

## Too Open for Its Own Good? Six Proposals for Taming Open Co-Ordination

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### Key points:

- Within the framework of the Lisbon Strategy launched in 2000, open methods of co-ordination (OMCs) have expanded to numerous fields of application, since a high degree of openness has made them an easily accessible instrument of EU policymaking.
- The basic idea of open co-ordination – co-ordination rather than legislation; open to various actors, policies, and methods; transparent and open to the public – presents considerable opportunities for EU policymaking.
- In light of an even more heterogeneous Union due to enlargement, and the need to search for new instruments beyond hard legislation in sensitive areas of national sovereignty, open co-ordination has the potential to develop into a complementary EU policymaking tool.
- More than five years down the road, however, open co-ordination is still too 'open' to be a manageable instrument. The current hesitation of EU member states towards open co-ordination results primarily from the concept's linguistic and conceptual vagueness. Thus, the most important challenge confronting open co-ordination involves the establishment of a common understanding of the concept as such.
- The key to success lies in taming open co-ordination through six measures: clearly defining the overall objective of each respective OMC, developing a methodological tool to identify promising fields of application, enhancing member states' commitment to the OMCs, making open co-ordination more democratic, respecting heterogeneity, and constitutionalising open co-ordination.

One of Eurospeak's recent stylistic howlers is the term 'open method of co-ordination'. Open co-ordination has become a fashionable instrument in political practice as well as a subject for researchers all over Europe and the United States. But even amongst experts there is still no common understanding about what open co-ordination means, how it works and what its objectives are. Ask ten people, and you might get ten different answers.

Since its official launch within the Lisbon Strategy in spring 2000, open co-ordination has expanded to numerous fields of application and can vary widely with regard to legal basis, procedures, and the actors involved. More than five years down the road, however, open co-ordination – which was presented as a method 'designed to help the member states to

progressively develop their own policies' in the March 2000 Presidency Conclusions – is too 'open' in many ways, with significant consequences for its effectiveness: a concept that is so vague and malleable is difficult to translate into actual policymaking, especially within an already very complex system like the European Union. Thus, the most important challenge confronting open co-ordination involves the establishment of a common understanding of its objectives and main features.

OMCs currently fall far short of providing a formalised and complete concept such as the community method. Rather, they can be described as a laboratory of integration. In this sense, open co-ordination offers a number of opportunities for the future of EU policymaking. In light of an even more heterogeneous Union due to enlargement, and the growing pressure to search for new instruments beyond hard legislation in sensitive areas of national sovereignty, open co-ordination has the potential to develop into a new policymaking tool complementing existing instruments of EU governance.

This paper discusses the opportunities presented by open co-ordination as well as particular structural deficits that the existing OMCs have revealed over time, and proposes a number of strategies and measures for strengthening open co-ordination.

### 1. Opportunities of Open Co-Ordination

The basic idea of open co-ordination – co-ordination rather than legislation; open to various actors, policies, and methods; transparent and open to the public – provides the ground for a number of opportunities for EU policymaking:

- *No formal transfer of competencies:* with OMCs, the member states are and continue to be free in their decisions concerning national policies. If there is political consensus amongst the member states, open co-ordination can be implemented without changing the distribution of competencies in the Treaties, which is always a politically sensitive issue.
- *Flexibility:* Open co-ordination is a flexible instrument that can be extended pragmatically to various institutional settings and administrative procedures without requiring further elaboration in the Treaties.
- *Lower 'threshold for participation':* OMCs were installed in policy areas where member states are not willing to give up further competencies to the EU, but nevertheless feel the need to co-operate more closely. Because open co-ordination lacks formal sanctions, member states' resistance to further co-operation is reduced.

- *A means to complement 'hard' economic integration:* Since member states are and probably will remain reluctant to surrender further sovereignty in certain sensitive policy areas (such as Social Policy), open co-ordination can complement economic integration by providing an instrument for the further development of a European approach to Social Policy.
- *New instrument of governance:* Open co-ordination can develop into a new instrument of multilevel governance, complementing the existing instruments of EU policymaking that are either intergovernmental or supranational, and enabling the EU and the member states to choose amongst a larger variety of governance instruments in the future.
- *Making learning a value in itself:* Open co-ordination, a concept taken from the private sector, makes learning an integral part of the political process. This unique form of co-operation within the EU might prove to be a competitive advantage for the Union by effectively supporting member states on their way to becoming knowledge-based economies.
- *Dealing with diversity:* Open co-ordination is an instrument that builds on diversity. Diversity is often perceived as an obstacle to EU policymaking rather than as an advantage. However, by aiming toward a convergence on the level of ideas rather than legal harmonisation, open co-ordination might demonstrate that the potential benefits of diversity have not been sufficiently exploited by the EU.

## 2. Deficits of Open Co-Ordination

Despite these positive aspects, the potential of open co-ordination remains underexploited. A number of horizontal aspects of open co-ordination require further discussion. The main problems of open co-ordination are:

- *No consensus on the overall objective of open co-ordination:* What is the clear objective of a proposed OMC? Does a particular OMC seek to establish a process of policy learning or a process of policy co-ordination? What steps must be undertaken to reach this objective? The European Council was too vague on this issue. Consequently, a considerable number of problems have arisen during the planning and implementation of the various OMCs.
- *Criteria for potential fields of application missing:* Currently, the main rationale for implementing an OMC in a specific policy area is connected to the distribution of competencies, i.e., OMCs can be established only where the EU does not have further legislative competencies. It is questionable whether this approach represents the best way to identify the most appropriate policy fields for instituting OMCs. Irrespective of the actual

distribution of competencies, which policy fields are most conducive to OMCs? What are the criteria for identifying suitable fields of application?

- *Lack of member states' commitment to open co-ordination:* OMCs are non-binding and leave member states great room for manoeuvre in organising processes at the national and sub-national levels. This flexibility allows participating member states to circumvent co-ordination processes or engage in OMCs as an exercise in symbolic politics. Furthermore, only a limited number of national officials are involved in peer reviews or the formulation of National Action Plans. As a result, the direct impact of open co-ordination at the national level is quite low. How can ownership of OMCs be improved?
- *Lack of democratic participation:* OMCs currently exacerbate the democratic deficit of EU policymaking. They are in many ways bureaucratic exercises for European, national, and sub-national administrations. Neither parliaments nor stakeholders are sufficiently involved, and the processes lack transparency. This type of governance is one of the reasons why EU citizens are dissatisfied with the Union's policymaking. Is there a way to make the OMCs more democratic?
- *The obstacle of heterogeneity:* The objective of enhancing member state ownership of the Lisbon process turned out to be highly ambitious. Among other factors, this has to do with different priorities among the EU-25 member states regarding the three pillars of the Lisbon agenda (economic growth, social coherence, and environmental sustainability). Already diverse, the EU has become even more heterogeneous as a result of enlargement. Does this diversity present a significant obstacle to open co-ordination? Or is open co-ordination the key for coping effectively with this diversity?
- *Non-Constitutionalisation of open co-ordination:* Open co-ordination is not anchored in the Treaty of Nice as an official policymaking instrument. Part III of the Constitutional Treaty mentions the use of open co-ordination in certain current and potential fields of application but contains no horizontal article on open co-ordination. If the Constitution is ultimately ratified – an uncertain prospect at the moment – open co-ordination will enter constitutional law in a rather unsystematic way. If the Treaty of Nice continues to serve as the EU's legal basis, OMCs will remain unmentioned in primary law. How could a horizontal article on open co-ordination look like?

### 3. Six Proposals for Taming Open Co-Ordination

While one of the main advantages of open co-ordination is its flexibility and 'openness', the above list of deficits reveals that this high degree of flexibility also presents an obstacle to open co-ordination. How can one tackle the deficits of open co-ordination without giving up its flexibility? The following section offers six proposals to meet this challenge.

### *3.1 Defining the overall objective of open co-ordination*

The objectives of open co-ordination are likely to vary depending upon the policy field addressed. The EU tried to respond to this problem by setting up different kinds of open co-ordination over time. But the European Council has remained too vague in its definitions, trying to bridge the different approaches and objectives of the member states in respective policy areas. This vagueness has turned into a burden for daily political practice: different understandings of the broad European Council definitions emerged within the EU bodies, leading to institutional rivalries and a diffusion of different practices. Therefore, from the very beginning, there should be a clear consensus, at the level of the European Council, on the objectives and procedures of each respective OMC. If the objective of an OMC is to promote a learning exercise for member states, a conceptual framework for policy learning must be developed. If the OMC's goal is to co-ordinate policies, then the OMC must be set up to meet specific requirements of policy co-ordination. Defining an objective also involves identifying the most appropriate instrument to achieve this goal. This does not necessarily imply choosing open co-ordination. The community method or a mix of both might be an alternative (see section 3.2).

### *3.2 Identifying potential fields of application*

From a strictly legal point of view, OMC processes can be established only where the EU does not have further legislative competencies. Supporters of the community method argue that if OMCs were applied in areas where the EU possesses legislative competencies, they would create a kind of legislation through the back door that would threaten the community method. However, the existing distribution of competencies should not be regarded as permanent. Consequently, it is important to think open co-ordination beyond the present division of competencies.

What are promising fields of application? This question is closely related to the issue of defining the objectives of open co-ordination. One parameter for distinguishing among relevant policy fields is the existence of cross-border externalities or international spillover. There are policy areas with a strong potential for external spillover from one country to another, such as Research and Development, whereas others do not have strong direct effects on other member states. It is questionable if it makes sense to apply OMCs in areas possessing strong spillover potential, i.e., areas that could enhance EU-wide competitiveness in the short or medium term, because open co-ordination is a relatively weak tool. Policy areas with strong potential for external spillover should be regulated within the framework of EU legislation rather than through open co-ordination. In contrast, areas with less potential for external effects fit better into OMC processes that support trans-national learning in a long-term perspective. In contrast to the legal-based approach, this content-driven approach to potential fields of application involves the

conceptualisation of OMCs beyond the policies covered by the Lisbon agenda, and beyond the actual division of competencies, since competencies might be questioned and transferred to OMCs and vice versa.

### *3.3 Enhancing the member states' commitment to open co-ordination*

There are three primary ways to improve the commitment of member states to OMCs: public pressure, formal constraints, and financial incentives.

- *Public pressure:* Public pressure through the mechanism of naming and blaming has not been particularly effective in the OMCs launched thus far. One of the main reasons for this failure is the low profile of OMCs within national political processes: they fall within the purview of small circles of national administrations. The participation of concerned civil society organisations (e.g. in the social sector) depends on the goodwill of national governments. Participation of stakeholders varies amongst the member states, but in general stays on a low level. As a consequence, open co-ordination suffers from a lack of political, public and media attention. Lisbon is perceived as one of the many faceless, apolitical, technocratic, and complex EU processes that are difficult to communicate to a broader public. But as the 'PISA shock' proved, comparing national practices and publicly ranking them can actually put pressure on governments to undertake reforms in order to perform better. One cannot expect that this pressure will occur if OMCs remained relatively hidden within administrations. Public pressure can only grow if Lisbon receives greater attention within broader national as well as transnational debates.
- *Formal constraints:* A second option involves the introduction of formal sanctions. This strategy would face a major hurdle, however: it is unlikely that member states would voluntarily introduce sanction mechanisms, and even if they did, the example of the Stability and Growth Pact has demonstrated that constraints can be handled quite loosely. Finally, since open co-ordination must be conducted primarily at the national level in order to function effectively, the sanction 'stick' should be handled carefully.
- *Financial incentives:* As a third alternative, financial incentives could reinforce member state commitment to OMCs. The High Level Group chaired by Wim Kok suggested restructuring the EU budget according to the Lisbon priorities, in order to encourage member states to meet the Lisbon targets. But this requires a fundamental reform of the EU budget, which, in light of the compromise on the Financial Perspective 2007-2013 agreed at the European Council in December 2005, is not in sight at the moment. Financing areas of open co-ordination will therefore be a highly difficult, though indispensable, task.

### 3.4 Making open co-ordination more democratic

If open co-ordination is to become an official part of the EU policymaking toolbox in the long run, it must become more democratic. This can be achieved through greater transparency as well as the increased involvement of the European Parliament, national parliaments, and civil society organizations.

- *Transparency:* OMCs are difficult to trace in EU and national policymaking processes because of their open, flexible, and multilevel character. Thus, information on all OMC processes should be systematically documented (legal basis, actors involved, measures taken and state of play) and made available to the public. The Commission, which already plays a co-ordinating and monitoring role, has the resources and independence to manage OMCs (by collecting data, conducting analysis, identifying best practices, and providing government and public access to relevant information). Within the Commission, there should be a clear delegation of responsibility for OMC management ('Mr. OMC'). The Commission should develop an official OMC scoreboard (as is already provided, for example, by the Center for European Reform) and discuss it with both the media and involved actors on a regular basis. It would also help to develop new terminology for communicating the Lisbon Strategy: Open co-ordination is an expression that is both overly technical and confusing.
- *Involving Parliaments and civil society organizations:* Strengthening parliamentary discussion of and participation in OMCs offers an additional avenue for making OMC processes more democratic. The Standing Committee that was established in the European Parliament during the Lisbon mid-term review should be upgraded to the status of a Committee dealing horizontally with economic, social, and environmental questions. The EP should establish a plenary session on the Lisbon agenda before each Spring European Council and invite representatives of national parliaments to these debates. The participation of national parliaments should be enhanced by extending the Constitutional Treaty's early warning mechanism to areas of open co-ordination. Involving civil society organizations more systematically in OMC processes would raise the awareness of the Lisbon Agenda amongst EU citizens.

### 3.5 Dealing with heterogeneity through differentiation

Open co-ordination is trapped in a dilemma: on the one hand, comparison and learning require a certain degree of diversity. On the other hand, an excessive diversity of preferences might hinder open co-ordination. Differentiated integration is a promising strategy in light of the growing diversity of an enlarged EU. Member states that share objectives and face similar problems in specific fields – e.g., because they possess similar social welfare systems – could decide to establish an OMC together. Limiting OMCs to smaller groups of member states would provide a

further benefit in that peer pressure works much better in groups of smaller size. OMC islands could develop within the EU, and additional third countries could be invited to participate. Combining open co-ordination and the concept of differentiated integration might thereby prove to be an important innovation within EU policymaking.

### *3.6 Constitutionalising open co-ordination*

A horizontal provision on the instrument of open co-ordination would acknowledge existing OMC practice and make it more binding and transparent. To preserve the flexibility of open co-ordination, there should be no absolute, exclusive list of fields of application. Instead, a horizontal article should be formulated, that should delineate the key features of open co-ordination (a prototype OMC) from which diverse variations might develop according to the different requirements of respective policy fields. The article could broadly define open co-ordination as a mutual feedback process that is composed of elements to support learning; that includes executives and parliaments at the European, national, and sub-national levels as well as stakeholders; that must be compatible with other requirements resulting from primary and secondary law and from EC policies; and that must respect the objectives of the Treaties. Details on the procedures could then be listed in a catalogue that might include the following components:

- OMCs must be initiated by a formal decision of the European Council, and this decision must include a clear definition of the OMC and delegate the operational set-up to the Commission and Council;
- During the set-up of an OMC, the Commission and Council must consult all concerned actors within the relevant policy field (including, e.g., the private sector and civil society) in order to develop suitable OMC objectives and processes;
- The Commission must report systematically and regularly to the European Parliament and national parliaments;
- OMC processes must be regularly documented and reviewed through transparent procedures managed by the Commission; these procedures should evaluate not only the outcome of the OMC but the OMC process itself;
- The early warning mechanism must be applied to OMC processes (i.e., national parliaments and the European Court of Justice could be involved).

This catalogue of measures would reduce the excessive 'openness' of current OMC processes and enhance the transparency and democratic legitimacy of open co-ordination. This clarification of procedures and principles would also affect decision-makers' perception of open co-ordination: having a clear road map (what you see is what you get) rather than a vague concept

that can be variably interpreted might enhance the commitment of member states to open co-ordination.

#### 4. Conclusion

Cross-border comparisons of national practices, as is performed within OMCs, are not new. But such comparisons go further within the EU context, because the Union offers a political framework that is lacking in other international arenas (e.g. the OECD). In that sense, the EU's unique system can turn out to be a competitive advantage. So far, the history of open co-ordination has been very short, and the experience of a few years has probably revealed more weaknesses than positive results. In light of these performance deficits, open co-ordination certainly does not represent a policymaking panacea. The launch of the first OMC generation was characterised by a significant amount of randomness. Much progress remains to be made in making open co-ordination an effective instrument of governance.