

The Reception of the Open Method of Coordination in Slovenia

Damjan Lajh and Urška Štremfel



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Damjan Lajh and Urška Štremfel

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Abbreviations

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| CEEPUS | Central European Exchange Programme for University Studies |
| EC | European Commission |
| ECJ | European Court of Justice |
| EEC | European Economic Community |
| EES | European Employment Strategy |
| EU | European Union |
| E&T 2010 | Education and Training 2010 Work Programme |
| ICT | Information and Communication Technology |
| ILO | International Labour Organization |
| IMF | International Monetary Fund |
| MLFSA | Ministry of Labour, Family and Social Affairs |
| MLP | Mutual Learning Programme |
| OECD | Organisation for Economic Cooperation and Development |
| OMC | Open Method of Coordination |
| PLA | Peer Learning Activity |
| RS | Republic of Slovenia |
| UN | United Nations |
| UNESCO | United Nations Educational, Scientific and Cultural Organisation |

1 Introduction

Without contesting the relative (and variable) “success” of European integration, most observers still consider the political system of the European Union (EU) to be plagued by serious performance problems. This concerns the effectiveness of decision-making as well as (probably even more often) democratic legitimacy (Eberlein and Kerwer 2002: 2), debates of which reached a peak during the 1990s (Hix 1998). As a result of these debates, the processes of reforming EU governance have begun. The so-called “new modes of governance” have offered a promising solution to the challenges faced by EU governance. The most noticeable difference is seen in the procedural, heterarchical, flexible new governance instead of the previously regulatory, top down and uniform model (Eberlein and Kerwer 2002: 1). European Commission (EC) initiatives concerning new modes of governance, resulted primarily in the White Paper on European Governance (2001), have also attracted considerable scholarly attention. It is therefore no surprise that, during the last decade, we have been faced with many debates about governance and the changing modes of governance, which have become significant, exclusively in the context of EU research (Eberlein and Kerwer 2002; Héritier 2002; 2003; Scott and Trubek 2002; Knill and Lenschow 2003; Treib et al. 2007; Kassim and Le Galles 2010: 7). In this respect, qualitative studies of the EU (soft law) mode of governance, known as the Open Method of Coordination (OMC) have gained in prominence. The OMC is a relatively new method introduced within the EU. It is based on the voluntary cooperation between the EU member states and EU institutions in those policy fields where treaties establishing European Communities allocate

rather few, if any, competencies for direct decision-making within the framework of EU institutions (Dehousse 2002: 5).

The growing political emphasis on the OMC, coupled with the widening and greater diversity of its processes, has resulted in many contrary judgments concerning the OMC – not only by (EU) policy actors, but also by researchers and academics. According to Zeitlin (2005a: 19), no other development within European integration has triggered as much interest and debate as the OMC. Radaelli (2003: 16) and many other authors (Chalmers and Lodge 2003; Goetschy 2005; Kröger 2006; Alexiadou 2007) assert that, while the OMC is the subject of many theoretical debates, it is too soon to offer any unanimous and exhaustive estimation of its effects in practice – primarily due to the lack of qualitative empirical analysis of the influence of the OMC on national beliefs, decisions and policies. In addition, one can also identify debates about the relationship between its advantages and deficiencies as well as questions of whether the method works *de facto* within and between the member states (Chalmers and Lodge 2003; Radaelli 2003; Goetschy 2005; Kröger 2006; Alexiadou 2007).

In the subsequent high level discussions about shaping the new governance of the EU (including the White Paper on European Governance), the OMC has been seen as a new and flexible instrument capable of introducing more democratic parameters into decision-making, and of regaining the lost popular confidence in the European integration project by inducing further political action to complement the Community Method (Scott and Trubek 2002; Borrás and Jacobsson 2004: 186–187). Within the framework of the “new governance”, the OMC has been referred to as a “network governance” (Kohler-Koch and Eising 1999) or a “new governance architecture” (Radaelli 2003). The OMC’s novelty and the range of expectations of it have stimulated an interesting and multifaceted debate among policymakers and scholars. Instead of treating it as a problem-solving facility of European policymaking (Héritier 2001, Scharpf 2001; 2003) and as a form of policy-learning (de la Porte et al. 2001; Radaelli 2004; 2008; Kan 2005; Lange and Alexiadou 2010), one of the most visible debates is the question of its democratic potential (Rodrigues 2001; Scott and Trubek 2002; Telo 2002; Cohen and Sabel 2003). In this way, the OMC was contested as a form of new governance from different theoretical perspectives in

the light of theories of deliberative democracy, Habermasian public discourse approach, the theory of directly deliberative polyarchy, participative deliberative democracy (Friedrich 2006: 4), and instrument-focused literature (Dehousse 2002; Jordan and Schout 2006; Kassim and Le Galles 2010).

Experimentalist theory describes methods like the OMC by highlighting a basic dissatisfaction with the existing attempts to conceptualise the relationship between “new governance” and the traditional forms of EU (hard) law. Perhaps the most popular view of this relationship is the idea that the OMC should be seen as an “extra-legal” process (Scott and Trubek 2002; de Burca 2003). This external view of the law *versus* governance relationship suggests that both the strengths and limits of the method rest upon its distance from law as it is traditionally understood. In terms of strengths, this means that the OMC can be a useful instrument in filling legislative “gaps” closed-off by the strict decision-making hurdles of the European Community Treaty (Scharpf 2003: 654; Zeitlin 2005a). In terms of limits, it suggests that the OMC is a “second-best solution”, comparatively “weak” when contrasted with the EU’s normal legislative instruments (EC 2001: 22; Scharpf 2003: 655). In both cases, the OMC should be understood as something working at the periphery of legal integration (as either a supplement or threat to ordinary legal methods). The challenge of the OMC in relating to governance is thus how to reconcile diversity and democratic accountability on the one hand, with convergence and efficiency on the other hand. The OMC can be characterised as a “post-regulatory” approach to governance in which there is a preference for procedures or general standards with wide margins for variation, rather than detailed and non-flexible (legally binding) rules (de la Porte et al. 2001: 302).

New modes of governance and policy innovations are operationalized through the selection of new policy instruments. It may be that new policy instruments are sought when other mechanisms of coordination or governance have failed (Kassim and Le Galles 2010: 7). Scott and Trubek (2002) define “new mode of governance” in a broad manner as “any major departure from the classical Community Method”. Treib et al. (2007) argue that the classification of modes of governance as “old” or “new” is of little analytical value. Most frequently, the term governance is

used to describe a change in the nature of the state. Governance takes into account a change in the actor constellation, both during the formulation and the implementation of policies and in the method of political steering (Treib et al. 2007). In the literature, the concept of governance is used in at least two different ways: one broad, the other more restricted. In the encompassing sense it implies every mode of political steering involving public and private actors, including the traditional modes of government and different types of steering, from hierarchical imposition to sheer information measures. In the restricted sense it only comprises types of political steering in which non-hierarchical modes of guidance, such as persuasion and negotiation, are employed, and/or public and private actors are engaged in policy formulation (Héritier 2002: 2). Governance therefore involves interaction between actors in complex networks of policy bargaining, policymaking and policy implementation (Everson 1998; Kohler-Koch and Eising 1999; Sibeon 2000 in Ahonen 2001: 5).

EU officials have recognised the urgency of developing a common understanding of governance in the EU. The most systematically visible and original way was presented in the White Paper on European Governance (2001) which – through a description of various principles – suggested what new governance should look like. Although the White Paper itself had a limited impact (Kassim and Le Gales 2010: 6), new policy instruments carried the promise of making the EU more transparent and more participatory. In this sense, many statements praising the new modes of governance have come from the EC. While the EC sees the new modes of governance as offering a possibility to expand European policies in the face of resistance from national government, member-state governments prefer them to legislation because they allow member states more autonomy in policy-shaping. Trade associations support the new modes of policymaking because they play an important role in it. The European Parliament is more sceptical because it circumvents the European Parliament's rights of co-decision (Héritier 2002: 3). Members of the European Parliament view the process with some scepticism since they are not involved in this soft mode of policymaking, and they opt for hard law legislation instead. All in all, even where there are no major and demonstrable consequences of national policies for other member states or for other areas of

Community policy, it is recognised that the Community takes an interest in good governance for all citizens of the EU. This raises profound questions as to the nature of the EU as a supranational political community (de la Porte et al. 2001: 301).

The establishment of the OMC has thus been strongly associated with a general challenge to the EU, namely the legitimacy crises. For example, in the aftermath of the Maastricht Treaty a large gap became evident between the European political elites and the public, a gap concerning the most appropriate matters of and the tempo of European integration. Shortly after Maastricht, another legitimacy crisis arose at the EU level. The democratic deficit of the EU expanded beyond the question of popular representation and the role of the European Parliament and became a question of the transparency, accountability and openness of policymaking processes. The legitimacy crises have been as much a matter of political goals as the means to fulfil them. The European integration project has reached a stage where core areas of the welfare state, such as employment policy, social policy, and education, are directly affected. These are areas where the political support of member states is particularly difficult to gain (Jacobsson 2001). Hence the OMC has been developed to avoid the classical form of legislation through directives and regulations in order to achieve common goals (Héritier 2001: 2–3; Hodson and Maher 2001; de la Porte 2002; Mosher and Trubek 2003). The OMC was designed as the method for meeting the Lisbon policy challenges whilst at the same time being a method suited to addressing the EU's democratic deficit. Here, the key question relates to the readiness and capability of member states to decide and initiate such a form of cooperation as would bring about greater obligations and would enable the comparisons of the development levels among respective member states. In this respect, the potential of the OMC is ready to be put to good use. But an essential question remains: how to achieve a better reception of the method without undermining its ambitious goals of greater efficiency, safety, better quality decisions, improved implementation and enhanced democratic legitimacy?

The Aim of the Book

A growing body of political science and sociological literature has thus far attempted to capture the ways and means by which national systems are, or are not, affected by supranational processes. Qualitative studies of the OMC produce conflicting accounts of its effectiveness within the member states. Furthermore, such studies are limited in that they have predominantly concerned a small number of country case studies and one or two particular policy issues. Obtaining an accurate overview of the normative effectiveness of the OMC is therefore problematic (Copeland and Haar 2010). There are two further problems with respect to the OMC and the member states. Firstly, there is the issue of causality: the OMC is one of several factors that can influence policies in the member states (de la Porte and Pochet 2003: 59–61), while establishing the exact relationship between policy activism in a member state and the EU guidelines is complex (Zeitlin 2009: 215–216). However, the fact that it is difficult to prove does not mean that there is no relationship (Tucker 2003). Secondly, member states may simply comply with the EU guidelines in areas which correspond to their domestic welfare structures (Haas 2000: 45; de la Porte and Pochet 2003: 54–61). Member states may appear to be extremely active within certain guidelines, but that may be a result of the goodness-of-fit with domestic policy, rather than the result of any genuine OMC-inspired reform.

There is a growing literature on the OMC and its potential effect on domestic settings (e.g. de la Porte and Pochet 2002; Borrás and Jacobsson 2004; Zeitlin et al. 2005). The academic discussion about the impact of the OMC has led to dissimilar arguments given the diverse theoretical understandings and analytical frameworks (Borrás and Greve 2004). This book seeks to contribute to this literature by comparatively focusing on particular aspects of the effects of employment OMC (i.e. the European Employment Strategy – EES) and education OMC (i.e. Education and Training 2010 Work Programme – E&T 2010) on domestic policymaking processes – and by presenting a number of factors that are linked to the differential influence of soft law on member states. In questioning the extent to which the OMC introduces changes to the governance of the EU,

de la Porte et al. (2001) thus conclude that the OMC is likely to have substantial implications for domestic and European governance, but that these may vary considerably, depending on the manner of its implementation (2001: 292).

Many academics hold the view that there is a lack of empirical evidence concerning how good governance works in practice within member states (Zeitlin 2005a). They argue that the most significant unanswered question concerning the OMC – which will also be addressed in this book – is the lack of examples indicating a genuine effort to apply the core tenets of “transformation” to the practice of EU governance. In terms of the lack of empirical evidence, the selection of just one country does reduce the strength of the theoretical argument; but it does allow for greater empirical depth. From this perspective, Slovenia is a particularly interesting case because it is new member state and it is interesting to see how it has adapted to these new modes of governance. The analysis offers a valuable insight for candidate countries to see the future challenges in transforming their governance (also in the field of employment and education policies).

Taking different theoretical presumptions into consideration, especially Zeitlin’s (2005a: 26) warning about the lack of qualitative empirical research, the main aim of this book is to analyse to what extent the OMC is being put to its best possible use in Slovenia. In this respect, the book will conduct a systematic review of its *de facto* reception in the fields of employment and education policies. However, regarding Europeanization processes, both directions (top-down and bottom-up) need to be considered since member states are never passive recipients and implementers of EU policies and initiatives. This means that distinct European practices, institutions, policies and discourses developed at the EU level create pressure for reform or change in structures, processes, and policies at the domestic level. The adaptation pressure varies according to the type of EU rule in question, as well as the degree to which it fits with pre-existing policies and policymaking practices in the member states. The debate amongst scholars identifies the following as important domestic factors having an impact on OMC reception: political ideologies and policy paradigms, state traditions and administrative legacies, state capacities and resources, actor constellations and

social interests (Cowels et al. 2001; Featherstone and Radaelli 2003; Jacobsson 2004; Jacobsson and West 2007). In order to understand the reception of the OMC in a national setting, both the institutional context in which the OMC is to be implemented and the micro-politics of the OMC in Slovenia (i.e. actor responses and activities as well as relationships between actors) need to be taken into account (Jacobsson and Johanson 2007). For this reason, it is important to consider the institutional arrangements at the EU level in the areas of the two case studies – employment and education.

On the one hand, in the early days of its existence in the 1950s and 1960s, the European Economic Community (EEC) was characterised by a period of virtually full employment. Perhaps some of the failure to grasp the problem of unemployment was due to the enlargement of the EEC/EU from 1972, making control from Brussels increasingly difficult. However, the changing world economic climate, globalisation and the spectacular growth in the emerging economies added to the difficulties of introducing an effective employment policy (Walsh 2009: 11). Emergent and persistently high levels of unemployment in Europe during the 1980s and 1990s thus called for the inclusion of a high level of employment as one of the EU's most important development objectives. During the mid-1990s, the need to address unemployment and the need for labour market reform began to appear explicitly in the official documents of the EU. The common guidelines on employment policy were first adopted in 1998, and have over the years increasingly evolved into the early stages of a common social policy. At the Lisbon Summit, the EU set itself a new strategic goal – to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with a greater number of better jobs and a greater degree of social cohesion (Kajzer 2002). However, although social issues appear high on the European agenda, this has also brought softer approaches to dealing with employment policy, including the OMC.

On the other hand, education is an area of EU policy which requires no harmonisation of national laws and regulations with EU legislation. In accordance with the Treaty, the EU's primary aim in the field of education is to contribute to the development of high quality education by encouraging cooperation between member states and by supporting and complementing their actions, whilst

fully respecting the responsibility of member states to create their own curriculum content and the organisation of education systems and their cultural and linguistic diversity. Nevertheless, at the EU level we are able to find various declarations and other documents which refer to education. Education activities in the EU context represent an area of common cooperation (on a voluntary basis) among member states, and the foundations for this cooperation between EU member states in the field of education were laid down through the OMC. By introducing the OMC, the Lisbon Strategy established a common European education space in which the (hitherto completely heterogeneous) education systems could connect to create a uniform core of lifelong learning (Gornitzka 2005).

The main aim of this book is to study the reception of the OMC in Slovenia. There are two ways that the reception of the OMC and the ability to exploit the various dimensions of its potential are important: firstly, in order to achieve the quantitative goals of the Lisbon Strategy; and secondly, the qualitative goals, for example including the greater convergence of different policy fields and a greater degree of democratic governance in the EU. The OMC's potential in the area of employment and education policies reveals a considerable capacity for strengthening horizontal and hierarchical interactions and for achieving the future convergence of decisions and actions. The appropriate reception of the OMC should enable future EU policy agendas to become deeper and broader, and to remain in harmony with the principle of subsidiarity in relation to the EC and other European agencies as important process initiators. Taking into account the bottom-up approach, it is particularly important to exploit the OMC's potential in each member state since all member states (should) contribute to the quantitative and qualitative dimensions of the EU-wide arrangements in the field of employment and education. Only through the contribution of all member states can the EU become "the most competitive knowledge-based society in the world" (as defined in the Presidency Conclusions, European Council, 2000). Additionally, in the emerging literature we can also find a gap in the empirical evidence that underpins the potentials and constraints of the OMC as a new form of governance. Therefore this book will also assess the OMC through selected principles of good governance as stated in the EC White Paper on European Governance.

In the book we apply theoretical arguments concerning the implementation of public policies, soft modes of governance, Europeanization processes and policy learning, as well as the opinions of those actors dealing with the OMC in employment and education at both the national and EU levels. The book is based on an analysis of Slovenian legislation and other official documents that steer employment and education policies, EU official documents in the field of employment and education, and semi-structured interviews with relevant officials at the Slovenian Ministry of Education and Sport and at the Slovenian Ministry of Labour, Family and Social Affairs (conducted from 2008 to 2011), at the Slovenian Permanent Representation in Brussels (one interview), and with relevant officials at the Directorate General for Education and Culture in Brussels (ten interviews conducted in January 2010). The data gathered through semi-structured interviews presents an additional source of information and was used only to clarify those open issues which we were not able to identify from our analyses of the official documents.