

Innovations in EU Governance
The Case of Employment Policy Co-ordination

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A New Method of Cooperation¹

Traditional welfare policy areas, such as employment policy and social protection, have recently been defined as an area of common concern among the EU member states and are no longer exclusively a national responsibility. In these areas, the ordinary supranational legal method has not met political support. Therefore, new forms of regulation and governance are emerging (Jacobsson 2001a), based on and supported by new treaty provisions. The overall aim of the research project outlined in this report is to analyse the system of EU governance developing in EU employment policy. A core question is to what extent and how the new legal empowerments have led to new forms of interaction, deliberation, problem-solving and decision-making among policy actors at the European and national levels.

For a long time, the member states saw no problem with the traditional Community method (the Monnet method) for European integration, understood as the creation of economic integration, the step-wise transfer of competence from member states to Community institutions and the ad hoc development of common institutions and supranational decisions (Ekengren 2001). On the contrary, it was considered as a prerequisite for the success of the integration project. The main reason why the EU has now chosen a new method of cooperation, which differs from the dominating one where law is the main mechanism for policy co-ordination, is that the European integration project has reached a phase where the core areas of the welfare state are directly affected, such as employment policy, social policy and education. In these areas, supranational decision-making has not met political support and a method of cooperation has been developed which is basically a government cooperation, but at the same time includes supranational elements and also builds on a fairly broad participation of social actors, such as social partners and sub-national actors. The aim is to reach a voluntary co-ordination and adaptation of member state policy. The key word is policy convergence, not harmonisation. Harmonisation of social policies is considered a sensitive matter but would also be difficult, due to the complexity of – and differences in – national welfare systems. The aim is convergence of goals, not means.

¹ This report is basically a state-of-the-art report and a project plan for my part of the GOVECOR project (EU Governance by Self Co-ordination? Towards a collective 'gouvernement économique'), funded by the European Commission. However, it draws on the results of another project, conducted within the research programme "Transnational regulation and the transformation of the state", funded by the Swedish Research Council and co-ordinated by Bengt Jacobsson and Kerstin Sahlin-Andersson.

There were also other factors behind the new policy approach. The completion of the internal market coincided with recession and rising unemployment in Europe, and the social policy order of the day shifted from constructing social regulatory policies at the European level to reconfiguring labour market and other arrangements to allow the European economy to compete in the world market (Ross 1995). The inability in dealing effectively with reducing unemployment increased the willingness of member states to consider co-ordinated action and voluntary convergence of individual policies in the labour market field. So have also common challenges, such as the demographical challenges, in field of social protection more recently. Another important factor was the third step of the economic and monetary union. With this, the member states have lost the control of monetary policy and they have limited their autonomy in fiscal and budgetary policy by the Growth and Stability Pact. The need for adaptability and flexibility in labour market policy and social security systems has therefore increased. The full implementation of EMU has increased the economic interdependence and fiscal policies and labour market and social policies are, due to the risk of externalities, no longer considered merely national – but common – concerns (Ekengren & Jacobsson 2000; Hodson & Maher 2001).²

The perceived need to view national policies as a 'common concern' and the need to achieve a certain policy convergence has led to the development of particular procedures for establishing common objectives and achieving member state compliance, including the setting of common objectives or guidelines at the European level which the member states are expected to implement in their national policies. The key elements of the open method of co-ordination as defined by the Lisbon summit are: 1) fixing guidelines for the Union, 2) translating the European guidelines into national and regional policy by setting specific targets and adopting measures; 3) establishing quantitative and qualitative indicators and benchmarks as a means of comparing best practice; and 4) periodic monitoring, evaluation and peer review.

In the field of employment policy, the annual procedure that has developed from the Amsterdam treaty and from the 'job summit' in Luxembourg in November 1997 is that the Commission drafts Employment Guidelines that eventually are decided upon by the Council by a qualified majority vote. An Employment Committee (EMCO) was set up as an

² Moreover, for several governments, the employment cooperation was a way to justify EMU, especially so for Social Democratic governments. The coming into office of Social Democratic governments in Britain, France and Germany in 1997 and 1998 was instrumental for the coming about of the new employment cooperation (Johansson 1999).

advisory body in the process of drafting the guidelines, consisting of two officials from each member state and two Commission officials. It shall, in its work, consult the European social partners. The European Parliament (EP), the Economic and Social Committee and the Committee of the Regions are also consulted in the policy process. (The EP, accordingly, has a fairly weak role in the employment policy procedure, and has proposed a stronger role for itself, e.g. by also participating in the supervisory procedure, reviewing member state implementation of the guidelines.) While the guidelines are not legally binding, the Member States are expected to take them into account in their employment policies. National governments are to work out annual National Action Plans on employment (NAPs). The NAPs are in turn submitted to the Commission for cross-national comparison and evaluation. Also the implementation of the guidelines is to be reported. Moreover, the member states are reviewing each others' results within the Employment Committee (*peer review*). The results of the cross-national comparisons are published in an employment report to be approved jointly by the Commission and the Council (the Joint Employment Report). The report includes *benchmarking* of the countries and the identification of *best practices*. The formal task of supervising Member State implementation of guidelines rests with the Council, which can on a qualified majority vote make *recommendations* to Member States to adapt their policies according to the guidelines.

The governance by self co-ordination, developed in employment policy (but also in economic and social policy) means new forms of governance in the EU. Novelties in relation to the traditional Community method include: 1) Institutional mixes with peer group review bodies in addition to the 'classic' set of EC/EU institutions, and involvement of actors at supranational, national and sub-national levels; 2) Procedural mixes with collective self co-ordination instead of regulatory or redistributive policies, and cyclical instead of sequential deliberation and problem-solving processes; 3) New administrative committees; 4) New policy outcomes: guidelines, benchmarks as a result of joint monitoring instead of 'classic' norms (regulations, directives) (GOVECOR 2000). While not all of these components are altogether new, there is good reason to view the systematic system of governance developing as a new form of governance in the EU.³

³ 'Governance' I take to refer to processes of steering and coordination (in contrast to a view of governance as structure, cf. Pierre & Peters 2000: 14ff). The main institutional difference pointed to when using the concept of 'governance' in contrast to 'government' is that governance does not imply the existence of a single centre of government. But often governance is still taken to refer to binding commitments. For instance, Kohler-Koch and Eising stress that "the essence of governance just like that of government is to reach binding decisions" (1999: 14; cf. also Risse et al. 2001). Still, there is good reason to acknowledge 'soft law governance' in the cases where law-making capacity is lacking and policy-making relies on basically

Employment Policy Co-ordination: Novelties and Challenges

Employment policy was the first field where the new method of EU cooperation, in 2000 framed the open method of co-ordination, was introduced. Thus, employment policy cooperation has already been going on for several years. The first common employment policy guidelines were decided in 1997. Already in Essen in 1994, the European Council had agreed on five common priorities in employment policy and a first procedure for co-ordinating policies started. This was later developed and institutionalised in the Employment Title of the Amsterdam treaty (Art. 125-130) and at the Luxembourg 'job summit' in 1997. In the employment policy field, therefore, it should be possible to start to evaluate the functioning and the impact of the new method of cooperation. (A five-years evaluation is also conducted by the Commission and the member states.)

Of course, the cooperation model was not entirely new, but drew heavily on the economic convergence process, which is also treaty based (Art. 99) and built around annual broad economic policy guidelines and also including peer pressure. It was stated in the treaty (Art. 126) that the employment policy guidelines must be compatible with the economic guidelines. The model was also inspired by the 'recommendation policy' and benchmarking exercises of OECD as well as of the benchmarking exercises of private companies. The use of benchmarking as an instrument to promote change and continuous improvement of Europe's competitive performance was introduced in two Commission Communications in 1996 and 1997 (CEC 1996, 1997) and drew upon the work of the European Round Table of Industrialists (ERT 1996; see de la Porte et al. 2001). Neither is soft law a new method in EU social policy (see Cram 1997). However, compared to OECD as well as to the reliance on soft law in earlier phases of European social policy, the current employment procedure includes a much more systematic system of monitoring and building on more of mutual commitments and peer pressure.

The treaty innovations are of course of great significance for the development of the new system of governance (Ekengren & Jacobsson 2000). The Employment Title in the Amsterdam Treaty established employment policy as 'a joint responsibility' of the Member States. It can be seen as enshrining a new approach to cooperation by providing an institutional framework for mutually reinforcing measures at both EU and Member State level. The new section on employment emphasises that 'the

voluntary, but structured, policy co-ordination, as in the case of EU employment policy. It is reasonable to expect different dynamics to follow from 'soft law governance', for instance in terms of 'going about' and in terms of outcomes, as compared to law-making (see Jacobsson 2001a).

Member States and the Community shall work towards developing a co-ordinated strategy for employment'. It also says that 'the objective of a high level of employment shall be taken into consideration in the formulation and implementation of Community policies and activities'. Accordingly, attention must be paid in the future to employment policy within all the EU's fields of competence.

The formula in the Amsterdam treaty was that the Member States and the Community should 'work together' in developing a co-ordinated employment strategy. While authority over labour market policy remains with the national parliaments, the treaty makes it legitimate for the Commission to play an active role in the process as well as for Member States to have opinions on each other's labour market policies. The declared rationale behind the *complementary* approach is that the Member States are now so closely linked that one Member State's mistake in terms of employment policy – as well as economic policy – will have an impact on the others. The employment measures that an individual Member State take (or fail to take) are no longer merely a national issue but one of common concern. Legal provisions can function as *opportunity structures*. Not least important is the treaty provision of employment as 'a matter of common concern' which has legitimised Commission initiatives as well as member state peer pressure and made possible a common European policy approach (cf. Winterton & Foden 2001). Moreover, the treaty-base has given the EMCO (Employment Policy Committee) a stronger position (compared to the interimistic Employment and Labour Market Committee and, arguably, also in relation to the Economic Policy Committee which is not treaty-based). EMCO can now act on its own initiative and is not dependent on a Council or Commission initiative (author's interview).⁴

Employment policy-making is also interesting as an example of *multi-level governance*. It can be argued that the European Employment Strategy (EES) illustrates a new type of interplay between different levels of governance, likely to give rise to a new political dynamic (Jacobsson 1999). It is not a matter of *either* supranational *or* intergovernmental policy-making but precisely an *interplay between different levels of governance*, a new pattern of multi-level governance. The European Social Fund (ESF) is regarded as the key financial instrument available at the European level for 'modernizing' the labour markets. There is supposed to be a synergy between the ESF and the implementation of the EES, and in

⁴ Interesting with the EMCO, as with the EPC, the Social Protection Committee and EFC, is that it is neither a Council committee nor a Commission committee but both. This has not been an uncontroversial location. It may be interesting to study what this location means in terms of enabling possibilities, for instance in terms of Commission and member state relations and cooperation.

the negotiations on the new Structural Fund programmes (2000-2006), the Commission put pressure on the member states to translate the principles underlying the Employment Guidelines into practice. Sub-national actors are instrumental in implementing the European employment policy. A key role in implementing the EES is also given to the social partners at all levels (cf. the adaptability pillar, lifelong-learning, wage formation). Tripartite cooperation has also been strengthened, as illustrated nationally by the social pacts in several member states and at the European level by the macro-economic dialogue (established at the Cologne summit in June 1999) and the recently reformed Standing Committee on Employment. The social partners are also to be involved in the employment policy procedure proper. The European social partners are to be consulted by the Employment Committee, and national social partners shall be consulted in the National Action Plan (NAP) work. Partnerships between the social partners at the European, national, local and enterprise levels are thus expected to contribute to consensus-formation and problem-solving in employment policy. Moreover, with the Social Protocol, the role of European social partners has been strengthened: the Commission is obliged to consult the social partners before submitting proposals in the social field and the social partners have been assigned the right to conclude European agreements.

Taken together, this policy process, is a new combination of domestic policy-making and cooperation at the European level. The system is based on a combination of subsidiarity and European action which partly differs from policy-making in the other pillars. It is likely to create a somewhat different political, institutional and organisational dynamics than the first and second pillar policy-making, both in the EU and domestically. It may also alter the institutional balance of the EU system.⁵

The role of the Commission in the open method is a matter of dispute. Some point to the fact that the heads of states have increasingly taken the lead as regards policy initiatives (cf. Lisbon summit), and that the Commission's exclusive right to initiative is lost in the open method. On the other hand, the role of the Commission as a broker is evident in the open method and 'mediation' may easily imply a policy guidance (Jacobsson 1999, 2001a). For instance, the Commission provides the secretariat for the committees on employment and social protection and drafts most of the background documents, even if it has to share the right to initiatives with the member states. The Commission may be able to exert

⁵ In Ekengren & Jacobsson (2000), we have discussed this in terms of a possible 'fourth pillar', characterised by a different institutional balance and member state and EU competence divide. We also characterised the method of cooperation in terms of an 'extranational method'.

considerable power by its ability to take initiatives, interpret the guidelines, draft the joint employment report and the recommendations for individual countries, collect statistics, and evaluate and comment on national reports. The Commission thus has a chance to exert the power of interpreting and defining problems and solutions. At the same time, the Commission is open for the influx of ideas from other actors in the process of drafting proposals. For instance, a workgroup of the EMCO is currently working on finding employment policy indicators, however, in close cooperation with the Commission staff. The Commission has partly got a changed role with the open method, and has to cooperate closely with the member states, e.g. in the recently established committees. Given the fact that the policy fields under concern are still national competence and moreover, touch upon the very heart of the welfare states, this is hardly surprising. In a brochure, the Commission describes itself as a “social policy mediator who formulates hypotheses and objectives, invites to discussions and tries to create a consensus“. This is an important but indirect role. Besides the management of information, the Commission has also managed to establish arenas for exchanges and negotiations and a framework for debate, covering a broad range of actors. The Commission, thus, has managed to affect the environment in which future decisions are taken (cf. Cram 1997: 167). It has created contexts for other actors to operate – in an area where the EU’s own legal capacity is limited – and has moreover managed to ensure the support of key actors, such as social partners, by giving them a central role in the implementation. For the Commission, building confidence between the Commission, member states and social partners is crucial in this situation where legal force does not apply and the relevant actors must be mobilised.

It has been argued that the new method of cooperation is an attempt to overcome the ‘joint decision-trap’ that lies in the fact that governments desire a closer cooperation on social issues but are not prepared to adhere to supranational decision-making, and thus an attempt to overcome the asymmetry between ‘negative integration’ and ‘positive integration’.⁶ It has then been argued that with the Amsterdam treaty and its employment chapter, the Union has passed from a stage of a dominance of ‘negative’ to a balance of also ‘positive’ integration (cf. Scharpf 1996, 1999).

⁶ In the EU history, there has been an asymmetry between supranational European law and intergovernmental European policy-making, e.g. “between measures increasing market integration by eliminating national restraints on trade and distortions of competition, on the one hand, and common European policies to shape the conditions under which markets operate, on the other“ (Scharpf 1996: 15). While negative integration could be enhanced without much political attention through the initiatives of the Commission and through the rulings of the ECJ, positive integration depended on the agreement of national governments in the Council of Ministers.

Employment policy provides indeed a good test case. Can the new cooperation method balance negative integration?

Observers assess the contributions of the new employment policy in different ways. Scharpf sees it as providing some safeguards against competitive deregulation, tax cuts and 'beggar my neighbour' policies among the Member States. Moreover, structures for a joint reflection on the causes of unemployment and the policy options available at the national level are established (1999: 159). Streeck (1996) considers the 'neo-voluntarist' social policy regime as weak and unable to solve controversial, e.g. distributive, issues. Keller (1999) has pointed out how weak the employment policy procedure is compared to the economic Growth and Stability Pact, which has sanctions tied to it (cf. also Goetschy & Pochet 1999). Another question of doubt is whether national budgets can provide the financing of the employment policy proposals given the constraints put by this pact. The relationship between the economic convergence process and the employment policy cooperation therefore deserves attention. This is also true of the relationship between the Luxembourg process and the other institutionalised processes, all under the 'umbrella' of the European Employment Pact: the *Cardiff process* (aiming at improving the functioning of the internal market by a multilateral monitoring of structural reforms of the product, service and capital markets); the *Cologne process* (which is a macro-economic dialogue aimed at co-ordinating wage developments and economic and monetary policies among the member states); and the *Lisbon process* (aiming at achieving the strategic objective 'to become world's most dynamic and competitive knowledge-based economy by 2010' while reconciling the four objectives economic growth, innovation, employment and social inclusion).

It is of course highly relevant to study the employment policy method of cooperation (and the open method in general), i.e. to study the particularities of a system of EU governance which is highly structured, with strict procedures for monitoring (including annual policy cycles, soft law, peer review, information exchange, benchmarking) etc, but without any making of binding rules. The most important elements in the voluntary system of governance developing seems to me the exchange of information and communication between relevant parties, including the institutional set-up for facilitating this, expected to contribute to consensus-building and peer pressure. A relevant question then is to what extent these processes are governed by a more communicative logic and to what extent are national frames of references modified in shared discourse.

Another key issue is to what extent the cooperation method contributes to 'good governance' in the EU. On the one hand, the system of

governance is inclusive. This is certainly true in relation to the 'social partners' and to some extent in relation to civil society and sub-national actors. It is also open in principle to national parliaments. However, in practice, the cooperation method seems to have developed much as a transgovernmental network, anonymous and closed in relation to national publics as well as to the domestic political process and involving a fairly small number of central civil servants who are not well integrated in the making and implementation of domestic policy (Jacobsson & Schmid 2001). A question mark can, thus, be raised about the parliamentary anchorage of the EES. The European Parliament has a fairly weak role, only advisory. And the national parliaments are not much involved either in most countries, and certainly not national publics. Still, the process could be developed in the direction of more of bottom-up processes and with more public scrutiny and involvement of political actors and domestic constituencies in the member states (de la Porte et al. 2001; Jacobsson & Schmid 2001). The cooperation method pays respect to the subsidiarity principle, and thus to the national democratic systems, while still fostering a European outlook on issues of common concern. A cooperation method which pays respect to national contexts is of course especially appropriate in the social field with the marked differences in welfare models and systems.

Hodson & Maher (2001) argue that the open method of co-ordination can be seen as a new approach to governance in the light of three characteristics: the principle of subsidiarity, flexibility and legitimacy. They argue that the open method of co-ordination radicalises subsidiarity: "The open method, being focused on horizontal learning processes and peer pressure where individual action runs counter to broadly accepted principles, is dynamic in nature, heterarchical, decentered as a *modus operandi* and without any particular rule or single policy objective as an objective" (2001: 7f). Like other authors above, they call for transparency of the cooperation process beyond directly involved elites.

Furthermore, the question must be raised: Does the cooperation lead to anything? What effects does it have? What kind of effects can be expected? To what extent is increased convergence of goals reached? In my view, a logic of policy diffusion and homogenisation is built into the system of governance developed in the employment and social policy fields. While the national authority over employment policy is retained, the standardising effects of this policy process may still be considerable. The yearly drafting of guidelines and later submission of NAPs means that national administrations continuously work with employment issues with the "European spectacles" on: working on guidelines, action plans,

implementation reports, responses to evaluations by the Commission etc (Jacobsson 1999). Besides functional and structural pressures to adapt, we can thus think of such mechanisms as elite socialisation in the transnational policy networks, peer pressure, time pressure where adaptation may become a near at hand strategy for coping, as factors supporting convergence, however long-term and incrementally (Jacobsson 2001a). Moreover, the EES involves a *discursive practice* which suggests a particular perspective and a cognitive structure for understanding and describing the labour market, e.g. the four pillars of the guidelines (Jacobsson 2001a). A policy discourse in the EU on employment and social welfare has developed in the 1990s, built on key-concepts such as *employability, adaptability, flexibility, life-long learning, entrepreneurship, activation* and *social inclusion*. Although these concepts were not invented by the EU, the EU has nevertheless made them into official terms and popularised them and they are increasingly used in national policy discourse (Crespo & Serrano 2001). The categories established in the EES thus has had a symbolic impact nationally, and moreover, categories may have operational and institutional consequences. In Sweden, new administrative units were structured according to the four pillars of the guidelines when the labour market ministry was restructured.

To what extent, then, are national policies really affected? This is difficult to answer for several reasons: First, it is too early to say. The employment procedure was implemented the first time in 1998 and the one for social inclusion started in 2000. Second, it is methodologically difficult to establish causal links between policy shifts and diffusion of ideas. Moreover, convergence will not mean a total homogenisation – some or even most aspects of welfare policy will remain divergent, others will tend to converge (Risse et al. 2001). We should not expect the co-ordination and voluntary convergence of policies to produce the same outcomes in all countries. As pointed out by institutionalists, evolution and change tend to move along well worn paths, since the search for solutions to new international pressures is partly structured by prevailing domestic institutions (Thelen 1998). Or as put by Risse et al. (2001), adaptation is translated through mediating factors and structures domestically. What could be expected to converge is, in my view, rather priorities and problem descriptions, a tendency to move in the same direction.

Moreover, when assessing the impact it may be fruitful to distinguish between goals achieved in terms of process and in terms of outcomes. It may be too early to evaluate the methods of cooperation in terms on effects on public policy, but there has been progress in terms of process (cf. Foden 1999a; Foden & Magnusson 1999, 2000; Goetschy 2000). Member states

are committed to the procedures; peer review is at work; countries are more inclined to accept the fact that recommendations are given to them in sensitive areas; ideas and concepts are institutionalised in discourse and sometimes in practices (employability, activation etc). Procedures are established and a process set in motion which is likely to also get policy effects, however indirectly and incrementally (Jacobsson 2001a).

When assessing the impact, we should also be attentive to more subtle forms of impact (Jacobsson 2001a). The issue is not whether all governments will implement straight away all common objectives – most certainly, they will not. Soft law measures can also fill functions such as breaking taboos in national debates and changing domestic opportunity structures, providing legitimacy for domestic reformers in search for justifications or altering expectations about the future (Radaelli 2000). They can also put in motion new institutional and organisational dynamics and alter power relations and rules of the game nationally (Dyson 2000: 660). We should, thus, also be attentive to impact on national debates and discourses, changes in ways of thinking policy, and in collective understandings and identities (Jacobsson 2001a; Risse et al. 2001). Case-studies are needed to see to what extent this happens.

Previous Research and Current Research Need

There are a number of studies of the employment policy cooperation method (Biagi 2000; Ekengren & Jacobsson 2000; Foden 1999a; Foden 1999b; Foden & Magnusson 1999 and 2000; Goetschy 1999; Goetschy 2000; Goetschy & Pochet 1997; Jacobsson 1999; Jacobsson 2001a; Keller 1999; Keller 2000; Keller 2001; Kenner 1999; Mosher 2000; Rhodes 2000; Sciarra 2000 and nr 4 of *Transfer* 1999) and also of the open method of co-ordination in general (de la Porte et al 2001; de la Porte & Pochet 2001a; Mosher 2000; Sundholm 2001). Many of the studies of the employment policy procedure are basically descriptive and of a general character, focussing the Amsterdam treaty and the cooperation procedures developed on the base of it.

In addition, there are also some studies of the policy content of the EES (the articles in *Transfer* nr 4 1999; Serrano Pascual 2000; Crespo & Serrano 2001). Other studies focus on the role of trade unions in the EES (Foden 1999b; Jacobsson 2001b; Winterton & Foden 2001). The social partners are expected to play an important role in the system of governance developing, not least in implementing the employment strategy (cf. the adaptability pillar, lifelong-learning, wage formation). Studies of the Cardiff process have acknowledged the weak role of social partners in the

Cardiff process as compared to the Luxembourg process (Foden & Magnusson forthcoming; Jacobsson 2001).

I have myself tried to understand the dynamics of the particular type of 'soft law governance' developing in EU employment and social policy,⁷ and have identified a number of *mechanisms of policy co-ordination* and also a number of principles on which this system of governance relies. I have pointed to the more subtle mechanisms of policy co-ordination, such as diffusion, persuasion, repetition and time management, standardisation of knowledge and linkages – deliberate and functional – between policy areas. The principles, which set the frame for the cooperation and also provide the governance system with legitimacy, I have identified as voluntarism, inclusion, subsidiarity, flexibility and policy integration (Jacobsson 2001a). I have also addressed the dynamics this system of governance put in motion nationally, in terms of relations between ministries, between ministries and governmental agencies, in relation to social partners, in relation to parliament and the public debate etc. This remains to be studied more systematically and in various countries.

There are some studies of implementation problems in the employment policy process, however mostly based on data provided by the Commission's evaluations and the Joint Employment Reports, or by the NAPs themselves (Foden 1999a; Goetschy 1999, 2000; Keller 1999, 2000; Meulders & Plasman 1999; Lemièrè & Silvera 1999). In addition, case studies of the implementation of the entrepreneurship pillar in various countries have been conducted (Foden & Magnusson 1999, 2000).

To briefly recapitulate some of the implementation problems pointed to:

- More attention given to the employability and entrepreneurship pillars than to the adaptability and equal opportunity pillars;
- Prevention not enough emphasised;
- Poor co-ordination of the policies of various pillars;

⁷ *Soft law* in the EU context refers to action rules which are not legally binding but which still can be said to have a legal content and are intended to influence member state policy, such as recommendations, resolutions or codes of conduct. That also soft law is legally relevant is illustrated by the fact that the EC Court of Justice does pay attention to it and considers the loyalty principle to be applicable also in the case of soft law. The Court does not seem to make a sharp distinction between hard and soft law but rather sees to the content of the legal act in question (Kenner 1995; Landelius 2001 with references). Thus, EU soft law governance cannot a priori be reduced to symbolic politics without concrete effects. Also soft law can have effects if member governments are committed to it, and correspondingly, lack of implementation may well apply to hard law as well. Moreover, effects may include policy change in line with the soft law act but may also refer to more subtle impact on national debates and discourses, changes in ways of thinking policy, and in collective understandings and identities (Jacobsson 2001a).

- Insufficient social partner involvement;
- No clear links between employment and macro-economic policy nor any re-thinking of macro-economic priorities;
- Budgetary implications not spelled out nor extra financial resources added;
- Insufficiently developed links with the ESF and with individual policies or programmes;
- Most NAPs tend to reflect national employment plans already adopted or planned;
- Lack of appropriate indicators.

More general problems pointed to include the subordination of employment guidelines to economic guidelines; the scarcity of EU financial resources; the lack of real sanctions and the risk of mere symbolic politics (Goetschy 2000; Keller 1999, 2000; Mosher 2000). Still, it is acknowledged to have been procedural progress and also some progress in terms of content (Foden 1999a; Foden & Magnusson 1999, 2000; Goetschy 2000). Policy co-ordination based on other and more informal co-ordination mechanisms than European law-making should be expected to lead to gradual/incremental policy revision (Jacobsson 2001a). There is therefore a need for continuous studies. Most studies referred to above draw their conclusions on the first NAP year, 1998. Consequently, I do not think one should generally expect to see implementation results from one year to another. Different dynamics are likely to be involved at the national level compared to implementation of directives, and the process is more long-term. Since 1998 some procedural improvements can be seen, concerning the participation of social partners and the fact that national actors are committed to the co-ordination procedures. Actual policy implementation needs further investigation.

An important conclusion when looking at previous implementation studies is that the process of transforming the NAPs into policy decisions and the role and function of the NAPs in real life is less investigated than the NAPs themselves. There is a need for detailed case studies of the NAP procedure inside the member states. Studies on implementation which, like the Commission and Council reports on implementation, focus on results alone, beg the question of causality. The official implementation assessments tend to look for co-variation between policy intention and outcome and to assume some kind of causal relationship.

In a paper co-written with Herman Schmid, I have focussed on *the procedure* of implementation – instead of on results/effects of policies

(Jacobsson & Schmid 2001). Assuming that administration is the main factor for labour market policy to lead to intended effects, we looked at how the interaction chain from the Commission through the national central government agencies to the whole field of regional and local labour market agents works. The methodological assumption was, first, that a policy effect presupposes a really existing mechanism of influence and second that this mechanism must be proven effective in some way. Where others looked for results we therefore looked for mechanisms of influence and particularly for real administrative channels of communication between the Commission and the actors on the regional and local fields. We looked into what happens on the way from the national “international relations department”, which is in close contact with the Commission, to the national labour market policy administration. If it turns out that some link of the chain is very weak or entirely absent, then a possible covariation between policy intention and real effects may be due to many different factors. Based on case studies of Denmark and Sweden, we identified a number of implementation problems, concerning such things as the integration of the NAP process into the everyday agenda of national ministries and state authorities, its connections to the budgetary process, its relations to the regional and local levels and the ESF projects etc. The interaction between national officials and EU officials, e.g. in the new Employment Committee, is certainly important, but we concluded that only a minor group of officials from the international offices were involved, and that those who administer labour market policy nationally were not so. We argued that it is not possible to speak of a real integration of the EES into the national agendas and activities at the moment policies (Jacobsson & Schmid 2001). Of course, case-studies of other countries are urgently needed (since Sweden and Denmark already had a policy well along the lines of the EES and may not be the most interesting cases).⁸

De la Porte et al. (2000) argue, along the same lines as Jacobsson & Schmid (2001), that the process would benefit from more of bottom-up processes and more public scrutiny and involvement of political actors and domestic constituencies in the member states. Cross-national policy learning involving the broader public is more likely to stimulate political demands for ‘catching up with the best’. The guidelines, objectives, benchmarks must be debated more openly and not imposed – or appear to be imposed – from outside or above. Moreover, de la Porte et al. (2001) have argued that such an approach would also contribute to ‘good governance’ in the EU.

⁸ The SALTSA research programme has sponsored some studies of transposition of soft social policy measures at the national level (e.g. Anderson 2001; Junestav 2001, de la Porte & Pochet 2001a; de la Porte & Pochet 2001b).

There are some comparisons between the economic and monetary policy co-ordination and that of employment policy and social policy (de la Porte, Pochet & Room 2001; de la Porte & Pochet 2001; see also Hodson & Maher 2001). De la Porte et al. (2001) argue, inter alia, that in the case of economic and monetary policy co-ordination Germany played a hegemonic role: "The objectives and benchmarks which they defined and the political leverage they were able to bring to the process of monetary unification drove out dissent, with the political classes in each of the aspirants members of Euroland subordinating other policy interests to this one overriding objective". In contrast, in the social field, there is no such hegemony, enforcing a single vision. Moreover, there is a risk that the economic co-ordination spills over to the social field and that fiscal discipline is privileged over social needs. Benchmarking is also more difficult in the social field given the diversity of welfare models – it is not possible to have common objectives in the social field (as in economic and employment policy). In the social field, improved standard for domestic performance may be more relevant than joint standards. Social benchmarking must by necessity be of a different character than pressure from convergence coming from above. Thus, the practices of the open method of co-ordination vary between sectors and the impact of the method is therefore also expected to vary (de la Porte & Pochet 2001a), for instance according to the extent to which the EU cooperation leads to an altering of rules of the game and distribution of power and resources nationally. The impact nationally also differ among member states depending on the different shapes of national welfare regimes (de la Porte & Pochet 2001a), or what Risse et al. (2001) would call the degree of 'goodness of fit' between Europeanization and domestic structures, resulting in various degrees of and kinds of adaptational pressures.

Concentrating on employment policy co-ordination, research questions that need further attention, in my view, are:

- What routines and procedures have developed at the European level for the making and implementation of a EU employment policy?
- What routines and procedures have developed at the national (and sub-national) level for implementing the common guidelines and standards in the various member states? (How does this differ from implementation of directives?)
- How does the new system of governance shape the outlooks and actions of actors involved?⁹

⁹ For instance, I have not seen a systematic description and analysis of the formal institutions developed at the EU level (EMCO, EPC, Social Protection Committee, the ESF administration

- What opportunities do the new treaty provisions provide? How have they been used by various actors at the European, national and sub-national level?
- Has the new method of cooperation put in motion new dynamics nationally (in the domestic debate, between government ministries, in relation to government agencies etc) and transnationally (between member states, between EU institutions)? New forms and patterns of interaction? Altered power relations?
- In what sense can we speak of a Europeanization of policy, politics, polity following from the open method of co-ordination?¹⁰

In sum, I conclude that the basic research question of this research programme, i.e. how actors use the new legal empowerment as means for interaction, deliberation, problem-solving, decision-making and public discourse, by and large remains to be answered.¹¹

A Sociological Perspective

The project thus aims to study what the new legal empowerments have meant for interaction, deliberation, problem-solving, decision-making and public discourse. Or put differently, to focus how formal-legal institutional arrangements may be turned into 'living' institutions (cf. Olsen 2000: 6). What do the new formal political institutions and formal procedures mean for the 'living' practice of policy-making?

A research task will then be to study the policy-making practice following from the new formal procedures (cf. the annual policy cycle) in the employment policy field. A related research task will be to investigate the role and functioning of the new formal institutions developed at the EU level, such as the EMCO, the Social Protection Committee besides the EPC and EFC. These committees are special in the sense that they are situated under *both* the Commission and the Council.

etc) and the role and functioning of them in the employment policy process. For instance, to what extent does the deliberation in these committees lead to more 'Europeanized' views and outlooks?

¹⁰ There has been little systematic attention given to the discursive and cognitive impact of the EES (impact on policy thinking of standardisation of knowledge, concepts, categorisation etc), even if I have acknowledged that dimension myself as being key in the new system of governance (Jacobsson 2001a; see also Crespo & Serrano 2001). In relation, the impact on public discourses should be researched.

¹¹ In addition, the relation between the economic policy and employment policy procedures deserves further attention: To what extent are they integrated or parallel processes, and to what extent governed by different actors with different agendas?

The EU committees are arenas where national and supranational actors participate, and are to some extent 'fused' together in decision-shaping and decision-making processes (Rometch & Wessels 1996). Previous studies indicate that participation in EU committees may affect the roles and loyalties of the participants (Joerges & Neyer 1997; Kerremans 1996; Egeberg 1999; Trondal & Weggeland 2000). The multiple institutional affiliations mean multiple obligations and may imply role conflicts. A question has been whether national representatives in such EU committees primarily consider themselves as *national* government representatives, as *independent* experts or as *supranational* agents (Trondal & Weggeland 2000). Even if it is reasonable to believe that "the civil servants' *main* loyalty will remain at the national level, as long as their primary institutional affiliation is to national government institutions" (Trondal & Weggeland 2000: 2), it is important to study what the interaction and deliberation in these committees mean for perspectives and positions taken. For instance, does it lead to more 'Europeanized' views and outlooks? Can we see examples of modification of positions, taking the perspective of the others, as set out in the literature on the deliberative qualities of EU committees (Joerges & Neyer 1997; Eriksen 1999)? Are the deliberations governed by a consensual rather than strategic orientation and of a logic of arguing rather than bargaining?

In the institutional analysis developed by March and Olsen (1989), a core assumption is that actors follow a 'logic of appropriateness' where action involves evoking an identity or role and matching the obligations of that identity or role to a specific situation. Such an institutional research focus therefore looks at which policy-makers are socialised into the political system and which social norms prevail in the concrete contexts of policy-making. Actors are assumed to respond to what is expected from them – in terms of their roles and functions – in a particular context and situation.

In this perspective, preferences, interests and identities do not just 'exist' prior to negotiations, but are partly created and recreated in interaction with others in concrete processes (B. Jacobsson 1999). 'National interests' as well as 'EU interests' are reinterpreted in the transnational settings. Students of international organisations, such as OECD, have showed that processes of communication and socialisation in trans-national political-administrative networks can lead to the development of common perceptions of problems and solutions (Mörth 1997; Sahlin-Andersson 1996). The intensification of transnational political-administrative networking, as is clearly the case with the employment policy cooperation, is likely to affect the outlooks and perspective of those involved. The

policy networking may lead to the development of professional, bureaucratic and other social norms which may have an indirect and long-term impact on policy, politics and polity at the European level as well as nationally.

We do not need to assume that actors always and only respond to (external) context-dependent expectations, but we can assume that they may follow both a 'logic of appropriateness' and 'logic of consequentialism', or rather, trying to balance them, resulting in a mixture of both types of motives and action rationales. We can also assume that actors try to balance the expectations connected to various roles and institutional affiliations. The important thing is that external expectations can, in the concrete social context, be internalised and perceived as obligations and the 'reasonable' way to act. Crespo & Serrano (2001) argue that the socialising role of EU institutions is strengthened with practices such as the identification and exchange of 'best practices' and the notion of learning from each other.

The employment policy cooperation is an example of 'soft' coordination. Sociologically, a key issue is how formally non-binding agreements can gradually become *de facto* binding, i.e. become morally and socially binding for the actors involved. This kind of binding is never absolute, and one can imagine action courses for conforming and adapting in some respects and preserving one's interests and initial positions – refusing conformity – in others. But it is reasonable to assume that lowered degrees of freedom of political action and a more limited space of manoeuvre follow from both the structural, functional *and* social pressures inherent in the employment policy cooperation. (Examples of structural and functional pressures which I have elsewhere pointed to are the need to deal with functional spill-over/externalities, and to handle the time pressure and administrative work load inherent in the new cooperation processes (Jacobsson 2001a)). If the system of governance developed in employment policy cooperation means that actors are to some extent 'hedged in', what, then, are the mechanisms behind the hedge? It is then a matter of other types of mechanisms for conformity and order than (legal) force. In order to understand the dynamics of soft law governance, these types of social mechanisms need to be given attention.

Something happens in social interaction – that is the logic of the social. An assumption in this study will be that the (elite) interaction in the dense, institutionalised, transgovernmental communications networks (cf. Smith 2000) related to the making of EU employment policy will – to a higher or lower extent – affect the positions and political behaviour of participating actors. Some social mechanisms behind this are socialisation and

internalisation of norms, feelings of obligation, and the development of shared beliefs and discourses. The degree of 'binding' of social norms can be supposed to be a function of the density of (elite) networks. To what extent does the employment policy cooperation, and the participation in the EMCO and other fora, lead to a densification of interaction and the development of social norms fostering commitment common objectives and actual conformity? One may further assume that not only a dense, but a more equal cooperation governed by a communicative rationality and interactive logic (indeed self co-ordination), will tend to lead to a more socially binding cooperation. A formally non-binding cooperation may actually be even more difficult to resist.¹² As put by a Swedish top civil servant: "peer pressure feels" (authors' interview).¹³

Or is it the case that soft co-ordination is little more than symbolic, and that the lack of formal sanctions mean that compliance will not be reached – that actors pay lip service to common objectives but no more than that – and that the interaction in the relevant committees basically takes the character of defense of initial national positions?

The project will test two sets of expectations, namely whether the new legal empowerments lead to 'good collective governance' (including joint deliberation and problem-solving, a high degree and consensus and deep motivations to install the provisions) or to attempts to evade any kind of compliance following from soft co-ordination (GOVECOR 2000). The project will also attempt to point out the mechanisms behind the outcomes in these respects.

The Aim and Scope of the Study

As mentioned, the overall aim of the research programme is to study the interplay between new formal institutions and procedures *and* practices of interaction, deliberation and problem-solving. The research task in this project will then be to study *to what extent the institutional and procedural innovations do affect the dynamics and modes of policy-making*, more

¹² A study of the Cardiff process in France showed that the French government experienced strong pressure from the open method and had preferred the issue of setting dead-lines for a deregulation of the electricity and gas markets to be handled by the Council and with QMV (Lafoucriere 2000). OM may actually make it more difficult to say no.

¹³ Olsen (2000: 9) has argued that "a challenge for students of political integration is to provide a better understanding of the legitimacy and authority of European rules, including the change mechanisms between types of rules and motivations for following them. Which factors affect the probability of acting in accordance with rules of appropriate behavior? How can we understand variations in compliance across rules, actors and situations"? This study will attempt to answer those questions in the case of the system of soft law governance that has developed in EU employment policy.

precisely the forms and character of interaction and deliberation (e.g. in the direction of deliberative democracy); forms and character of involvement of actors (social partners, NGOs, sub-national actors); and the impact on outlooks and perspectives (common orientations, legitimacy concepts).

The European employment strategy is an example of multi-level governance. However, this project will not be able to study all levels of governance equally systematically. The main research focus will be at the European level, and on the consequences of institutional and procedural innovation there. However, the project will also draw on national reports from reporting fellow institutes, and thus be able to compare the consequences of institutional and procedural innovation at national level in various member states. However, detailed case-studies of the interaction and impact within the member-states, for instance at sub-national levels, will not be able to be carried out within this project.¹⁴

At the *European* level, the project will focus: the new procedures and routines related to the annual policy cycles; the work of the Commission (various DGs); the role and functioning of the Employment Committee and the other related committees; the interaction with social partners and civil society (the social and civil dialogues); the role of various Council formations, the European Council and the European Parliament. The aim is to study what practices of interaction, deliberation and problem-solving the treaty innovations have resulted in. What new incentives/opportunities and constraints have been opened for various actors?

At the *national* level the project will focus: the new procedures and routines related to the annual EU employment policy cycles; the role of various ministries and implementing agencies; the interaction with social partners and civil society; the role and functioning of Parliament and connections to the political process and public debate at large. The aim is to study what practices of interaction, deliberation and problem-solving the treaty innovations have resulted in. What new incentives/opportunities and constraints have been opened for various actors?

In relation, a key issue is of course to what extent there is a 'fusion' between levels of governance and what *transnational* dynamics are set in motion in the transnational policy fora.

¹⁴ However, I have carried out such detailed case studies of Sweden and Denmark in another project (Jacobsson & Schmid 2001).

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