



UvA-DARE (Digital Academic Repository)

Is the Open Method of Coordination an alternative to the Community Method?

Zeitlin, J.

Publication date

2011

Document Version

Submitted manuscript

Published in

The 'Community Method': obstinate or obsolete?

[Link to publication](#)

Citation for published version (APA):

Zeitlin, J. (2011). Is the Open Method of Coordination an alternative to the Community Method? In R. Dehousse (Ed.), *The 'Community Method': obstinate or obsolete?* (pp. 135-147). (Palgrave studies in European Union politics). Palgrave Macmillan.

General rights

It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations

If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: <https://uba.uva.nl/en/contact>, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.

Is the OMC an Alternative to the Community Method?

Jonathan Zeitlin (University of Wisconsin-Madison)

I. The OMC and the Community Method

The Open Method of Coordination (OMC) was launched at the extraordinary European Council of March 2000 as a broadly applicable new governance instrument designed to assist the Union in achieving the ambitious goals of the Lisbon Strategy through iterative benchmarking of national progress towards common European objectives and organized mutual learning. This new method built directly on the experience of new Treaty-based processes introduced for the coordination of Member State policies during the 1990s, notably the Broad Economic Policy Guidelines (BEPGs) and the European Employment Strategy (EES).¹

The OMC was defined by the Portuguese Presidency at Lisbon and afterwards as an ensemble of four interdependent procedural elements closely modeled on the EES:

- ‘Fixing guidelines for the Union combined with specific timetables for achieving the goals which they set in the short, medium and long term;
- establishing, where appropriate, quantitative and qualitative indicators and benchmarks against the best in the world and tailored to the needs of different Member States and sectors as a means of comparing best practices;
- translating these European guidelines into national and regional policies by setting specific targets and adopting measures, taking into account national and regional differences;
- periodic monitoring, evaluation and peer review organized as mutual learning processes’ (European Council 2000: §37; cf. also Portuguese Presidency of the EU 2000).

The Lisbon European Council authorized the application of the OMC to a wide range of policy areas, including R&D/innovation, information society/eEurope, enterprise promotion,

¹ For a fuller account of the origins of the OMC, see Zeitlin (2007).

structural economic reform, social inclusion, and education and training. In the years following Lisbon, OMCs were introduced in a number of further policy fields, including pensions, health and long-term care, youth policy, better regulation, and most recently culture. Proposals were also advanced by the Commission and others to extend the OMC to a host of other policy areas, such as immigration, asylum, occupational health and safety, environmental protection, disability, and fundamental rights. In addition, following recommendations from the Commission's High Level Group on Industrial Relations (European Commission 2002), the European social partners have drawn inspiration from the OMC for the monitoring and follow-up of non-binding framework agreements and guidelines at both cross-industry and sectoral levels. Significantly, however, many of these new OMC processes did not include the full four-stage governance architecture defined at Lisbon, but only fragmentary elements such as European Action Plans, objectives, targets, scoreboards, indicators, peer review, or exchange of good practices.²

The OMC was explicitly conceived by its architects as a new approach to EU governance, a 'third way' for EU governance between regulatory competition and harmonization, capable of opening a sustainable path for the Union between fragmentation and a European superstate (Larsson 2000b; Rodrigues 2001; Telò 2002). Many academic and political commentators embraced the OMC as a suitable instrument for identifying and pursuing common European concerns while respecting legitimate national diversity, because it commits Member States to work together in reaching shared objectives and performance targets, without seeking to homogenize their inherited policy regimes and institutional arrangements (Hemerijck and Berghman 2004). Many likewise viewed the OMC as a promising mechanism for promoting experimental learning and deliberative problem solving across the EU, because it systematically and continuously obliges Member States to pool information, compare themselves to one another, and reassess current policies against their relative performance (Zeitlin 2005c; Cohen and Sabel 2003). For all these reasons, during the years immediately following the Lisbon Summit the OMC rapidly became the governance instrument of choice for EU policy making in complex, domestically sensitive areas, where the Treaty base for Community action is weak,

² For an overview of the diffusion of OMCs after Lisbon, see Zeitlin (2005a).

where inaction is politically unacceptable, and where diversity among Member States precludes harmonization.

The OMC's rapid diffusion led to widely voiced concerns that such 'soft-law' procedures could represent a threat to the 'Community Method' of European integration, based on binding legislation initiated by the Commission, enacted by the Council and the Parliament, and enforced by the Court of Justice. It has equally been considered a threat to the alternative method of EU social legislation, introduced by the Treaty of Maastricht, whereby European social partners negotiate framework agreements on issues proposed by the Commission, which are then approved as legally binding Council directives, and implemented by the Member States either through transposition into domestic legislation or (more rarely) through encompassing collective agreements at national level. The assumption here is that the OMC's availability as a 'soft law' option may displace the use of 'hard law' instruments even where the EU already possesses legislative powers. Such concerns have led to repeated demands by the Commission, the European Parliament, the Convention on the Future of Europe, and others that the OMC should not be used when legislative action under the Community Method is possible.³

But this objection misses the mark both empirically and conceptually. The OMC was never intended to serve as the sole governance instrument for the pursuit of the Lisbon Strategy, but was always supposed to be combined with the full set of EU policy tools, including legislation, social dialogue, Community action programs, and the structural funds. Empirically, there is little evidence that the OMC has in fact displaced EU legislation. Thus the Commission's proposals to use the OMC to monitor and supplement existing European legislation in immigration and asylum policy were rejected by the Council—not because Member States considered them too soft, but rather because they found an open-ended public evaluation of their comparative performance in this politically sensitive area too intrusive (Caviedes 2004). Even in the highly charged social policy field, where the OMC on Social Protection and Social Inclusion (OMC/SPSI) has become the guiding framework for EU policy making, there is no sign, as Pochet's chapter in this volume shows, of any decline over the past decade in the number or significance of new directives enacted.

Nor do we observe a clear practical separation between the OMC and other Community governance instruments. Often, there is ‘an integral continuity’ between the legally binding norms embodied in EU framework directives (whether enacted through the ‘classic’ Community Method of legislation or through the social dialogue procedure) and the ‘soft’ commitments of the EES guidelines, as in the regulation of part-time work or private pensions (Davies and Freedland 2004; Kilpatrick 2006; Natali 2004). Many directives also include non-mandatory provisions, which are frequently transposed into national law, as in the cases of part-time work, parental leave, gender equality, disability rights, and occupational pensions (Falkner et al. 2005). National plans for the use of the structural and cohesion funds are increasingly closely integrated with the objectives of OMC processes in employment and social protection/inclusion, as well as with those of the Lisbon Strategy more generally (Kilpatrick 2006; Trubek et al. 2006; European Commission 2007, 2008: 96-8). And EU budget lines and Community Action Programmes on employment and social inclusion (now unified as the Programme on Employment and Social Solidarity – PROGRESS) have likewise played a critical role in supporting horizontal networking and participation of civil society and subnational actors in the EES and the OMC/SPSI (Zeitlin 2005b: xx-xx, 2009).

At a still deeper level, ‘hard-law’ directives themselves increasingly incorporate provisions for implementation, monitoring, evaluation, peer review, and periodic revision through ‘soft-law’ OMC-style procedures. A prominent case in point is the Water Framework Directive (WFD) and its Common Implementation Strategy (CIS). Adopted in 2000 after years of intense negotiation, the WFD replaces seven detailed directives with a single broad, integrative regulatory framework. This aims to improve water quality and sustainability across the EU through integrated management of river basins, while requiring Member States to achieve ‘good status of water quality’ by 2015, an explicitly open-ended and multi-dimensional concept. Central to the practical implementation of the WFD is a new institution not formally envisaged in the directive itself: the CIS, an ‘informal’ forum for ‘open cooperation’ and information sharing created to help Member States achieve good water status and avoid regulatory conflicts arising from incompatible national practices. The CIS operates through

³ See for example European Commission (2001); European Convention (2003); European Parliament (2007). On the debate over the OMC at the Convention, see de Búrca and Zeitlin (2003); Zeitlin (2005c: 236-41). For a broader discussion of the hard law-soft law debate, see Trubek and Trubek (2005).

three nested levels of organization, involving expert working groups overseen by national Water Directors, the Commission, and the Council Presidency, with broad participation from industry and environmental stakeholders. Its primary outputs are non-binding technical guidance documents, such as indicators and values for measuring and defining ‘good’ water status, which are subject to ongoing review and updating. But Member States are also obliged to submit regular reports to the Commission on the implementation of the directive, including both water management plans and programs for monitoring water status. The Commission in turn produces its own regular implementation progress reports, including reviews of EU water status, surveys of Member State water management plans, and proposals for future improvement, all of which draw on scoreboards based on benchmarks developed through the CIS. These implementation activities feed directly and indirectly into revisions of the WFD, both in the form of legislative proposals for new daughter directives and the transformation in some cases of technical guidance documents into legally binding requirements by the Commission acting under comitology procedures.⁴

The WFD/CIS is only one instance of a new architecture of experimentalist governance in the EU, based on recursive processes of framework rule making and revision through networked deliberation among European and national actors, which is transforming the Community Method in practice if not (yet) in theory. In this architecture, framework goals (such as ‘good water status’, full employment, a unified energy grid, non-discrimination) and measures for gauging their achievement are established by joint action of the Member States and EU institutions. Lower-level units (such as national ministries or regulatory authorities and the actors with whom they collaborate) are given the freedom to advance these ends as they see fit. But in return for this autonomy, they must report regularly on their performance and participate in a peer review in which their results are compared with those of others pursuing different means to the same general ends. The framework goals, performance measures, and decision-making procedures are themselves periodically revised by the actors, including new participants whose views come to be seen as indispensable to full and fair deliberation. Though this architecture cannot be read off from Treaty provisions or (most) textbook accounts of the formal operation of

⁴ For fuller discussions of the WFD/CIS, see Scott and Holder (2006); Trubek and Trubek (2007); Sabel and Zeitlin (2008: 309-10, 315); von Homeyer (2009).

EU institutions,⁵ it has nonetheless diffused rapidly over the past decade through a variety of organizational forms such as fora, councils of regulators, networked agencies, and OMCs, across a wide range of policy domains. Well-documented examples of this experimentalist architecture in the EU now include telecommunications, energy, data privacy, drug authorization, occupational health and safety, environmental protection, food safety, maritime safety, financial services, competition policy, state aid, anti-discrimination policy, fundamental rights, justice and home affairs, and external relations (Sabel and Zeitlin 2008, 2009). From this perspective, the ‘Community Method’ should not be seen as a distinctive mode of governance, based on hierarchical authority and ‘command-and-control’ regulation, but rather as a procedure for enacting European legislation, which as the Water Framework Directive illustrates can take experimentalist as well as conventional forms.

II. The OMC in Action⁶

But the most widespread critique of the OMC has focused less on the potential threat to the Community Method than on its limited practical effectiveness and alleged lack of substantive impact on policy making in the Member States. Despite the explosion of research on the OMC in recent years,⁷ much of the debate over its effectiveness continues to suffer from a serious empirical deficit, relying on a limited range of often outdated evidence onto which authors project their own theoretical and normative assumptions.⁸ Thus many of the most critical assessments of the OMC are not based on original first-hand research on the method in action (e.g. Radaelli 2003; Moravcsik 2005; Citi and Rhodes 2007; Hatzopolous 2007).⁹ The 2004-5 mid-term review of the Lisbon Strategy, which reached harsh conclusions on the ineffectiveness

⁵ For a recent exception, see Craig and de Búrca (2007), ch. 5.

⁶ This section draws on Zeitlin (2009).

⁷ For a selective bibliography, see the University of Wisconsin-Madison’s online Research Forum on the OMC, <http://eucenter.wisc.edu/OMC/index.htm>. For an overview of the initial debate with extensive references, see Zeitlin (2005a).

⁸ See for example Casey and Gold (2005), who present a highly critical account of the OMC’s capacity to promote cross-national policy learning based exclusively on the first round of employment peer reviews conducted in 1999-2001; or Lodge (2007), whose critique of the OMC/pensions for its lack of common indicators appeared after these had been agreed by the SPC.

⁹ A partial exception is Idema and Kelemen (2006), which draws on a small-scale study of the Social Inclusion OMC in the Netherlands.

of the OMC in promoting domestic reforms in EU Member States, was also a surprisingly non-evidence-based process. Thus the Report of the 2004 High Level Group chaired by Wim Kok did not systematically review the available evidence on the performance of OMC processes, such as the extensive mid-term review of the EES in 2002, or the report of the 2003 Employment Task Force (also chaired by Kok), both of which reached more positive assessments. Similarly, the European Commission's (2005) Lisbon New Start communication appears to have neglected both internal and external evidence on the successes and failures of different OMC processes, such as an independent evaluation of the eEurope program and other information society initiatives, which concluded that the OMC in these areas 'cannot yet be said to be a success or failure', because it 'simply has not been fully implemented' (Tavistock Institute et al. 2005).

Empirical assessment of the OMC is extremely challenging, for a number of interrelated reasons. These include: the variety of distinct processes with different institutional characteristics subsumed under the OMC rubric; their relative newness, and the frequency of procedural changes to even the most highly institutionalized processes such as those for employment and social inclusion; and the horizontal and vertical complexity of OMC processes, which typically cut across sectoral policy domains and involve multiple levels of governance (European, national, subnational) in 27 Member States (15 before 2004). Most fundamental, however, are the methodological difficulties of assessing the causal impact of an iterative process based on collaboration between EU institutions and Member States, without legally binding sanctions. Thus Member State representatives continuously participate in the definition of OMC objectives, guidelines, targets, and indicators, allowing 'uploading' of domestic concepts and preferences which blurs the causal boundary between the national and European levels. OMC processes do not necessarily result in new legislation or justiciable obligations, rendering the concept of Member State 'compliance' problematic. Member States may often have political reasons for playing up or down OMC influences on domestic policy, from strategies of blame avoidance and credit claiming at home to self-presentation as a 'good European' or a defender of the national interest in Brussels. Nor is it easy to isolate the influence of the OMC on national policy from those of other EU-level processes (such as the Stability and Growth Pact, European court decisions, or the structural funds), other international organizations (such as the OECD, the World Bank, or the IMF), and domestic political changes (such as shifts in government). In each

of these respects, the OMC encapsulates in extreme form the broader methodological problems involved in studying the impact of ‘Europeanization’ on domestic policy and politics.¹⁰

These difficulties are not merely theoretical. Researchers studying the same national and sectoral cases often disagree about the magnitude and significance of the OMC’s influence. A noteworthy example is the impact of the European Employment Strategy (EES) in Germany, where some researchers see only ‘surface integration’ (Büchs and Friedrich 2005), while others find deeper cognitive and practical influences on the design of key measures such as the Hartz labour-market reform legislation, as well as on the strategies pursued by employers and other non-state actors (Zohlnhöfer and Ostheim 2005; Heidenreich and Bischoff 2008; Preunkert and Zirra, 2009).

Thorny as these methodological problems are, they can be mitigated through a combination of research strategies:

- contextualized process tracing, in order to identify and assess the practical influence of the OMC (alongside other factors) on domestic actors, debates, procedures, and policies in specific contexts (national, sectoral, temporal);
- careful triangulation of documentary and interview evidence within and between studies, in order to multiply points of observation and offset sources of bias;¹¹
- systematic comparison of research findings across countries, policy domains, and time periods, in order to identify and explain both general tendencies and dimensions of variation.

Yet many of the sources of controversy about the OMC’s national influence are conceptual as well as empirical. Researchers disagree not only about the magnitude of the OMC’s impact in different countries and policy fields, but also about what types of influence should count as significant, and through what causal mechanisms they might be generated. Thus, for example, Citi and Rhodes (2007) propose a comparative assessment of OMC processes

¹⁰ For a comprehensive review of the Europeanization literature, see Graziano and Vink (2007).

¹¹ Such biases are visible not only in interviews, but also in survey responses, where public officials and NGO representatives systematically disagree about the extent of the latter’s participation in domestic OMC processes: see for example OPTEM (2007) on the EES and O’Kelley (2007) on social inclusion. These disagreements are not purely empirical, but also reflect different normative expectations on the part of the actors.

in terms of their *ex ante* capacity for securing policy convergence across EU Member States. Analysts of the OMC as a new form of experimentalist governance argue instead that it is more properly assessed as a mechanism for promoting convergence of performance, through comparisons of experience in implementing alternative approaches to reaching common objectives in different national contexts (Zeitlin 2005c; Sabel and Zeitlin 2008). Similarly, many critics of the OMC's capacity to promote cross-national learning consider the method a failure because peer review and exchange of good practices rarely result in direct transfer of identical policies and programs from one country to another (Casey and Gold 2005; Kerber and Eckhardt 2007; Schludi 2003). Proponents of 'contextualized benchmarking' argue conversely that successful borrowing from abroad typically requires extensive adaptation of foreign models and practices to fit local circumstances, while cross-national learning induced by such processes often takes an analogic rather than a directly mimetic form (Zeitlin 2003, 2005c; Sabel 2004, 2005; Hemerijck 2007; Visser 2009; van Gerven and Beckers 2009).

Many critics of the OMC take substantive policy change, especially as reflected in new legislation, as the main criterion for assessing its domestic influence (e.g. Moravcsik 2005; Kröger 2007; Citi and Rhodes 2007). Judged solely on this basis, as they insist, it is hard to show that the OMC has had a major impact outside of certain restricted cases, and even in those it is only one of several factors. But if we consider other types of impact, including not only procedural changes in governance and policy making processes, but also cognitive and discursive shifts, along with changes in issue salience and political agendas, then we may identify deeper and more numerous influences.

Despite these methodological challenges, there is now a substantial body of empirical research on the operations of the OMC at national and subnational levels, drawing on a wide range of official and unofficial sources. Most of this research focuses on employment, and social protection/inclusion as the oldest, most fully developed, and best institutionalized OMC processes.¹² Although the findings of this research remain controversial and subject to multiple interpretations, my reading of the available evidence supports the view that the OMC in these policy fields should be considered a qualified success in a number of important respects.¹³ The

¹² For synthetic overviews, see Zeitlin and Pochet (2005); Heidenreich and Zeitlin (2009).

¹³ For a fuller assessment, with detailed examples and extensive references, see Zeitlin (2005b, 2009).

first of these concerns *substantive policy change*. Thus, these OMC processes have helped to raise the salience and ambition of national employment and social inclusion policies in many Member States. They have contributed to *changes in national policy thinking (cognitive shifts)* by incorporating into domestic debates EU concepts and categories (such as a comprehensive approach to fighting unemployment, raising the employment rate, making work pay, flexicurity, active ageing, sustainable social protection, and active inclusion); exposing policy makers to new approaches, often inspired by foreign examples; and pressing them to reconsider long-established but increasingly counterproductive policies (such as early retirement). These OMC processes have likewise contributed to *changes in national policy agendas (political shifts)* by placing new issues on the domestic political agenda (such as activation, prevention, lifelong learning, gender mainstreaming, social exclusion, and child poverty) and/or increasing the salience of efforts to tackle long recognized national problems (like pension reform, early exit from the labour market, child care provision, gender segregation, and integration of immigrants). There is also evidence from both official reports and interviews that OMC objectives, guidelines, targets, and recommendations have contributed to *changes in specific national policies (programmatic shifts)*, in areas such as activation/prevention, tax-benefit reforms, active ageing/lifelong learning, gender equality, child care, immigrant integration, social assistance, and pension reform. Yet given the active role of Member States in shaping the development of OMC processes, their relationship to national policy making should be understood as a two-way interaction rather than a one-way causal impact.

Another form of positive influence on the part of the OMC concerns *procedural shifts in governance and policy-making arrangements*. Here there is abundant evidence that the EES and the OMC/SPSI have contributed in most Member States to *better horizontal coordination and cross-sectoral integration of interdependent policy areas* through the creation of new formal coordination bodies and inter-ministerial working groups. A second widespread procedural influence of the OMC on national social and employment policy making concerns *improvements in national steering and statistical capacities*. One side of this process involves the strengthening of national arrangements for data collection and analysis through the implementation of better and more Europeanized survey instruments, information systems, and statistical indicators. Another side of the OMC's influence on national steering capacity concerns the creation of new bodies and systems for monitoring and evaluating the

implementation of social and employment policies. *Enhanced vertical coordination* more generally constitutes a third major procedural influence of the OMC. Both in employment and in social inclusion, OMC processes have resulted in the establishment of new formal and informal structures for closer coordination between national, regional, and in some cases local governments. Not only has the OMC spurred moves towards the creation of Local and Regional Action Plans for employment and social inclusion in a number of countries, but it increasingly serves as a cognitive and organizational template for reconceiving the governance of vertical relationships between national/federal governments and regional/local authorities in the context of widespread trends towards the decentralization of administrative and policy-making competences in these fields. A fourth major procedural influence of the OMC concerns *increased involvement of non-state actors in domestic social and employment policy making*. Thus in many countries, the EES and OMC/SPSI have led to the creation or reinforcement of consultative and participatory structures for the involvement of social partners and civil society organizations in policy formation, implementation, monitoring, and evaluation at national and (in some cases) subnational levels.¹⁴ Here too, however, OMC processes are not the only cause of these shifts in governance arrangements, and the degree of involvement of non-state/subnational actors in particular also depends both on domestic institutional configurations and the actors' own strategies.

A third form of positive influence exerted by the OMC concerns mutual learning. At the time of the EES five-year review in 2002, it was difficult to find extensive evidence of mutual learning in the national evaluation reports and interviews with participating actors (de la Porte and Pochet 2004: 73-4; Casey and Gold 2005; but cf. the conceptual critique of the 'naïve individualistic concept of learning' deployed by the latter in Nedergaard 2006a: 320). Six years later, the picture is radically different, as mutual learning is now among the most widely attested findings about the OMC's national influence emerging from official evaluation reports, academic surveys, and case studies. Thus for example, in a recent evaluation of the Integrated Guidelines for Growth and Jobs conducted for DG ECFIN, 70 percent of interviewees reported some mutual learning (Euréval/Rambøll 2008: 26-8). Similarly, in a qualitative study of the EES based on interviews with national employment policy actors in 28 European countries (including Turkey),

¹⁴ This influence has been strongest in social inclusion, where 'mobilization of all the relevant bodies' figures prominently among the EU's common objectives.

‘almost all respondents in all countries’ paid tribute to its contribution to mutual learning, though interviewees from southern Europe and the new Member States were more forthcoming about their experiences in this regard than those from some old Member States such as France, Luxembourg, Germany, and Italy (OPTTEM 2007: 70-2). In the mid-term evaluation of the social OMCs, ‘many Member States’ likewise emphasized that ‘mutual learning and policy exchange lies at the very heart of the OMC’ (European Commission 2006: 27-31).¹⁵

But what kinds of mutual learning have occurred, and via which causal pathways? The OMC’s strongest impact on cross-national learning has come through a series of indirect or higher-order effects, which may be termed *heuristic*, *capacity-building*, and *reflexive* or *maieutic*, respectively (Zeitlin 2005b: 470-2; Ferrera et al. 2002; Ferrera and Sacchi 2005). *Heuristically*, as we have already noted, both the EES and the social OMCs have contributed to increased awareness of policies, practices, and performance in other Member States; to the identification of common challenges and development of shared problem diagnoses; and to the identification of promising policy approaches, even if these remain subject to continuing controversy and debate. These processes have also stimulated policy learning from other EU Member States outside the formal framework of the OMC itself, involving not only government officials but also NGOs and other non-state actors. In terms of *capacity building*, key learning effects associated with the OMC include the development of common European indicators and statistical data bases such as EU-SILC; improvements in the quality and comparability of national statistics; and some elaboration of regionally disaggregated indicators and statistical data for both employment and social inclusion. The construction of these common indicators and data bases has resulted not only in the strengthening of national (and in some cases also subnational) statistical capabilities, but also in a European-wide debate, involving NGOs as well as administrators and academic experts, about how best to achieve comparability across Member States while respecting legitimate differences in domestic priorities and institutional practices.¹⁶ In *maieutic* or *reflexive* terms, the OMC processes in employment and social protection/inclusion have pushed Member States to rethink established approaches and practices as a consequence of

¹⁵ See also Nedergaard 2006b, based on a survey of members of the EU Employment, Social Protection, and Economic Policy Committees.

¹⁶ For detailed case studies of the conceptual challenges and practical work involved in creating common indicators for poverty, homelessness, and pensions, see Nivière (2005); Brousse (2005). See also the regular reports of the EMCO and SPC indicators groups, available on the DG EMPL website.

the obligation to compare national progress towards common European objectives and targets to that of other countries on the one hand and to re-evaluate the effectiveness of their own policies in reaching these goals on the other.

The OMC's effects remain weaker in terms of direct or first-order learning. There are still few examples of direct policy transfer from one country to another, since national reforms typically draw analogical inspiration rather than detailed blueprints from the experience of other Member States, while selectively borrowing, adapting, and recombining elements of foreign programmes and practices to fit their own local contexts. Thus the same interviewees who praise the benefits of mutual learning are no less insistent that 'other countries' experiences cannot simply be transferred "exactly as they are" without taking the target country's specific situation and level of development into account' (OPTEM 2007: 70; cf. Euréval/Rambøll Management 2008: 27). But as discussed earlier, this behavior is a natural and appropriate response to the reflexive learning through 'contextualized benchmarking' which the OMC is designed to promote, in contrast to the 'one-size-fits-all' reform models pushed by 'expertocratic' bodies like the OECD, the IMF, and the World Bank.¹⁷

In terms of identifying what works and what doesn't work in specific policy areas such as labour-market activation and reducing child poverty, there has been significant progress at EU level, mainly through the Mutual Learning Programmes associated with the EES and the OMC/SPSI, which have been upgraded significantly over the past five years (EMCO 2006; SPC 2007). But despite the growth of horizontal networking among non-state and subnational actors, there are still few examples of bottom-up learning from innovative local practices through the OMC, largely because of continuing limitations on participation in national social and employment policy making in many Member States (Zeitlin 2005b: 473-5). Yet the flow of creative ideas visible in the reports of European roundtables, networking conferences, transnational exchange projects, and 'shadow peer reviews' conducted by NGO federations provides abundant evidence of the OMC's incompletely tapped potential to stimulate such cross-national learning from below on focused themes such as combating homelessness or mainstreaming social inclusion (FEANTSA 2007; O'Kelley 2006; EAPN-EUROCITIES 2003).

¹⁷ Both the OECD and the World Bank have moved a long way in recent years towards acknowledging the need for a more contextualized approach to national policy reforms: see for example OECD (2005); Rodrik (forthcoming).

Both the Employment Committee (EMCO) and the Social Protection Committee (SPC) have conducted external evaluations and internal debates in recent years on how to improve mutual learning within the OMC. A number of core principles and procedural innovations have emerged from these deliberations, some of which have already been implemented. Thus peer review/mutual surveillance of national plans and strategy reports within both committees now concentrates on key transversal themes such as flexicurity and active inclusion (selected each year in line with European priorities) in order to foster a more open and focused policy debate. Both groups are also committed to developing a more context and process-oriented approach to peer review of both good and bad practices; stronger analytical frameworks for understanding the relationship between policies and outcomes; and better linkages between EU and national debates through improved dissemination of results, wider stakeholder participation, and development of transnational ‘learning networks’ (Bischoff 2008; SPC 2007; EMCO 2006).¹⁸

Despite these achievements, empirical research also shows that the OMC processes in employment and social protection/inclusion have suffered from significant weaknesses. Chief among these were a lack of openness and transparency, with bureaucratic actors playing a dominant role at both EU and national levels; weak integration into national policy making, with National Action Plans (NAPs) serving more as reports to the EU than as operational policy steering documents; and as noted above, limited bottom-up or horizontal policy learning, with few examples of upwards knowledge transfer and cross-national diffusion of innovative local practices. Yet most of these observed shortcomings arguably stemmed not from any intrinsic weaknesses of the OMC *per se*, but rather from procedural limitations of specific OMC processes. Hence a potentially fruitful strategy for improving the effectiveness of existing OMC processes would be to apply to their own procedures the key elements of the method itself: benchmarking, peer review, monitoring, evaluation, and iterative redesign. Ongoing initiatives within the EES and the OMC/SPSI over the past few years provide evidence of the practical viability of this reflexive reform strategy, such as the strengthening of mutual learning and peer review programs on the one hand, and proposals by EU institutions for greater openness, stakeholder participation, and ‘mainstreaming’ of OMCs into domestic policy making on the

¹⁸ The main issue which remains controversial is the participation of non-state actors in peer reviews, which is supported by the Commission and the leadership of the OMC committees, but opposed by some Member States.

other.¹⁹ In this way, the recursive processes of framework rule making and revision characteristic of the EU's new architecture of experimentalist governance may prove capable not only of renewing the Community Method, but also of correcting defects and overcoming blockages in its own institutional arrangements.

References

Bischoff, G. (2008). 'How to Improve Mutual Learning through OMC: Perspectives from the Trio Presidency', unpublished paper, Berlin: German Ministry of Labour and Social Affairs.

Brousse, C. (2005). 'Définir et compter les sans-abri en Europe: enjeux et controverses', *Genèses* 58: 48-71.

Büchs, M., and Friedrich, D. (2005). 'Surface Integration. The National Action Plans for Employment and Social Inclusion in Germany', in Zeitlin and Pochet (2005), 249-86.

Casey, B.H., and Gold, M. (2005). 'Peer Review of Labour Market Programmes in the European Union: What Can Countries Really Learn from One Another?', *Journal of European Public Policy* 12(1): 23-43.

Caviedes, A. (2004). 'The Open Method of Co-ordination in Immigration Policy: A Tool for Prying Open Fortress Europe?', *Journal of European Public Policy* 11(2): 289-310.

Citi, M., and Rhodes, M. (2007). 'New Modes of Governance in the EU: Common Objectives versus National Preferences', *EUROGOV Working Papers* No. N-07-01, www.connex-network.org/eurogov/pdf/egp-newgov-N-07-01.pdf.

Cohen, J., and Sabel C.F. (2003). "Sovereignty and Solidarity: EU and US", in Zeitlin and Trubek (2003), 345-75.

Craig, P., and de Búrca, G. (2007). *EU Law: Texts and Materials*, 4th ed., Oxford: Oxford University Press.

Davies, P., and Freedland, M. (2004). 'The Role of EU Employment Law and Policy in the De-Marginalization of Part-Time Work: A Study in the Interaction between EU Regulation and Member State Regulation', in S. Sciarra, P. Davies and M. Freedland (eds), *Employment Policy and the Regulation of Part-Time Work in the European Union*, Cambridge: Cambridge University Press, 63-82.

de Búrca, G., and Scott, J. (eds) (2006). *Law and New Governance in the EU and the US*, Oxford: Hart.

de la Porte, C., and Pochet, P. (2004). 'The European Employment Strategy: Existing Research and Remaining Questions', *Journal of European Social Policy* 14(1): 71-8.

¹⁹ For a fuller discussion of this reflexive reform strategy, see Zeitlin (2005b: 483-93); Sabel and Zeitlin (2007: 49-52).

EAPN-EUROCITIES (2003). *The EU Strategy for Social Inclusion: Making It Work at the Local Level*, report of a conference held in Athens, 28 February-1 March.

EMCO (2006). 'Reinforcing the Mutual Learning Programme', EMCO/23/131106/EN, Brussels, 13 November.

Euréval/Rambøll Management (2008). *Evaluation of the Integrated Guideline Package (IGP) for Growth and Jobs*, final report to the European Commission, ECFIN/R/3/2007/004-IGP, http://ec.europa.eu/economy_finance/multiannual_eval_prg/multiannual_eval12403_en.htm.

European Commission (2001). European Commission, *European Governance: A White Paper*, COM (2001) 428, Brussels, 25 July.

----- (2002). *Report of the High Level Group on Industrial Relations and Change in the European Union*, Brussels: DG EMPL, January.

----- (2005) Working Together for Growth and Jobs: A New Start for the Lisbon Strategy. Communication to the Spring European Council from President Barroso in agreement with Vice-President Verheugen, COM (2005) 24, Brussels, 2 February.

----- (2006) Evaluation of the Open Method of Coordination for Social Protection and Social Inclusion, SEC (2006) 345, Brussels, 8 March.

----- (2007). *Member States and Regions Delivering the Lisbon Strategy for Growth and Jobs through EU Cohesion Policy, 2007-2013*, COM (2007) 798, Brussels, 11 December.

----- (2008) Accompanying Document to the Joint Report on Social Protection and Social Inclusion, SEC (2008) 91, Brussels, 30 January.

European Convention (2003). *Final Report of Working Group XI on Social Europe*, CONV 516/1/03 REV 1 WG XI 9, Brussels, 4 February.

European Parliament (2007). *Resolution on Institutional and Legal Implications of the Use of 'Soft Law' Instruments*, reference no. A6-0259/2007/P6-TA-PROV(2007)0366, 4 September.

Falkner, G., Treib, O., Hartlapp, M., and Leiber, S. (2005). *Complying with Europe: Harmonisation and Soft Law in the Member States*, Cambridge: Cambridge University Press.

FEANTSA (2007). *Untapped Potential: Using the Full Potential of the OMC to Address Poverty in Europe*, Brussels, October.

Ferrera, M., Matsaganis, M., and Sacchi, S. (2005). 'Open Co-ordination against Poverty: The New EU "Social Inclusion" Process', *Journal of European Social Policy* 12(3): 223-39.

Ferrera, M., and Sacchi, S. (2005). 'The Open Method of Co-ordination and National Institutional Capabilities. The Italian Experience', in Zeitlin and Pochet (2005), 137-72.

Graziano, P. and Vink, M.P. (eds) (2007). *Europeanization: New Research Agendas*. Houndmills: Palgrave Macmillan.

Hatzopolous, V. (2007). Why the Open Method of Coordination is Bad for You: A Letter to the EU', *European Law Journal* 13(3): 309-42.

Heidenreich, M. and Bischoff, G. (2008). 'The Open Method of Coordination. A Way to the Europeanization of Social and Employment Policies?', *Journal of Common Market Studies* 46 (3): 497-532.

Heidenreich, M., and Zeitlin, J. (eds) (2009). *Changing European Welfare and Employment Regimes: The Influence of the Open Method of Coordination on National Reforms*, London: Routledge, forthcoming.

Hemerijck, A. (2007), 'From Retrenchment to Recalibration: How Welfare States', unpublished paper, unpublished paper, The Hague: Netherlands Scientific Council for Government Policy.

----- and Berghman, J. (2004). "The European Social Patrimony: Deepening Social Europe through Legitimate Diversity", in T. Sakellariopoulos and J. Berghman (eds.), *Connecting Welfare Diversity within the European Social Model*, Antwerp: Intersentia.

Idema, T., and Kelemen, R.D. (2006). 'New Modes of Governance, the Open Method of Co-ordination and Other Fashionable Red Herring', *Perspectives on European Politics and Society* 7(1): 108-23.

Kerber, W., and Eckhardt, M. (2007). 'Policy Learning in Europe: The Open Method of Co-ordination and Laboratory Federalism', *Journal of European Public Policy* 14(2): 227-47.

Kilpatrick, C. (2006). 'New EU Employment Governance and Constitutionalism', in de Búrca and Scott (2006), 121-52.

Kok, W. (2004). *Facing the Challenge: The Lisbon Strategy for Growth and Employment. Report from the High Level Group Chaired by Wim Kok*, Brussels: European Commission, November.

Kröger, S. (2007). 'The End of Democracy as We Know It? The Legitimacy Deficits of Bureaucratic Social Policy Governance', *Journal of European Integration* 29(5): 565-82.

Larsson, A. (2000). 'The New Open Method of Co-ordination: A Sustainable Way between a Fragmented Europe and a European Supra State?', lecture at Uppsala University, 4 March.

Lodge, M. (2007). 'Comparing Non-Hierarchical Governance in Action: The Open Method of Co-ordination in Pensions and Information Society', *Journal of Common Market Studies* 45(2): 343-65.

Moravcsik, A. (2005). 'The European Constitutional Compromise and the Neofunctionalist Legacy', *Journal of European Public Policy* 12(2): 349-86.

Natali, D. (2004). 'The European Union and Pensions: Recent Steps in "Hard" Legislation and "Soft" Co-ordination', in C. Degryse and P. Pochet (eds.), *Social Developments in the European Union 2004*, Brussels: ETUI-REHS, Observatoire Social Européen, and SALTSA, 203-30.

Nedergaard, P. (2006a). 'Policy Learning in the European Union: The Case of the European Employment Strategy', *Policy Studies* 27(4): 311-23.

----- (2006b). 'Which Countries Learn from Which? A Comparative Analysis of the Direction of Mutual Learning Processes within the Open Method of Coordination Committees of the European Union and among the Nordic Countries', *Cooperation and Conflict* 41(4): 422-42.

- Nivière, D. (2005). 'Négocier une statistique européenne: le cas de la pauvreté', *Genèses* 58: 28-47.
- OECD (2005). *Modernizing Government: The Way Forward*, Paris: OECD.
- O'Kelly, K.P. (2006). *The Evaluation of Mainstreaming Social Inclusion in Europe*, Dublin: Combat Poverty Agency.
- OPTEM (2007). *Qualitative Study on the European Employment Strategy: Analysis of the Attitudes of the Main Actors in Employment Policy in 28 European Countries*, report prepared for DG EMPL, European Commission, July.
- Preunkert, J., and Zirra, S. (2009). 'Europeanization of Domestic Employment and Welfare Regimes: The German, French and Italian Experiences', in Heidenreich and Zeitlin (2009).
- Radaelli, C. (2003). *The Open Method of Coordination: A New Governance Architecture for the European Union?* Swedish Institute for European Policy Studies, Stockholm, Sieps Report no. 1, March.
- Rodrigues, M.J. (2001). 'The Open Method of Coordination as a New Governance Tool', in M. Telò (ed.), 'L'evoluzione della governance europea', special issue of *Europa Europe* 2-3, Rome: Fondazione Istituto Gramsci, 96-107.
- Rodrik, D. (forthcoming) 'Goodbye Washington Consensus, Hello Washington Confusion', *Journal of Economic Literature*.
- Sabel, C. F. (2004). 'Beyond Principle-Agent Governance: Experimentalist Organizations, Learning and Accountability', in E. Engelen and M. Sie Dhian Ho (eds.), *De Staat de Democratie. Democratie Voorbij de Staat*, Amsterdam: Amsterdam University Press, 173-95.
- (2005). 'A Real-Time Revolution in Routines', in C. Heckscher and P. Adler (eds), *The Firm as a Collaborative Community*, Oxford: Oxford University Press, 106-56.
- , and Zeitlin, J. (2008). 'Learning from Difference: The New Architecture of Experimentalist Governance in the EU', *European Law Journal* 14 (3): 271-327.
- (eds) (2009). *Experimentalist Governance in the European Union: Towards a New Architecture*, Oxford: Oxford University Press, forthcoming.
- Schludi, M. (2003) 'Chances and Limitations of "Benchmarking" in the Reform of Welfare State Structures – The Case of Pension Policy', unpublished paper presented at the Amsterdam Institute for Advanced Labour Studies, 8 May.
- Scott, J., and Holder, J. (2006). 'Law and "New" Environmental Governance in the European Union', in de Búrca and Scott (2006), 211-42.
- SPC (2007). 'Proposals Generated from the Summary of Member States' Replies to the Follow-Up Questions on How to Enhance Mutual Learning with the OMC Social Protection and Social Inclusion', Brussels, 27 June.
- Tavistock Institute et al. (2005) *The Analysis of Impacts of Benchmarking and the eEurope Actions in the Open Method of Co-ordination. How the eEurope OMC worked: Implications for the Co-ordination of Policy under i2010*, final report prepared for DG Information Society by

the Tavistock Institute, London, Net Effect Ltd., Helsinki, and Istituto per la Ricerca Sociale, Milan.

Telò, M. (2002). “Governance and Government in the European Union: The Open Method of Co-ordination”, in M.J. Rodrigues (ed.), *The New Knowledge Economy in Europe: A Strategy for International Competitiveness and Social Cohesion*, Cheltenham: Edward Elgar.

Trubek, D.M., Cottrell, P., and Nance, M. (2006), “‘Soft Law’, ‘Hard Law’, and EU Integration”, in de Búrca and Scott (2006), 65-94.

Trubek, D.M., and Trubek, L. (2005). ‘The Open Method of Co-ordination and the Debate over “Hard” and “Soft” Law’, in Zeitlin and Pochet (2005), 83-104.

----- (2007) ‘New Governance and Legal Regulation: Complementarity, Rivalry, and Transformation’, *Columbia Journal of European Law* 13(3): 539-64.

Van Gerven, M., and Beckers, M. (2009). ‘Unemployment Protection Reform in Belgium, Finland, the Netherlands, and the UK: Policy Learning through Open Coordination?’, in Heidenreich and Zeitlin (2009).

Visser, J. (2009). ‘Neither Convergence nor Frozen Paths: Bounded Learning, International Diffusion of Reforms, and the Open Method of Coordination’, in Heidenreich and Zeitlin (2009).

Zeitlin, J. (2003). ‘Introduction: Governing Work and Welfare in a New Economy: European and American Experiments’, in Zeitlin and Trubek (2003), 1-30.

Zeitlin, J., and Trubek, D. M. (eds), (2003). *Governing Work and Welfare in a New Economy: European and American Experiments*, Oxford: Oxford University Press.

----- (2005a). ‘Introduction: The Open Method of Co-ordination in Question’, in Zeitlin and Pochet (2005), 19-33.

----- (2005b). ‘Conclusion: The Open Method of Co-ordination in Action: Theoretical Promise, Empirical Realities, Reform Strategy’, in Zeitlin and Pochet (2005), 447-503.

----- (2005c). ‘Social Europe and Experimental Governance: Towards a New Constitutional Compromise?’, in G. de Búrca (ed.), *EU Law and the Welfare State: In Search of Solidarity*, Oxford: Oxford University Press, 213-41.

----- (2007). ‘A Decade of Innovation in EU Governance: The European Employment Strategy, the Open Method of Coordination, and the Lisbon Strategy’, in Portuguese Presidency of the EU, *Perspectives on Employment and Social Policy Coordination in the European Union*, Lisbon: Ministry of Labour and Social Solidarity, 129-44.

----- (2009). ‘The Open Method of Coordination and National Social and Employment Policy Reforms: Influences, Mechanisms, Effects’, in Heidenreich and Zeitlin (2009).

-----, and Pochet, P., with Magnusson, L. (eds.), (2005). *The Open Method of Coordination in Action: The European Employment and Social Inclusion Strategies*, Brussels: PIE-Peter Lang.

Zolnhöfer, R., and Ostheim, T. (2005). ‘Paving the Way for Employment? The Impact of the

Luxembourg Process on German Labour Market Policies', *Journal of European Integration*
27(2): 147-67.