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The Open Method of Co-ordination and the European Welfare State

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The Open Method of Co-ordination and the European Welfare State

Damian Chalmers and Martin Lodge¹

I. Introduction

Open Method Co-ordination (OMC) has been treated in the literature as the Lazarus of European integration. Developed at the Lisbon Summit, it has led to the reincarnation of the European Union, both in terms of what it does and how it does it. No longer is the European Union to be centred around the Classic Community Method (CCM) of supranational management of regulation. Instead, it is to be a decentred participatory process, in which national governments are no longer controlled and commanded by the imperatives of EC law, but rather commit themselves to review each other's programmes in the light of a series of mutually agreed standards and of domestic and trans-national participatory processes. The European Council and its surrounding machinery is placed at the heart of the Union's policy process, and new types of Union-Member State relations are forged which are centred less around classical legal prescriptions, and more around diffuse national adaptation to a wide array of transnational norms, whose form and origin varies (for initial review, see Hodson and Maher 2001).

This working paper will argue, however, that there is a danger in comparing these methods at the level of constitutional abstraction. Each, is both a method of governance and a policy process. Neither can be separated from the policy remit they govern. It is perhaps a little too easily forgotten that the CCM has been umbilically attached to the realisation of the Single European Market and surrounding areas of market regulation. As a method of market regulation, its failures are well-documented (eg, Majone, Dehousse, Joerges, Snyder and Everson 1992), and this has resulted in an ongoing process of regulatory reform, which has led, in many cases, to more of the same;² in others, more centralised procedures³, and in others still a lighter regulatory touch.⁴

OMC is not part of this process. If the CCM was concerned with establishing a method of governance for the Union's regulatory function, it is rather concerned with finding a system of governance for the Euro-era in those areas where the Union is engaged in redistributive and macro-economic activities. These are less tightly-constrained areas; intrude more into nationally-sensitive policy domains, and are policy areas where, in all jurisdictions, law, classically understood, has a less direct role.

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² Directive 2000/36/EC relating to cocoa and chocolate products intended for human consumption, OJ 2000, L 197/19.

³ EC Financial Services Action Plan COM (99) 232.

⁴ EC Commission, Updating and Simplifying Community Legislation COM (2003) 71.

Whilst its remit spills over into one or two other areas, OMC is therefore concerned with providing a constitutional architecture for the European Welfare State, no more and no less. As a governance process, OMC provides a new form of institutional ordering by placing the European Council at the heart of the Union's policy-making. New styles of Union-Member State relations are forged around the diffusion of a variety of transnational norms (of different form and origin) supposedly leading to national adaptation. A new politics of the Welfare State emerges in which politics is recast as something not determined by domestic contention, but through transnational problem-solving. A constitutional resettlement occurs in which a decentred, multi-level regime is gauged against the norms of deliberation, knowledge-generation, participation and subsidiarity (Trubek and Scott 2002). As a policy process, OMC rests upon two sets of dynamics. One is a *politics of strategisation* in which Union processes are to provide a compass for directing and locating national policy-making. The other is a *politics of reaction* in which the subjects of these guidelines will apply them, believe them and provide constructive feedback on them.

It will be argued that the assumptions behind OMC as a governance process rest upon its operationalisation as a policy process. For the governance model does no more than suggest an architecture of the process through attributing to it a series of static features. For these features to inhere to OMC, the process must follow a certain linear policy dynamic. This will rest upon certain assumptions about how OMC operates as a policy-making process.

In this regard, it will be argued that as a *strategy* for reincarnation of the European Welfare State, OMC is subservient to the ideologies, path-dependencies and structures of Economic and Monetary Union, as institutionalised in the Broad Economic Policy Guidelines (BEPG). As such, it is not a coherent strategy, for all its rhetoric, but a tactical response with limited manoeuvre to the new political economy of the Euro-zone. Many of the strategies are inchoate, at best, and focus less on substantive policy reform, and more on bureaucratic readjustment.

This dissonance between rhetoric and practice has led to a politics of *reaction*, where if the OMC is to be operational as a strategy, it is likely to fall foul of a number of structures. Embedded systemic and territorial path-dependencies will challenge its coordinatory capabilities. The politics of contestation that lie at the heart of welfare policy and political economy limit its legitimacy potential as they render conflict and difference an integral dimension and corollary of 'problem-solving'.

II. The Open Method of Co-ordination Introduced

The constitution of the Open Method of Co-ordination was set out at the Lisbon European Council, 23-24 March 2000. The central thrust of this European Council was not regulatory reform, however, but the resurrection of its ambitions and revision of its goals.

5. The Union has today set itself a *new strategic goal* for the next decade: *to become the most competitive and dynamic knowledge-based economy in the*

*world, capable of sustainable economic growth with more and better jobs and greater social cohesion.*⁵

Four key policies were to be central to this vision, which, if successful, was to deliver 20 million jobs by 2010.

- Better policies for the information society and research and development (R&D)
- Stepping up the process of structural reform for competitiveness and innovation
- Completion of the internal market
- ‘Modernisation’ of the European social model
- Applying an appropriate macro-economic policy mix
- An employment policy with a goal of full employment in a society which is more adapted to the personal choices of men and women
- A Sustainable Development Strategy.⁶

In terms of policy remit, the Lisbon Strategy was very wide-ranging indeed. As the Commission has noted on its website, it covers nearly all of the Union’s social, economic and environmental policies.⁷ To that end, a variety of regulatory regimes have been used to implement the Lisbon Strategy. The majority of it is still realised through the Classic Community Method of legislation. In its 2002 Review of the Lisbon Strategy, therefore, the Commission found there were 57 legislative acts or proposals for legislation that fell within classic EC competence, compared with 35 initiatives for benchmarking (EC Commission 2002a; *our calculation*) The scale of the tasks, however, meant the development of policies involving not merely the regulatory functions of government, but also those of stabilisation, allocation and redistribution. New institutional arrangements were necessary for such fields. Traditional harmonisation of laws, in which supranational institutions drew up a corpus of legislation, were perceived as too centralised, too *communautaire* and too rigid. In particular, harmonisation was felt to be inappropriate where:

- The area of work was closely connected with national identity or culture, eg culture or education
- The instruments for implementing national policies were so diverse and/or complex that harmonisation seemed disproportionate in relation to the objectives pursued, eg employment
- [There was] No political will for EC legislation amongst the Member States but there was a desire to make progress together.

(European Convention Secretariat 2002)

In these areas there was, instead, to be a Europeanisation of national policy-making, concerned with securing three values. The first, compatibility, required national policies not to have negative effects for the other Member States or the achievement of the objectives of the Union. The second, consistency, entailed that national

⁵ Presidency Conclusions (Lisbon European Council), Council of the European Union SN 100/00, 23-24 March 2000.

⁶ This was introduced not at Lisbon but at the Göteborg European Council, 15 June 2001.

⁷ http://www.europa.eu.int/comm/lisbon_strategy/index_en.html (last accessed 16 June 2003).

policies were to enhance each other's effectiveness. Finally, national government performance was to converge.

Open Method Co-ordination was to provide an institutional framework for securing these values. It was to draw upon the methodologies that had first been applied to the European Employment Pact: co-ordination of economic policy and improvement of the interaction between wage developments and monetary, budget and fiscal policy; improvement of labour market efficiency; and structural reform of the goods, services and capital markets. In addition, the method was to be extended to a number of other fields – the information society, research policy, enterprise, education and vocational training, combating social exclusion, immigration policy, and sustainable development.⁸ The institutional frameworks that were to govern these areas were to be marked by the following features:

The Fixing of Pan-Union Guidelines: Guidelines and targets will be set for each policy sector in which OMC is applied with specific timetables to be set for achieving the goals which they set in the short, medium and long terms.

The Development of National Action Plans in the Light of EU Guidelines: National action plans are established setting out specific targets and adopting specific measures in such a way as to translate these EU guidelines into national and regional policies, whilst retaining the freedom to take into account national and regional differences.

Regular Benchmarking and Peer Review: Quantitative and qualitative indicators and benchmarks are to be established as a means of comparing best practice. The implementation of national action plans is to be regularly reviewed within the Council in the light of these and the pan-Union guidelines.

Partnership: Regional and local government, as well as the social partners and civil society, will be actively involved in the development and review of national action plans. Such processes will be carried out in the light of 'best practices on managing change' devised by the European Commission, networking with different providers and users, namely the social partners, companies and NGOs.

Public-Private Networking: Implementation of OMC will rely primarily on the private sector, as well as on public-private partnerships. It will depend on mobilising the resources available on the markets, as well as on efforts by Member States. The Union's role will be to act as an 'enabling State' which acts as a catalyst in this process, by establishing an effective framework for mobilising and bringing together available resources.

At the Barcelona European Council, held in March 2002, the European Council endorsed a review of the Strategy carried out by the Commission (EC Commission 2002a). Its central points were that:

- Delivery of the Lisbon goals depended upon a 3 per cent growth rate, which has proved problematic in the economic climate since September 11th.

⁸ This was added by the Göteborg European Council, 15 June 2001.

- It is early days for most areas of OMC. The Commission was still in the process of formulating draft guidelines.
- Progress in some areas, notably structural reform of capital markets - the so-called Cardiff Process – was being held back by a failure to agree legislation at the EC level.

The European Council endorsed this curate's egg of a document. But, if the second-year report of the Commission is 'Slow start, but signs of progress' then there are already ominous signs emerging. The formulation of guidelines has appeared to be more drawn-out and complex than might have been anticipated. The Barcelona European Council expressed impatience and stated that focus must now move to implementation and away from simple annual elaboration of guidelines.⁹ In December 2002, the Union of Industrial and Employers' Confederations of Europe (UNICE) published a report in which it was heavily critical of the Lisbon Strategy, arguing that it had resulted in little structural reform (UNICE 2002). Meanwhile, others expressed concern at the lack of progress in addressing welfare reform and the absence of any meaningful strategy in the area (EAPN 2002).

This was reflected in an increased institutional pessimism about OMC. In its report to the 2003 Spring European Council, the Commission assessment was downbeat across all policy sectors. On employment, the Commission noted that despite five years of the European Employment Strategy (EES) there was little evidence of any significant structural reform. There had been some reform of product service and capital markets in areas covered by EC internal market legislation, but weak implementation overall. The co-operation in knowledge, research and development, and innovation had been weak. Progress on social cohesion was difficult to measure, as there was an absence of clear data. The Sustainable Development Strategy still revolved around legislation rather than economic instruments (EC Commission 2003). Both the European Socialist Party and the European Social Programme, meanwhile, issued statements indicating that they believed the Lisbon Strategy was focussing insufficiently on jobs, growth, and environmental and social goals (PES 2003; Social Platform 2003). The British and Finnish Prime Ministers issued a joint letter stating that structural reform and economic performance had been modest (United Kingdom Government 2003a). The reasons for this become more apparent if the performance of OMC is broken up into three headings.

Drawing up of Pan-Union Guidelines: The most developed and detailed, by some way, are the Broad Guidelines on Economic Policies by the Member States (BEPG). These are individually tailored for Member States, discussed extensively and subject to considerable monitoring.¹⁰ It will be remembered that these draw on a similar methodology to OMC and incorporate many of the criteria developed elsewhere in Lisbon. Their basis lies not in Lisbon, but in the commitment developed at Maastricht in Article 99(2) EC to co-ordinate national economic policy, and in the subsequent commitment made in the Stability and Growth Pact to maintain budgets close to balance or in surplus (Artis and Buti 2000).¹¹

⁹ Conclusions of the Presidency of the European Council, 15 and 16 March 2002; para 39.

¹⁰ For the latest, see Decision 2002/549/EC on the broad guidelines of the economic policies of the Member States and the Community, OJ 2002, L 182/1.

¹¹ Regulation 1466/97, OJ 1997, L 209/1.

The second category encompasses the guidelines set out in the European Employment Strategy. These are less wide-ranging than the BEPG. They focus on elements of employment policy - improving employability; developing a culture of entrepreneurship; promoting the adaptability of firms; and modernising work by organising and strengthening equal opportunities. Yet, there is a clearly defined and reflexive strategy which has evolved over time to encompass certain 'horizontal objectives', notably development of lifelong learning, and a broader policy community by attempting to involve the Social Partners in defining, implementing and evaluating of the Guidelines. They are less detailed and wide-ranging than the BEPG, and are required to be compatible with the BEPG. Whilst evaluation of national action plans to meet the Guidelines takes place, country-specific guidelines are not provided (Article 128 EC). Like the BEPG, the Employment Strategy has a longer lineage than OMC, dating back to the Luxembourg European Council in 1997 (Magnus-Johannsen 1999).

The third category represents the Sustainable Development Strategy (SDS) adopted at the Göteborg European Council in June 2001. The Strategy involves development of national action plans which not only take account of environmental impacts in decision-making, but which also address a series of themes, notably climate change, sustainable transport, public health and management of natural resources. Whilst a series of concrete targets have been set, these are less detailed than under either the EES or BEPG. As yet, indicators have not been developed by the Commission and there are no requirements for Member States to present national action plans for actual discussion. Furthermore, whilst the Sustainable Development Strategy can be said to be a genuine OMC, unlike the other two discussed, it is misleading to see it as such. The SDS is based upon a mode of governance established in 1993 in the Fifth Action Plan on the Environment and Sustainable Development, and continued in the Sixth Environment Action Plan, which is not dissimilar from OMC in that it sets a series of broad EU targets and guidelines and then commits Member States to involving civil society and market-players in the meeting of these targets. It therefore follows pre-existing trajectories, path-dependencies and institutional patterns. What is notable, however, is that it does not build upon these. Thus, the SDS is really a re-description of the Sixth Action Plan, in that it does not carry any of the features that distinguish OMC from it, notably feedback and review of national policies.

The fourth category contains the OMCs against poverty and social exclusion and those on pensions. A series of objectives have been set. These are, however, very broad. They include facilitating participation in employment and access to all resources; preventing the risks of exclusion; helping the most vulnerable, and mobilising the relevant bodies. Whilst indicators have been established, no quantitative targets or benchmarks are set. Instead, there is merely a requirement that Member States develop national action plans in these areas.¹²

Fifthly, there are a number of areas which are subject to wide-scale benchmarking. These include e-learning, investment in education, early school-leavers, graduates in mathematics, science and technology, upper secondary education attainment and

¹² The most recent outlines are contained in a Communication from the Social Protection Committee to the Committee of Permanent Representatives (COREPER) on 25 November 2002, Doc 14164/02, Rev 1. EC Commission, Joint Report from the Council and the Commission on Adequate and Sustainable Pensions, 17 December 2002.

participation in lifelong learning. In such cases, there is no strategy as such. Rather international excellence and the average of the three ‘best performing’ states are set as a standard of excellence.¹³

Finally, there is one other area, immigration,¹⁴ where proposals for OMC have been made, but there has been little further development.

Transformation of National Practices in the Light of Union Guidelines: Detailed constraints have applied to Member States only in the case of the European Employment Strategy and BEPG. In its Five-Year Report on the European Employment Strategy, the Commission noted that there had been a development of new policy paradigms; there was increased policy convergence and some policy-learning. It also noted, however, that there were few transformative effects in those Member States where there was already either a strong pre-existing convergence or divergence with the guidelines, and that these guidelines had led to some unanticipated effects (EC Commission 2002c). The position with regard to BEPG was less positive. The Commission assessed national progress in implementing country-specific BEPG across three areas – public finances, labour markets and product markets. It measured progress as either good, some or limited. Only two States, Sweden and Denmark, were considered as having made ‘good’ progress in more than one of these fields, and none in all three fields. In addition, two Member States, Germany and Austria, were regarded as having made only ‘limited’ progress in two areas (EC Commission 2003, 39). These results have been confirmed by independent research by the Centre for European Reform, which noted that it was both the OMC elements of the Lisbon Strategy that had hitherto produced the most disappointing results, and that it was the performance by the large economies of France, Germany and Italy that provided most cause for concern (Murray 2003).

Participation in Government: A central feature of the ‘new constitutionalist’ praise for OMC are the perceived opportunities it offers for participatory democracy (Scott and Trubek 2002; Gerstenberg 2003). Here, evidence is particularly disappointing. The Commission notes in its Five-Year Review of the European Employment Strategy – an area with established institutional actors – that participation has generally been weak (European Commission 2002b). Furthermore, there is little evidence that, since 1993, either the Fifth or Sixth Environment Action Plans have served to mobilise civil society or broaden decision-making.

Responses to this crisis seem disjointed. A number of Heads of State have published communiqués, but the policy responses are disjointed and represent different ideological priorities. The German, UK and French Governments issued a joint letter (known in EU circles as the ‘three tenors’ letter) in which they stated that Europe should not become some form of laboratory for regulation; that there should be some further market liberalisation, but nothing that imperils Services of General Economic Interest. Agreement focuses only on the establishment of a High-Level Review Body, paralleling the Hartz Commission in Germany, to review labour markets (United Kingdom Government 2003a). The British and Finnish Governments argued for wide-ranging structural reform and market liberalisation, as an antidote (United Kingdom

¹³ For analysis of these see EC Commission, European benchmarks in education and training COM (2002) 629 final.

¹⁴ EC Commission, Proposal for Open Method Co-ordination on Immigration COM (2001) 387.

Government 2003b). The sheer ephemerality of the measure apart, it also represents a damning indictment on the European Employment Strategy, the predecessor of OMC, to develop a coherent approach after five years operation.

III. The Strategic Assumptions of OMC

When viewed as *politics of strategisation*, the Lisbon Process embodies three dimensions. There is a strategy of evaluation regarding the improvement of the processes of regulation; a strategy of co-ordination proposing common actions and emphasising the interdependencies and solidarities between participants; and a strategy of interpretation seeking to secure a common interpretation of the processes amongst participants. Any strategy is therefore dependent upon the presence of a large number of different forms of resource. Information is central to the development of any kind of knowledge-formation capacity. Organisational resources are central for transforming this into a coherent and reflexive system of knowledge; ideological resources for purposes of visioning and evaluation. Finally, some co-optive resources must be present to generate normative expectations capable of steering common behaviour. In all these areas, OMC is weak.

(a) The Organisational Capacities of OMC: a European style of policy-making?

At the heart of the Lisbon Strategy lies a huge discrepancy in institutional resources. In the field of employment policy and BEPG the Commission's resources are available for the preparation of draft Guidelines. Similarly the Göteborg Guidelines on Sustainable Development draw heavily on the Commission's work on the Sixth Action Plan.

In other areas of OMC, the European Council is pitted as the strategic brain. It is to have 'a pre-eminent guiding and coordinating role to ensure overall coherence and the effective monitoring of progress.'¹⁵ It therefore sets the overall guidelines that act as the compass to the whole process. The challenges of such a role seem considerable given that what is called for is the steering of macroeconomic and redistributive policy across the Union. It is with bemusement, and even amusement, that this is all going to be done once a year in the Spring. It appears that Europe truly is going to be built within a day. Aware of the limits of its institutional resources, the European Council at Lisbon therefore asked the Commission to organise both upstream and downstream for that meeting, by drawing up an annual synthesis report on progress using to-be-agreed structural indicators, relating to employment, innovation, economic reform and social cohesion.

In terms of policy effectiveness, there was a problem in that the Commission has not devoted much resources to those policy sectors that form the core of OMC. Furthermore, its role was not to act as a form of surrogate COREPER, acting as the strategic brains of the Council by setting the agenda, creating roadmaps and directing debates. This led to a 'strategy deficit'. The Commission's formal constraints prevented it acting as the brains of the process. The European Council's temporal constraints prevented it, however, from acting out that role. This has led to two difficulties. It has ideologically skewed the process so that whilst economic policy co-ordination has been developed, the co-ordination of welfare politics has not (PES

¹⁵ Lisbon European Council, para 36.

2003, Social Action Platform 2003). It has also given the process an *ad hoc* feel, with little overall vision, coherence or explicit policy prioritisation (EC Commission 2002b).

The first step to address was taken at the Seville European Council in June 1992. The General Affairs Council (to be renamed the General Affairs and External Relations Council; GAERC) is to be given a more central role in the preparation for the Spring European Council.¹⁶ Its role will be to act as a form of surrogate COREPER. This will involve drawing up the agenda in a manner that distinguishes between items to be approved without debate and those for discussion. For any items for discussion which are either to lead to the definition of political guidelines or to decisions, a brief outline paper will now be provided setting out the issues to be debated and the options available.

A second step has also been proposed by the Commission. It suggests a more active role for itself in following-up the process. Following the Spring European Council it will propose a Guidelines Package, which will include both general and country-specific recommendations. This will be submitted to the various Council formations for consideration, and to the European Parliament for its opinion, before resubmitting the Guidelines to the European Council. To ensure temporal consistency, this Package would, in principle, cover a three-year period from April 2003, which would only be reissued each year to take account of new developments (EC Commission 2002c).

If the status quo is an agenda-setting deficit, these two proposals suggest competition for agenda-setting. The Commission vision is one where it locates itself at the centre of the process. This is reinforced by its ability to present annual guidelines as merely 'technical' updates, and therefore within its remit. Yet how this is going to be accepted by the GAERC, which is responsible for the preparation of the Spring meeting, is unclear. If it rejects Commission interpretations of the Guidelines, there is no fall-back position or clear consensus on division of responsibilities. It might be argued that Commission analysis understates the role of the GAERC within OMC, which arguably repositions Foreign Ministries at the hub of decision-making on welfare and macroeconomics. Yet, problems of specialisation lead to questions over where these will obtain their policy solutions and how these will be evaluated. In such instances, temporal constraints and shortage of expertise usually leads actors to adopting generic, off-the-peg solutions ill-suited to local circumstances or new contemporary demands (Boli 1987; Meyer 1997).

(b) A European Politics of Knowledge

Certain tools and microprocesses are central for government. The most obvious are statistics, as it is only through the creation of statistics about a phenomenon that it is rendered governable by presenting qualities and features that enable it to be governed (Shore 2000: 26-32). They are particularly central in regimes anchored around 'learning by doing' where policies are determined experientially, rather than on the basis of prior fixed goals. Yet, a perennial criticism of Eurostat is that its data continues to be too vague, and differences between national statistical data too great, for accurate data to be provided to policy-makers. In like vein, the European Commission admitted that it had failed to work out those structural indicators that it

¹⁶ Conclusions of the European Council, 21 & 22 June 2002, Annex II.

was required to develop for Lisbon, thereby not being in a position to assess progress in a number of key areas at Barcelona (EC Commission 2002d). Whilst it has been quite easy to develop benchmarks – procedures have been developed in research and development, employment, enterprise policy, jobs in the information society, social inclusion – the quality and seriousness of these are untested. (EC Commission 2002a: Annex 1). Some are wide-ranging, other extremely technical and drawn up by experts. How effective or reflexive any are as feedback mechanisms is still an open question.

Paradoxically, the more extensive the policy co-ordination, the greater the demands on the information-gathering process as more detailed feedback mechanisms have to be instigated. Gaps in the process have, therefore, emerged in areas of more intensive co-ordination. Eurostat's dependence on reports from national statistical offices has been hampered by different statistical methods and, in some cases, lax reporting. This added to the Commission's inability to assess a number of crucial areas (EC Commission 2002d). The Sustainable Development Strategy has been hampered, by contrast, by the Commission's failure to develop appropriate indicators (Baldock 2002).

Even where the Union has the power to develop indicators, it often does not have the knowledge-systems available to relate performance to results – something essential for the development of any strategy. Thus, the Union target of 70 per cent employment by 2010 is premised upon 3 per cent growth. Yet, work by International Monetary Fund (IMF) economists suggests the assumptions that one will lead to the other are misleading, and probably unfounded. For some states, almost certainly, growth levels will have to be higher to reach those targets (Morelli et al 2002)

(c) The Ideological Limits of the Lisbon Process

The Lisbon Process takes place in the shadow of the Stability and Growth Pact. It is, firstly, a process negatively constrained by the fiscal procedures of the Excessive Deficit Procedure. Certain options in welfare politics are simply not open. This leads, in part, to mutton being dressed up as lamb. Particularly in the field of employment policy and social inclusion, policies that amount to little more than administrative reform or rejigging of measurement procedures are presented as substantial because more far-reaching alternatives are not available (de la Porte and Pochet 2001).

More subversively, the Lisbon Process leads to a transformation of the politics of the Welfare State, whereby it becomes less centred around a discourse of social citizenship and more around economic growth and competitiveness. This is witnessed in the continued growth of the BEPG. These are required to take account of the guidelines established by the Lisbon Process. The result has not so much been an economic policy sensitive to social concerns, as a colonisation of the Welfare State by the economic policy-making process. In the 2002 BEPG, as part of the commitment to ensure growth and stability-orientated conditions, Member States are required to ensure wage increases do not exceed increases in productivity or the demands of local labour markets. The goals of structural reform of labour markets include developing tax and benefit systems 'to make work pay'. These include reforms to introduce conditionality of benefits, reducing incentives for early retirement, and promoting more 'flexible' labour regulation.¹⁷

¹⁷ Recommendation 2002/549/EC, OJ 2002, L 182/1.

The consequence of the structural imbalances in the strategy process is an organisational structure with a relatively incoherent set of welfare targets and a strong neo-liberal policy dynamic. It rewards two types of states – those committed to a neo-liberal agenda, and those who already meet the welfare targets and have no need for convergence. In the light of this, the following part of the paper moves towards an analysis of the ‘politics of reaction’.

IV. The Politics of Reaction

Even if the pre-conditions for strategisation were in place, the obtainment of OMC objectives depends on a second crucial dimension: the reaction by national systems both in terms of modifying their behaviours, and in terms of supporting the information-gathering for comparison, learning and adjustment. The success of OMC as a problem-solving mechanism places extremely high demands on the policy-making processes in the different domains, at the EU, the national and the EU-national level. As already noted, OMC is said to encourage the decentralised and deliberative experimentation and open problem-solving assumptions that were hardly present in the *Realpolitik* calculations at the basis of the Lisbon process. Before exploring why OMC (in its variations across domains) is unlikely to achieve its desired processes and goals, but will rather incur a multitude of effects ranging from futility, jeopardy to perversity, the following sets out the standard account of why OMC provides a *progressive* problem-solving response.¹⁸

For some observers (see de Burca 2003, de Burca and Zeitlin 2003, Sabel and Zeitlin 2003), the Open Method provides an historically inevitable policy response to the policy problems and shifts emerging within the European Union. That is, economic life of the 1990s is said to have exposed the individual to increased uncertainties, to the move of social-democratic parties towards ‘post-Keynesian’ supply-side economic policies in their search for new constituencies, and to the realisation that a ‘social Europe’ had to operate on a differentiated rather than uniform basis given the inherent diversity of the European Welfare State, and growing national sensitivity towards transfer of competence to the EU-level. There was an increased interest in decentralised, but co-ordinated EU policy activities in domains with likely negative ‘externalities’ in the face of unco-ordinated policy activity. Put differently, in the affected policy domains, common targets and procedures were seen to encourage a Europeanisation and increasing commonality of outlook across Member States in their adjustment policies to the Welfare State. OMC was said to allow for an opening-up of the policy standard-setting process, in that goals or standards were no longer ‘hard-wired’ in legislation, nor prone to delay and dilution when muddling through the legislative processes of the CCM, but instead were now sufficiently flexible to allow for continuous adjustment and learning. Accordingly, OMC ‘fits’ the current perceived problems across EU Member States that occur as part of their membership to the EU, allowing for voluntary and discretionary compliance in the absence of judicial processes.

¹⁸ This section utilises Hirschman’s account of reactionary and progressive rhetoric (Hirschman 1991). According to Hirschman, there are three progressive and reactionary strategies; the former consisting of historical inevitability, mutual reinforcement, and impending peril; the latter of futility, jeopardy and perversity.

Furthermore, the rise of OMC also reinforced other contemporary policy developments across EU Member States as well as within the EU itself. At the domestic level, there has been an increasing emphasis on so-called social pacts at the national level that aimed to establish supply-side orientated social and employment policies at the national level (Teague 1999) and change in national labour market policies.¹⁹ At the EU-level, OMC broadly fits themes pronounced in the 2000 White Paper on European Governance (Kohler-Koch 2001; Joerges 2001). It draws on the increasing emphasis on legislative initiatives to rely on so-called co-regulation, self-regulation, voluntarism and the employment of hybrid instruments (for example, in the fields of noise pollution, safety at sea, maritime pollution and the broad 6th Environmental Action Programme). It also relates to 'soft law' (Sisson and Marginson 2001) and it suits the emphasis paid to subsidiarity (Héritier 2002), proportionality and procedural accountability (Sabel and Zeitlin 2003). It also reflects on those arguments that attach great importance to discourse as part of comitology as well as the use of information rather than authority as regulatory device.

Moreover, OMC also potentially rescues the EU from the impending peril of its substantial legitimacy problems. By the time of the Lisbon summit, the European Union faced a substantial legitimacy crisis, expressed not only by the resignation of the Santer Commission, but also the referenda results in Denmark, Ireland, Norway and France throughout the past decade, and the record abstention to the 1998 European Parliament elections. In the light of such public disillusionment, and Member State hostility to further delegation of competencies in nationally-sensitive policy areas, any other emphasis other than relying on EU-wide standards responded to by diverse Member State policy initiatives would have arguably further undermined the popular support across the European Union, for the European Union.

While such accounts for the acceptability and attractiveness of OMC seem at first sight persuasive, they are based on unrealistic assumptions; for example, the assumption that policy change is to occur along intended lines of learning through mere incorporation rather than obligation.²⁰ However, 'incorporation' relies on voluntary compliance with the OMC assumptions, despite a legacy of studies that point to EU-Member State tensions in areas of policy adjustment, the dominance of actor self-interest and the doubtful capability of the OMC standards to affect change at the national level. Whilst largely explorative, the rest of this section points to effects (of futility, jeopardy and perversity) of the OMC that are likely to outweigh those promoted by OMC enthusiasts. One outcome suggests that OMC is unlikely to have any effect whatsoever. In contrast, OMC could be seen as jeopardising existing achievements as incorporated in the *acquis* or even to achieve the exact opposite of the intended policy outcomes. None of these effects can occur together, at the same time, across all domains affected by OMC. However, there is at least some evidence that suggests the presence of all three effects across various OMC aspects.

One does not have to search far to encounter elements of OMC that point to substantial *futility*, ie, the absence of any noticeable impact. OMC characteristics that

¹⁹ 2010 as a target year for economic and social policy achievements has also emerged in domestic policy discourse, for example in Germany which also established a 'stability pact' in its intergovernmental financial relations to deal with the German 'difficulty' with the Stability and Growth Pact.

²⁰ We are grateful to Charlie Dannreuther for this formulation.

are most clearly linked to futility are its target-setting and enforcement mechanisms and its questionable effectiveness in opening national policy domains in a coherent way.

Tools of peer-group pressure and benchmarking are widely held to be insufficient to motivate intended policy change; the only exception to this is when domestic cleavages utilise ‘open method’ guidelines and norms to consolidate their own policy positions in the domestic political landscape. In cases of non-achievement of the agreed benchmarks, there is little enforcement power. Furthermore, given the vague nature of benchmarks, there is substantial scope for creative compliance without the need to tackle substantive policy issues. The adopted targets of the ‘open method’ rival each other in terms of vagueness and have been exposed to regular change and amendment, thus making any comparison over time futile. There is, at best, mixed evidence in the EU-specific context (and more generally) that benchmarking offers a tool to maintain the momentum for advancing policy-making regardless of whether they emerge as ‘hard’ or ‘soft’ versions of ‘open methods’.²¹ Instead, there has been a constant stream of new types of benchmarks and targets following the ‘headline initiative-ites’ of European summit meetings. The ever-increasing number of targets, partly replacing, partly overlapping, but mostly adding to the reporting duties of Member States reduces the likelihood of a concentrated and sustained focus on any individual policy initiative. This problem was also diagnosed by the European Commission that called in its five-year review of the Employment Strategy for a simplification and clarification of the objectives of the employment guidelines (European Commission 2002b).

The need to set clearer and more precise guidelines becomes evident when considering goals such as ‘lifelong learning’, ‘increased employment in services’, ‘modernising social protection’, or ‘promoting social inclusion’. Whether such vagueness can be described as ‘open’ is debatable, but it is doubtful that such reference indicators coupled to national policy initiatives will induce policy and belief convergence or cause problems in terms of compliance ‘reporting’. It is also questionable how ‘open’ the process of selecting European standards and national targets is: does such a process include the consideration of all available policy options in the light of a full and ‘rational’ assessment and ranking of policy problems and solutions; or are such processes associated with summit grandstanding and peppered with references to latest policy fads and fashions? Furthermore, the adoption of European standards and national targets also reflects typical EU-type package deals with some issues reflecting particular ‘Anglo-Saxon’ interests, while also pleasing more ‘technology-innovation’ and ‘employment’-friendly French policy preferences.

Similarly, the belief that cross-national benchmarking opens up national self-referential policy-making processes seems rather naïve given the substantial variations in national starting positions and institutional arrangements as illustrated in the ‘varieties of capitalism’ literature (Hall and Soskice 2001, Scharpf 2000). The so-called National Action Plans have been mostly characterised by the restating of more or less well-known government policies, biased attention (and filtering) to particular

²¹ Trubek and Mosher (2003: 45) note the limited number of changes in employment policies, with those Member States indicating some policy change, showing a more enthusiastic response to specific and uncontroversial measures (such as in preventative and active unemployment policy) than in broad and politically contested policy domains (such as tax).

policy areas and a neglect of ex post (and cross-national) evaluation (Goetschey 1999, 2000, 2001). Furthermore, the peer group review process hardly provides for extensive ‘review’ given the short time-span allocated for each country’s assessment.²²

Arguably, given the diversity of welfare state arrangements across Member States, any ‘open method initiative’ is most likely to remain at this ‘thin’ or ‘superficial’ level, given the necessity of having to deal with diverse welfare state regimes.²³ More precise and targeted measures are likely to affect some Member States more than others, leading to diverse responses in terms of policy substance, dynamics and impact on relationships between actors at the national level. In the longer term, the initial futility of the ‘open method’ given its ‘thin’ standards is likely to invite a ‘futility double whammy’: the limited impact of the initial policy initiatives is likely to encourage an increased level of prescriptive detail included in policy tools and approaches, thereby undermining the fundamental basis of the ‘open method’, namely the potential for nationally diverse responses and applications that encourage cross-sectoral and cross-national policy learning, while also in the light of welfare state differences, becoming increasingly differential and potentially divisive in their impact at the national level.

The ‘open method’ is also largely futile when considering ‘openness’ in terms of participation given its emphasis on learning and mutual adjustment across policy elites. Despite commitments by the Social Protection Committee to include societal actors, it did not represent a clear institutionalisation of ‘open access’. Instead, across OMC-affected domains, established societal actors dominate the process, thereby asserting existing power structures and cleavages rather than encouraging wider ‘openness’ (see also Wincott, forthcoming). However, and also linked to the point about absent enforcement powers, it is most unlikely that peer group pressure (even by closed elite networks) will be sufficient to hold states’ policies to account in a transnational arena. As is the case in any national administration, ‘rudeness’ and ‘frankness’ in policy evaluation are not widespread and the futility of ‘naming-and-shaming (or celebrating)’ is also, if not more so, most likely to occur in the case of negotiations at the EU-level, in particular in less salient policy domains (such as the Cardiff process) in contrast to debates about broad economic policy. Whether however high salience debates on broad economic policy allow for learning and peer review instead of grandstanding and adversarial confrontation is debatable. At the same time, as Jacobsson and Vifell (2003) note, there is at best, mixed evidence across the different committees of ‘learning’ and preference ‘adjustment’ of national

²² While the Organisation for Economic Cooperation and Development (OECD) utilises similar procedures with peer group review led by two Member State reviewers, the OECD processes rely on longer ‘testing’ periods and conversations prior to the ‘peer’ evaluation. Arguably the main effect is in enhancing the defence preparations of the Member State under review rather than the level of interaction or potential learning effects.

²³ Two of the three key ‘active labour market policies’ recorded for Germany by the European Commission as directly related to the EES were triggered by domestic politics (number fiddling by the Federal Employment Agency and the Social Democrat/Green government’s interest in developing a ‘social dialogue’ with the trade unions (that collapsed in early 2003), an initiative that had already had seen previous (failed) incarnations in the 1970s and its predecessor in office, the Christian-Democrat-Liberal coalition government, in the mid-to-late 1990s. The content of these measures also did not seem to be directly informed by the EES.

officials, but whether these translate into national action requires such ‘fused’ actors (Wessels 1997) to translate their experiences into national policy action.²⁴

OMC can also be seen as a considerable threat to existing policy advances in European integration, despite its potential appropriateness for present policy problems. Accordingly, OMC may well represent an appropriate response towards market enabling and welfare state policies which are strongly linked to claims of national sovereignty and welfare state diversity. Its existence, however, *jeopardises* the continued development of supranational decision-making modes in other policy domains, or, and arguably more importantly, presents a threat to the *acquis* itself (and the underlying principles of the *acquis*). Both of these tensions have received some attention, in particular in discussions considering the ‘constitutionalisation’ of the OMC (de Burca and Zeitlin 2003, de Burca 2003). These concerns are arguably motivated by the absence of judicial oversight and therefore the weak safeguards that protect individual rights (as granted through the *acquis*) in OMC policy-making. Such a concern is particularly pertinent if one regards OMC not as a temporary stage towards the move of affected policy domains to the CCM, but as a set of policy instruments that are likely to increase in application given continued hostility by major Member States to any further transfer of policy competencies to the European Commission.

One of the favourite occupations of academic observers is to highlight the inherent folly, futility and unpredictability of all human affairs, in particular the widespread occurrence of *perversity*, namely the achievement of the opposite of intended policy outcomes (Hood 1998: 208-219). Such ‘fatal remedies’ (Sieber 1981) are associated with a number of causal processes, as illustrated in Table 1.

²⁴ Meyer (2003) comes to a similarly sceptical view of peer group pressures.

Table 1: Perverse effects, fatal remedies and OMC

<i>Fatal remedy type</i>	<i>Caused by</i>	<i>OMC-related example</i>
Functional disruption	Unintentional destruction of system requirements, thereby worsening conditions that were intended to be improved.	Member States turn, given explicit nature of reporting to targets, from voluntary compliance to explicit cheating. Diversity of national responders to common standard leads to non-standardisation.
Exploitation	Opportunities for opponents to subvert process to achieve opposite of intended effect.	Legal and political achievements of EU integration process are 'withered away'.
Goal displacement	Instrumental value defeats basic objective; creative compliance.	Explosion of targets creates over-complex rather than adaptive process.
Classification	Intended badges of stigma turn into badges of honour.	Refusal to accept naming-and-shaming becomes national electoral asset.
Placation	Poor goal setting and target-achievement encourages complacency and deflects attention from substantive and continuing policy problems.	Policy initiatives are meaningless to deal with challenges to national welfare states from European Monetary Union (EMU).
Over-commitment	Grandstanding and hype depletes resources and leads to disillusionment and abandonment.	Summit announcement of ambitious goals and non-achievement lead to eventual abandonment given embarrassment. Policy domains are subsequently neglected.
Provocation	Instead of compliance, instruments provoke adversarialism and hostility.	Naming-and-shaming leads to open hostility and distrust.

Without seeking to claim that all these fatal remedies will automatically occur across all OMC-affected policy domains, a focus on perverse effects nevertheless puts the enthusiastic and endorsing claims, noted earlier, in a different light. It is certainly too early to make any conclusive statement as to the extent of perversity in OMC, but a brief discussion of three particular phenomena shall suffice to highlight their pertinence.

As the debates concerning the compliance of Member States to the Broad Economic Policy Guidelines have shown, Member States are unlikely to find it attractive to be named-and-shamed in public (ie, leading to the provocation effect). One example was the public shaming of Ireland's Fianna Fail-led government for its expansionary and tax-cutting 2001 budget, which was deemed inconsistent with the BEPG. A similar case was the extreme reluctance by France (and to a lesser extent, by Germany and Portugal) to comply with the guidelines (that were accentuated by Commission President Prodi's suggestion that the Stability and Growth Pact represented

‘stupidity’). Such behaviour may become even more widespread should such open resistance receive additional domestic support, therefore leading to a classification effect. Furthermore, there is also a substantial element of goal displacement, given the increasing complexity of targets. Initiatives in areas such as ‘information society’ may be regarded as encouraging ‘placation’ effects given underlying, more substantial problems in European economies that are unlikely to be solved by adopting the rhetoric of emulating US-type economic policies (as was done by the chief initiators of the Lisbon process). Similarly, functional disruption is likely to occur when the diverse responses to the OMC initiatives encourage domestic ‘policies as their own cause’ phenomena that not only divert attention from the OMC process, but also make benchmarking and cross-national learning increasingly difficult given increasing diversity of national policy domains, thereby undermining the basis on which OMC was supposed to operate. Therefore, instead of encouraging mutual adjustment, co-ordination and learning through open discussion and comparison, OMC processes may achieve the absolute opposite.

V. Where are the emperor’s clothes?

In the introduction we noted the significance that has been attached to OMC for the wider understanding of the EU, whether in terms of Europeanisation, the creation of a decentered participatory process and the reshaping of the national welfare state. We have highlighted the origins and development of the OMC before considering two fundamental pillars for the successful operation of the OMC, the *politics of strategisation*, and, admittedly more speculatively, *the politics of reaction*.

As has already been noted, for some, the OMC represented the functional response of Member States eager to maintain authority over particularly sensitive and nationally diverse policy areas in the face of externalities provoked by other EU policies, in particular, anticipated effects from the single currency. The sensitivity of the policy domains was also arguably one reason why delegation did not take place in the form of delegation to supranational institutions, but in terms of transnationalising target-setting with limited enforcement powers, thereby reducing the possibility of unexpected consequences (as identified by Pierson 1996). For others, the ‘open method’ is best described in terms of ‘multi-level governance’ and the increasing ‘networkisation’ and ‘fusion’ (Wessels 1997) of national and EU policy-making. However, while such accounts seek to describe the supposed *sui generis* nature of the EU, they do not provide an explanation as to why the ‘open method’ occurred in the first place and what its effects may be (without having to rely on other, mainly functional explanations).

OMC hardly represented a fundamental move towards more flexible policy instruments in a European Union where Member States were more mature and no longer required supranational authority to enforce their commitments. OMC developed in the context of one particular economic policy coalition that (a) required a ‘modern’ sounding set of instruments to overcome potential hostility by some Member States to a US-type economic policy reform agenda, that (b) wanted to displace the Commission as the central standard-setting organisation and that (c) was not overly appreciative of the institutional complexity of EU policy and law. It was also doubtful whether the emphasis on national responses towards common problems was due to the differential nature of national economies and their exposure to the Single Market and the single currency (in the face of inevitable ‘mismatch’ of any

supranational response), or whether the OMC mostly represented a pleasing of national and distinct policy agendas intended to avoid any supranational or transnational enforcement.

Furthermore, rather than regarding the 'open method' as a realisation that the true basis of legitimacy remained at the national level, it could be regarded as a deliberate exclusion of societal and non-Member State countries from the increased (and necessary) elite networking inherent in mutual learning and peer-pressure activities as prescribed by the 'open method'. Both of these dynamics were at work in the OMC, given the launch and the central oversight (in terms of the broad headline targets) at the highest level of Member State representation, in the Council, while the technical work (and the box-ticking of the various initiatives that were to obtain the broad goals) was undertaken within the networks of national officials.

OMC standard-setting was mainly orientated towards motivating domestic policy reforms (if at all) and were hardly orientated towards creating a 'learning community' of Member State politicians and officials. Furthermore, if the effect of OMC was not completely futile, then its effects were likely to jeopardise existing achievements of the CCM (the recognition of individual rights), while also potentially triggering effects and outcomes that achieved the opposite from initial OMC intentions.

Such considerations have, so far, hardly featured in the literature on the OMC, although some accounts as to the utility of peer-group reviews have recently emerged (Meyer 2003; Jacobsson and Vifell 2003). The literature makes many references to the literatures on 'soft' and 'hard' law, on 'policy transfer', 'benchmarking' and 'policy learning' as well as on 'post-regulation'. While references to such growth industries in alternative sub-disciplines, such as 'governance' or 'policy transfer' (Dolowitz and Marsh 1996, 2000; Rose 1993; Radaelli 2000; Lodge 2003; James and Lodge 2003) offer potential paths for cross-disciplinary interaction, the study of OMC requires (and deserves) a more critical exploration of these much referenced literatures and a more critical application to the origins and the practice of the various shades of OMC across policy domains. Given substantial evidence of turf-fights and non-learning in national government (as within any organisation and most of all university departments), why should there be grounds for so much optimism about 'learning' and 'preference adjustment' when it comes to the level of the European Union? It is unlikely that the mere referencing to these literatures will enhance our understanding of the 'open method'. For example, various institutionalist schools could point to path dependencies (North 1990; Pierson 2000) or limited searches according to standards of appropriateness, depending on resource dependencies, mimicry in the face of uncertainty or particularly biases due to different trajectories of professionalisation which all matter for putting the emergence and impact of OMC into context.

In sum, much has been and is being written about the 'open method' and, as in any area of rapidly expanding interest, the rightful interest in the terminology and associated policy initiatives has centred more on description and commentary than on critical evaluation. The high demands of the OMC on policy-makers and EU and national policy regimes require further exploration, especially by those who regard the OMC as a substantially innovative and potentially powerful instrument. The 'open method' does not represent a mode that necessarily provides for more effective and

‘democratic’ governance than other, more traditional institutional modes which may or may not be applicable in the particular policy domains where the ‘open method’ enjoys prominence. Similarly, the open method may or may not be appropriate for expanding into further areas of EU policy-making.

There are many ‘naked emperor’ attributes that can be linked to OMC. Nevertheless, the centrality of policy domains affected by OMC, the dominance of the economic (BEPG) OMC mechanisms over the ‘social’ processes, the nature of the employed instruments (and their increased application), as well as wider questions concerning the viability of particular governance devices for the EU, encourage further probing into the open method.

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