

THE OPEN METHOD OF COORDINATION AND EUROPEAN INTEGRATION

The Example of European Education Policy

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Abstract

Eight years ago, the Open Method of Coordination was codified as a mode of governance to implement the Lisbon strategy of the European Union which aims to turn the European economy into the most competitive and most dynamic knowledge-based economy in the world by 2010. Since then, the OMC has often been highlighted as a “third way” in European governance – an alternative to intergovernmental negotiations and the Classical Community Method. Hopes that the OMC could develop into a “third way” would be destroyed if the OMC had considerable potential to promote institutional-spillover and this way to encourage the European Commission's competence creep. In that case, the OMC could be seen as having a bridging function between the two traditional methods used to govern the EU.

Based on the supranationalism as put forward by Sandholtz and Stone Sweet (1998), this paper analyses the OMC's potential to promote institutional-spillover in European education policy. With institutional-spillover I mean an increase of the decisional autonomy or capacity of the European Commission. The analysis reveals that the OMC's potential to promote institutional-spillover in education is very small as it neither increases participation of transnational society in the policy-making process nor sufficiently increases the autonomy of joint organisations such as the European Commission and the European Court of Justice.

1. Introduction

Ever since its codification at the Lisbon Summit in March 2000 the Open Method of Coordination (OMC) has been highlighted as an alternative to the “pure integration” approach of the Classical Community Method (CCM) on the one hand and to the logic of genuine intergovernmental cooperation on the other (Dehousse 2002: 4). It therefore has been applied in politically sensitive areas such as employment, taxation, education and training or pensions. The OMC's new governance architecture seems to provide an answer to the three main challenges to EU policy-making that evolved since the 1990s: (1) the necessity of common EU action to respect diversity among Member States, codified in the subsidiarity clause of the Maastricht Treaty, (2) the wish to develop an EU social dimension without questioning Member States' competencies in sensitive policy areas and, (3) the legitimacy crisis in the aftermath of the Maastricht Treaty and with regard to the corruption scandals within the European Commission (Commission).

In this paper¹, I will assess the potential of the OMC to promote institutional-spillover. By potential to promote institutional-spillover I mean the potential to make governments agree upon an increase of the competencies of the Commission.

I will explore the OMC's potential to promote institutional-spillover with respect to European education policy. Education is a policy area with a long tradition at the European level but where competencies of the Commission remain weak. In this sense, EU education policy is a representative example of politically sensitive areas where the OMC is applied. It would be important to include other policy areas in the analysis to increase the scope for generalisation. Yet, this paper only represents a first step towards the assessment of the potential of the OMC to promote institutional-spillover. Further research that takes into account other policy areas has to be conducted to confirm my findings.

In the first section I recapitulate the extent to which the OMC has been presented as a third way of governance in Europe. In the second section I derive conditions for deeper integration from supranationalism. Building on Sandholtz' and Stone Sweet's argu-

¹ This paper is based on my Master's thesis written as a part of the joint Master's Programme “International Relations” at the FU-Berlin, the Humboldt Universität zu Berlin and the Potsdam University.

ments I will show that supranational norms (institutional-spillover) will be produced if there exists a transnational society which generates a demand for supranational governance and if there exist supranational organisations whose autonomy is sufficient to respond to this demand. In a third part I will apply these conditions on the OMC process in the field of education and training.²

My claim is that the OMC's potential to bring about agreement upon an increase of the decisional autonomy or capacity of the Commission is very low. This is due to insufficient channels for participation of transnationally active society groups in the policy-making process and the absence of European organisations with sufficient autonomy to pursue their pro-integrative agenda.

My claim that the OMC's potential to promote institutional-spillover is very low supports the thesis of some authors that argue that the OMC effectively ended the competence creep of the Commission (Kassim/Menon 2004; Walkenhorst 2005; Schäfer 2004). No further competence creep is a necessary condition for Radaelli's and other authors' argument that the OMC represents a distinct method between intergovernmental cooperation and the CCM which has considerable potential to develop into a third way in European governance.

2. The OMC as a Third Way

Eight years ago, the Open Method of Coordination was codified as a European mode of governance at the Lisbon Summit of March 2000. In Lisbon, the leaders of EU Member States agreed upon the goal to turn the European economy into the most competitive and most dynamic knowledge-based economy in the world by 2010. As a method that aims at helping Member States to develop their own national policies, the OMC is not built on hierarchy. Its mechanisms are based on learning and knowledge diffusion. Especially in politically sensitive areas where EU Member States fear growing Commission influence, such as education or pensions, the OMC is a very attractive method for policy coordination since it respects national diversity and does not foresee the

² There is no separate OMC for education alone but for education and training together. When referring to the OMC process I will therefore always speak of education and training although this paper is particularly interested in developments in the area of education.

transfer of competencies to the European level. The OMC relies exclusively on voluntary accords.³

The OMC is often seen as a new mode of governance and a third way between inter-governmental negotiations and supranational governance. These arguments are based upon six key characteristics of the OMC that make it less rigid and more open than the CCM and more ambitious and better structured than intergovernmental negotiations (Dehousse 2002). These key characteristics are: (1) its new approach to problem-solving, (2) its openness to participation, (3) its respect for diversity and subsidiarity, (4) its new ways to produce usable knowledge, (5) its potential for policy learning and (6) the new role it assigns to law (Radaelli 2003: 24).

After only eight years, it is too early to assess the effectiveness of the OMC. Yet, as shown above, many scholars see considerable potential for the OMC to develop into an effective third way of governance between supranationalism and intergovernmentalism that assigns the Commission the role of a coordination coordinator and that relies on joint responsibility rather than on the transfer of competencies to a supranational level.

3. The OMC and Deeper Integration

This paper assesses the potential of the OMC to promote institutional-spillover. The analytical framework I derive from supranationalism as developed by Sandholtz and Stone Sweet (1998). Supranationalism sees egoistic and rational societal actors involved in transnational activities at the heart of European integration whenever they have the opportunity to transmit their demand for supranational governance to powerful pro-integrative supranational organisations.

Transnational activity generates a demand for European standards, harmonisation and conflict-solving mechanisms – in short – a demand for supranational governance. Supranational governance describes a situation where supranational organisation can produce rules which are binding for all actors. Supranational governance serves those

³ See Lisbon European Council 2000: paragraph 37.

groups of society which transact across borders and which are advantaged by European rules. These advantaged transnational groups try to make their voice heard at the national but also at the European level. While the responsiveness of states is low, pro-integrative supranational organisations such as the Commission and the European Court of Justice respond to transnational society's demand if their leverage is sufficient. They supply supranational governance by influencing decision-making processes and intergovernmental bargaining. States finally agree to further increase the decisional autonomy or capacity of joint organisations since transnational exchange raises the costs for national governments to maintain disparate national policies. The higher the level of transnational exchange the higher the incentives for governments to adjust their policy in ways that favour supranational governance. Once European rules which place constraints on state behaviour are fixed they generate a self sustaining dynamic. Derived from these conditions for integration to occur I develop the following hypothesis:

If a transnational society which generates a demand for supranational governance exists, and if supranational organisations whose autonomy is sufficient to respond to this demand also exist, then supranational norms (institutional-spillover) will be produced.

The three following criteria will guide this paper's empirical analysis of the OMC in the field of education and training.

a) The generation of demand

When trying to assess whether the OMC in education and training facilitates the generation of demand for supranational governance it will be important to analyse to what extent the OMC increases mobility in this area. I will therefore assess the nature of the OMC in education and training: its objectives, its work programme, measures which have already been established – without forgetting the OMC's contribution to structuring the process and to facilitating policy outcomes.

b) The transmission of demand

In order to assess this criterion, a first important step will be to examine if a transnational society which expresses demand for supranational governance in education actually exists. Empirical analysis will identify these actors and will show which particular interests they pursue with relevance to the Lisbon process. In a second step, the exis-

tence of possibilities within the OMC process to transmit transnational society's demand for supranational governance to joint organisations will be analysed.

c) The satisfaction of demand

This criterion focuses on the existence of supranational organisation with sufficient autonomy to respond to transnational society's demand for supranational governance. According to Sandholtz and Stone Sweet, supranational organisations have a pro-integrative nature and welcome any demand for supranational governance by transnational society. They supply supranational governance if their autonomy permits them to sufficiently influence decision-making processes and intergovernmental bargaining. If their autonomy is not sufficient, governance remains on an intergovernmental level.

In order to assess criterion c, this paper will identify the supranational organisations that are involved in the OMC process in education and training. Then, their autonomy will be assessed using Pollack's (1999) framework for the analysis of formal and informal agenda setting power.

4. Empirical Analysis: the OMC in Education and Training and its Potential to Promote Institutional-Spillover

Education is a very important policy area for the European Union as improving the quality of education is one of the major conditions for making Europe one of the most competitive knowledge-based economies in the world by 2010. Moreover, the OMC in education is very suited as a case study as it shares its main properties – a weak treaty basis, the total exclusion of the ECJ, and no right for the Commission to make recommendations⁴ - with many other policy areas where the OMC is applied⁵. This increases the scope for generalisation of the findings of this paper.

The weak EU-level competencies in the area of education have their origin in the treaty establishing the European Steel and Coal Community (ECSC) and have evolved ever since (cf. Walkenhorst 2005; Hackl 2001). Originally restricted to vocational training, community activity has expanded to almost every part of education policy in the past.

⁴ For an overview see Laffan/Shaw (2005).

⁵ E.g. taxation, pensions, youth, healthcare.

However, Article 149 of the Maastricht Treaty clearly assigned the responsibility for education to the Member States. What is more, since Maastricht, community competencies remain restricted to quality assurance and mobility issues. This is important to consider when analysing the OMC in education and training which was originally introduced to coordinate policy fields not covered by the treaty. Interestingly, quality assurance and mobility issues were included in the OMC process in education and training after 2000, this way coupling the OMC process with already ongoing policy developments (Gornitzka 2005).

4.1. Key Features of the OMC in Education and Training

The OMC in education and training was very successful in including areas traditionally considered to be very close to the realm of exclusive national competencies, such as content of teaching, teacher training and language learning in the coordination process. While community action before Lisbon mainly concentrated on mobility and quality of higher education, the OMC process and particularly the benchmarks focus on secondary education (cf. Gornitzka 2005: 21).

In Stockholm 2001, the European Council agreed upon three strategic goals (common objectives) in the field of education and training: to improve the quality and effectiveness of education and training systems in the EU, to facilitate the access of all to education and training systems and, to open up education and training systems to the wider world.

At the summit of European education ministers in Barcelona 2003 five benchmarks and 29 indicators related to education and training were agreed upon (see Annexes).

Eight working groups had been set up after 2001.⁶ The working groups were responsible for implementing the common objectives. Indicators proposed by the working groups were evaluated by a Standing Group on Indicators and Benchmarks (SGIB) which advised the Commission (cf. Kaiser 2004). As a reaction to the weak perform-

⁶ Working groups mainly consist of national representatives recruited from national ministries, government agencies and academic and professional units. Representatives of the Commission are also included. To a limited extent, these groups are also open for representatives of the social partners and stakeholders (e.g. ESIB, UNICE) and in some cases also from international organisations, most notably the OECD and the Council of Europe.

ance of Member States regarding the achievement of the objectives,⁷ the Commission is currently reorganising part of the OMC structure in education and training. Firstly, an Education and Training Co-ordination Group (ETCG) has been created in December 2005 to oversee the 2010 work programme. Secondly, learning clusters will replace working groups in the future.⁸

As Table 1 illustrates, the OMC in education and training does not oblige Member States to produce national action programmes (NAPs), does not allow for peer reviews and does not “allow” the Commission or the Council to issue recommendations in fields other than covered by Articles 149 and 150 TEC.

Table 1: Key features of the OMC in Education/Training

Features	Education/Training
Started	2000
Cycle	Biannual (since 2004)
Key participants – initiators and decision-makers	European Commission DG EAC; Ministers of Education (EYA)
Mandatory consultative participants	None
Legal or political mandate	Lisbon Summit 2000
Relative institutionalisation of coordination process (based on the use of Lisbon instruments)	Strong*
Technical dimension of process	3 objectives, 5 benchmarks, 29 indicators
EU targets	Yes*
MS targets	No*
Guidelines	Yes*
Best practice	Yes*
Community action programme	Yes, 2010 programme*
National Action Programmes	No*
National strategies	No*
Peer review	No*
Scoreboards	Yes*
Council recommendations	No*
Commission recommendations	No*

⁷ Joint interim report on the achievement of the Lisbon goals (Council of the EU and Commission of the European Communities 2004).

⁸ During 2005, four clusters were set up on individual policy themes. For 2006-2007, the Commission plans to continue three of the four clusters (“teachers and trainers”, “ICT in education”, and “making the best use of resources”), and intends to set up a number of new clusters.

**Laffan/Shaw (2005)*

The European Court of Justice (ECJ) and the European Parliament (EP) are generally excluded from the OMC process in education and training. Consequently, the Commission and the Education Council are the main actors, with the exception of measures referred to in Articles 149 and 150 TEC. The European Council is taking the core decisions such as which benchmarks to include. It also has the last word regarding the inclusion of new indicators.

4.2. The Generation of Demand for Supranational Governance

Sandholtz and Stone Sweet (1998) state that the higher the level of transnational activity the greater the demand for supranational governance. This section will analyse if the OMC in education and training developed measures that have the potential to increase mobility in education.

Within the Lisbon strategy, mobility is assumed to indirectly contribute to the achievement of the objective to become the most competitive knowledge-based economy in the world by 2010.⁹ Subsumed under the goal “openness to the world”¹⁰, two concrete objectives will guide actions of the Member States towards increasing transnational activity: (1) improving foreign language learning and (2) increasing mobility and exchanges.

Among the five benchmarks agreed upon in Barcelona, there are none that aim directly or indirectly at increasing transnational activity.

Of the 29 quantitative indicators that were developed in order to monitor Member States' progress towards the Lisbon objectives, six are concerned with foreign language learning and mobility:

⁹ Transnational mobility in education encourages knowledge transfer and is therefore expected to play an important role in the modernisation of education and training systems. Mobility is also seen as enriching the learning experience and thereby raising the overall quality level of education in Europe. Positive effects from mobility are also expected on the labour market and for research capacity. For detailed information see Report from the Commission to the Council, the European Economic and Social Committee and the Committee of the Regions “Report on the follow-up to the Recommendation of the European Parliament and the Council of 10 July 2001 on mobility within the Community of students, persons undergoing training, volunteers and teachers and trainers”, COM(2004) 21 final.

¹⁰ “Openness to the world” is one of three strategic goals of the “work programme on the objectives of education and training systems in Europe” (Education and Training 2010).

Foreign Language Learning

- Distribution of lower/ upper secondary pupils learning foreign languages.
- Average number of foreign languages learned per pupil in upper secondary education.

Mobility

- Inward and outward mobility of teachers and trainers within the Socrates (Erasmus, Comenius, Lingua and Grundtvig) and Leonardo da Vinci programmes
- Inward and outward mobility of Erasmus students and Leonardo da Vinci trainees
- Foreign students enrolled in tertiary education (ISCED¹¹ 5 and 6) as a percentage of all students enrolled in the country of destination, by nationality (European country or other countries)
- Percentage of students (ISCED 5-6) of the country of origin enrolled abroad (in a European country or other countries)

The Maastricht Treaty assigns the Commission a supporting role with regard to mobility issues. Several processes and lines of action in addition to the “pure” OMC process therefore exist in order to identify and implement measures aimed at increasing mobility in education and training. These processes and lines of action include the “Action Plan for Mobility”, the “European Quality Charter for Mobility”, the Commission’s “Action Plan for Skills and Mobility”, the “Copenhagen Process” which was decisive for the development of the “Europass” and the “European Qualification Framework” (EQF), and the “Action Plan for Language Learning and Linguistic Diversity”. Although often started outside the OMC process, these measures have been integrated into the “Education and Training 2010” work programme.

As we can see, European-level measures aiming at increasing mobility are manifold and partly existed before 2000. The implementation of the “Education and Training 2010” work programme will promote mobility, although at this point in time it is impossible to deliver quantitative proof. An example of how guidelines developed on the European level are influencing vocational training at the national level is the new law con-

¹¹ International Standard Classification of Education.

cerning vocational training in Germany. The “Berufsbildungsgesetz” was reformed in order to allow for the recognition of training periods in a foreign country.¹²

Community competence in the field of mobility and quality explains why, in contrast to the provisions of the OMC, the EP is often involved in policy-making and the Commission, together with the Council, is able to issue recommendations. When trying to isolate the influence of the OMC on mobility, this poses methodological problems as the following example shows:

The “European Quality Charter for Mobility” was directly drafted by working group F “Mobility and European Cooperation” of the “Education and Training 2010” work programme. Yet, the Charter is the result of a development that started outside the OMC process. The “Mobility Action Plan” endorsed by the 2000 Nice Council¹³ and the recommendation of the European Parliament and the Council of 10 July 2000¹⁴ gave the original impetus to this measure. Although the “Education and Training 2010” work programme, which today presents the framework for EU-level action on mobility, was only approved at the 2002 Barcelona European Council Summit, action before 2002 was possible because of the Commission's competencies in the field of quality education and mobility based on Articles 149 and 150 TEC.

The example of the production of the “European Quality Charter for Mobility” illustrates that the line between the OMC process and the use of traditional soft law (Commission and Council Recommendations) is blurred in the field of quality education and mobility since a legal basis for Community action exists in the EC-Treaty. Methodologically, this poses a problem when trying to find out to what extent the OMC process facilitated (or rather will facilitate when measures are implemented) the generation of transnational activity. Especially with regard to mobility enhancing measures we simply do not know which measures would not have been developed without the use of the OMC.

¹² Germany 2006: National report on the implementation of the 'Education and Training 2010' work programme, http://europa.eu.int/comm/education/policies/2010/nationalreport_en.html.

¹³ Resolution of the Council and of the representatives of the governments of the Member States, meeting within the Council of 14 December 2000 concerning an action plan for mobility (2000/C 371/03), OJ C 371 of 12.12.2000, p.4.

¹⁴ Recommendation of the European Parliament and the Council of 10 July 2001 on the mobility of students, persons undergoing training, volunteers and teachers and trainers, OJ L 215 of 9.8.2001, p.30.

There is, however, reason to suggest that the OMC influences policy outcomes and enhances the development of mobility measures in education and training. Firstly, the OMC has increased the level of institutionalisation in education and training (Laffan/Shaw 2005). The OMC is also structuring the process by establishing clear objectives and clear deadlines for the objectives to be achieved. Secondly, the development of indicators and new statistical data improves the quality of monitoring and comparison considerably. Thirdly, the OMC process should have effects on transnational activity by systematically mainstreaming knowledge diffusing and trust building mechanisms. Last but not least, the OMC process promotes the development of mobility-increasing measures by according mobility in education and training a clear role within the strategy to become one of the most dynamic and competitive economies in the world by 2010. The Lisbon strategy and the OMC process play a legitimising role with regard to mobility measures in education and training. There is no doubt that the Lisbon strategy and the OMC process have this way facilitated EU-level action in the field of education during the last eight years.

It can therefore be assumed that the Lisbon strategy and the OMC – supplemented by action under Articles 149 and 150 EC-Treaty – gave important stimulus to the development of measures which, if implemented effectively, will generate transnational activity in the field of education and training.

4.3. The Transmission of Demand for Supranational Governance

The generation of transnational activity alone is not sufficient for the creation of supranational governance. There have to be strong enough interest groups which express their demand for supranational governance. What is more, this demand has to be transmitted to relevant supranational organisations. Besides identifying the most important interest groups in education, this section will therefore also look at the channels the OMC creates for social partners¹⁵ and stakeholders at the European level.¹⁶ In su-

¹⁵ The notion “social partners“ refers to registered European social-partner organisations consulted under Article 138 of the EC Treaty. CEEP, ETUCE, UEAPME and UNICE are social partners. ESIB and EUA are not and therefore are considered relevant stakeholders.

¹⁶ Empirical research suggests that the OMC is more a top-down standard-setting through specialised committees rather than a bottom-up deliberative setting encouraging public scrutiny and local participation (Kaiser/Prange 2002; Barbier et al. 2002; Sismann 2004). Public debate with regard to the OMC process does basically not exist (de la Porte/Nanz 2004). The decision to concentrate on direct participation and on the European level seems therefore adequate. This proceeding is also in line with

pranationalism, an important channel to transmit private actor's demand for supranational governance to supranational organisations is their right to present complaints before the ECJ. As the ECJ is excluded, this channel does not exist within OMC process. I will therefore concentrate on possibilities for direct participation of private actors. The inclusion or better consultation of the social partners and relevant stakeholders in the policy-making process at EU-level is not new. It will therefore be important to look at what the OMC does better than traditional methods in involving these social partners and stakeholders.

With growing policy-making in education at the European level new interest groups have been established (e.g. EUA in 2001, ESIB in 1986)¹⁷ and existing interest groups created new departments or committees (e.g. the UNICE education committee within the social affairs working group and CEEP's¹⁸ social affairs committee working group on employment & training). Organised transnational society in education at EU-level consists *inter alia* of students (e.g. ESIB, OBESSU¹⁹), teachers (e.g. ETUCE)²⁰, universities and university staff (e.g. EUA), enterprises with public participation and of enterprises of general economic interest (CEEP) and representatives of the industry (e.g. UNICE, EUROCHAMBRES²¹ and UEAPME²²).²³

As Table 2 illustrates, EU-level social partners and stakeholders in education have a strong interest in increasing mobility in and quality of education and training. They are particularly concerned with issues of recognition of qualifications across national borders and comparability of degrees²⁴ and therefore welcome measures such as the EQF

Sandholtz' and Stone Sweet's (1998) argument that transnational society prefers lobbying for supranational rules in Brussels to lobbying at the domestic level.

¹⁷ The European University Association (EUA) was established in 2001 as a merger of the Association of European Universities (CRE) and the Confederation of European Union Rector's Conferences. The European Student Information Bureau's (ESIB) history goes as far back as 1982 but has become increasingly active since the Bologna Declaration of 1999.

¹⁸ CEEP is the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest.

¹⁹ OBESSU is the Organising Bureau of European School Student Unions.

²⁰ European Trade Union Committee for Education (ETUCE) was established in 1975.

²¹ EUROCHAMBRES is the Association of European Chambers of Commerce and Industry.

²² Union Européenne de l'Artisanat et des Petites et Moyennes Entreprises – European Association of Craft and Small and Medium-Sized Enterprises (UEAPME).

²³ There are many other interest groups that do not fit into these categories as the list of social partners and stakeholders that participated in the OMC working groups shows. Among these interest groups are the Confederation of European Scouts (CES), the European Association for the Education of Adults (EAEA), the European Parents' Association (EPA), the European Vocational Training Association (EVTA) and many more.

²⁴ See for instance the ESIB Statement on the Lisbon Objectives of the European Union, the EurActiv interview with Philippe de Buck, the head of the European employers' federation, and the ETUCE Ex-

and the Europass. To a lesser extent issues beyond mobility and quality are addressed.²⁵

Table 2: Examples of transnational actors and their interest in education and training with regard to mobility

Organisations	Main interest in education and training with regard to mobility	Issues addressed
ESIB	to facilitate mobility of students in order to ensure equal access to quality learning opportunities	visa regulations, portability of grants, internship regulations, recognition of qualifications and competencies, comparability of degrees
ETUCE	to facilitate mobility of teachers with regard to undertaking courses of study and obtaining jobs	portability of pension rights, social security, recognition of qualifications and competencies, comparability of degrees
EUA	to facilitate student and staff exchange in order to increase the quality of education	portability of pension rights, social security, synchronisation of academic calendars, introduction of language policies, recognition of qualifications and competencies, comparability of degrees
EURO-CHAMBRES	to facilitate mobility of employees in order to raise the quality of the workforce	recognition of qualifications and competencies, comparability of degrees
OBESSU	to facilitate school student mobility in order to promote cultural experiences	obstacles to mobility in general, foreign language learning, new European incentive programmes such as “Junior Erasmus”
UEAPME	to facilitate mobility of employees and apprentices of small and medium-sized enterprises (SME)	special mobility programmes for SMEs, recognition of qualifications and competencies, comparability of degrees
UNICE	to facilitate mobility of employees in order to raise the quality of the workforce	recognition of qualifications and competencies, comparability of degrees

²⁵ Executive Board Position on the European Commission Staff Working Document: Towards a European Qualifications Framework for Lifelong Learning, adopted in their meeting on 6-7 December 2005. Of the organisations regarded, only the EUA explicitly urges governments to synchronise academic calendars and to introduce appropriate language policies, starting at school level, in order to increase transnational mobility. These issues concern the content of teaching and the organisation of education systems and are therefore part of the exclusive competencies of the Member States. Yet, it can be assumed that with growing cross-border mobility in education, the content of teaching and the organisation of education systems will become more and more the subject of debate at the European level.

*Source: <http://www.esib.org>, http://www.etuce.homestead.com/CSEE_fr.html,
<http://www.eua.be>, <http://www.eurochambres.eu>, <http://www.obessu.org>,
<http://www.ueapme.com>, <http://www.unice.org>; consulted on 4 June 2006.*

We can see that interest groups in education at the European level are diverse and are well organised. These interest groups support efforts to increase transnational activity in education and seek for supranational regulations since they have an interest in legal certainty for the group of actors they represent. Transnational society in education is mainly concerned about issues where the Commission already has some competencies – namely mobility and quality. Issues concerning the content of teaching and the organisation of education systems are rarely addressed. This, however, could change if mobility in education increased. The more so as the content of teaching is directly linked to the recognition of qualifications and the comparability of degrees.

Recognising that there is a high demand for supranational governance, the potential of the OMC to promote institutional-spillover considerably depends on the extent to which the OMC creates channels for the transmission of this demand to pro-integrative supranational organisations.

Ideal-typically, participation should be possible in the OMC at all stages of the process, from agenda setting to implementation and monitoring (de la Porte/Nanz 2004). In practice, the OMC has delivered little on its promises (Radaelli 2003: 39). As opposed to the European Employment Strategy, consultation of the social partners²⁶ and the relevant stakeholders is not mandatory in the field of education and training. Nevertheless, an effort has been made to include the social partners and relevant stakeholders in the “Education and Training 2010” working groups, though not in all of them and without a clear procedure regarding the choice of social partners and stakeholders invited to join the working groups. Most importantly, social partners and stakeholder representatives are not present in one of the main OMC bodies in education and training, the Standing Group on Indicators and Benchmarks (SGIB). The SGIB is particularly important since it advises the Commission with regard to the choice of indicators and benchmarks which are the most important instruments of the OMC.

²⁶ The social partners are a defined group of non-governmental organisations which enjoy consultation privileges laid down in Article 138 and 139 of the Treaty. As opposed to UNICE and ETUCE, ESIB and EUA are no social partners.

Although this situation might improve with the recent creation of learning clusters and the Education and Training Co-ordination Group (ECTG), there are at the moment no indications that the OMC process in education and training created new channels for the transmission of demand for supranational governance: ECJ scrutiny is disabled and participation of social partners and stakeholders in the policy-making process has not been widened compared to traditional methods (Gornitzka 2005: 29).²⁷

4.4. The Satisfaction of Demand for Supranational Governance

Sandholtz and Stone Sweet (1998) argue that supranational governance emerges if supranational organisations exist, namely the Commission and the ECJ²⁸, which “responding to the demands made by those who are advantaged by EC rules and EC governance and disadvantaged by national rules and governance will evolve its own distinctive rules and procedures” (Caporaso/Stone Sweet 1998: 96).²⁹

Caporaso and Stone Sweet (1998), Sandholtz (1998) as well as O’Reilly and Stone Sweet (1998) underline the importance of the ECJ with regard to the emergence of supranational governance. Judicial decision-making, so their argument, is a powerful form of governance since it not only settles the dispute between two parties but does also establish precedents for future judgments. To put it differently, by justifying the decision made in a dispute at hand, the ECJ is giving a precise idea of how it will treat similar cases in the future. According to the advocates of supranationalism, in the past, the ECJ constructed integration through this twofold impact of lawmaking: ECJ case law transformed the legal basis of the Community by fundamentally increasing the capacity of the legal system to respond to the demands of private actors (Caporaso/ Stone Sweet 1998: 102). All the more it is decisive for the potential of the OMC to promote institutional-spillover that the ECJ is not included in OMC. The ECJ was deliberately

²⁷ Article 138 TEC already contains a legal basis for the consultation of the social partners with regard to Community actions initiated through the CCM. According to Article 138(1), the Commission has the task of promoting the consultation of management and labour and must take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties.

²⁸ According to the supranational approach, the EP’s role in the integration process is negligible. The EP will therefore be excluded from my analysis.

²⁹ Sandholtz (1998) and O’Reilly and Stone Sweet (1998) analyse the telecommunication as well as the air transport sector and find that society groups working in alliance with supranational organisations defined the nature and the scope of EC governance in these sectors. The pattern in these two sectors was the same: the Commission took the initiative together with private actors and the ECJ supplied the legal precedents which finally allowed the EU to enter into domains where EU competence was originally not explicitly mentioned in the treaty.

excluded from the OMC process to ensure its voluntary nature.³⁰ As the ECJ takes an important, if not the most important role in the supranational approach presented above, it is questionable if transnational society's demand for supranational governance can be satisfied without its integration-constructing rulings.

Before jumping to conclusions, however, I will regard the role of the Commission in the OMC process in education and training to see if it can compensate for the exclusion of the ECJ. I will do so by using the principle agent framework presented by Pollack (1999). Pollack notes that the autonomy of an agent depends on its agenda setting power. He distinguishes two types of agenda setting power: formal and informal agenda setting power.

According to Pollack (1999: 4) formal agenda setting power is "the ability of an actor to set the procedural agenda of a legislature by placing before it legislative proposals that can be adopted more easily than they can be amended, thus structuring and limiting the choices faced by a group of legislators." With regard to the Commission, agenda setting power is highest where it has the monopoly for initiatives and where decision-making is based on Qualified Majority Voting (QMV). With QMV, the Commission can choose its most convenient preference among all preferences that would attain a majority. Formal agenda setting power is close to zero where the unanimous consent of the Council is needed, for then the Commission cannot take advantage of diverging preferences of Member States. This is the case in the OMC process as one of its basic principles is its voluntary nature. The OMC does not foresee the production of binding rules and does not force Member States to implement any measures. Formally, in the OMC process the Commission only has a coordinating role. The formal agenda setting power of the Commission in the Lisbon process should therefore be close to zero.

But, depending on the sector, the OMC process has been coupled to already ongoing policy-making processes. In education and training, Article 149 TEC (education) and Article 150 TEC (training) enables the Commission to propose recommendations and incentive measures which can be adopted by the Council according the procedure referred to in Article 251 requiring a qualified majority. Yet, the Commission's theoretical agenda setting power is restricted as Community action is clearly limited to mobility and quality assurance in the treaty. What is more, Articles 149 and 150 TEC explicitly ex-

³⁰ The EP is also excluded from the OMC process.

clude any measures that aim at a “harmonisation of the laws and regulations of the Member States”³¹ and accord the Commission only a supporting and supplementing role. Moreover, the notion “incentive measures” excludes any binding measures referred to in Article 249 TEC (Fischer 2003). This means that incentive measures referred to in Article 149 (4) TEC have the same effect as recommendations based on Article 149 (4) TEC not allowing the Commission to enforce any measures against the will of Member States that voted against the measure in the Council. Although this interpretation of incentive measures is sometimes contested (Krebber 2002), in practice the discussion whether binding measures are allowed under Article 149 is not essential since the spectrum of binding measures not having any harmonising effect is rather limited. In the end, the soft nature of Article 149 TEC means that the Commission's formal agenda setting power in education is firstly limited to quality and mobility and secondly very weak in areas of political controversy.

In contrast to the very weak formal agenda setting power, the Commission possesses a fairly high degree of informal agenda setting power with regard to shaping the instruments of the OMC, namely common objectives, guidelines and benchmarks.

Informal agenda setting power is defined as “the ability of a policy entrepreneur to set the substantive agenda of an organization, not through its formal power but through its ability to define issues and present proposals which can rally consensus among the final decision-makers.” (Pollack 1999: 4).

The three common Lisbon objectives³² in education and training agreed upon in Stockholm 2001 by the European Council are the foundation for any action in the OMC process in education and training. The Commission had an influential role in defining these objectives as it distilled the information supplied by the Member States and then drafted a first outline of possible general objectives of education systems³³. Later, the Commission also gave important impetus to the report that was transmitted to the

³¹ Article 149 (4) TEC: In order to contribute to the achievement of the objectives referred to in this Article, the Council acting in accordance with the procedure referred to in Article 251, after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States.

³² The three common Lisbon objectives are: 'to improve the quality and effectiveness of education and training systems in the EU, to facilitate the access of all to education and training systems and, to open up education and training systems to the wider world.

³³ Report from the Commission on the concrete future objectives of Education systems, COM (2001) 59 final.

European Council in Stockholm in 2001.³⁴ In its first outline the Commission proposed six common objectives. Although not all of these six objectives were confirmed by the Education Council, one can easily see that this outline already contains the three common objectives agreed upon later with slightly different names.³⁵

By giving an important impetus to the definition of the common objectives which guide the 2010 work programme, the Commission essentially shaped the framework for actions in education and training for this decade.

The Commission also possesses informal agenda setting power with regard to indicators and benchmarks since it has been central in managing their development (Gornitzka 2005: 20).³⁶ This is particularly important as indicators and benchmarks are the main instrument of the OMC process for monitoring progress of the Member States.

As shown above, the Commission is a powerful agent due to its right to take initiatives, to make proposals with regard to organisational issues (e.g. learning clusters) and monitoring instruments, as well as due to its right to comment on national progress.

Yet, the Commission's agenda setting power is not unlimited. While the Commission is pushing for more precise indicators which would make monitoring more effective, the Member States are reluctant with regard to amending the list of indicators. In 2002, for example, the Commission proposed 15 quality indicators of lifelong learning.³⁷ From these 15 indicators comprising areas such as skills, resources and system development – obviously areas where national competencies are very strong – only one indicator on participation in lifelong learning was approved by the Council. Other indicators, such as “strategies for lifelong learning” that directly concern the organisation of educa-

³⁴ Report from the Education Council to the European Council "The concrete future objectives of education and training systems". 5980/01 EDUC 23.

³⁵ “Raising the standard of learning in Europe” became “improving the quality and effectiveness of education and training systems in the EU”, “making access to learning easier and more widespread at all times of life” became “facilitate the access of all to education and training systems” and “opening education and training to the local environment, to Europe and the world” was slightly altered to “opening education and training systems to the wider world”. In addition, “making the best use of resources” and “updating the definition of basic skills for the knowledge society” later became sub-objectives in the “Education and Training 2010” work programme.

³⁶ In 2002, the Commission proposed five benchmarks which were adopted, only slightly altered, by the Council in 2003. The same was true for the first set of indicators adopted together with the benchmarks in Barcelona. See also: Communication from the Commission. European benchmarks in education and training: follow-up to the Lisbon European Council. COM(2002) 629 final.

Council Conclusions on reference levels of European average performance in education and training (benchmarks). 8981/03 EDUC 83.

³⁷ European report on quality indicators of lifelong learning. Fifteen quality indicators, June 2002.

tion systems were not approved. The Commission repeatedly underlined the importance of the development of quality indicators for lifelong learning in its interim report 2004. Thereupon the Council invited the Commission to present detailed proposals for the development of new indicators, yet it slowed down this process by defining the development of new indicators as a long-term project, at times lasting five to ten years.³⁸ What is more, in its conclusions the Council stresses that:

“The development of new indicators shall fully respect the responsibility of Member States for the organisation of their education systems and should not impose undue administrative or financial burdens on the organisation and institutions concerned, nor inevitably lead to an increased number of indicators used to monitor progress” (Council Conclusions of 24 May 2005 on new indicators in education and training, paragraph 14).

This paragraph 14 manifestly confirms the impression received above that the Commission’s informal agenda setting power is clearly limited in areas of high political salience and areas Member States consider within the realm of their exclusive responsibility.

The inclusion of social partners in national implementation mechanisms is another example of an unsuccessful attempt by the Commission to set the agenda. The Commission was pushing for the inclusion of social partners in national mechanisms coordinating the implementation of the “Education and Training 2010” work programme. In its draft for the 2006 joint interim report the Commission proposed to set in place such structures by 2008. The report adopted by the Council contains a general reference to the setting in place of coordination structures but does not mention any clear date.

The Commission's attempts to introduce new indicators for lifelong learning and to introduce clear deadlines for the introduction of national decision-making structures that include stakeholders illustrate that Member States are not willing to let the Commission enter into areas they consider being a part of the realm of national competencies. The fact that the Council repeatedly affirmed the responsibility of Member States for the organisation of their education systems shows that Member States will use the strong position of the European Council and the Council in the OMC to block any attempt to

³⁸ Council Conclusions of 24 May 2005 on new indicators in education and training. (2005/C141/04).

formally centralise policy formation or to introduce top-down methods of integration. The strong position of Member States in the OMC process in education and training weighs particularly heavy in the absence of the ECJ. It is hard to imagine that the informal agenda setting power of the Commission in areas of low political salience can compensate for the impossibility of court rulings which in the past have to a great extent constructed integration. The increase in decisional autonomy and capacity the Commission enjoys in the frame of the OMC can therefore be regarded as insufficient to pursue an integrative agenda and to supply supranational governance.

5. Conclusions

This paper argues that the OMC's potential to promote institutional-spillover in education is very low as it neither increases participation of transnational society in the policy-making process nor sufficiently increases the autonomy of joint organisations to be able to supply supranational governance.

Although this paper focused on the OMC in education and training, the analytical framework used is transferable to other OMC processes, especially to those sharing the same properties with respect to the inclusion of stakeholders as well as to the treaty basis and its implications for the competencies of the Commission and the ECJ.

Regarding the OMC's potential to promote institutional-spillover in general, the absence of the ECJ from the OMC process weighs particularly heavy. Without the ECJ, the legal construction of integration through the OMC will not be possible. This is true for any field where the OMC is applied. Also in policy fields where the position of the Commission as an agent in the daily working process is stronger than in education³⁹, it is hard to imagine that this strong position can compensate for the exclusion of the ECJ, the most important channel for the transmission of demand for supranational governance supranationalism identifies. What is more, Radaelli (2003: 39) states that the OMC has delivered little on its promise to increase the participation of social partners and stakeholders in the policy-making process.⁴⁰ And even in policy fields with a

³⁹ The Commission has the right to issue recommendations in Employment, Fiscal Surveillance and Macro-Economic Policy.

⁴⁰ See also Zeitlin, Jonathan 2005: Conclusion: The Open Method of Coordination in Action: Theoretical Promise, Empirical Realities, Reform Strategy, in: Zeitlin, Jonathan/Pochet, Philippe/Magnusson, Lars:

strong treaty basis and where consultation of the social partners is compulsory⁴¹ the development of supranational governance cannot be observed.

Further research has to confirm these results and should try to assess which level of autonomy of joint organisations has to be passed in order to kick start a dynamic of legal integration.

My claim that the OMC's potential to promote institutional-spillover is very low has two implications: on the one hand, my findings confirm the arguments of some scholars who see the OMC as an effective tool to end the Commission's competence creep (Kassim/Menon 2004; Walkenhorst 2005; Schäfer 2004). According to my findings based on Sandholtz' and Stone Sweet's supranational approach, the autonomy of the Commission and the ECJ within the OMC process is too small to expand the Commission's competencies against the will of the Member States.

On the other hand, a very low potential to promote institutional-spillover is a necessary condition for Radaelli's (2003) and other authors' argument that the OMC represents a distinct method between intergovernmental cooperation and the CCM. According to Radaelli, the OMC has considerable potential to develop into a third way in European governance which relies on joint responsibility rather than on the transfer of competencies to a supranational level. My findings support this argument to the extent that a high potential to promote institutional-spillover would have meant that the OMC might only have a bridging function.

The Open Method of Coordination in Action: The European Employment and Social Inclusion Strategies, Brussels, 447-503.

⁴¹ For example, the consultation of the social partners is compulsory in the OMC on employment and social inclusion.

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