communication and data sharing across Member States. The resulting knowledge has helped legislators and government officials design more effective legislative frameworks. This has confirmed national parliaments as viable regulatory institutions.

We offer a set of empirical case studies to support our claims. For precedent setting, we examine the introduction of antitrust legislation in the EU and its repercussions in Italy and The Netherlands. In the case of policy transfer, we turn to the Open Method of Co-ordination (OMC) and its application to employment and social inclusion. In the discussion section, we consider the implications of our findings for the enlargement process. Have the national parliaments of the new Member States benefited from participation in the European project? We then consider whether the findings have relevance for other regional integration efforts, such as South America's Mercosur.

II The Current View: The Struggle of National Parliaments in the EU

Over the years, scholars have developed a 'de-parliamentarisation' thesis to describe the fate of national parliaments in the EU. The thesis argues that 'national parliaments suffer from a lack of authoritative power over transnational policymaking' (Schmidt, 1999, p. 25). The general course of European integration, which sets the broad objectives of EU law, is largely dictated by decisions made in the European Council, a body composed of the heads of state. EU law is in turn the product of the EU Commission, the European Parliament and the Council of Ministers. The first two bodies are supra-national in nature. The third is composed of members of national executive branches.

National legislators have thus had no significant participation in EU affairs. The primary function of national parliaments has been to transpose EU directives into national law and to ensure consistency between ongoing national and EU law. This, scholars argue, has deprived national parliaments of their right to deliberate, and has effectively turned them into administrative extensions of the EU (Duina, 2003). Noting the presence of heads of state and national ministers in the European Council and the Council of Ministers, scholars then argue that national parliaments have lost ground to the benefit of the executive branch. Schmidt (1999, p. 25) observed that transnational policymaking 'is generally the domain of national executives'. Weiler and his colleagues in turn proposed that 'EU governance results in a net empowerment of the executive branch of states' (Weiler, Haltern and Mayer, 1995, p. 7).

Some scholars have recently criticised the de-parliamentarisation thesis. The issue, however, has been *the extent to which the EU has undermined the authority of national parliaments*, rather than any questions about the direction of the EU's impact on them.

These critics have argued that the presumed freedom of national executives operating in Brussels and other transnational premises may have been overstated: that, in other words, national parliaments exert some control over European legislative processes and may hence not be fully passive in accepting EU intrusions. They point out, first, that the Maastricht Treaty included two declarations on national parliaments. Declaration 13 asserts that 'it is important to encourage greater involvement of national Parliaments in the activities of the European Union'. This should be achieved through information sharing, collaboration with the European Parliament and the submission of proposed Commission legislation for 'information or possible examination'. Declaration 14 then asks for regular formal meetings between national and European parliamentarians. The Amsterdam Treaty later adopted more binding language. Articles 1 and 2 of its protocol on national parliaments state:

All Commission consultation documents shall be promptly forwarded to national parliaments of the Member States . . . Commission proposals for legislation . . . shall be made available in good time so that the government of each Member state may ensure that its own national parliament receives them as appropriate.

Articles 4–6 follow by establishing formal mechanisms for national parliaments to voice their concerns to the European Parliament, the Commission and the Council of Ministers.¹

The critics also point out that national parliaments have established European Affairs Committees (EACs). Their function is 'to influence and control national decision-making on individual pieces of EC legislation' (Raunio and Hix, 2000, p. 155). Their power varies across member states. In the UK, where the House of Commons and the House of Lords both have an EAC, EACs examine closely EU legislative proposals in order to raise issues and concerns. Ministers can then vote as they wish. The same occurs in France (Agostini, 2001). In Austria, Germany and Denmark, on the other hand, EACs have 'the right to issue binding voting instructions to government representatives' (Raunio and Hix, 2000, p. 155). In Austria and Germany, this right is seldom exercised, but in Denmark it is exercised routinely and with success. In the words of Claus Larsen-Jensen, Chairman of the Folketing's (Danish Parliament) European Affairs Committee and Danish MP, 'instructions are always followed'.²

To this, the critics add that standing committees within parliaments have also been instituted. These are meant to provide national legislators with technical knowledge and thus increase the 'legislature's policy expertise vis-à-vis the government, which due to its superior organizational resources and regular presence in the Council and Commission working groups enjoys an informal advantage over the legislature' (Raunio, 1999, p. 193).³

¹ The recently proposed draft treaty for a European Constitution, if ratified by all the Member States, will grant national parliaments more power to stop EU legislation if deemed contrary to the principle of subsidiarity: if a third of all national parliaments object to a proposed law, the Commission is asked to review and possibly drop the proposal. Again, though, this will only constitute an attempt to grant national parliaments some control over the intrusiveness of the EU, and will not represent a mechanism that will make them better off than if they were not participating in the EU.

² Interview with the authors (Copenhagen, 17 May 2002).

³ There are additional ways in which national parliaments have gained control over national representatives from the executive branches as they vote in Brussels. In The Netherlands, for instance, proposals having to do with the Third Pillar of the EU (Justice and Home Affairs) require the consent of parliament.

Despite their differences, then, proponents of the de-parliamentarisation thesis and their critics share one conviction: that the EU, albeit to different degrees, has undermined the power of national parliaments. On the whole, this is an accurate conclusion. Yet, it is not descriptive of the full impact that the EU has had on national parliaments. In the next section, we explore ways in which the EU may, in fact, have benefited national parliaments.

III Parliaments and Power: the Benefits of European Integration

We propose that European integration has benefited national parliaments through two specific venues: precedent setting and policy transfer. Through these venues, the EU has helped national parliaments to fulfill their fundamental function of regulating society. Precedent setting has done so by expanding the *reach* of parliaments, while policy transfer has done so by confirming the *viability* of those parliaments as regulatory institutions.

A Precedent Setting

The national legislature of any given country regulates some, but not all, spheres of social life. Several southern European states, for instance, did not produce laws on the environment for many decades. Many northern countries have long had very limited legislation on alcohol and tobacco consumption. In most EU Member States, national parliaments had very limited legislation on gender issues at the workplace for most of the twentieth century.

Absence of parliamentary activity in any given issue area might be explained by a number of variables. Four seem especially influential. First, interest on the part of the public, key interest groups and key sectors of society in regulating a particular topic may be missing. Second, regulation may occur through venues other than law. Courts, national administrative branches and collective agreements (involving key interest groups and possibly the state) may be the places where norms and agreements are born. Third, parliament may be suffering from a longstanding deadlock. Entrenched factions with opposite views have sufficient power to block any meaningful legislative proposal. Fourth, there may be a lack of leadership in parliaments. Though sufficient votes could be garnered with the proper incentives and compromises, no single individual or group has the ability and resources to take action.

We propose that EU law can act as a catalyst for parliamentary activity in those areas traditionally not subject to domestic legislation. What Mazey (1998, p. 131) observed in the case of EU laws on gender equality can be generalised: 'The Community delivered a "shock" to national policy systems and helped create a new policy area at the national level'. The 'shock' occurs because the introduction of EU law affects precisely those variables that preclude parliamentary activity. The arrival of an EU law arouses interest on that topic, establishes law as a legitimate option for regulation and provides interested parties with enough impetus to overcome the opposition.

In all of these cases, the EU sets a precedent. It sends a message that legislative intervention in a particular subject area is desirable, appropriate and necessary. National parliamentary activity—whether instigated by government officials from the executive branch, internal members of parliaments or even other actors such as civil society groups—follows. Sometimes, national laws are put forth as expansions of EU law (for example, a domestic law on parental benefits follows an EU law stating that men and

women should be paid equally at the workplace). At other times, national laws are seen as deploying principles found in EU law to new areas (such as a new law on air quality following an EU law on water quality). On yet other occasions, domestic laws are presented as complementary to EU law (for example, a law on the use of artificial flavours in food following a law on artificial colouring). Regardless of how they originate or are framed, these new domestic laws represent a strengthening of the national legislative function. They point to an expanded role for national parliaments: parliaments, and with them law, become the vehicle for the regulation of more and more areas of social life.⁴

B Policy Transfer

The legislative organ of any given country can boast of policy areas where national laws offer a comprehensive and effective approach. It can also point to areas, however, where the existing frameworks are weak. The legitimacy of national parliaments as regulatory bodies in given policy areas depends on their ability to produce 'quality' laws. When they fail to do so, critics point to other venues—such as private actors, collective agreements or administrations—for the regulation of society.

Policy transfer represents a significant venue for the improvement of legislative outputs. It may be defined as 'a process in which knowledge about policies . . . in one time and/or place is used in the development of policies . . . in another time and/or place' (Dolowitz and Marsh, 1996, p. 344). Officials involved in the legislative process from different countries learn from each other,⁵ as data about best practices is made increasingly available across national frontiers (Bennett, 1991a; Rose, 1991; Dolowitz and Marsh, 1996; Stone, 1999). Officials learn how to set objectives (e.g. choice of goals, prioritisation), devise strategies (e.g. appropriate measures, trade-offs, coordination), work with multiple state functions (e.g. the administration, the courts), cooperate with elements of civil society (e.g. interest groups, targeted groups) and more. Such learning can drive the formulation of more realistic and sustainable legislative frameworks.⁶

Scholars identify various mechanisms that make policy transfer possible. Policy makers at times simply borrow voluntarily ideas and knowledge from other places and times. In other cases, more coercive factors are at work. These include externalities—such as technological change, global economic pressure and international consensus—which subject several countries to similar external pressures and increase the rewards of cooperation. They also include powerful agents—such as an organisation or a supra-national institution—that are endowed with the resources to facilitate or even impose transnational exchanges.

Evidence already exists that the EU has throughout its history created externalities conducive to the transfer of useful ideas and knowledge (Bomberg and Peterson, 2000, p. 9; Levy, 1997; Padgett, 2003; Wiener and Neunreither, 2000; Wallace, 2000). These

⁴ Note that precedent setting can also be argued to extend the reach of the executive branches of the Member States. Unprecedented laws require implementation after all, and this entails the development of new administrative programmes and institutions.

⁵ Again, these might be officials from the executive or legislative branches, or even social actors capable of influencing the legislative process.

⁶ Many analysts are confident that policy transfer normally leads to the design of 'substantively better' policies (Bomberg and Peterson, 2000). We should note, however, that Rose (1991), Esping-Andersen (1996, pp. 2, 267) and others have expressed doubts.

externalities have included the introduction of the single currency, the reform of the Common Agricultural Policy and responses to public health crises such as ‘mad cow’ disease. Much evidence exists, for instance, that the introduction of the European Monetary Union sent countries with weak financial situations in search of insights across the EU. The 1995 pension reforms in Italy hence reflected at least in part the ‘borrowing’ of concepts and ideas from earlier Swedish reforms.⁷

We propose here that the EU has also built concrete mechanisms for valuable exchanges of information and data. These are EU-sponsored forums, regular conferences and programmes dedicated to particular policy areas in which national officials regularly meet (Mèny, Muller and Quernome, 1996). In those areas where there exists much supranational legislation, the EU has used these exchange mechanisms to ensure the proper implementation of its law. However, the EU has also used these mechanisms to promote better law making at the national level in areas where it has no competence to intervene, such as education or social security. In these cases, the EU has created remarkable learning opportunities, both among national legislators and members of the executive branches involved in the legislative process. Armed with knowledge and insights, those officials have then turned to national parliaments to generate more effective regulatory activities, thereby helping national parliaments to fulfill their function as regulators of society.⁸

In the next section, we consider precedent setting and antitrust policy in two Member States: Italy and The Netherlands. In the subsequent section, we examine the origins and characteristics of OMC and its deployment in the areas of employment and social inclusion.

IV Precedent Setting: the EU Regulates Antitrust

The EU’s antitrust initiatives opened doors for unprecedented parliamentary activity in Italy and The Netherlands. The Treaty of the European Communities outlined the broad antitrust principles for the EU. Article 81 focused on agreements that can distort trade between member states:

The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market (Article 81 EC).

Among the prohibited agreements are those fixing prices, limiting production levels, sharing of markets and offering preferential treatment. Article 82 in turn prohibited companies with a dominant market position to engage in activities that might distort trade between the Member States:

⁷ See Franco (2001) and Palmer (2001). For this insight, we benefited from correspondence with those two authors (May 2003). Both reforms entailed a move from a defined benefit to a notional defined contribution system (International Social Security Association, 1996, p. 3).

⁸ Of course, policy transfers have also helped in the design of more effective administrative policies as well (often in tandem with the design of more effective laws), and have thus contributed to a strengthening of the executive branches of the Member States as well. Given our analogous observation about precedent setting (see note 4 *supra*), we suggest here that the EU has benefited nation states as a whole. We then add that the existing tendency on the part of scholars to focus on the advantages enjoyed by national executives over national legislators as they operate in Brussels paints a misleading picture of how the EU may benefit one branch of Member States at the expense of another.

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market as it may affect trade between Member States (Article 82 EC).

Such abuse would include the imposition of unfair purchasing or selling prices, the adoption of unfair trade conditions, the reduction of production levels and the preferential treatment of selected players. Importantly, both Articles 81 and 82 address the *European marketplace* and trade therein. They do not specify principles for the regulation of domestic competition, unless of course activities within those markets have consequences for trade between Member States (Waarden and Drahos, 2002, p. 914).

Articles 81 and 82 did not provide specific guidelines for investigation, assessment and implementation. Moreover, they did not cover all possible anti-competitive agreements or practices. Article 81 in fact required, for its application, the existence of a formal agreement between undertakings. Article 82 in turn required that the undertaking(s) in question already enjoy a dominant position. Recognising this, the Commission began crafting a new law in the mid-1980s. The result was Regulation 4064/89, known as the Merger Regulation.

The Regulation opens by recognising the limits of Articles 81 and 82. It then offers an overview of how a concentration may come about: fusion of independent companies, acquisitions, joint ventures and so on (Article 3). Annual turnover is selected as the critical dimension for identifying potentially harmful arrangements. The Commission is to be notified when the 'aggregate worldwide turnover of all the undertakings concerned is more than ECU 5,000 million' and when the 'aggregate Community-wide turnover of each of at least two of the undertakings is more than ECU 250 million' (Article 2). Notifications jumped from 12 in 1990 to a peak of 345 in 2000 and 277 in 2002.

As with the Treaty, the Regulation thus concerns itself with concentrations that have a Community dimension and a potential impact for European-level competition. It explicitly leaves untouched concentrations that might affect less than 25% of the relevant market (Preamble). Most national-level mergers are thereby not covered. Accordingly, the Regulation, like the Treaty articles, does not ask national legislators to produce complementary laws for domestic-level concentrations (European Commission, 1999, p. 329; Waarden and Drahos, 2002, p. 914).

A Beyond the Impasse: Italy Targets Mergers

Until 1990, Italy had no general antitrust law. Special laws prevented monopolies in the newspaper and broadcasting industry (Bartocci, 1994, p. 542). These, however, were highly targeted and of limited applicability. Two factors—parliamentary deadlocks and a general public disinterest in preventing anti-competitive behaviours—had precluded the development of more comprehensive legislation.

In parliament, several antitrust bills were put forth starting in 1950. Early key proposals were put forth by Liberal Party deputies Giovanni Malagodi and Aldo Bozzi and by eminent figures such as Ugo La Malfa. But a majority of legislators systematically opposed those attempts. All proposals failed.⁹ Opponents voiced similar concerns each time:

⁹ For a complete list of previous attempts, see Capotorti *et al.* (1989).

The main objection was that Italian firms were generally at a disadvantage in international competition because they were, on average, small in size compared to firms in most other industrialized countries (Bartocci, 1994, p. 543).¹⁰

Adopting stringent measures to discourage companies from growing—the argument went—was precisely something that Italy did not need, especially as Italian firms faced increasing competition from abroad. In the mind of legislators and parliamentary committees on monopolies, the competitive environment in Italy was fundamentally healthy, and in no need of intervention (Silva, 2000, p. 34).¹¹

Legislators were also concerned, though not explicitly so, about the future of large state-owned companies. Many were *de facto* monopolies and allowed to be so by Article 43 of the Italian Constitution. Several legislators had close ties with those companies. Because of this, antitrust legislation became early on ‘almost an heretical objective’, one for which only ‘a small minority of politicians were ready to put their heads above the parapet and argue that public interest needed defending against both public and private industrial power’ (Wyles, 1990).

The country at large, in turn, was largely uninterested in antitrust. Confindustria, the national organisation representing business, feared the creation of yet another bureaucratic hurdle (Silva, 2000, p. 35). Voters affiliated with the Communist Party, a major force well into the 1980s, championed a powerful state, running monopolistic enterprises in sectors such as energy and telecommunications. The more conservative and powerful Christian Democrats supported state companies too, but also sought to safeguard what appeared to be small and medium-sized private enterprises (Amato, 1996, p. 161). These had in fact formed intricate and complex alliances over time, which middle and upper-class Italians were hesitant to have scrutinised (*The Economist*, 1995).

The pending arrival of the EU Merger Regulation in the late 1980s sent a shock through the system. The Single European Act of 1986 had further integrated the economies of the Member States. The number of mergers in Italy and elsewhere spiked (Silva, 2000, pp. 33–35). Some of these mergers, and particularly those involving a domestic and a foreign company, qualified as having a ‘community dimension’ and thus required Commission notification. Those having a national dimension, however, went unexamined, regardless of their consequences for national markets. This put Italy in a unique position: it alone in Europe had no domestic regulatory frameworks. The situation was awkward. As the *Financial Times* put it, ‘without an antitrust law of its own, the Italian position in the European Community would be foolish rather than just anomalous’ (Wyles, 1990).

The arrival of the EU Regulation presented a new opportunity for parliamentary action. In the words of the President of the Italian Senate, ‘Europe gave the county the extra push to open competition by demolishing taboos which to us seemed insurmountable’ (Mancino, 2000, p. 9). Senator Roberto Cassola, Chairman of the Senate’s industry committee and President of the parliamentary Commission on Competition, seized the opening. He had begun launching investigative hearings on competition as early as 1987. During that time he worked with industry leaders and colleagues to develop a general antitrust framework for Italy. Cassola could now point to Brussels

¹⁰ For an overview of these and other reasons, see Munari (1991), as cited in Bartocci (1994, p. 543).

¹¹ See, for instance, the conclusions of the Committee of Inquiry, following a 1961–1965 investigation (Amato, 1996, p. 158).

to justify his actions. There was a need, he noted in 1990, to 'regulate the domestic market in harmony with the Community norms' (Associated Press, 1990). In parliaments, proponents of antitrust regulation used that argument to convince opponents (Silva, 2000, p. 36). Momentum was building. During 1987 and 1988 alone, three comprehensive proposals were submitted.¹² By 1990, a majority in parliament seemed poised to pass a law.

Public mistrust still had to be won, however. Scepticism at this point came from business as much as from labour. Both feared the arbitrary application of antitrust principles on the part of a politically controlled commission. Cassola addressed those concerns by proposing the creation of an antitrust authority that would function independently of government influence. The Guarantee Authority would seek the impartial and consistent implementation of any national antitrust legislation (Wyles, 1990).

The result was the first major antitrust legislation in the country: Law 287 of 10 October 1990. Observers noted immediately that the law exhibited 'a high degree of deference to the EEC competition rules' (Bartocci, 1994, p. 547). The law opened by acknowledging Articles 81 and 82 EC and the subsequent antitrust legislation (Preamble). In line with EU law, it targeted anti-competitive agreements (Article 2) and abuses of dominant positions (Article 3). The focus, however, was the *national market*. Hence, thresholds for notification were lowered: Lire 500 billion for the combined undertakings and Lire 50 billion for a target acquisition (both numbers were to be adjusted yearly in line with inflation) (Article 16).¹³

With Law 287, the Italian parliament produced a powerful and comprehensive law in an area hitherto without any legislative intervention. The law proved highly consequential from the start. The Guarantee Authority became very active early on (De Nicola, 1991a, 1991b; Fignani, 1992). Between 1992–1994 the Authority produced 85 decisions on restrictive practices and 60 on abuses of dominant positions, while it investigated 1,421 mergers (*The Economist*, 1995). Highly publicised cases involved Coca Cola, airports in Rome and Milan, and Alitalia (McKay, 1999; *The Economist*, 1995).

B Spoiling the Cartel Paradise: The Netherlands Pursue Competition

Up until 1998, The Netherlands was known as a 'cartel paradise' (Brusse and Griffiths, 1998). Formal and informal mergers and alliances proliferated across industries. Cartels—which included market-sharing, purchasing and pricing agreements amongst firms—were legally accepted and recognised in a variety of industries ranging from transportation to banking, transport, food, retail, textile, insurance and beyond (Brown, 1996; Brusse and Griffiths, 1997, pp. 385–387). The country's embrace of cartels reflected a desire to protect small companies from large international competitors. It also reflected a preference—developed after World War II—for stability and social harmony (Brusse and Griffiths, 1998; OECD, 1999, p. 10).

The main mechanism for controlling cartels was a revered tripartite collective bargaining forum: the Social Economic Council. An advisory body made up of union representatives, employers and laymen, the Council decided most aspects of economic and

¹² Legislative proposals no. 1365 of 5 August 1987, no. 102 of 10 May 1988 and no. 1240 of 26 July 1988.

¹³ The regulation also includes restrictions and exceptions that have no parallel in EU law. These include restrictions on the freedom of private industrial companies to acquire stakes in credit institutions (Articles 27–30), abrogated in 1993, and some protection of public and private enterprises that benefit the public.

social policy, including the nature, reach and limits of anti-competitive arrangements (Brusse and Griffiths, 1998). This tripartite system was typical for The Netherlands—a country that was in many respects organised along corporatist lines. This was a system in which the Dutch ‘state [had] often shared sovereignty over making and applying public policy with . . . organised market interests’ (OECD, 1999, p. 10).

Parliament’s role in regulating competition had thus been kept to a minimum by the existence of an alternative venue to law for regulation. Until 1998, the Economic Competition Act of 1956 was the only law in place. The Act was remarkably weak and ineffective, and described by observers as ‘dormant’ (Brusse and Griffiths, 1998). Rather than prohibiting *a priori* anti-competitive behaviour, the law targeted only behaviour counter to the ‘general interest’ of society. Arrangements that promoted Dutch productivity and wealth were strongly encouraged. Thus, only eight agreements had provisions dissolved during the period 1958–1998 (Brusse and Griffiths, 1998, p. 398).¹⁴

The push for a single European market in the late 1980s and early 1990s led to an increase in European Commission’s scrutiny of the Dutch economic landscape. Several investigations found the size of Dutch cartels sufficiently large to influence competition at the Common-Market level. In the most publicised case, the Commission fined the Dutch construction cartel SPO €22.5 million in 1992 for price-fixing and other harmful practices. The cartel represented over 4,000 builders, almost the entire construction business of the country (European Information Service, 1995). Cases such as this, and the arrival of the EU Merger Regulation in 1990, ‘triggered a great deal of commotion in the Netherlands’ (Drahos, 2001, p. 368): they made it unequivocally clear that competition could, and in the mind of the EU should, be a matter for legislative regulation (Waarden and Drahos, 2002, p. 932).

A flurry of government activities and reports followed. The application of EU law to large cartels meant that two contradictory approaches were affecting the Dutch economy: a European one focused on law, and a domestic one involving tripartite negotiations (Drahos, 2001, p. 366). During parliamentary debates, ‘national competition law and its relation to European rules had shifted to centre stage’ (Drahos, 2001, p. 368). A small group of leading Dutch politicians began exploiting this opening to bring competition under parliamentary authority (OECD, 1999, p. 12). They spoke of ‘bridging the gap between Brussels and The Hague on matters of cartel policy’ (Brusse and Griffiths, 1997, p. 398).

In 1994, Dutch Economic Affairs Secretary Yvonne van Rooy worked on a proposal for a Dutch competition law that she presented as being ‘in line with European Union regulations’ (EuroWatch, 1994). The law would ‘once and for all dispel the perception that the Netherlands is a cartel paradise’ (EuroWatch, 1994) by introducing a new balance between protectionism and dynamism that was more in tune with the European environment (OECD, 1999, pp. 10–15).

Aware that parliament was entering uncharted ground, Van Rooy asked the Social and Economic Council to examine the proposal and report back in six months. The Ministry of Economic Affairs in turn spent much of 1995 expressing doubts that the 1956 Act could effectively safeguard competition (EuroWatch, 1996). Then, on 2 May 1996, Economic Affairs Minister Hans Wijers presented to parliament a draft of a law that would ban cartels outright and institute a commission to oversee mergers and alliances (Brown, 1996).

¹⁴ For an analysis of the impact of the 1956 Act, see Brusse and Griffiths, 1997.

Wijers introduced the law as something that would complement EU-level norms (*ANP English News Bulletin*, 1996). Wijers himself was leading an initiative in Brussels to expand the European Commission's power of investigation into mergers that did not reach community-level turnovers, but which required notification in at least three member states (*ANP English News Bulletin*, 1997a). The OECD, along with the press, referred to the EU regulation as the incentive behind the Dutch efforts (AFX News, 1996; OECD, 1999, p. 12).

The Wijers proposal encountered opposition.¹⁵ Nevertheless, a year later, the Competition Act of 1 January 1998 was signed into law. The law provided 'exceptionally close links with European competition law' (Drahos, 2001, p. 109). Passages were copied directly from EU law and clauses that referred to 'trade between the Member States' and the 'common market' were replaced by their Dutch equivalents (Drahos, 2001, p. 109). Principles found in Articles 81 and 82 EC were affirmed in Article 6 and 24 of the Act, though adjusted to the national market (Ottervanger and Voorde, 2002). Concentration levels were lowered to joint turnovers of Dfl 250 million and where at least two of the enterprises earned at least Dfl 30 million in The Netherlands. The Act also incorporated directly the exemptions found in the EU regulation (see, for example, Articles 12, 13 and 14). The Dutch Competition Authority (*Nederlandse Mededingingsautoriteit*) was also created on the same day and endowed with the power to apply both the principles of the new Competition Act and those in EU law.

The Competition Act and the Authority were truly revolutionary. Indeed, at first, their practical effectiveness was questioned. The Authority was housed several miles away from key governmental offices. Dutch companies, moreover, 'coddled until recently by a softer régime, [were] often puzzled that the new cartel-basher [could not] be brought to heel' (Gray, 1998). Yet, the Authority became rather active early on. 'The Netherlands is no longer a cartel paradise,' declared Willem Kist, Director General of the Authority, in 1998: 'We have succeeded in a short period of time in putting the [Authority] on the economic map of the Netherlands' (Gray, 1998). Indeed, by 2002 the Authority had 'barred or unwound no fewer than 350 cartels' (*The Economist*, 2002). For the first time in the country's history, then, law had become the vehicle for regulating competition in the country.

V Policy Transfer: OMC and the Cases of Employment and Social Inclusion

In use since 1997, OMC was formally launched at the Lisbon European Council of March 2000. Its purpose was to spread legislative 'best practices' across the Member States in areas where the EU has no competence for regulation. Areas have thus far included information technology, research and development, economic reforms, education, employment, social inclusion and pensions (Bennett, 1991b, p. 43; Vandembroucke, 2001; Working Group, 2001). Observers have described OMC as a clear effort on the part of the EU to encourage policy transfers among member states (Hodson and Maher, 2001, p. 727). OMC is in fact a compendium of mechanisms for cross-national communication. Four mechanisms are at work in most policy areas.

The EU collects *National Action Plans* (NAPs) on a regular basis from the Member States. In these plans, Member States disclose their legislative approaches and

¹⁵ Wijers had to make concessions, for instance, for public health insurance boards, newspapers and shopping malls (*ANP English News Bulletin*, 1997b).

frameworks on given topics.¹⁶ The Commission and the Council collect the plans and make them publicly available for review. National government officials and legislators have the opportunity to learn about the activities of their counterparts. An in-depth, public cross-national comparison of national plans follows with the release of *Joint Reports* (JRs). These represent a second major venue for learning. The Commission and the Council compare well-designed laws and programmes with weaker initiatives. Strategies are examined, problems identified and recommendations made.

Indicators are crucial for framing problems and devising sound solutions. They include statistics, ratios and other numerical as well as qualitative measurements. OMC actively promotes cross-national awareness of indicators. The EU collects information on the use of indicators in the Member States and makes that publicly available. It also helps Member States to develop shared indicators. Lastly, OMC relies on *Peer Review Programmes* for lesson drawing. These include a variety of sessions, conferences and exchanges in which national officials present, compare and share information. Some of these activities take place in countries where best practices have been identified, to enable site visits and closer inspections.

Some scholars have described OMC as a way for the EU to advance certain agenda items and goals (Regent, 2003). Undoubtedly, the Commission in particular has influenced the terms of the debate and steered progress in certain directions (Borrás and Jacobsson, 2004; Héritier, 2002). Yet, OMC has from the start conformed to the spirit of subsidiarity, with the Commission acting primarily as a facilitator for exchanges (de la Porte, 2002, p. 40). We argue that OMC should be seen above all, as de Búrca and Zeitlin (2003, p. 2) state, as 'a valuable tool for promoting deliberative problem-solving and cross-national learning across the EU'. It offers a dynamic and unprecedented opportunity for national officials to acquire vital information that can prove crucial for the design of more effective and sustainable legislative frameworks (Cameron, 2003).

Other scholars have noted that the OMC has involved primarily civil servants from the Member States (and members of the EU bureaucracy) and not national legislators (Hodson and Maher, 2001, p. 730; Raunio, 2004; de la Porte and Nanz, 2004). They have then argued that national legislators have thus suffered from an information deficit, because they have had to react to decisions made without their participation (Raunio, 2004, p. 20–22). We observe here that OMC may have indeed involved national executives more so than legislators, but that this need not have been to the disadvantage of national legislators or parliaments. In fact, regardless of who, exactly, is involved in the various OMC mechanisms, the production of more effective legislative frameworks can only help national parliaments to assert themselves as the regulatory institution of society. This is particularly the case when weak legislative régimes were in place in any given issue area.

We turn to the areas of employment and social inclusion to examine the functioning of OMC and its impact on national legislative approaches.¹⁷

¹⁶ These plans are to be in line with a set of basic objectives to which all Member States have committed themselves.

¹⁷ OMC, of course, has also had an impact on administrative policymaking. The following sections focus on law, though inevitably in several cases the evidence presented concerns administrative policymaking as well.

A Employment

At the Luxembourg European Council of November 1997, the European leaders recognised the general failure on the part of most Member States to address rigid labour markets, unsustainable welfare systems and outmoded industrial-relations paradigms. The EU could not supply a solution for practical and constitutional reasons (Trubek and Mosher, 2003). As an alternative, the European Employment Strategy (EES) was launched. EES would build upon the ‘multilateral surveillance process’ used for EMU (Mosher and Trubek, 2003, p. 67) to develop a complex system of data and information exchanges. Its goal would be the improvement of national approaches to employment. EES became the first *de facto* instance of OMC, though its mechanisms for exchange were at first referred to as the Luxembourg Process.

The yearly NAPs on employment have offered national government officials and legislators an invaluable window onto national strategies, stories of success and failure and ongoing experiments.¹⁸ The 2002 Swedish and Spanish plans outlined, for instance, two very different approaches. The former focused on helping factors of production thrive. It described training and education programmes, and the partial deregulation of industries such as telecommunications, transport and electricity. Attention was also given to the aging working population, and to ways of postponing the retirement age. The 2002 Spanish NAP, by contrast, focused on the problem of unemployment and to job-creation initiatives. Those included the simplification of paperwork to start new companies, incentives for self-employment and more flexible academic requirements for jobs and part-time regulations. The Spanish NAP also described techniques for managing highly decentralised administrative and legal systems—something of interest to countries such as Belgium and Germany.

The yearly JRs on employment have offered systematic comparisons of best practices in the four areas identified by all Member States as central to their efforts: employability, entrepreneurship, adaptability and equal opportunities. The 1999 report, for instance, identified 27 good practices, ranging from new labour-market activation schemes to educational programmes. The major themes of the reports vary yearly, however, depending on perceived priorities. In all JRs, best practices are linked to concrete results in employment. Much attention is also devoted, however, to poor practices. The 2002 JIR criticised Austria, Spain and Italy for not involving social partners in policy formulation and implementation.

By 2002, OMC had helped Member States to develop a list of 35 key and 64 specific indicators to measure problems and performance related to employment. There are now standard definitions for terms such as ‘long-term unemployment rate’, ‘real unit labour costs’ and ‘marginal effective tax rate’. The peer review programme for employment has functioned as perhaps the most direct opportunity for learning and exchanges. Eight to ten reviews are done on an average year. Each focuses on intensive one-day reviews of a country’s successful initiatives in one area followed, at times, by site visits. Officials from three to five countries are present. Results from the exercises are then made publicly available.¹⁹ A recent example is Austria’s *Arbeitsassistenz* programme, which supports the integration of disabled people into the labour market via

¹⁸ The plans for 1998–2003 are available from the European Commission’s official website: <http://europa.eu.int/comm/employment_social/employment_strategy/national_en.htm>.

¹⁹ See <<http://www.peerreview-employment.org/en/>>.

Table 1. Summary assessment of the success of the European Employment Strategy (EES) in Germany

Domestic measures	Influence of the EES on national policy	Impact on employment to date	Anticipated impact on employment
1. Strategies for prevention and for activation in the event of unemployment	++	+	++
2. Employment-friendly tax and transfer system	0	+	+
3. Social integration:			
— of migrants	+	+	+
— of people with disabilities	++	+	++
4. Simplification of the administrative effort for start-ups	+	+	+
5. Creation of jobs in the service sector, at the local level and in the social sector	+	+	++
6. Modernisation of the organisation of work	++	+	++
7. Equal Opportunities	++	+	++
Overall assessment	+	+	++

Notes: 0 = no detectable impact; + = limited impact; ++ = strong impact.

Source: Germany (2002, at 2).

a set of laws launched with the Disabled Persons Employment Act and several protective laws (related to quotas, dismissal and other matters). Held in Vienna on 17–18 January 2001, it was attended by representatives from Finland, Germany, Luxembourg, Sweden, The Netherlands and the United Kingdom. The programme included a visit to a small manufacturing company that had participated in the project.

How has OMC helped national parliaments assert themselves as viable institutions for tackling unemployment in the Member States? National officials, observers and EU representatives alike agree that the OMC has helped officials in a number of countries design more robust, coherent and effective legislative approaches (European Commission, 2002a, p. 9; Mosher and Trubek, 2003, pp. 73–76, 79).²⁰ Consider the case of Germany and its efforts to reform its labour market policy. According to the Federal Ministry of Labour and Social Affairs, OMC directly influenced a number of key and successful reforms. Table 1 identifies key measures, the influence of EES on those measures and the resulting positive impact on employment.

Initiatives have included the ‘Immediate Action Programme for Young People (JUMP)’ and a new Social Code in 1998. The latter has contributed to job creation and has offered a ‘bridging allowance’ to promote self-employment among the unemployed. In 2000, on the basis of successful efforts in Austria and elsewhere, the ‘50,000 New

²⁰ Of course, assessing the impact of the EES (or any other OMC initiative) is a difficult empirical task, and there is evidence of negative experiences in some member states. Scholars, research institutions, and various associations (such as the European Antipoverty Network and the European Work Organisation Network) have all issued opinions and evaluations. See Mosher and Trubek (2003, pp. 73–76) and Foden and Magnusson (2003) for useful discussions.

Jobs for People with Disabilities Programme' was adopted. Yet another powerful initiative has been the 2002 Job-Aktiv law.²¹ The law has already improved the process of placing people into jobs through several venues: the modernisation of job counselling, new training programmes that cater to the needs of companies and a greater emphasis on the rights and obligations of the unemployed.²²

OMC also helped French legislators develop major employment initiatives. As the French government states in its 2002 *Impact Assessment*:

French employment policies are not, in general, the same as they were before the Luxembourg process. To one degree or another, the framework for policy making, the content of policies, methods of implementation, and the role of different actors, especially the social partners, were modified (France, 2002, p. 4).

The annual revisions have brought greater cohesion to employment policy; indicators have facilitated performance monitoring and France has 'learned from the good practices of others', such as the Finnish programme on 'active aging' (Mosher and Rubek, 2003, p. 75). There has also been a general shift from short to long-term planning for the creation of jobs (France, 2002; Mosher and Trubek, 2003, p. 75). New policies have included the introduction of the 'nouveau depart' in 1998, the 'New Services Jobs for Youth' in 1998, linking social exclusion to employment in 1998 (TRACE programme), the integration of tax-benefit elements in 2001 (the '*prime pour l'emploi*') and two laws that simplify working-time flexibility. Lastly, better education and training programmes now target the workforce, the unemployed and youngsters who leave school early (European Commission, 2002b, p. 45).

Officials from a number of other Member States have also described the benefits of OMC in a series of impact assessments from 2002.²³ Spanish officials describe the impact of EES on gender equality laws: 'Following the EES', they write, 'equality policies began to take a horizontal approach, affecting the full range of labour policies'. Among the initiatives, we find the Work and Family Life Conciliation Act of 1999 (Spain, 2002, p. 31) which, along with a series of other measures, is credited with 'reinforc[ing] the positive trend began in the 1990s towards a gradual reduction in the inequalities between men and women (Spain, 2002, p. 32). 'EES recommendations', Spanish officials then add, have been used to increase the flexibility of working hours, convert temporary work contracts into permanent ones, and introduce productivity incentives (Spain, 2002, p. 44). The same officials report that:

There has been a significant increase in the average education level of the Spanish population. In the last five years, the percentage of the population in the lowest three categories of educational attainment (illiterate, no schooling, primary education) has dropped considerably. At the same time, the percentage of those with secondary school diplomas and university has grown. This phenomenon is associated with the results of previously implemented educational policies, but it should be noted that these were reinforced in recent years by the application of different lines of action, shown in the NAPs and associated with the EES (Spain, 2002, pp. 41–42).

In a similar spirit, the Dutch state in their NAP that 'the encompassing comprehensive approach for the unemployed would not have been introduced with the same urgency

²¹ Job-Aktiv stands for JOB—A = Activate, Q = Qualify, T = Train, I = Invest, V = Mediate.

²² The International Reform Monitor offers a recent analysis of these reforms. See: <http://www.reformmonitor.org/httpd-cache/doc_reports_2-2185.html>.

²³ Not all impact assessments, of course, are positive. Italy's, for instance, is rather neutral, and the Dutch report offers a mixed assessment. All impact assessments for 2002 are available on the EU official website at: <http://europa.eu.int/comm/employment_social/employment_strategy/impact_en.htm>.

had the EES not existed', while lifelong learning initiatives were directly 'stimulated by the EES (The Netherlands, 2002, p. 66). Lastly, in Portugal, officials note improvements in equal opportunities, training and education, and prevention programmes for the young unemployed (Portugal, 2002).

B Social Inclusion

European leaders agreed to apply OMC to the eradication of poverty and social exclusion at the Lisbon Summit of March 2000. Their commitment to 'social inclusion' was then restated at the Stockholm Summit of June 2001 (de la Porte, 2002). They were recognising the failure of many Member States—with the exception of the Scandinavian countries and some of the smaller countries—to help the poor and the marginalised. It was time, the leaders agreed, to promote the 'exchange of good practices and mutual learning' across Europe (European Commission, 2001, p. 5).

Countries produce National Action Plans on inclusion every two years.²⁴ As with employment, these plans offer invaluable learning opportunities. The 2003 Finnish and Irish plans illustrate this. The Finnish plan is more conservative: it seeks to preserve the basic structure of the social security system and emphasises the primacy of work. Initiatives include health promotion, improving the attractiveness of work and providing effective services and a reasonable level of income security. Hence, a new legislative act from October 2003 provides for special income subsidies for immigrants, and permanent income support for pensioner returnees. The Finnish NAP also emphasises collaboration among various social actors. Its approach for preventing social exclusion (the Jyväskylä model), for instance, involves the social welfare and health authorities, the employment office, a university and a polytechnic. The European Social Network (2003, p. 17) praised this strong partnership approach.

The Irish 2003 NAP is considerably more innovative and multifaceted. It is based on the recognition that past approaches did not work and that the roots of social exclusion are complex. The European Commission described it as 'well balanced and broad ranging . . . more comprehensive than the previous plan in covering a wider range of issues, such as access to legal services, equality, and participation in art and cultural activities' (European Commission, 2003, p. 177). Eight very diverse initiatives stand out, including: ending child poverty, addressing alcoholism improving cultural exchanges, addressing immigration and aiding the elderly. Numerous new laws on vulnerable groups, gender equality and disabled people are discussed.

The EU has used the 2001 JR to launch the first discussion on best and poor practices. Appendix II has an extensive review of 'examples of good practice' in fourteen areas, ranging from housing to indebtedness to family solidarity. For each area, the report identifies key measures taken in each of the Member States. The report attracted media attention as a powerful venue for learning and policy improvement (European Report, 2001). The 2003 JR continued this approach, noting that overall the Member States had made progress in several key areas, including the disabled, the long-term unemployed and ill, social exclusion and poverty, and child and family protection. The report called attention to Finland, France and Ireland for having the most comprehensive and innovative plans. Other Member States, such as Austria, Greece and Spain, were criticised instead.

²⁴ The 2001 and 2003 plans are available at the EU's official website:
<http://europa.eu.int/comm/employment_social/news/2001/jun/napsincl2001_en.html>.

The 2001 JR also offered a comprehensive overview of indicators used in national plans. In the area of unemployment, officials can learn about the use of involuntary part-time (France), employment rates for women with and without children (Italy), percentage of the population in voluntary work (The Netherlands) and employment rates for disadvantaged such as people with disabilities, lone parents and ethnic minorities (United Kingdom). The Social Protection Committee (SPC)—a body working within the Commission in the area of inclusion—in turn developed a set of ten primary and eight secondary commonly agreed indicators. The Member States, along with the Commission and the Council, are to use these indicators to devise policies, compare initiatives and measure effectiveness.²⁵

The peer review programme began formally in 2004, with selected countries hosting decision-makers from other countries, the European Commission, independent experts, and various stakeholders learning and appraising their ‘good practices’. The programme for the year is impressive. It includes ‘The Rough Sleepers Unit’ hosted by the United Kingdom, the ‘New Migrants Integration’ hosted by France, and the ‘Reconciliation of Work and Family Life’ hosted by Germany.²⁶ We should note, however, that in 2002 the Transnational Exchange Programme was also launched. A total of 95 projects, such as seminars, short studies, literature reviews on cross-national comparisons of activities across the Member States, but also EFTA and EEA countries, were sponsored.²⁷

The use of OMC for inclusion is more recent than for employment. Yet, there are already signs of positive changes in national approaches (European Report, 2002). The coherence of several of the NAPs has improved between 2001 and 2003. More fundamentally, since 2001 there has been an explicit acknowledgement by observers and member states alike on the benefits of the OMC. Improvements have been reported in the lawmaking process itself—a first step towards the production of more realistic and enforceable laws. The European Anti-Poverty Network, a major observer of the inclusion effort, for instance wrote:

The NAPs have put some impetus into policy co-ordinating mechanisms. Spain is one of a number of countries that have established Inter-Ministerial Committees. The Portuguese Network reported that new informal structures had been established, for example internal Commissions of the Ministry. The Netherlands and Portugal reported the most frequent meetings, in both cases involving civil society actors (Duffy, 2002, p. 21).

Officials from the German Federal Ministry for Health and Social Protection report similar changes, as do observers for Finland (Duffy, 2002) and national officials from Ireland (Mangan, 2003).

More importantly, participants point to direct improvements in the quality of legislative outputs. Spain notes that the OMC has spurred ‘the advancement, re-designing and innovation of methods and measures so as to tackle social exclusion in a more operative, effective, consensual, participative manner’ (Spain, 2003, p. 7). The results include the 2003 Law on Cohesion and Quality of the National Health System (on improved access to health care for the whole population) and the 2002 Law on Quality of Education (on reducing drop outs and school failure). The Irish, in turn,

²⁵ The 2003 JR noted that this list of common indicators and associated measurements techniques needed improvement.

²⁶ Interestingly, the new EU Member States also participate in the process. For more information on the programme, see: <<http://www.peer-review-social-inclusion.net/>>.

²⁷ See <http://europa.eu.int/comm/employment_social/soc-prot/soc-incl/tep_en.htm>.

write that OMC 'is proving to be of great assistance in planning to achieve [a number of] objectives' such as 'more and better jobs, greater social cohesion and of making a significant impact on poverty by 2010' (Ireland, 2003, p. 2). They point to their 2003 legislation, prepared by the Department of Justice, Equality and Law Reform, which made public services accessible to people with disabilities.

Similarly, following recommendations from the 2001 JR and the examples of The Netherlands and other Member States, the German 2003 NAP reports on new legislative (as well as administrative) initiatives for ethnic minorities who are a neglected segment of the population suffering from persistent exclusion from the labour market. German officials also report the adoption of a new set of indicators that build on the two EU level sets to measure poverty and exclusion rates more accurately (Kuck-Schneenmelcher and Müllenmeister-Faust, 2003). Portugal too reports adopting a new set of 'indicators for social cohesion comparable with other member states' that should help measure 'progress in the implementation and fulfillment' of initiatives (Portuguese Ministry of Labour and Social Security, 2002, p. 17).

Lastly, the 2001 JR had singled out France for the difficulties encountered by 'excluded people' when they attempt to exercise their rights: 'jumbles of rules and regulations' and the 'complexity of administrative procedures to be completed' hampered their efforts (European Commission, 2001, p. 46). The top priority in the 2003 NAP plan is precisely to bring France more in line with the practices of more efficient member states (News Press, 2003). The plan details a simplification of laws, financial support for organisations to help the excluded, easier access to courts and other steps.

VI Discussion

Most scholars agree that the EU has weakened national parliaments. In this article, we have proposed that the EU has also benefited them. We identified two mechanisms: precedent setting and policy transfer. By setting legal precedents in areas previously beyond the remit of national parliaments, we argued that the EU opens the door for unprecedented national legislative activity. As regulators of society, national parliaments expand their legislative reach to new areas of social life. By facilitating cooperation and lesson drawing, we proposed that the EU helps national officials produce more effective national regulation. This confirms national parliaments as viable regulators of social life.

Our objective was to 'rescue' national parliaments from the exclusively negative effects of European integration. We offered, however, only two models of how the EU may be helping national parliaments. We also noted the possibility that a strengthening of national parliaments may be accompanied by a concomitant strengthening of the executive function, and thus of the nation state in the EU context as a whole. Future research projects could explore both topics in detail: most works on the EU focus exclusively on the weakening of nation states, and the rewards for pursuing a contrasting line of reasoning could be great. In this section, we concentrate the implications of the findings for EU enlargement and for a second common market—South America's Mercosur.²⁸

²⁸ Within the boundaries of our model, we could have proposed that the EU, by setting legal precedents, helps national parliaments to improve existing legislative frameworks—the effect we attributed to policy transfer. We could have then proposed that policy transfer helps national parliaments to break through policy fields previously beyond their remit—the impact we attributed to precedent setting.

As a prerequisite for membership, as spelled out by the Copenhagen European Council Meeting of June 1993, Central and Eastern European applicants have had to adopt the entire secondary legal system of the EU. Practically completed as of mid-2003, the process deprived parliaments in those countries of much freedom. In the space of a few years, they incorporated 80,000 pages of legislation. Many scholars interpreted this process as a unidirectional imposition of law, characterised by the passive acceptance of foreign law on the part of national parliaments (Grabbe, 2001, pp. 1016–1017). Our findings in this article urge us to consider whether national parliaments in applicant countries may have also benefited from participation in the European project.

The need to adopt vast amount of complex EU legislation in little time, and the technical knowledge required to come to grips with such legislation, must have surely given legislators and government officials a sort of *carte blanche* to propose additional domestic laws. Many of these laws were most likely introduced as building upon EU law, but were in fact not required for accession. Initial evidence indicates that our supposition may be correct. Poland's recently developed a rather impressive environmental protection policy, for instance, that greatly expanded upon EU law (Brown, Angel and Derr, 2000).

We suspect as well that EU enlargement is creating significant opportunities for policy transfer. We know that national legislators in the applicant countries collaborated and shared information while working to adopt the EU legal system. We also know that national legislators in applicant countries closely scrutinised legislative frameworks in current Member States as they prepared for accession. Lastly, we also know that applicant countries were invited to participate in the OMC for social inclusion and other areas. Initial evidence suggests that policy transfers have indeed occurred. Lavenex (2002), for instance, has attributed the convergence of refugee policies in the applicant states to the transfer of policy approaches from the current member states. Enlargement may have thus solidified the role of national parliaments as regulatory institutions.

Our findings may have important implications for national parliaments in other regional integration efforts. We consider here Mercosur, one of the most impressive integration efforts currently in existence.²⁹ Has regional integration in South America benefited the national parliaments of Member States? We can begin answering this question by determining whether Mercosur has, in the first place, the appropriate legal capacity to be able to set precedents and whether it has created forums that can facilitate policy transfer.

With the Treaty of Asunción of 1991 and Protocol of Ouro Preto of 1995, Brazil, Argentina, Uruguay and Paraguay agreed to form a common market. Mercosur's founding treaties ask that a system of secondary laws, very similar in nature to that of the EU, support the creation of a common market. Article 9 of the Protocol of Ouro Preto concerns decisions that are comparable in their broad scope to EU directives. It

²⁹ One way of determining the success of an integration effort is to measure the increase of one Member State's exports to the other Member States as a percentage of that country's total exports since joining the bloc. Cameron has analysed EU figures for 1958–1995 (Cameron, 1998). With the exception of Ireland and Greece, Member States show an average increase of 25 percentage points from the time of entry to 1995. For Mercosur and 1991–2000, that figure is 33 percentage points (estimates calculated from data in International Monetary Fund, 1995 and International Monetary Fund, 2000). Argentina's economic crisis of late 2001 and 2002 has challenged, but not undermined, Mercosur.

states: 'The Common Market Council (CMC) will promulgate Decisions, whose adoption will be obligatory for the Member States'. Article 15 concerns resolutions, which are more detailed in their nature and similar to EU Regulations. It states: 'The Common Market Group (CMG) will promulgate Resolutions, whose adoption will be obligatory for the Member States'. Article 42 reiterates the obligatory nature of both decisions and resolutions: 'The laws emanated from Mercosur's organs, which are discussed in Article 2 of this Protocol, have an obligatory character'.³⁰

To date, Mercosur has produced hundreds of decisions and resolutions. Topics covered range almost as broadly as those targeted by EU law: industrial processes, competition, the environment, public health, consumer rights, research and development, professional training, labour rights and many others (Duina, 2003). Mercosur officials are thus constitutionally capable of setting legal precedents. Initial evidence points to an increase in domestic legislative activities in areas where Mercosur officials have produced significant legislation and national parliaments have been traditionally passive, such as the environment and public health (La Republica, 2003; Elias and Cohn, 2003).

Has Mercosur created mechanisms that could facilitate policy transfer? Mercosur has established important forums for cooperation and information-sharing among national legislators.³¹ The most important is the Joint Parliamentary Commission (JPC). The JPC is made up of 64 representatives. Each national parliament names 16 of its own legislators to work in the JPC. The JPC produces recommendations intended to guide the CMC in its deliberations on Mercosur law. Yet, as part of their mandate, JPC members are expected to recommend laws that provide continuity with, and incorporate the best aspects of, national laws. The JPC has all the features of an organisation conducive to learning the various policy approaches in place in the Member States.

Additional important forums exist. Mercosur relies on fourteen permanent working groups (*subgrupos de trabajo*), nine specialised committees (*reuniones especializadas*) and five commissions for advice on the formulation and implementation of its laws. These working groups cover commerce, the environment, technology, gender and much more. They all involve national representatives from various segments of society, including parliaments, labour and business. They are expected to base their recommendations only after reaching an understanding of existing policies in all the member states. The Social and Labor Commission of Mercosur (*Comisión Sociolaboral del Mercosur*), for instance, has representatives from national labour departments, employers and labour unions, which must share reports on domestic policies and initiatives related to the protection of workers' rights (Article 7 of Resolution 12/2000).

The initial evidence from South America suggests that regional economic integration need not prove only detrimental to the national legislative function of Member States. While most scholarship on the EU, but also regional integration in general, assumes a weakening of national institutions, we propose that more sophisticated analyses can generate a more balanced picture of reality. This article is an attempt to develop theoretical frameworks and evidence in support of such a perspective.

³⁰ Both decisions and resolution are expected to be transposed into national legal systems (Decision 23/00 of 2000) and become effective in Mercosur 30 days after the last Member State announces their adoption (Article 40 of the Protocol of Ouro Preto).

³¹ We should note that Mercosur is purely intergovernmental. The CMC is composed of the ministers of foreign affairs and finance, and the heads of state. The CMG is composed of four permanent members and the ministries of foreign affairs, the economy and national central bankers. Information flow across the Member States, in the legislative but also administrative branches, is perhaps even higher than in the EU.

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