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Policy Learning in Europe: The "Open Method of Coordination" and Laboratory Federalism

von

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Policy Learning in Europe: The "Open Method of Coordination" and Laboratory Federalism

Wolfgang Kerber and Martina Eckardt*

Abstract:

The Open Method of Coordination (OMC) is a new governance method applied in the European Union to policy fields where the main competences still rest with the member states. The OMC should help to foster mutual learning about successful policies and promote policy transfer by identifying best practices and recommending them. By confronting this approach with the economic concept of laboratory federalism its potential for the innovation and diffusion of policies in a multi-level governance system is analysed. Both concepts use the basic idea of decentralised experimentation and mutual learning from experiences with implemented policies. Whereas the OMC organizes this learning process to a greater extent "top-down", laboratory federalism is much more a "bottom-up" concept. Their advantages and shortcomings in evaluating, finding and transferring best policies are discussed and the underlying insufficiencies in setting adequate incentives for adopting better policies are analysed. It is shown that under certain conditions both concepts can supplement each other.

JEL-Classification: D7, F02, F42, H7

Keywords: European Union, Federalism, Open Method of Coordination, Policy Coordination, Policy Innovation, Policy Learning

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I. Introduction

With the EU summit in Lisbon in March 2000, the EU has been introducing a new form of governance ("Open Method of Coordination"; OMC) which should help to reform policies of the member states. Its basic idea is that policies which are in the competence of the EU member states should be evaluated on the EU level, "best practices" should be identified and recommended to the member states. In our view the most innovative aspect of the OMC is that it is an institution that attempts to establish a process of mutual learning about appropriate public policies among the EU member states. This basic idea of decentralised experimentation and mutual learning, however, can also be found in the economic theory of federalism. It claims that in a federal multi-level system of jurisdictions decentralisation of public policies would lead to an experimental process with new policies ("laboratory federalism"; Oates 1999). This would imply processes of innovation and imitation of superior policies, driven by yardstick competition and / or interjurisdictional competition.

In this paper we analyse in a comparative way to what extent the OMC and laboratory federalism might be capable of fostering processes of policy innovation and learning of lower-level jurisdictions in a multi-level (federal) system. Both concepts are critically studied in regard to their capability to establish permanent learning processes for public policies. Our results show that both the OMC as a more centralised ("top-down") method of benchmarking and spreading "best practices" and laboratory federalism as a much more decentralised ("bottom-up") approach are able to foster processes of policy learning. However, both also suffer from considerable problems and defects, which require the establishment of appropriate rules for their remedying. An important outcome of our analysis is that the OMC has a strong tendency to promote only the diffusion of policies, whereas laboratory federalism focuses both on the generation of policy innovations and on policy diffusion. The OMC and laboratory federalism, however, can also support each other.

The paper is structured as follows: In section II, the OMC as an institution for supporting policy learning is briefly introduced. The economic concept of laboratoy federalism is presented in section III. The advantages and problems of both concepts are elaborated and compared in section IV. The concluding section V shows that the OMC and laboratory federalism might be integrated within the broader framework of an European multi-level system of jurisdictions.

II. The EU "Open Method of Coordination" as an Institution for Supporting Policy Learning

The OMC was first explicitly introduced through the Social Agenda in 2000, which constitutes a core element of the Lisbon Strategy. According to this the EU should become "the most competitive and dynamic knowledge-based economy in the world" by 2010 (Council 2003, 1). The OMC is applied in a wide area of policy fields, in which the competences for policy-making still rest nearly exclusively with the national level. In particular, reforms in the field of employment and social security (pensions, social inclusion, health care) are seen as decisive. While it still leaves the competence for these policies on the level of national governments, these are considered to be in need of assistance when it comes to the imitation of successful policies from other jurisdictions. Due to the huge diversity in national welfare systems the traditional community method seems to be inappropriate. In contrast to this "hard law" approach the OMC can be seen as a particular form of "soft law". It has evolved from the experiences gained by the EMU, the Broad Economic Policy Guidelines and the European Employment Strategy (Borrás / Jacobsson 2004; Radaelli 2003; Wincott 2003).

Basically, the OMC can be characterized as a procedural instrument which rests on the idea of benchmarking, peer review, and mutual learning (Arrowsmith / Sisson / Marginson 2004). Theoretically, the OMC can be understood as a two-level procedure for policy learning (Eckardt / Kerber 2004). By comparing and evaluating the effectiveness of the policies implemented in the member states on the central level, the best policies on the lower (national) level should be identified and spread by policy recommendations. In its ideal form it consists of the following steps (Borrás / Jacobsson 2004; Casey 2003; Eckardt 2005): The EU Council agrees on common objectives (with indicators and benchmarks), mainly drafted by the Commission. The member states report regularly how far they have attained the objectives and what policies they have implemented and planned. The Commission assesses their efforts, identifies best practises and formulates recommendations for each member state. The results are laid down in a joint report which has to be approved by the European Council. In the follow-up stage, the member states implement the measures recommended to them. This procedure is repeated regularly thereafter. As a consequence, the Commission, by being involved in the definition of common problems, objectives and potential problem-solutions, might influence the path of future reforms in the member states. However, due to the large variety of different policy fields, which renders the development of adequate objectives, targets, indicators and benchmarks difficult, there emerged a large diversity of how the OMC is actually

employed (Borrás / Jacobsson 2004, 192-194). Closest to its template is the OMC in the field of budgetary and macro-economic policy as well as in the area of employment policy. But there are also "softer" versions, e.g. in respect to social inclusion, pensions, health care, further training, and research and innovation policies (Casey 2003, Commission 2003).

There is a vivid academic discussion on the OMC, which is mainly driven by political scientists and legal scholars (Borrás / Jacobsson 2004; Commission 2001; De la Porte / Pochet 2003, 2004; De la Porte / Nanz 2004; Eberlein / Kerwer 2004; Eckardt 2005; Hemerijck / Visser 2003; Jacobsson 2003; Meyer 2004; Radaelli 2003; Sakellerapolous et al. 2004; Scott / Trubek 2002; Trubek / Trubek 2003; Wincott 2003). The most relevant topics are (1) the OMC as a new mode of governance, (2) the OMC as a (partial) solution for the legitimacy crisis of the EU, and (3) the connection of the OMC with the discussion on a European Social Model. But most important from our view is (4) the OMC as organizing processes of policy learning. With the maturing of the OMC, like in the fields of employment and pensions, more empirical research is now available (Borrás / Jacobsson 2004; Büchs / Friedrich 2005; De la Porte / Nanz 2004; De la Porte / Pochet 2002, 2004; Hemerijck / Visser 2003; Jacobsson 2003; Jacobsson / Vifell 2004; Meyer 2004; Sakellerapolous et al. 2004; Schludi 2003; VDR et al. 2003). It gives a rather critical picture about the effectiveness of the OMC to reach some of its main goals, particularly in regard to policy learning. While earlier studies referred to a rather idealized learning situation, now the obstacles for a successful policy transfer through benchmarking and peer review processes are discussed in more detail. The main outcome is that so far there is no comprehensive multi-level vertical and horizontal learning process triggered off by the OMC.

III. Laboratory Federalism: another Approach for Policy Innovation and Policy Learning

In economics the issue of policy innovations and policy learning is a rather new topic. Benchmarking processes, in which best policies are identified by comparing a number of already implemented policies, have only recently emerged as a method of finding good economic policies (Arrowsmith / Sisson / Marginson 2004; Noaksson / Jacobsson 2003). Since the 1990s, some literature developed in the context of the economic theory of federalism which analyses the advantages of decentralised federal systems in regard to the innovation and diffusion of new policies. The concept of "laboratory federalism" sees the experimentation with new policies and the ensuing possibility of mutual learning about superior policies as an essential characteristic of federal systems (Oates 1999; Kollman / Miller / Page 2000).

Another strand of research encompasses theories which see innovation and diffusion of public policies as an important aspect of interjurisdictional competition (Vanberg / Kerber 1994). This has led to the question whether an appropriately designed system of competitive federalism can be understood as a suitable institution for the generation and spreading of knowledge about superior policies through experimentation and mutual learning (Kerber 2000; 2005).

The starting point of the policy innovation issue is the "knowledge problem", i.e. that for most policy fields the optimal public policies have not been found yet. This has been strongly emphasised both by the concept of laboratory federalism (Oates 1999) and - in a much more fundamental way - by Hayek (1996). His critique of "constructivism", based upon his studies about highly complex systems like human societies, showed that our knowledge how to intervene successfully in modern complex societies is very limited. From his epistemological perspective, finding out about the quality of policies requires experiences made in trial and error-processes. That is the reason why Hayek's concept of "competition as a discovery procedure" is used by evolutionary theories of interjurisdictional competition (Hayek 1978; Vanberg / Kerber 1994; Kerber / Budzinski 2003). It is conceived as parallel trial and error-processes, in which competing jurisdictions experiment with different policies, identify the superior ones and imitate them (policy innovation and diffusion).

From an economic point of view the issue of policy innovation and policy learning has to be analysed as part of the much broader question of how to design federal multi-level systems of jurisdictions.[1] The economic theory of federalism asks primarily for the optimal vertical allocation of competences for policies in a federally organised system of jurisdictions (Oates 1999; Breton 1996). A number of criteria were developed to determine the optimal degree of centralisation and decentralisation of policies, e.g., the regional scope of the benefits of public goods (spill-over effects, interregional externalities), economies of scale, regional homogeneity / heterogeneity of problems and preferences of the citizens, decision and transaction costs, the extent of knowledge problems, and the effects on policy innovation. Theories of interjurisdictional and regulatory competition take also into account the effects resulting from the mobility of individuals, firms, and production factors between lower-level jurisdictions. They ask for the additional advantages and failures of such competition processes (Tiebout 1956; Vanberg / Kerber 1994; Sun / Pelkmans 1995; Breton 1996; Bratton / McCahery 1997; Sinn

[1]For the discussion on multi-level governance in the political science literature see, for example, Marks / Hooghe / Blank (1996) and Jordan (2001).

1997; Garcimartín 1999; Trachtman 2000; Wellisch 2000; Van den Bergh 2000; Esty / Gerardin 2001; Grundmann / Kerber 2002; Marciano / Josselin 2002, 2003).

For a more detailed analysis of the processes of innovation and mutual learning about policies within such federal multi-level system of jurisdictions, it is useful to differentiate between three different kinds of transmission mechanisms for learning between jurisdictions (Heine / Kerber 2002; Kerber / Budzinski 2003):

- *Pure yardstick competition:* The only requirement is that two countries can mutually observe the policies of their governments and their performance. As a consequence, governments can learn from each other about the success or failure of their policies. More important is that the citizens of the jurisdictions can use the policy performance (e.g., unemployment and inflation rates) in foreign countries as "yardsticks" for the assessment of their domestic government (elections).[2] Through intrajurisdictional political competition the governments can have incentives to generate policy innovations or to imitate superior ones from other jurisdictions. In that way parallel processes of experimentation with policies in different countries can increase the knowledge about public policies through processes of mutual learning (Van den Bergh 2000; Kerber 2005), but there also can be problems, which are analysed in empirical studies (Besley / Case 1995).
- *Interjurisdictional competition:* If also goods, production factors, firms, and individuals are mobile between jurisdictions, a market for locations emerges, with jurisdictions supplying packages of public goods, regulations, and taxes, and with the demand side consisting of mobile individuals, firms, and production factors. The importance of such interjurisdictional competition (locational competition) has increased considerably through globalisation and – within the EU – through the four basic freedoms by removing mobility barriers between member states (Tiebout 1956; Siebert / Koop 1990; Breton 1996; Sinn 1997; Kerber 2000; Oates 1999; Trachtman 2000). The danger of losing (and the chance of attracting) resources to (and from) other jurisdictions implies much more powerful incentives for the jurisdictions (and their governments) to increase their competitiveness as locations for mobile resources. In that respect, a number of potential problems and failures are discussed, as, e.g., whether a too low level of public goods or redistribution (due to excessive tax competition) and race to the bottom-problems in regard to regulations can emerge, or whether there are lacking or distorted incentives for politicians or too high mobility costs

[2]The concept of yardstick competition was developed in the economic theory of regulation; in regard to federalism see Salmon (1987) and Besley / Case (1995).

(Sun / Pelkmans 1995; Sinn 1997; Wellisch 2000). The potential advantages of interjurisdictional competition are seen in its higher efficiency in supplying public goods and regulations, and in a lower level of rent-seeking (through the exit option of mobile ressources). Of particular importance, however, is that the innovation and imitation of better policies can be a very promising strategy for increasing the competitiveness of jurisdictions.

- *Competition among legal rules (regulatory competition):* If individuals and firms have the right to choose between legal rules of different jurisdictions without having to change their location (free choice of law), then competition among legal rules emerges (Sun / Pelkmans 1995; Ogus 1999; Garcimartín 1999; van den Bergh 2000; Trachtman 2000; Heine / Kerber 2002; Kerber / Budzinski 2003). One well-known example of this kind of regulatory competition is competition among corporate laws within the U.S. Most experts hold the opinion that this competition does not lead to a race to the bottom but, on the contrary, to a race to the top. Particularly interesting is that the positive effects of this form of competition are primarily seen in the generation and diffusion of new legal rules within corporate law (Romano 1985; Easterbrook / Fischel 1996). After some important decisions of the European Court of Justice (i.e., "Centros"), a similar kind of competition among corporate laws might also develop within the EU (Wouters 2000; Heine / Kerber 2002).

From this perspective federal multi-level systems of jurisdictions can be seen as innovation systems, in which public policies are the object of a continuous process of innovation and imitation, driven by decentralised experimentation and competition. As a consequence, learning about superior policies as well as the search for policy innovations are an inherent characteristic of federal systems (Oates 1999; Kerber 2005). Due to the potential problems of a decentralised (and / or competitive) supply of public policies, however, such a system of laboratory federalism needs an institutional framework of rules which ensures that these competition processes have more positive than negative effects (competitive order: Vanberg / Kerber 1994; Garcimartín 1999). Consequently, the EU multi-level system of jurisdictions with its vertical allocation of competences and the necessary overall institutional framework should be formed in that way that it also works as an innovation system for public policies.[3]

[3]For contributions from that perspective in regard to the EU see, e.g., Kirchner (1998), Frey / Eichenberger (1999), and Kerber (2000).

IV. OMC and Laboratory Federalism: a Comparative Analysis

1. Common Idea: the Knowledge Problem, Experimentation and Mutual Learning

The most striking similarity between the OMC and laboratory federalism is that they are both based upon the common idea of the positive effects of policy experimentation and mutual learning from the experiences with already implemented policies. Both concepts start with the assumption that the optimal policies are not known yet (knowledge problem). Instead of trusting theoretical analyses, they take the experiences of already implemented policies for an essential source for improving the knowledge about appropriate policies. Within the concept of laboratory federalism this knowledge problem is explicitly stated. Within the OMC it is implicitly shown by the application of the pragmatic concept of benchmarking, which originally has been developed in business practice. As a consequence, both concepts see themselves as institutions that organise processes of mutual learning about the experiences with policies more systematically.

But there are considerable differences how this learning process is organised. Within the OMC, the different policies of the member states are evaluated by applying the method of benchmarking (Arrowsmith / Sisson / Marginson 2004; Hemerijck / Visser 2003). This can be interpreted as a kind of implicit process of parallel experimentation, but the evaluation and learning process is organised on the central EU level. Despite the right of the member states to decide on the acceptance of the policy recommendations, this is primarily a top-down approach. In contrast to that, in laboratory federalism the search for better policies is carried out on a decentralised level by the jurisdictions themselves, either by innovation of new policies or by learning from others. Like firms in market competition, jurisdictions can implement their own benchmarking processes, identify "best policies" in other countries and imitate them (bottom-up approach).

2. Learning Problems I: Evaluation, Identifying "Best Policies", and Limited Transferability

The most basic problem for learning about superior policies, both in the OMC and in laboratory federalism, is to what extent learning from positive or negative experiences of others is possible at all. The method of benchmarking and searching for best practices assumes implicitly that a "best practice" for all can be identified. But this is a critical assumption. If in different jurisdictions different policy aims and / or different problems and conditions exist, then the theory of economic policy would suggest that also different policies are optimal. This certainly does not imply that no learning is possible, but often it has to be a much more complicated process than simply identifying "best policies", which others can imitate directly. This is a problem both for the OMC and laboratory federalism, because simplified versions of both are based upon the somewhat naïve notion that there are "best policies" that only have to be found, either through central evaluation or through decentral competition processes.

This problem is directly linked to a number of diffusion and imitation problems, which are well known in innovation economics (Rogers 1995). Due to different conditions and capabilities, the imitation of successful policies usually is a difficult and time-consuming process, which also can fail. Often imitation requires itself innovative adaptations. This problem has also been elaborated in the political science literature, in which the application of the method of benchmarking and recommending "best practices" has been criticised as too simplistic (Arrowsmith / Sisson / Marginson 2004). Although the significance of "cross-national learning" is considerably emphasized (Hemerijck / Visser 2003), "decontextualised" benchmarking in form of a "one-size fits all" approach it not seen as being appropriate. Without rejecting the best practices approach, Radaelli (2003) favours a "context-sensitive 'lesson-drawing' approach", in which "contextualised learning" should be carried out in form of a stronger consideration of specific institutional conditions and traditions (Radaelli 2003, 42). Mutual learning can also take place in form of "negative lesson drawing", i.e. that unsuccessful policies are not imitated (Rose 2002).

This insight that the efficacy of specific policies depends on the existence of other policies, or, more generally, on the institutional context of a jurisdiction is also recognized in theories about competition among legal rules. The transfer of foreign legal rules into the domestic legal order (through free choice of law) can lead to compatibility problems with other legal rules (problem of "legal transplants"), which can cause costs due to inconsistencies of a legal order and, therefore, can impede competition among legal rules (Heine / Kerber 2002). The

theory of economic policy can support this position and provide sound arguments why policy transfer might be difficult and requires adaptations to the specific circumstances of the imitating jurisdiction. Nevertheless, this argument should be used cautiously, because it can be easily abused as an excuse for not having to learn from others and sticking to one's well-established but outdated policies.

In addition, the question arises whether the more centralised approach of the OMC or the more decentralised approach of laboratory federalism might be superior in identifying better policies. The central evaluation of policies in the OMC seems to have the advantage that evaluation costs have to be borne only once. A decentralised form of comparing the performance of policies might lead to unnecessary parallel research with much higher costs. But the the central evaluation of policies presupposes that there is a consensus about a uniform set of assessment criteria and methods of measuring performance, which often is not the case. Since the criteria decide on the "ranking" of policies, the decision on the assessment criteria is itself a political decision, which in the institutional context of the OMC can be expected to be the outcome of complex political bargaining processes (Arrowsmith / Sisson / Marginson 2004; Eckardt 2005). Another danger is that also a group of leading experts might come to an erroneous assessment which could lead to wrong policy recommendations from the central level. Due to possibly ensuing lock-in effects and path dependences, it might get difficult to correct wrong developments. In that respect, the OMC entails also the potential dangers of centralisation and harmonisation – although to a lesser extent.

In laboratory federalism the decentralised form of the evaluation of policies implies different sets of assessment criteria and operationalisation methods. It can be suggested that less resources are invested in the particular studies, and that they will be made less systematically. An important problem is that the access to statistics and other information about the policies and their performance in other countries is much more difficult than in the OMC, where the member states have to provide this information. But in laboratory federalism the evaluations about the quality of policies are themselves controlled by interjurisdictional competition. Since the uncertainty in respect to the evaluation of policies often is rather high, the variety of assessments with different criteria and methods might be an advantage in the long run. In such a decentralised system of evaluation of policies, it might also be easier to correct evaluation errors and avoid problematic path dependences.

3. Learning Problems II: Lacking and Distorting Incentives

It is particularly difficult to analyse the incentive problems within the concept of the OMC, in which a number of actors from different vertical and horizontal levels within and across policy fields are involved. The outcome of the OMC depends decisively on the quality of the national reports about the actions taken on the national level. This bottom-up dimension and the need for participation of all affected actors in a policy field is stressed both in official documents about the OMC as well as in the literature (Commission 2003; De la Porte / Nanz 2004). However, the experiences made so far are rather disillusioning. In most cases the national reports are prepared by a small circle of government officials in charge of EU affairs, for whom this is just another task to be performed for Brussels, without getting additional resources. Although often information and data have to be brought together from different departments and institutions, this usually does not lead to an exchange between the involved actors. Moreover, in most OMCs participation of social partners, local actors or civil society representatives is also weak or non-existent, despite efforts of the Commission to increase their influence (De la Porte / Nanz 2004). Also national parliaments are usually not actively involved, neither does a public debate take place.

There are also incentive problems at the central EU level (Arrowsmith / Sisson / Marginson 2004; Chalmers / Lodge 2003; De la Porte / Pochet 2004; Jacobsson / Vifell 2004). Again, there is a variety of actors involved from different institutions (EU Commission, Commission Committees, EU Council, European Parliament, association of social partners, representatives of national governments), who all follow different interests. Only accidentally will their incentives coincide with finding out about best policy solutions and their dissemination. Thus the political logic might also well hinder or even block learning processes to take place at the EU level. But even if the OMC succeeds in identifying best practices, the incentives lack to implement them (Arrowsmith / Sisson / Marginson 2004; Borrás / Jacobsson 2004; De la Porte / Nanz 2004; Eckardt 2005; Jacobsson / Vifell 2004; Schludi 2003; Trubek / Trubek 2003). Both the Stability and Growth Pact and the EES show that the implementation of commonly agreed objectives works the better, the stronger the positive and / or negative sanctions are. Soft sanctions like negative or positive publicity in the media or naming-and-shaming seem to have far less effect than more formal monetary sanctions like fines for non-compliance or additional funding of measures.

In regard to laboratory federalism the incentive problems are much better analysed. On a first level the question arises whether jurisdictions have sufficient incentives to improve their poli-

cies by policy innovation and learning. Jurisdictions have strong incentives when competing for mobile resources to improve their packages of public goods, regulations and taxes - both for improving their knowledge and implementing better policies. But since failures of inter-jurisdictional competition cannot be excluded, it is necessary to ensure that jurisdictions have undistorted incentives for improving their policies. For example, it might be individually worthwhile for jurisdictions to embark on strategic policies with negative externalities for others (beggar-my-neighbour policies) which can lead to race-to-the-bottom or prisoners' dilemma problems (Garcimartín 1999; Kerber / Budzinski 2003). In those cases the jurisdictions would have incentives to improve their knowledge about policies which reduce the welfare of all jurisdictions. The already mentioned "competition order" for competitive federalism would have the task to impede such developments, i.e. this institutional framework should channel the efforts of jurisdictions to search for welfare-enhancing policies.

But even if the incentive problems are solved on the level of jurisdictions as a whole, considerable incentive problems can occur through defective intrajurisdictional political processes. For example, the economic literature on political economy (public choice, rent seeking theory) offers a lot of explanations why governments choose policies which do not correspond to the preferences and interests of their citizens. In those cases politicians may lack the appropriate incentives for policy innovation and policy learning. Some particular problems have been analysed by federalism theory. In regard to the efficacy of yardstick competition, empirical studies in the U.S. have come to very differentiated conclusions in regard to the comparison of the performance of governments by the voters (Besley / Case 1995; Kollman / Miller / Page 2000). Another crucial problem is the "rational ignorance" of voters, because their incentives to search for information about the quality of policies in other jurisdictions is very small (Schnellenbach 2004).

These incentive problems, however, differ considerably according to the type of competition. Whereas "rational ignorance" is a great problem in the case of yardstick competition, it is no problem in the case of interjurisdictional competition. Here mobile individuals and firms have sufficient incentives for improving their knowledge about the advantages and disadvantages of jurisdictions before deciding on their location. The same is true for competition among legal rules via free choice of law. The decisive difference is that in the case of yardstick competition information costs born by a voter contribute to a collective good, namely the quality of collective decisions, whereas in the other cases the advantages of better information accrue directly to those who bear the information costs. Furthermore, in contrast to competition among legal rules and yardstick competition, interjurisdictional competition can suffer from

considerable problems because of (1) mobility costs between jurisdictions and (2) the fact that mobile firms or individuals always have to decide between whole packages of public goods, regulations and taxes. The latter problem implies that the incentive of the jurisdictions to improve particular policies, as e.g. corporate laws, can be relatively small, because this might only have a marginal effect on locational decisions. For competition among legal rules via free choice of law, however, neither the "rational ignorance" problem nor the "package" problem nor mobility costs are of relevance. But here the question arises what the incentives for the jurisdictions are to improve these legal rules at all, if domestic firms can also use foreign legal rules.[4]

In sum, both the OMC and laboratory federalism can have a number of incentive problems. In the OMC no active learning process has been triggered off within the member states by the OMCs. Here the main problem is that most of the actors have no real positive incentives for policy learning, and also negative incentives (sanctions) are very weak. Within a workable system of competing jurisdictions, it can be presumed that, in general, the incentives for policy innovation and policy learning are considerably higher than in the OMC. Here the main problem is that these incentives can be distorted, which leads to the necessity to solve or reduce these problems by establishing an appropriate framework of rules for the overall multi-level system of jurisdictions.

4. Policy Innovation

What are the advantages and disadvantages of OMC and laboratory federalism in regard to the creation and dissemination of policy innovations? Policy innovations are important for two reasons: (1) For most economic and social problems, we cannot assume that the best policies have already be found (knowledge problem). (2) The dynamic development of the world through technological progress and social change implies also the perennial emergence of entirely new problems and the qualitative change of old problems. Therefore, in the long run, it is not sufficient for a country to learn from the "best policies" of others, rather it is necessary to have a high capability of innovativeness and adaptability in regard to its policies and institutions (Kerber 2005).

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[4] In the case of competition among corporate laws in the U.S., the incentives are franchise taxes which have to be paid from the firms to the states for incorporation (Romano 1985). But usually there are no direct fees for using legal rules.

Evolutionary concepts of laboratory federalism emphasize these advantages in regard to the emergence and spreading of policy innovations. This is reflected by the explicit use of evolutionary approaches to competition in the tradition of Schumpeter and Hayek as well as in the application of variation-selection-models in the modern evolutionary approach to innovation economics (Hayek 1978; Nelson 1995). The competitive process of experimentation in laboratory federalism can be interpreted as a parallel trial-and-error process. It consists both of the generation of new hypotheses about promising policy solutions (policy innovations) and of the spreading of those policies, which after their implementation turn out to be superior, primarily through imitation. From an evolutionary economics perspective, this process can be analysed as a never-ending process of variation and selection of policies, which - in the ideal case - leads to a step-by-step improvement of policies. Since the selection of policies through imitation reduces the heterogeneity of applied policies, there must be a permanent source of new variety in form of new policy innovations (Metcalfe 1989).[5] Therefore, the concept of laboratory federalism encompasses both the innovation of new policies, and their learning by others (policy diffusion).

Already a superficial analysis of the OMC, however, shows that this concept focuses only on the identification and diffusion of successful policies (selection). The development of new policy innovations is not part of this concept. On the contrary, the OMC endangers the long-term capability of the system for generating policy innovations. The main reason is that a successful carrying out of the OMC in a particular policy field would imply that all member states would imitate the "best policy", leading to a harmonisation of their policies.[6] Certainly, a fast process of harmonisation in the policy fields, in which the OMC is being applied, is not very probable due to the heterogeneity of the conditions in the member states and political resistance. But a very crucial additional objective of the OMC has to be considered. The EU Commission understands the OMC also to be an instrument for accomplishing a greater convergence in those policy fields which so far are in the exclusive competence of the member states. Since the heterogeneity of national policies is negatively assessed, the diffusion of "best policies" to the member states can also be seen as a suitable means for attaining this aim of convergence (Chalmers / Lodge 2003; Working Group 4a 2001). It cannot be expected that the EU would support the emergence of new heterogeneity by fostering experimentation with

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[5]For the theoretical foundations from evolutionary economics in regard to this argumentation, see Metcalfe (1989), Nelson (1995) and Kerber (2005).

[6]The focus on the diffusion of superior policies and the neglect of innovations is also a problem of the benchmarking concept itself (Arrowsmith / Sisson / Marginson 2004).

new policies on the level of the member states. On the contrary, the EU would probably discourage the member states from deviating from its policy recommendations. One important instrument is that the EU can link the financial support from EU programs to the compliance of the member states with its policy recommendations (Jacobsson / Vifell 2004). An important consequence of this convergence process through the OMC is that future processes of parallel experimentation with different policies might be eliminated, leading to an end of the knowledge-generating processes of parallel trial and error-processes with mutual learning (Arrowsmith / Sisson / Marginson 2004; Lundvall / Tomlinson 2002; Radaelli 2003).

5. Policy Convergence and Coordination

It is surprising that the objective of a greater policy convergence is not critically discussed in the literature on the OMC, but seems to be kind of self-evident. There are no profound analyses about the advantages and disadvantages neither of more heterogeneous vs. more uniform national policies, nor of the consequences of more centralisation / harmonisation vs. decentralisation in these policy areas. In economic theory, particularly in the already mentioned theory of federalism, a number of arguments have been developed why coordination (or even harmonisation) of national policies might be appropriate. Those arguments, for example, include negative externalities and spill-overs by national policies on other countries (e.g. through beggar-my-neighbour policies), or the solution of international prisoners' dilemma situations. Therefore the question, why and to what extent convergence and / or coordination of national policies is necessary, is a widely neglected issue in both the political and academic discussion on the OMC.

This finding is closely linked to the main inconsistency in the discussion on the OMC. If coordination and / or convergence in certain policy fields of the member states should really be necessary, then the appropriate policy answer would not be to apply the OMC, but to shift the competences for these policies to the EU level. If it is true, however, that the competences for these policies should rest with the member states, then it is contradictory to simultaneously strive for the convergence of these policies. Of course, this does not exclude the possibility that a certain degree of coordination in regard to particular aspects of national policies might be necessary (Radaelli 2003).

This contradiction within the concept of the OMC, as it is put forward by the EU Commission and its proponents, however, would not emerge, if the OMC is limited to its initial central purpose, namely to support policy learning. Here, the only task of the OMC is to provide a central institution that helps to establish processes of policy learning on a decentralised level.

By giving up the aim of convergence, the OMC also does not need to be an impediment for the heterogeneity of national policies, and, therefore, also not for decentralised experimentation with new policies. From that perspective, the non-binding character of its policy recommendations has to be assessed in a positive way, because the right of the member states to decide on the basis of their own objectives, problems, and knowledge about the appropriate policies is not restricted. Policy innovations on the level of the member states remain possible and can be a valuable input for future evaluations of experiences with national policies. It might be even worthwhile to ponder on the possibilities to improve the concept of the OMC by extending it through introducing an additional process of fostering policy innovation, e.g. by (financially) supporting experimentation with new policies in the member states (Oates 1999: 1133).

What are the implications of laboratory federalism in regard to convergence and coordination? As far as decentralisation and / or interjurisdictional competition leads to more disadvantages than advantages, centralisation / harmonisation or other forms of coordination of policies are necessary, which implies some limitation of the scope for decentralised experimentation processes. But also the necessity to establish an overall institutional framework that ensures the workability of a federal system (competitive order), presupposes a considerable amount of cooperation between the jurisdictions on the different levels.

Another question is to what extent laboratory federalism would lead to a convergence of policies. Within a competitive system of jurisdictions, in which innovation and imitation of policies take place, there are tendencies both for convergence (through imitation) and for divergence (through innovation). It is not possible to predict which tendency will dominate. The contention, however, that interjurisdictional competition can be seen as an instrument for ex-post harmonisation (Siebert / Koop 1990), because the best solutions would prevail, is misleading. It ignores that the innovation-imitation-processes are never finished. Through innovations new heterogeneity can emerge, which is also necessary for maintaining the parallel processes of experimentation with new policies. For laboratory federalism, the extent of convergence is an endogenous result of the decentralised processes of learning and experimentation.

V. Policy Innovation and Policy Learning in Multi-level Systems of Jurisdictions: Perspectives for an Integrated Concept

It was the objective of this paper to analyse the potential of the OMC and of laboratory federalism as instruments for policy learning in a multi-level federal system. As an important result our starting hypothesis can be confirmed: Both concepts are institutions which can establish a process of generating and spreading new knowledge about appropriate public policies. Some of the problems of both concepts can be solved by an appropriate institutional framework. But our analysis has also revealed fundamental differences: The OMC is primarily a top-down approach, while laboratory federalism is a bottom-up approach. The OMC focuses only on the diffusion of policies, whereas laboratory federalism takes into account both policy innovation and policy diffusion. But most important are the profound differences in regard to the mechanisms and incentives for policy innovation and policy learning.

The OMC was developed rather narrowly to deal with the specific problem of how the member states can learn from the policy experiences of others in policy fields where the central EU level has no competences. The question of the optimal vertical allocation of competences between member states and the EU has not been connected with this concept on a theoretical level. We have seen that this leads to severe problems and inconsistencies in the discussion on (and the application of) the OMC. Therefore, it can be suggested that the theoretical discussion on the OMC should be embedded into the much more general discussion on the optimal design of federal multi-level systems of jurisdictions. In contrast to that, the concept of laboratory federalism can draw upon the general economic theory of federalism, which claims to provide criteria for the vertical allocation of competences, and upon the theory of interjurisdictional competition, which analyses the positive and negative effects of yardstick, interjurisdictional, and regulatory competition. Based on this approach also the more general question of the optimal degree of (de-)centralisation, the (dis-)advantages of harmonisation, and the necessity of coordinating the policies of the member states can be analysed. Also recommendations about the desirability of competition processes between member states (competitive federalism) in regard to specific policies can be derived.

From this more general perspective, it can be suggested that the OMC and laboratory federalism need not be seen as alternative options, but that both concepts might also be complementary. Under certain conditions they might also help each other in regard to their effectiveness. It has been shown in section IV.3 that one of the main problems of laboratory federalism are the severe information problems for voters, firms, and individuals to assess the performance

of their governments (yardstick competition) or to carry out a comparative analysis of different locations or legal rules (interjurisdictional and regulatory competition). Within laboratory federalism, the OMC might act as a central evaluation agency which supports the workability of this multi-level system of jurisdictions as an innovation system by providing information on the policies of the member states and their relative success. By improving the publicly accessible information base, the OMC can considerably support the smooth working of yardstick, interjurisdictional, and regulatory competition. By providing comparable information at low costs, citizens and firms can improve their electoral and locational decisions through a better assessment of the performance of their governments (for yardstick competition) and the policies of different locations or legal rules (for interjurisdictional and regulatory competition). The problem of rational ignorance of voters might be reduced and the migration decisions of mobile resources can improve. Vice versa, the much stronger incentives within a competitive multi-level system of jurisdictions might also help to improve the effectiveness of the OMC. If, in particular, both yardstick and interjurisdictional competition work in a satisfactory manner, the governments of the member states have more powerful incentives to improve their knowledge on the most successful policies. In addition, the capability of laboratory federalism to generate a continuous stream of policy innovations does help to establish the OMC as an institution which can permanently generate new knowledge about superior national policies.

Depending on the precise design of both concepts, they can either support or jeopardize each other. If the OMC primarily attempts to attain convergence of national policies, the danger emerges that sooner or later this would shift competences for these policy fields to the central EU level, thus leading to more centralisation. This would destroy the preconditions for the EU as a decentralised multi-level system of jurisdictions. An appropriately designed OMC, however, which limits itself to its function as a device for policy-learning, can be a valuable instrument to systematically promote policy innovation and mutual learning within a federal European multi-level system of jurisdictions.

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