

# **The Open Method of Coordination and National Parliaments: Further Marginalization or New Opportunities?**

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# The Open Method of Coordination and National Parliaments: Further Marginalization or New Opportunities?

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**ABSTRACT** Legislatures are central to national democracy. Yet, scholars examining the impact of the European Union (EU) on national parliaments (NPs) have concluded that integration undermines national legislatures. We call for a more nuanced and realistic analysis. We turn to the EU's new forms of governance and, specifically, the Open Method of Coordination (OMC). Our analysis reveals a complex picture. On the one hand, by empowering governments through cooperative federalism, the OMC risks further marginalizing NPs. On the other hand, the OMC provides national legislators with opportunities that the traditional Community method of legislation cannot offer. First, the OMC gives national legislators access to an array of powerful, but also flexible, insights and tools for producing successful laws. Second, the OMC gives those legislators grounds for criticizing the policies of government officials. The empirical record suggests that NPs are already experiencing some of these contradictory effects. The conclusion calls for a reassessment of the position of NPs while stressing the need for stronger participation of NPs in EU politics.

**KEY WORDS** Cooperative federalism; democratic representation; legislative insights; national parliaments; Open Method of Coordination; soft law.

## INTRODUCTION

Legislatures are a central characteristic of the modern nation state (Weber 1968: vol. 2, chapter 9 and vol. 3, chapters 10-13; Skocpol 1985: 3-37). Locke, in his *Second Treatise of Government* thought of the legislature as 'the soul that gives form, life, and unity, to the common-wealth' (1980: 107-8). Generations of writers thereafter echoed his sentiments (Lauterpacht 1997: 138). Yet, modern accounts of European parliaments paint a much bleaker picture. They recognize that national parliaments (NPs) are central institutions in European systems of government: NPs elect and control the government, approve legislation, and – as the bodies responsible for amending the constitution – hold the ultimate power in society. At the same time, those accounts stress that such a constitutional perspective is divorced from reality: NPs are reactive institutions, casting rather modest influence on policy initiatives coming from the executive. The technicality of most legislation, strong party government, and the growing relevance of external constraints – globalisation, judicialization through the activism of national and European courts, and delegation of policy-making authority to various public or private agencies, not least central banks – all limit the real influence of parliaments (Strøm *et al.* 2003; Norton 1998; Raunio and Hix 2000).

European integration in particular appears to have put an enormous stress on NPs. Proponents of the ‘deparliamentarization’ thesis have convincingly argued that the EU has largely weakened NPs by strengthening the executive branch and moving legislative activities to the supranational level. Subservient to higher powers, the scope and autonomy of NPs has been greatly curtailed. In this paper, we examine and then challenge this thesis. Our claim is that the institutional and procedural complexity of the EU is likely to have multiple, and possibly contradictory, effects on NPs. This is especially so with the arrival of new forms of governance, mostly centered on soft law. Our attention turns to one of those new forms, the Open Method of Coordination (OMC), and its multifaceted impact on NPs. In use since the mid-1990s, the OMC was formally launched at the Lisbon European Council of March 2000. Its purpose is to spread legislative ‘best practices’ across the member states primarily in areas where the EU has no formal competence for regulation. Much attention has been given to the OMC’s modus operandi, the nature of various initiatives across policy areas, and the general impact on the policies of the member states. The OMC’s implications for NPs specifically have, by contrast, gone almost completely unexamined, but for a few exceptions which summarily point to the lack of NPs involvement in the process. We call for a more sophisticated analysis of the OMC and NPs.

We propose, on the one hand, that the OMC indeed stands to marginalize NPs. As the European Commission itself has noted, the OMC functions without the direct participation of national legislators (Commission of the European Communities 2002: 3, 14). More importantly, the OMC entails a move towards cooperative or executive federalism and, with that, a channeling of authority towards the executive branch. We also argue, however, that the OMC presents NPs with new opportunities to strengthen their position. The traditional method of legislation in the EU leaves little room for national legislative initiative. By contrast, the OMC provides national lawmakers with a flexible and rich plethora of insights and guidance on successful legislative initiatives. In addition, the OMC gives national legislators munitions to undermine the programs and policies of government officials – thus increasing those legislators’ influence over the executive branch. The empirical record shows that NPs have already been to feel the effects of marginalization and the availability of useful insights and guidance into lawmaking. We conclude that the relationship between the OMC and NPs is complex and multifaceted, though we stress that the need for democratic representation in the EU remains unresolved.

The first section of this paper reviews the current consensus on European integration and the weakening of NPs. The next two sections examine in detail the design of the OMC and its multifaceted implications for NPs. The following section considers the empirical evidence in support of our points. The last section explores how NPs could increase their participation in the OMC.

## **THE CURRENT CONSENSUS: THE ‘DEPARLIAMENTARIZATION’ OF NATION STATES**

Much of the burgeoning ‘Europeanisation’ literature has approached the impact of the EU on national politics from the perspective of changing opportunity structures. The establishment of a new set of institutions at the European level with legislative, executive

and judicial powers, provides actors with a new layer of access to political decision making. The EU creates new exit, veto, and informational opportunities for domestic actors and therefore changes the national opportunity structure for exerting political influence. The idea is thus simple: states are not homogeneous, monolithic entities and the process of European integration may empower certain groups or institutions while reducing the power of others.<sup>1</sup>

NPs in particular have, in the view of most scholars, suffered from European integration. There are two distinctive accounts of this ‘deparliamentarization’ thesis. According to the liberal intergovernmentalist approach associated with Moravcsik (1994, 1998), European integration strengthens domestic governments as they, and not backbench parliamentarians or people outside the executive branch, participate in decision-making in the various EU institutions. The key aspect behind these arguments is information. National executives use the European institutions in a two-level game to strengthen their autonomy vis-à-vis other national actors, primarily the representative bodies. The dominant position of domestic governments in both national and European politics, combined with the constant interaction and policy co-ordination between the two levels, reduces the influence of parliaments at all stages of the decision-making process.

Proponents of ‘multi-level governance’ (MLG) theory offer a different account. In their view, the EU has diluted the power of all national-level actors to the benefit of sub-national and European level actors (Hooghe and Marks 2001). For example, the introduction of structural funds has strengthened the regional level in several member states, with regional authorities, encouraged by the Commission, circumventing all national authorities and establishing direct contacts with the EU bodies. In this framework, regional and EU bureaucrats – working in hundreds of working groups and committees – have gained more and more power, at the expense of NPs and other national actors (Benz 2003; Hooghe and Marks 2001; Bache and Flinders 2004).

Most of the cross-national empirical literature validates these arguments about executive dominance (e.g. Rometsch and Wessels 1996; Wessels *et al.* 2003; Bulmer and Lequesne 2005). There is almost universal agreement among scholars, including both integration and legislative experts, that power has shifted further to the executive at the expense of parliaments and that traditional mechanisms of parliamentary accountability have been weakened (Norton 1996; Raunio and Hix 2000; Maurer and Wessels 2001; Kassim 2005; Auel and Benz 2005). Researchers point to the increasing power of bureaucrats and organised private interests at all levels of government (Bergman and Damgaard 2000; Kassim *et al.* 2000; Wessels *et al.* 2003). They describe rules and procedures, as well, that favor those actors at the expense of national legislators. In the Council, for instance, the increased use of qualified majority voting (QMV) makes it difficult for NPs to force governments to make *ex ante* commitments before taking decisions at the European level. And should the NP tie the hands of the government before the negotiations, this reduced ability of the government to build compromises might result in worse outcomes than what might be achieved with a more flexible bargaining strategy (Benz 2004: 876; Auel and Benz 2005: 373, 379; Dann 2004). Accordingly, reports show the overwhelming majority of both national members of parliament (MPs) and members of the European Parliament (MEPs) think that national

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<sup>1</sup> The literature on Europeanisation is already quite extensive. See in particular the volumes edited by Goetz and Hix (2001), Featherstone and Radaelli (2003), and Bulmer and Lequesne (2005).

parliamentary control of EU legislation is weak and needs to be strengthened (Katz 1999).

To be sure, not all scholars of the ‘deparliamentarization’ literature depict a fully negative scenario for NPs. Some recognize that NPs have ‘fought back’ to a degree, thereby recouping some lost ground – but certainly not gaining new one. NPs have, for instance, invested more resources in holding their governments to account in EU matters. In several countries the constitutional rights of the legislatures have been strengthened, and within parliaments both the EU Committees (each NP has a special ‘European Affairs’ committee) and the specialized committees are now performing a larger role in the scrutiny of European issues (Norton 1996; Martin 2000; Maurer and Wessels 2001; Raunio 2005). Despite enduring differences between the parliamentary traditions in the EU countries (Bergman 1997; Maurer and Wessels 2001: 448-453), NPs gradually also learn from each other on how to have a voice in EU affairs, as was the case for instance during the ‘eastern’ enlargement in 2004 when the new member states studied closely the scrutiny mechanisms in place in the ‘old’ fifteen member states.<sup>2</sup> These initiatives have helped NPs gain some control over EU affairs and the actions of national executives in Brussels. Even so, the conclusion reached by scholars remains one and the same. There are ‘continuous deficits in parliaments’ ability’ to ‘influence national deputies’ in Brussels: ‘the involvement of parliaments in the EU policy-cycle remains weak and largely reactive.’ (Mittag and Wessels 2003: 433).

These are powerful and reasonable arguments. We contend, however, that they are based on a rather simplistic understanding of the relationship between the EU and NPs. NPs’ interface with the legislative process at various points, and in tandem with multiple EU and national actors. Their position is all the more complex, especially when we move beyond the traditional Community method of law making and consider newer forms of legislative processes in the EU. Our attention in this article turns to the OMC.

## **THE OMC AND NPs: A COMPLEX RELATIONSHIP**

The introduction of the OMC has brought further complexity in the relationship between NPs and the EU. On the one hand, from a *participatory* point of view, the OMC – by virtue of including elements of executive federalism – indeed stands to marginalize NPs. On the other hand, from the perspective of *output*, the OMC can prove quite beneficial to NPs. We consider both sides of this relationship.

### **Executive federalism and the marginalization of NPs**

The multi-level political system of the EU, in general, resembles the cooperative federalism characteristic of many federal states. The OMC, in particular, along with other forms of policy coordination, is a classic example of cooperative federalism – with

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<sup>2</sup> Much of this institutional learning has taken place in the context of the Conference of the European Affairs Committees (COSAC). COSAC meets once every six months in the member state holding the Council Presidency, bringing together delegations from the NPs’ European Affairs Committees and from the European Parliament. Its decisions are normally taken by consensus and they are not binding on NPs or EU institutions. COSAC also has a Secretariat in Brussels (see [www.cosac.org](http://www.cosac.org)).

common objectives defined by member states together with the Commission and/or the Council, monitoring by the EU institutions (federal level), and implementation and choice of instruments for meeting the objectives delegated to member states. As such the EU and the OMC suffer from the same drawbacks of cooperative federalism: namely, significant reliance on the executive branches of the member states at the cost of their legislative counterparts. Indeed, because of its intergovernmental character, cooperative federalism is often referred to as executive federalism.

Scholars have described how cooperative federalism concentrates power in the executive branch (Watts 1999: 57-9). For example, in Australia the system has resulted in a proliferation of intergovernmental committees and working groups. The ministerial meetings are characterized by low openness and transparency and reliance on informal, but still politically binding, procedures and decisions. State parliaments have often voiced complaints about being sidelined in the negotiations. Moreover, in order to make decision-making possible in the first place, decisions are increasingly taken by (qualified) majority voting which further reduces the effective sovereignty of the states. (Painter 1998) Germany provides another good example. The role of the *Länder* in the implementation of federal laws has resulted in extensive intergovernmental cooperation, with a total of over one thousand working groups and committees. Again, the *Land* parliaments have seen their role weaken due to intergovernmental cooperation (Börzel 2000, 2002). These observations apply neatly to the EU's MLG approach and, within that, the OMC.

Scholars have in fact argued that MLG in the EU (as well as beyond) involves the sharing of policy competencies by actors at different levels, muddies lines of accountability, and the marginalization of representative bodies that are sidelined from the intergovernmental negotiations (e.g. Bache and Flinders 2004; Benz and Papadopoulos 2006; Papadopoulos 2003). For example, Peters and Pierre (2004: 85) argue that 'multi-level governance, while tempting and attractive in its informality and orientation towards objectives and outcomes rather than focused on rules and formal arrangements, could be a 'Faustian bargain' in which core values of democratic government are traded for accommodation, consensus and the purported increased efficiency in governance.' These words certainly describe the EU case where officials increasingly rely on MLG to carry on the business of EU policymaking.

Turning to the OMC specifically, we see that its processes are on average characterised by more flexible rules and procedures, with strong reliance on voluntary cooperation by the national governments. This means that NPs find it harder to 'get a grip' on OMC, as such issues are not processed according to the familiar procedures used for scrutinising EU legislation.<sup>3</sup> The informal nature of OMC means also that the negotiations are less transparent and open, with both the NPs and the media having weaker (legal) access to documents and information (Borrás and Jacobsson 2004: 197-8; Jacobsson 2005).

Interestingly, it is worth noting that the EU resembles cooperative federalism even when it comes to the more traditional method of legislation – supranational lawmaking via the 'Community' method (Dann 2004). Through their regular participation in meetings at the European level, cabinet ministers and particularly civil servants develop

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<sup>3</sup> For detailed information on the information rights of the NPs in the EU countries, see COSAC (2005) and the country chapters in Maurer and Wessels (2001).

an extensive network of contacts with both fellow governments and the other EU institutions.<sup>4</sup> Even when the bureaucrats operate under tight instructions from the government, NPs are excluded from the process. At the domestic level, governments defend policies agreed in the Council and the European Council, with NPs entering the game often at a stage when decisions have effectively already been reached in Brussels.

### **Benefiting NPs: the OMC and the generation of ‘useful’ output**

From the perspective of who participates in the OMC, it is fair to describe NPs as experiencing marginalization and to call for more direct involvement of national legislatures (as well as elements of civil society) (de la Porte and Nanz 2004: 284; de la Porte and Pochet 2005: 360). Yet, the OMC interfaces with NPs in multiple ways. This section describes two, potentially quite beneficial, ways – both of which concern how national legislators, even if they do not participate in the OMC, can use its outputs to their advantage.

The OMC has introduced a new legislative dynamic into the EU. The traditional method of lawmaking is quite straightforward. The Commission and Council, with the help of the Parliament, produce laws (above all directives and regulations) that are binding on the member states. While directives specify objectives and allow for some flexibility in terms of the means for attaining them, both directives and regulations do not allow for much legislative creativity at the national level. Directives must be literally transposed into national law; regulations become law upon their promulgation. The fundamental function of the OMC, by contrast, is to *expose* officials from any one member state to ideas, initiatives, practices, and frameworks of other member states for the ultimate purpose of ‘policy’ improvement.

Crucially, the language of the OMC does not specify whether the term ‘policy’ refers to initiatives taken by the executive branch of government or the legislature. With Decision 50/2002 EC, for instance, the European Parliament and the Council announce that the paramount objective of the Social Inclusion OMC program is to ‘enhance the effectiveness and efficiency of policies to combat social exclusion’ (Article 10 of the Preamble). Nowhere in the text, however, do they detail what the term ‘policy’ is intended to cover. The use of terms such as national practices, approaches, and plans does little to clarify matters (see, for instance, Article 3 and the Annex). Such ambiguity is rapidly resolved when we closely examine the four mechanisms at the heart of the OMC: *all four concern legislative*, as well as administrative, matters.

Consider, first, NAPs. These plans offer a wealth of comparative data about good and poor legislative initiatives across the EU. Prepared by the member states on a given topic on a regular basis, these plans disclose every member state’s legislative approaches and frameworks, along with the country’s progress towards achieving commonly agreed goals

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<sup>4</sup> The role of committees, or ‘committee governance’, has recently received increased attention in EU studies, in particular with regard to the question of democratic representation. While some argue that governance by committees represents ‘deliberative supranationalism’ or ‘democratic experimentalism’ capable of producing better policies, others have emphasized the negative aspects of such ‘technocratic elitism’ where the policy process is removed from the public sphere. (e.g. Eberlein and Kerwer 2004; Olsson 2003).

and its responses to recommendations from the EU.<sup>5</sup> Illustrative examples abound. In the area of social inclusion, for instance, the Austrian plan discusses Parliament's passage in late 2003 of the Act on Part Time Work for Parents (Elternteilzeitgesetz). The act grants parents in companies with more than 20 workers the right to part time work until the seventh birthday of the child, change working hours (e.g., from mornings to afternoons), and return to full time employment (Austria 2004: 6). This is an innovative plan with few parallels in the EU. A second example concerns the French plan and its discussion of a law (2003-47 of 17 January 2003) designed to increase hiring of lower skilled workers by reducing employer social security contributions for low and average salaries (France 2003: 16). Yet a third example comes from Finland and its promotion of a law from October 2003 providing special income subsidies for immigrants and permanent income support for pensioner returnees (Finland 2003: 33).

If NAPs provide access to important data on law, Joint Reports (JRs) offer deep analyses of domestic and foreign legislative frameworks. Crafted by the Commission and Council, these reports evaluate national approaches, benchmark progress, and recommend good practices. Well-designed laws from across the EU are set against weaker laws. Strategies are examined, problems identified and solutions suggested – in most cases specifically targeted to each member state. An illustrative example comes from the OMC on European Employment Strategy (EES) and the 2004 JR. A section considers initiatives to increase adaptability and mobility in the labor market. The report praises the efforts of Spain and Portugal to introduce 'legislation on dismissal which set out a more transparent and reliable framework for both employers and employees' (Commission and Council 2004: 34). In a different section, the report notes that Greek 'legislation on immigrants has made major inroads towards combating undeclared work and towards promoting social protection (Ibid: 69). The same section discusses Italy's 'legislation on flexibility' (Ibid: 78)

We can make similar observations about Indicators – recommended statistical tools, ratios and other numerical as well as qualitative measurements of existing situations and conditions on the ground, plus information on progress given the commonly agreed objectives, in a particular policy area. Devised by the Commission, they are as relevant for lawmakers as they are for administrators; indeed, they are derived from an evaluation, by the Commission, of existing indicators in domestic law and administrative practices. Consider, for instance, the forty primary indicators for the EES, which were published in 2003. Specifications for 'long-term unemployment rate', 'employment growth', and 'transparency of job vacancies', for instance, could certainly drive the formulation of new legislative initiatives in any given member state.

The last main component of the OMC, Peer Review Programs allow for the direct spread of successful legislative measures. The programs include a variety of sessions, conferences and exchanges in which national officials (and independent experts) present, compare, and share information. They are hosted by a country selected for having best practices in a particular issue area. Some programs focus more on administrative policies; others on law. Consider, for instance, the EES program held by Ireland during June 23-24

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<sup>5</sup> Note that these legislative initiatives include both those that originated from members of national parliaments and government officials – in line with the lawmaking procedures in place in all of the member states. This distinction is worth mentioning: it underscores the fact that the OMC can speak to officials from the executive as participants in the process of lawmaking.

in 2005 in Dublin, Ireland, hosted by the Department of Enterprise, Trade and Employment. With representatives from nine member states, the program focused on the handling of migrant workers. A significant segment of the program was dedicated to a new Irish legislative proposal: the Employment Permits Bill. The purpose of the bill is to codify into legislation practices traditionally under administrative oversight: in the words of officials from Irish contingency, the bill aims ‘to provide a *firmer legislative basis* for the *current administratively-driven system*, allowing more accountability, certainty and transparency’ (Ireland 2005: 4) and, more specifically, ‘to place the existing employment permit system on a sound legislative footing’ (Murray 2005: 2). The bill covers the application process and approval, renewal, and revocation of permits. It also sets out protective measures for employees.

The OMC, then, focuses at least partly on law. National legislators may not participate directly in the process, but the resulting information is easily available and in, some countries such as Denmark and Sweden, regularly reviewed in parliamentary sections (Jacobsson 2005: 113). Traditional EU law is directive in nature: as mandatory law, it leaves some, but not much, room for domestic legislative initiatives. We suggest that the OMC, by contrast, provides national legislators with insights and guidance that can prove critical for the production of more cohesive and effective laws.

### **Grounds for criticizing governments**

There is a second venue through which the OMC stands to benefit NPs. In the traditional method of EU lawmaking, NPs often strive to criticize and challenge their respective governments. Their criticism, however, is tempered by two factors. First, in many EU countries, particularly in the smaller member states, national integration policy is based on broad parliamentary consensus, with the opposition also involved in forming national positions (Bergman and Damgaard 2000; Hanf and Soetendorp 1998). Moreover, were the opposition to attack the government, the prime minister might blame the opposition parties for rocking the boat and jeopardizing the success of the government (and thereby the ‘national interest’) in EU negotiations (Benz 2004: 881; Auel and Benz 2005: 379). In the OMC, by contrast, NPs are in a different position.

As discussed in the previous section, the OMC produces information about both administrative and legislative policies. This information is, moreover, comparative: observers in any given country can learn about policies undertaken in the remaining EU member states. The OMC in effect produces a public report card on the policy performance of any given country. Given that governments are primarily responsible for a country’s administrative policies, and for initiating and (through their representative in parliament) adopting legislation, the OMC gives national legislators from the minority parties exceptional (and third-party and thus objective) munitions for attacking the activities of the executive branch. The resulting dynamics are clear: parliaments can become the source of powerful criticism for both legislative and administrative government initiatives. Governments, in turn, cannot as easily dismiss such criticism as biased, uninformed, or irrelevant: the experience of other countries cannot be easily ignored.

The OMC, then, introduces new possibilities and dynamics in the institutional power struggles of the member states. At a time when national legislatures worldwide

increasingly seem to lose relevance, the OMC can potentially give NPs new grounds for asserting themselves.

Table 1 summarizes our key points about the OMC and NPs in comparative terms vis-à-vis the traditional method of legislation and in relation to other key actors. As highlighted in the table and discussed in the context of executive federalism, the OMC deprives NPs of scrutiny and information rights over EU legislation. On the other hand, it also gives more grounds to parliamentary oppositions and provides NPs with potentially useful insights and guidance into lawmaking.

TABLE 1

## THE EMPIRICAL RECORD

The empirical record suggests that NPs have begun to feel some of the OMC's contradictory effects. The most telling evidence concerns our claims about executive federalism and the leveraging, by NPs, of the OMC's insights and guidance into successful lawmaking.

### Executive federalism

The literature on the OMC and other forms of soft law instruments – or ‘new modes of governance’ – is already quite extensive, with much focused on its flexibility but also capacity to influence policy developments (Héritier 2002; Scharpf 2002; Radaelli 2003; Régent 2003; Eberlein and Kerwer 2004; Borrás and Greve 2004; Zeitlin 2005a,b).<sup>6</sup> The more important findings on NPs are those concerning the input of various ‘stakeholders’ in the process. The OMC has strengthened the leadership role of the Council and the European Council, intruding thus on Commission's right of monopoly, but on the other hand the Commission<sup>7</sup> has a central role to play through its role as the institution setting objectives and issuing guidelines and recommendations to national governments. The European Parliament has until now been effectively marginalized, and, more worryingly, the contribution of local and regional actors, often identified as the main stakeholders in these processes, has so far been quite disappointing. At the national level the OMC seems to be the preserve of a fairly small circle of civil servants that possess expertise on the issues. As the OMC and all forms of soft law policy coordination are primarily intergovernmental in character, NPs are thus from a constitutional perspective in a strong position to influence the proceedings. However, this applies only if they are willing and able to control their governments in these matters (Hodson and Maher 2001; de la Porte and Pochet 2005; Jacobsson and Vifell 2003; Radaelli 2003; Régent 2003; Borrás and Jacobsson 2004; Eberlein and Kerwer 2004; Zeitlin *et al.* 2005).

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<sup>6</sup> See in particular the material available at the homepage of the OMC Forum at the European Union Center of the University of Wisconsin-Madison (<http://eucenter.wisc.edu/OMC>) and the literature mentioned in Borrás and Greve (2004) and in Zeitlin *et al.* (2005).

<sup>7</sup> The role of the Commission in OMC and other forms of policy coordination varies considerably between policy areas, with the Council often adopting the leading function instead of the Commission.

Significantly, the available evidence indicates that NPs have failed to make an impact on the OMC and related processes. Examining policy coordination in employment and social inclusion strategies, the country chapters in Zeitlin *et al.* (2005) testify that the various OMC documents, particularly National Action Plans (NAPs), largely escaped parliamentary scrutiny or debates (Jacobsson 2005: 112-3, 128; Visser 2005: 206; Büchs and Friedrich 2005: 257, 261, 269; Armstrong 2005: 300-2). To be sure, NPs were often informed about NAPs, but mainly after they had already been produced and sent off to Brussels. In some exceptional cases (Portugal, Ireland), national MPs did demand more information, and there were some examples of opposition parties using EU's recommendations to support their own claims (see also Jacobsson and Schmid 2003; Jacobsson and Vifell 2006).

Examining also employment and pensions policies, de la Porte and Nanz (2004: 278) note that these processes escaped parliamentary scrutiny. National legislators thus have very little direct involvement in the OMC, playing at best a passive role by being informed of developments (de la Porte and Pochet 2005: 360). Visser's (2005: 208) observation on the Netherlands could therefore be generalized to the EU: 'the process has remained rather bureaucratic and isolated from parliamentary influence ... the audience for learning [being] almost entirely limited to the Ministry of Social Affairs and a handful of local, national and European civil servants.' While there are no other studies detailing the contribution of NPs, it is noteworthy that domestic legislatures are hardly even mentioned in other publications on the OMC. Therefore it is easy to concur with Radaelli (2003: 50) who argues: 'Although there is some preliminary evidence of limited technocratic-political learning, the potential in terms of participation, openness, real transparency, increasing visibility in the domestic media and parliaments – in a word, the democratic aspects of the process – has not been fulfilled.'

Indeed, national MPs themselves have become aware of their limited input. During the Convention the group of national parliamentarians stated:

The 'open method of coordination' occupies the middle ground between purely intergovernmental cooperation and common rules put in place at the Union level. This method should not just be the responsibility of the Council and the Commission; it should specifically involve national parliaments, who will then be obliged to account to citizens for decisions taken within the framework of the guidelines defined in this way. Is it seriously possible, for example, to envisage a coordination of national budgetary policies without consulting all the national budgetary authorities?<sup>8</sup>

(Haenel *et al.* 2003)

The EU, too, has come to similar conclusions. In a major report on the employment initiative by a Commission-sponsored High Level Group, chairman Wim Kok wrote that 'national parliaments must take more ownership of Lisbon, interpreting it for their publics and by debating what to do or not to do, opening up the whole issue' (Kok 2004: 40).

But what accounts for this limited involvement of NPs in OMC? We suggest this is explained by three factors. First, the whole process is by its very nature

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<sup>8</sup> 'Joint contribution on the role of national parliaments'. A draft written contribution on the role of national parliaments, drafted by Hubert Haenel and supported by Gisela Stuart, Henrik Dam Kristensen, Kimmo Kiljunen and Soren Lekberg, 17 January 2003.

intergovernmental, with primarily civil servants responsible for drafting national programmes and presenting them in Brussels.<sup>9</sup> National MPs are informed of these preparations, but far too often this happens much too late. Secondly, national MPs may find it hard to follow OMC processes. Unlike normal EU legislation, the OMC and other forms of policy coordination do not often have any fixed deadlines ('there is no clear beginning or end') or even rules guiding the behaviour of the various actors. Given the intergovernmental or informal nature of the OMC, there is also (at least in some NPs) procedural ambiguity about how to process these things in parliament and domestically in general (Jacobsson and Vifell 2006). For example, what are the rights of the national parliaments to receive the relevant information and documents, and how are these to be processed in the legislature. Hence it might be that NPs have simply not learned yet how to contribute to OMC issues, and that their contribution will become stronger over time.<sup>10</sup> As Armstrong (2005: 302) effectively summarises in the case of the UK parliament: 'The suspicion that OMC is developing as a mode of governance acting outside the traditional scrutinising structures of representative democracy is, therefore, well illustrated in the UK. There is a sense that while structures and mechanisms for scrutinising 'hard law' emanating from the EU have evolved, governance techniques which seek domestic influence by alternative means are slipping through the scrutiny net.' And thirdly, it appears that the actual impact of the OMC and other forms of informal policy coordination has so far been relatively modest, if not even inconsequential, in many policy areas. Importantly, OMC does not produce binding rules, and this may result in MPs not taking OMC as seriously as processes that result in supranational laws. As a result, national parliamentarians have not found it worthwhile to spend their precious time on scrutinizing such processes.

### **Leveraging the OMC's Legislative Insights and Guidance**

Lack of direct participation does not appear to have precluded national legislators from benefiting from the legislative insight and guidance that the OMC has produced. Researchers observe as much in a number of policy areas. Jill Rubery, an expert on gender rights and equality, praises the OMC for having helped member states with little legislation on the topic introduce impressive reforms. 'It is precisely those Member States without any significant tradition of gender mainstreaming where the EES may have done more to kick start a process ... in the Southern countries of Greece and Italy [the EES] has had a significant impact on the approach to employment policy' (2005: 397-8). Erhel, Mandin, and Palier, in turn, conducted interviews of policy and lawmakers in France in the area of social exclusion. 'The European Strategy and the guidelines,' noted one official, 'are useful in that they provide an orientation. This lends overall coherence that didn't exist to such an extent before.' A second official similarly observed, in reference to the OMC and social inclusion, that the 'NAP is the first support of the fight

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<sup>9</sup> Another related and highly important question, which lies beyond the scope of this article, is the extent to which these civil servants are subject to control by their ministers or even by their immediate superiors in the ministries.

<sup>10</sup> Interestingly COSAC has not debated parliamentary scrutiny of OMC issues. COSAC has talked about policy questions that fall under the OMC; in particular the Lisbon strategy, but has not discussed how such issues should be processed by NPs. We are grateful to Morten Knudsen about this information.

against the social exclusion. It's the document of reference, we follow the European rhythm' (2005: 234-5).

The member states themselves have produced, with the help of independent experts, regular reports on their assessment of the OMC's impact on legislation. Though potentially biased in favor of the OMC (given that the Commission is the audience), some are especially unequivocal in their assessment of the usefulness of the OMC for domestic lawmaking. Rubery's observations on gender initiatives are confirmed by several national reports. The Irish 2002 EES impact assessment report, for instance, states quite directly that 'a review of Irish labour market and employment policy, in the context of the EU Employment Strategy and Guidelines, indicated that the Guidelines have played an important role in influencing the policy development process in Ireland . . . [in a] small but significant number of cases EU Guidelines have influenced the content of Irish labour policy [in] Gender Mainstreaming' (Ireland 2002: S.7). The Italian report, in turn, recognizes that 'there has been an insufficient deployment of equal opportunities policies, to date;' it then adds that, 'between 1998 and 2001, the EES has been gradually implemented, with the introduction of measures aimed at enhancing the opportunities of women in the labour market' (Italy 2002: 142). The resulting NAPs discuss a range of new and unprecedented legal (and, of course, administrative) initiatives.

The Irish 2002 NAP notes a number of key measures introduced right after the launch of the EES. These include the Employment Equality Act of 1998 barring discrimination on the grounds of gender and family status, the Parental Leave Act of 1998, and taxation reforms to eliminate disincentives for spouses to enter the labor market (Ireland 2002). All of these represented significant advances in a new legislative direction, though of course they cannot be purely attributed to the OMC's influence. The 2002 Italian NAP points to a similar array of unprecedented legislative activity.

Assessment reports from other countries point to progress in other areas of employment. The Greek report is especially direct in its assessment. It states that "the 'launch of the [OMC] process . . . changed radically the framework for employment policy . . . in Greece' (Greece 2002: 6). Much attention then goes to key legislative initiatives taken in response to the EES:

Law 2639/98 provides . . . updates and modernizes flexible working time arrangements (for annualized working hours), introduced territorial employment pacts, [and] introduces private employment services.

A further move towards modernization of employment policy legislation is made with Law 2874/2000, where much of the influence of the EES can be traced . . . maximum statutory weekly working time is cut from 48 to 43 working hours, the provisions for flexible arrangement of annualized working time are improved towards more involvement towards more involvement and responsibility of the social partners . . . [and] part time employment pay is given a premium of 7.5% for those employed less than 4 hours daily.

In 2001, a new policy mix is developed which includes . . . the provision of new legislation and financial resources for venture capital, risk investments and new economy enterprises.

(Greece 2002: 7-8).

Initial evidence suggests, then, that the OMC seems to have influenced in a positive manner the activities of national legislators. While more research is surely needed to further substantiate this conclusion, we can state with confidence that purely negative assessments of the OMC's impact on national legislators do not seem accurate. The OMC has significant potential to influence the quality of national legislation – and thus improve the position of NPs in their respective political contexts.

## **REFLECTIONS: DEMOCRATIC REPRESENTATION AND EUROPEAN INTEGRATION**

The EU is making increasing use of the OMC and other forms of intergovernmental policy coordination. Hence it is crucial that scholars pay attention to the democratic aspects of these processes. As the contribution or role of NPs in the OMC has until now escaped scholarly analysis, our paper is an attempt to fill an important gap in the literature on EU governance.

We acknowledge that the consequences of OMC for NPs are at this stage quite difficult to examine. This results in part from lack of empirical research on this topic, and in part from the relative novelty of the OMC itself. However, we strongly believe that both the positive and negative aspects need to be taken seriously and, more importantly, require further systematic analysis. After all, there is good reason to expect that OMC will be used more frequently in the future. The leaders of the EU need to attain desired policy objectives, such as employment and economic growth, and indeed combating terrorism, but they (and also the public) are reluctant to transfer formal decision-making authority in such matters to the European level. National governments have accordingly resorted to various types of soft law instruments for achieving their goals. The impact of those new regulatory methods on NPs remains unclear.

We have made two major claims. The OMC, by adopting elements of cooperative federalism, is marginalizing NPs. Cooperative federalism removes decision-making processes away from the public sphere and into intergovernmental meetings that take place behind closed doors. It weakens the transparency of collective decision-making and, consequently, the accountability of the representatives. Cooperative federalism by design thus emphasises output legitimacy at the expense of transparency and parliamentary accountability. The OMC can be said to have done all of this. On the other hand, we have also suggested that the OMC provides NPs at once with powerful insights and guidance into successful lawmaking *and* with tools for criticizing government officials for their policies. In this sense, the OMC can help NPs assert themselves as viable and important domestic institutions. We have therefore depicted a mixed picture of the role of NPs in the OMC – one that is designed to rescue NPs from being thoroughly dismissed (as scholars have nearly done) as destined for irrelevance.

Importantly, however, our positive assessment of NPs in the OMC concerns itself mostly with the influence of the latter on the former as they function in their *national* confines. When it comes to their participation in the OMC, and thus EU-level decision

making processes, we have granted that NPs have been sidelined. Our analysis thus raises the question of *democratic representation at the EU level*. Can and should NPs be more directly involved in the OMC? Zeitlin has reflected on this:

National parliaments (and the European Parliament itself) could valuably participate in framing and debating OMC objectives and procedures, monitoring progress toward agreed goals, and revising the process in light of the results achieved. But this would involve a transformation of the conventional conception of parliaments' role in democratic polities as authoritative principals delegating detailed implementation of legislation to administrative agents, whose behaviour they seek to control through a combination of ex ante incentives and ex post sanctions. Effective participation by parliaments in OMC processes (as in the working of experimentalist democracies more generally) would require them to develop new roles in passing framework legislation embodying commitments to broad goals (such as OMC objectives); establishing administrative infrastructures to stimulate decentralized experimentation about how best to achieve these goals, monitor the efforts of local units to improve their performance against them, pool the resulting information, and set provisional standards in light of what they have learned; and reviewing the results and revising the framework objectives and administrative procedures accordingly.

(Zeitlin 2005a: 488)

Following these considerations, Zeitlin (2005a) concedes, however, that they might be unrealistic. He thus argues that a better way to inject democracy into OMC would be through increasing transparency, openness and the participation of all relevant actors. We believe that such revisions to the OMC would be welcome but not sufficient to advance democratic representation in the OMC.

Considering the broad scope of OMC and its use in highly salient policy areas, we propose that NPs should become much more involved in the OMC (see also de la Porte and Pochet 2005: 360). To facilitate parliamentary involvement in OMC and other non-binding forms of intergovernmental coordination, such 'soft law' matters should be processed by NPs using the same procedure that is reserved for scrutinizing the Commission's legislative initiatives. This would mean that ministers would be forced to explain their actions before parliamentary committees and in the plenary (where such a requirement exists), with MPs having the chance to put questions to the ministers or other government representatives travelling to Brussels (de Búrca and Zeitlin 2003; Jacobsson and Schmid 2003).

While MPs and parliamentary civil servants may object to this by saying that their desks are already full without having to process such non-binding matters, one must keep in mind that policy coordination is to an increasing extent used in questions that are highly salient for most MPs – such as employment policy, economic policy, social policy, and pension reforms. Efficient scrutiny of such matters is thus significant also in terms of national legislation, as the policy choices adopted at the European level increasingly impact on and constrain member states' domestic politics. Hence parliamentarians have both an electoral incentive and a policy incentive to engage themselves in such questions.

Table 1 EU governance models and the position of national parliaments

<i>Supranational legislation</i>		
Agenda-setting and proposal power Formal competence	Commission  EU	Commissi  Member states (but OMC under the
Decision rule in the Council	Increasingly QMV – national governments can thus be outvoted; when unanimity applies, national governments (and parliaments) have veto power	Unanimity, with national power. However, QMV which the Council in supr qual C
The role of the European Parliament Domestic negotiators at the EU level	Co-legislator when the co-decision procedure (and also assent procedure) is used; otherwise consultative Policy preparation is in most issues delegated to civil servants, but final decisions are always taken by ministers in Council meetings; more important items are always debated in the government	National reports and actio mainly by civil servant rela
<b>National parliamentary scrutiny</b> <b>Information rights of national parliaments</b>	The EU committee monitors government behaviour; specialized committees are also increasingly involved (but only routinely in a minority of countries) Legislative proposals and amendments are sent to national parliaments; governments often also provide MPs with additional explanatory memoranda	In principle the same as in there is little evidence scrutinisi Documents are sent to parliaments have often w documents produced eithe
<b>The role of national parliamentary opposition</b>	To challenge and criticize the government (as in the context of domestic politics); but often the opposition is actively involved in shaping national EU policy (particularly in smaller member states) and thus coordinates with the government	Less involved in the proces example, about how the countries) to attack the gov inefficient, when countr
Output	Binding EU legislation which either requires (directives) implementation by national parliaments or does not (regulations)	Non-binding recommen domestic legislation or c governm
<b>Policy learning</b>	With the exception of directives, the same solution applies across the Union	National parliaments ca dome

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