

## Laboratory for Integration

### Opportunities and Risks of the “Open Method of Coordination”

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#### Executive Summary

The policy areas in which the open method of coordination (OMC) is applied have multiplied rapidly, and OMC could become the fundamental model of future integration. To bring the method out of the twilight of EU integration, some guidelines should be set:

- Given the importance of OMC, and given that the Convention's draft has already been opened to amendments, the intergovernmental conference (IGC) should append a “Declaration on the Open Method of Coordination” to the Constitution.
- This declaration should define the method's key characteristics concerning the right to initiate action, decision-making, planning, co-ordination, evaluation and control.
- In addition, the current and planned guideline processes should be listed systematically, and their respective success evaluated.

The definition of such a framework would counter potential negative trends toward intransparency and a lack of legitimacy and at the same time make use of OMC's potential to increase efficiency and dynamism.

European integration is a process that requires innovation and dynamism. If a particular path of development appears blocked or exhausted, the application of flexible instruments often provides new momentum. The newest innovative twist is the development of the open method of coordination. This method arose in the run-up to the Treaty of Amsterdam as a way to organize the member states' varying ambitions concerning employment policy. OMC enables the definition of common guidelines, without resorting to the classic community method of legislation.

As so often in the history of the European Union (EU), once an instrument for integration has been successfully initiated in one field, it finds its way into other policy areas. This is particularly true for the areas addressed by the Lisbon process which will also play a key role in the meeting of the European Council on March 25–26, 2004.

### Accelerating implementation

The EU has set itself an ambitious goal. By 2010, the EU intends to be the most competitive and dynamic knowledge-based area in the world. To reach this goal, at the summit in Lisbon on March 23–24, 2000, the EU Heads of State and Government selected a new instrument that was described in the European Council's conclusions as a "new open method of coordination at all levels, coupled with a stronger guiding and coordinating role for the European Council." The conclusions explained the OMC as a method "designed to help Member States to progressively develop their own policies", and that should take effect within a framework of guidelines. The main elements of the process are

- first, fixing guidelines combined with specific timetables for achieving the goals which they set in the short, medium and long terms,
- second, establishing quantitative and qualitative indicators and benchmarks,
- third, translating these guidelines into national and regional policies and
- fourth, monitoring and evaluating the process, which aims towards mutual learning.

Following the specifications set up at Lisbon, OMC was first applied to the fight against poverty and social exclusion, as well as the question of the future of pension schemes. Moreover, agreements were quickly reached that called for applying the method, or at least studying how it could be applied, to policy areas that included migration, public health policy, security at the workplace, youth policy, training, tourism and e-Europe. Among the areas of supporting, coordinating and complementary action listed in the Convention's constitutional draft, industry, culture and civil protection are explicitly

### Current and Potential Policy Fields for OMC

- Civil protection
- Education and culture
- E-Europe
- Employment policy
- Fight against poverty and social exclusion
- Health care
- Industrial policy
- Migration
- Pension schemes
- Research and development
- Tourism
- Security at the workplace
- Youth policy

listed as possible areas for coordination. With those additions, OMC could penetrate areas that are neither the exclusive competence of the Union nor of the national governments, such as cultural policy, which in Germany is a matter for the *Länder* governments.

Its rapid extension makes clear that OMC has the potential to become a formative pattern of European integration.

### Not anchored in the Treaties

The open method of coordination is not yet explicitly anchored in the Treaties. Given its increasing importance, however, OMC played a significant role in the debates within the European Convention. There, OMC was primarily discussed in working groups V (Complementary Competencies), VI (Economic Governance), IX (Simplification) and XI (Social Europe). A majority of the members of the working groups on social Europe and economic governance spoke in favor of explicitly including the open method of coordination in the Constitution, provided that the method would be clearly defined.

In the end, the group in favor of integrating OMC into the Constitution did not achieve its goal, although the Convention's Praesidium had signaled several times that it would consider the possibility.

Concrete proposals for the text of a constitutional article were also submitted. The Praesidium reasoned that the method's flexibility should not be endangered by fixing it in a treaty's text. Furthermore, OMC could be subsumed under the clauses for coordinating economic, employment and social policy, which are found in Article I-14 of the constitutional draft. Article I-16, which covers the areas of supporting, coordinating or complementary action, also forms a legal point of reference for additional policy areas.

Another reason for foregoing an explicit article on OMC was that a formalized definition would have become an additional bone of contention within the Convention. For open coordination touches not only the question of how to involve EU institutions, and thus the problem of legitimacy, but also the regions' worry that OMC could undermine their legislative prerogatives.

### Cyclical Guideline Process as a Main Feature of OMC:

- **Guidelines:** Defining targets and setting schedules
- **Indicators:** Agreeing on quantitative and qualitative indicators (scoreboard)
- **Implementation:** Creating and implementing national action plans
- **Benchmarking:** Reporting by the member states; summarizing, analyzing best practices and suggesting policy recommendations by the Commission
- **Political Pressure:** Naming, blaming, shaming; peer review; monitoring
- **Guidelines:** Renewed setting of goals, targets and schedules

### Assault on the Community Method?

Whether or not it is anchored in the Constitution in an explicit article, OMC does already play an important role in EU policy making and will be applied in a growing number of policy areas. For this reason, it is necessary to weigh the method's opportunities and risks.

From a critical point of view, the process of open coordination could, under certain circumstances, work against the efficiency, transparency and legitimacy of European policies.

- The administrative structures on various levels will be involved with planning, implementing and evaluating a complex system of simultaneous guideline processes. OMC could thus lead to **intransparency**, by blurring responsibilities and abetting centralization.
- An agreement on a set of qualitative and quantitative goals might merely be **non-binding**, if there are no mechanisms to sanction those who do not meet these goals. Furthermore, orientation toward "best practices" is not necessarily innovative. It may simply consolidate existing knowledge, in particular, if distinctive national characteristics are not sufficiently taken into account.
- There is also the basic question of whether the governments of the member states are authorized to begin a process of open coordination in certain policy areas. This would clearly **reach a limit** if the national governments ignored the prerogatives of sub-national units.
- The question of **legitimacy** is particularly relevant because the participation of the European Parliament is limited, and national parliaments have hardly any means of overseeing all OMC processes. The role of national parliaments will tend to be reduced to implementation, and their opportunities for setting policy will be closed off in favor of the governments.
- Finally, OMC as a form of substitute legislation could also **undermine** the community method, if it replaces existing modes of policy-making and legislation.

Thus, there are a number of risks associated with the open method of coordination. However, under certain conditions, OMC could also develop in a different direction, one that respects the principle of subsidiarity and the sovereignty of the member states while simultaneously improving the EU's ability to solve problems.

- The OMC can encourage **subsidiarity**, because the process is intended to include all levels of government, thus working against centralization. In this respect, OMC is a "milder" approach than the community method. In principle, it would be possible to transfer competencies that had gone to the community method to the OMC.
- Furthermore, the OMC is **compatible with sovereignty**, because it leaves the member states sufficient room for manoeuvre. It can thus be applied in delicate policy

areas in which national sensitivities do not (yet) allow communitarization. OMC can contribute to solving current socio-political problems without necessarily having to pass community law.

- Due to its construction, OMC enables relatively **rapid agreement** on quantitative and qualitative goals. As there are no immediate sanctions, member states may be more likely to participate in this form of benchmarking. Where the countries succeed in living up to the goals, the results can also be presented positively to the electorate.
- Simultaneously, governments will also be **put under pressure**, because OMC creates comparability among the member states, and public interest will be aroused by the mechanism of “naming, blaming and shaming.”
- Finally, open coordination can offer an **alternative** to initiatives that have been unsuccessful within the community framework. In the end, not every member state would even have to participate.

There are thus as many good reasons to apply OMC as there are potential pitfalls. The use and extension of these guideline processes should only be applied on a case-by-case basis on the grounds of an analysis of the potential costs and benefits.

### Creating Framework Conditions

To prevent the negative tendencies inherent in OMC, certain principles and conditions should accompany the decision to begin a process of open coordination. These principles and conditions should aim at solving problems efficiently, reinforce democratic legitimacy, and increase transparency.

In order not to endanger the instrument’s flexibility, the process should not be overly formalized. Instead, various forms of open coordination should be available, each adapted to the appropriate policy area. Nevertheless, given the risks described above, it is necessary to create a common framework for the process.

1. A formal decision of the European Council should continue to be the starting point for launching an OMC initiative. This decision should define, in cooperation with the Commission, the guideline process, including schedule, qualitative and quantitative goals, and the modes of participation of various governmental levels.
2. The European Council should charge the European Commission with coordinating and evaluating the guideline process. This will give the Commission a comprehensive role in planning, coordinating and overseeing the process, because it enjoys the necessary independence.
3. The European Parliament and the national parliaments should receive regular progress reports. These bodies should, in addition, be able to pose questions to the Commission at any time. In this context, the early warning system described in the

constitutional draft's "Protocol on the application of the principles of subsidiarity and proportionality" should be extended to the open method of coordination.

4. In order that the EP, national parliaments and the public at large can exercise some form of control, the Commission should systematically summarize the current and planned guideline processes and evaluate their success. This will make the strengths and weaknesses of existing OMC initiatives visible, and highlight the key points that future OMC applications should take into account. The next summit of the European Council should take a respective decision.

### Conclusion

The OMC offers opportunities in those areas that urgently require a common approach, but where the member states have either been unwilling to give up sovereignty, or where the existing community practices have not led to success. In addition, the OMC could be applied as a new form of differentiated integration or as an alternative to the instrument of enhanced cooperation, if only a limited number of member states are willing to participate.

OMC is not one of the hot topics in the Intergovernmental Conference. Given its growing importance and its potential, the constitutional provisions concerning coordination should be revisited. In view of the tight schedule and the expected concentration on institutional questions, an explicit anchoring of OMC in the Constitution does not seem realistic at this stage.

Nevertheless, the current Intergovernmental Conference should make an effort to bring OMC out of its existence in the "twilight" of integration. Therefore, a declaration mentioning at least the conditions for starting and developing OMC should be attached to the Constitution. The specific arrangements could then be regulated in an interinstitutional agreement. At the same time, the early warning system for national parliaments that is included in the constitutional draft should be extended to cover the applications of open coordination.

If the member states fail to set up appropriate conditions for OMC, integration through coordination could increasingly take place without parliamentary or public control. In that case, the EU would have done itself a disservice, because one of the most important demands for the constitutional process was to improve transparency and legitimacy of EU decisions.