Exploration of Options for the Implementation of the Open Method of Coordination (OMC) for Environmental Policy

Final Report

by

Patrick ten Brink
Andrew Farmer   Ingmar von Homeyer
David Wilkinson   Nicole Kranz

Institute for European Environmental Policy   **Ecologic**

October 2005

Exploration of options for the Implementation of the Open Method of Coordination for Environmental Policy

Contents

Acknowledgements

Executive summary˙

Annex 1

Part B: Case Studies Annex (separate file)

.

Acknowledgements

**Exploration of options for the Implementation of the Open Method of
Coordination for Environmental Policy**

Executive Summary

I Introduction

The term 'OMC' has begun to be used more frequently in the past few years and there has been considerable uncertainty as to what OMC actually is, where it is, or could be, useful with regard to the environment, and what could be expected of it in the future. There is a range of environmental problems and addressing these combined a rnage of challenges – developing and sharing understanding, identifying and getting buy-in to possible acceptable solutions and then of course the broader implementation challenge, which includes a type of negotiation within Europe as to how best – what targets or objectives, instruments, processes, roles and responsibilities - to address these. The overall aim of this work is therefore to help address some of the uncertainty surrounding OMC's potential role and how it fits into the broader implementation challenge facing Member States. It is hoped that this report and the discussions on the 22 November in the Hague will increase understanding and help VROM make best use of OMC and OMC type applications and related lessons.

To do this the study / this report aims to:

- Discuss what OMC is and can be – as there are different uses of the term OMC;
- Where it has been used and for what purpose;
- Explore what lessons can be gleaned from existing practice, building understanding on what performance has been and what factors affect performance;
- Identify possible areas where OMC can be a useful tool;
- Develop a 'consideration process' to help explore whether the conditions are right for an OMC.

The focus is on obtaining insights on the use of OMCs - in most cases OMC type applications -dealing with environmental issues, though building on lessons from practice more broadly.

II The Study Approach and Case Coverage

The approach of the study can be summarised as:

Defining the Scope of OMC coverage: It was agreed to interpret 'OMC' widely - covering both processes explicitly described as OMC and processes that were of OMC type or which built in OMC type elements - so as to obtain a wider source base for insights, though ensuring that clarity is maintained as regards different uses of the term OMC. The particular focus of the study is on practice in relation to environment-related policies, though also building on practice in other fields.

Inputs / areas of focus: It was agreed to make use of specific environment case studies to explore the OMC type applications in depth. The ToR required at least 4 in-depth cases studies. It was agreed to examine ETAP, ENAP, IMPEL, and the WFD-CIS in depth (see Table E1). It was agreed to complement the analysis of environmental cases with other OMC insights from the social and economic fields (see chapter 2 on experience from these). The use of stakeholder

Institute for European Environmental Policy (IEEP) and Ecologic

interviews and literature survey allowed the necessary breadth, depth and also 'soft-knowledge' to be obtained.

Characterising OMC: Developing a characterisation for different OMC applications – OMC, OMC type and OMC-elements - to make sense of the insights and allow a differentiation of the lessons, conclusions and recommendations. Similarly, the team developed a classification for different roles of OMC vis-à-vis the 'Community Method' – eg whether an input to CM, a bridge, gap filler or competitor (see chapter 3). Overall, the OMC type applications were looked at from the following categorisations:

- Scope: institutional – eg whether full OMC, OMC type or OMC element;
- Scope: substantive – eg whether sector, subsector, economy wide;
- Scope/motivation: relation to CM - whether gap filler, bridge or complement;
- Motivation: strategic ambitions - eg whether problem solving, convergence, subsidiarity;
- Motivation: Output - eg looking for consensus, compliance or improvement;
- Motivation: relation to market + competitiveness – eg whether concerns with costs reduction and/or trade.

Study Outputs: The key outputs were to develop insights to help identify:

- Performance (success and failure) and performance factors.
- What conditions may be necessary or constructive for OMC and to develop a 'consideration process' – of issues to bear in mind when considering whether OMC is an appropriate approach for the challenge at hand.
- Recommendations – looking at a range of areas where OMC could be considered and assessing whether these would be potentially useful or not.

Table E1 OMC type examples and their OMC characteristics

OMC Type Example	OMC Characteristics
ETAP - Environmental Technologies Action Plan (ETAP) A major EU wide plan to encourage the development and uptake of clean technologies, with particular focus on PV, hydrogen and several others through 'technology platforms' .	- Inspired by the Lisbon Process - Commission initiated, with Member states commitment - Eg UK lead on public procurement - Regular reporting and meetings - Mirror groups for specific technologies at national levels - Link to green foresight work at national level - Broad objectives will be complemented by concrete targets in due course

ENAP/IPPC - Exploring New Approaches in regulating industrial installations A three year initiative led by VROM to explore - together with Member States from across Europe, the Commission and other stakeholders – ways forward on emissions trading, the use of management systems and industrial installation permitting.	• Member State lead (VROM) • The UK and the Czech Republic were key supporting Member States • There was growing Commission involvement, including active input • PREP group and regular meetings • Comparisons between Member State practices and experiences were made, amounting to quasi benchmarking • Different instruments were explored that could act as bridge, complement or substitute for legislation
CIS - Common Implementation Strategy of the Water Framework Directive (WFD) The WFD covers a very broad range of aspects but provides only broad provisions on implementation. Member States therefore need to develop implementation strategies. Led by Member States' Water Directors, co-ordination of strategy development is taking place.	• • The CIS illustrates an OMC type that complements EU legislation/the CM • It provides an example for an implementation stage OMC type • Although the Council is not involved, the CIS has a clearly differentiated structure with more political (meeting of Water Directors) and more technical levels (working groups) • The strategy documents can in some ways be regarded as European guidelines setting objectives etc. • The strategy documents are regularly reviewed and there is continuous improvement and testing of the guidance notes. This has enables significant technical and reflexive learning • There is some reporting, monitoring and use of indicators • There is significant participation by stakeholders
IMPEL and AC IMPEL – Implementation of Environmental Law network IMPEL consists of the network of government regulatory authorities of the Member States and Candidate Countries seeking to improve the way that environmental law is practically implemented. Amongst other issues it: • Considers what EU law means in practical implementation. • How competent authorities can work better to deliver implementation. • Peer-review analyses of individual Member State authorities.	• Whereas IMPEL was primarily a Member State initiative, AC-Impel was a Commission initiative • IMPEL is led by Member States, although the Commission runs the secretariat • A major focus is to assist in compliance with EU law without formal EU instruments • IMPEL focuses on the EU as a whole and on individual Member States • IMPEL uses a wide range of different working methods • Its work is funded by the Commission and Member States to differing degrees

III Conclusions

OMC practice

- OMC, in the formal sense of the term, has been applied more in the economic and social fields, areas with lesser Community legislative competence, than in the environmental field, where there is greater Community competence.
- In the areas of lesser community competence, there were ambitions to encourage convergence of national policies (or at least outcomes/performance). In the areas of environmental policy, convergence of practice is less often the primary ambition, though there are examples where compatibility is sought or a move towards minimum standards is sought and supported (eg IMPEL work leading to minimum criteria for inspections, Sevilla work on BAT – see further below).
- Any evaluation of the performance of the OMC strongly depends on which yardstick is used to assess performance. Using the status quo as a yardstick makes sense in areas in which it seems politically unrealistic that the Community Method (CM) could meaningfully be applied. Conversely, using the CM as a yardstick makes sense if it seems politically realistic that using the CM would actually lead to the adoption of legislation.
- The experience with the OMC is definitely mixed. Some still see OMC as little more than a talking shop, while others have seen OMCs to definitely offer more in terms of learning and addressing issues which could for political reasons otherwise not be addressed at the EU level.
- On the one hand, broad experience indicates that Member States do not approach OMCs with the same level of commitment as they would mandatory measures.
- On the positive side, in many cases Member States have committed themselves to address problems, which they would probably have refused to address through binding legislation.
- There have been some OMC successes in their role at encouraging learning. They have also led to improvements in governance structures in certain cases such as co-ordination structures and monitoring and evaluation capacities.
- In the social field there have been some successes – where the OMC was linked to funding (case of European Employment Observatory and links to European Social Fund monies).
- OMC type applications in practice have not proved to be good at encouraging action if and where Member States are not interested in acting. In other words it cannot be really useful to achieve needed results if there will be potential resistance by actors whose compliance is needed to achieve overall satisfactory outcomes.
- The Commission itself has recently been quite critical of the performance of OMCs in certain areas, notably as regards Lisbon (see Box E1).
- Generally, there is an increasing use of certain of the tools and processes that are found in OMCs, but the high hopes that have been associated with the OMC as a formal process in some quarters have so far been disappointed.
- Yet, there is some evidence that the OMC process and toolkit is maturing. The peer review process is one area where the instrument has gained strength over the years. Similarly, benchmarking and target setting have improved. There appears to be greater sensitivity to the possibilities and limits of mutual learning ("best practice").

- There are still some arguments that if there is insufficient political will/legitimacy (subsidiarity/sovereignty concerns) for a mandatory approach, and a mandatory approach will only lead to a long protracted process where the end result is so 'watered-down' that the legislation actually does nothing, that it is better to go for an OMC type process, possibly with the expectation that if no progress is made then a mandatory approach will be launched (the 'stick behind the door'). If there are positive results, then the OMC is a success, and if there are no results, there is at least a possibility that the political commitment to do something real develops and hence sufficient argument and momentum to legislate (OMC bridge function).

Box E1 Commission views on OMC for Lisbon

The Commission has also evaluated the OMC, in particular in the context of the 2005 review of the Lisbon Strategy. The failure by Member States to implement the structural reforms, which are at the heart of the Lisbon Strategy, is seen as the OMC's most troubling deficit. To improve implementation at national level, NAPs (national Lisbon Action Plans) are to support the Lisbon Strategy in future. In addition, the Commission will introduce Lisbon guidelines for Member States and introduce bilateral "coaching" of Member States. The Commission also seems to have found major implementation deficits with respect to other OMCs that were introduced after the 2000 Lisbon European Council. On the one hand, the Commission recognises that these OMCs have produced some benefits, in particular in terms of information exchange and mutual learning and that it will take time for these effects to lead to policy changes. The OMCs have also allowed the Commission to exert influence in areas in which it had previously had no or only very weak influence. On the other hand, the Commission sees few signs that Member States have acted on their OMC commitments. The implementation problem is compounded by the fact that these OMCs almost exclusively involve administrative actors, while regional and societal actors are largely excluded. In addition, the Commission seems to feel that the numerous reporting requirements under the various OMCs consume significant administrative resources at European and, in particular, national levels and must be streamlined.

OMC practice in environmental field

There are hardly any formal OMCs in the environmental field. There are a number of OMC-type applications, though these are generally not called OMCs[1]. Experience with OMC-types show some significant results in terms of new governance structures and capacities as well as learning (see performance later on). There are very few examples of concrete results in terms of policy outcomes and impacts. However, it is often inherently difficult to attribute results to OMCs. In addition, many of the applications are relatively recent and the results may not yet be fully visible.

OMC type applications play different *functional roles* depending on the example:
- *Gap filler or bridge to CM*
    - Under ENAP - exploration of use of EMS for supply chain issue, life-cycle issues or industrial estates.

---

[1] Where discussing the environmental cases, that use of 'OMC' can sometimes be a shorthand for OMC-type applications or OMC processes or elements, and should be read as such. Where there is specific importance of mentioning that it is an OMC type application, then the full term will generally be used in the text.

Institute for European Environmental Policy (IEEP) and Ecologic

- - Other gap fillers include sustainable mobility, spatial planning, and urban thematic strategy
    - Other bridges include EIA, IPP and ECCP
- *OMC(type application) a complement to CM*
    - ENAP IPPC work - contributes to better understanding of development needs and expected to contribute to revision of Directive
    - Other complementing OMC type applications include the Sevilla process (IPPC link; defining BAT), flooding
- *A CM-Implementing OMC* (hence also CM complement)
    - IMPEL – to help improve implementation of CM legislation
    - WFD-CIS – to help implementing the WFD
- *'Alternative' to CM*
    - eg GPP under ETAP.

OMC processes are also increasingly found in CM and hence the distinction is not as strong as some would perceive them to be – eg biofuels and renewables directives.

A range of OMCs and OMC processes are ***motivated by ambitions for convergence*** across the EU, notably – IMPEL (convergence of inspection etc), WFD, and Sevilla process (adopt same range of BAT to avoid too great disparities across the EU). Some of this convergence is based on countries adopting others' solutions (hence mutual learning), while others can follow from agreed ways forward following positive results from an OMC type project with ***problem solving*** as an objective or ambition (hence heuristic learning, to use the jargon). As regards problem solving - ENAP, ETAP, IPP are three key ones; EIA, ECCP and Lisbon also.

There is also ***subsidiarity motivation*** – ie do it nationally. These include, spatial planning, subsidiarity, mobility issues (though there can be some ambitions to block Community interests in having a role – hence 'smokescreen' role)

It can also be useful to categorise by ***motivation for output***. Some OMC type applications look for improvements (eg flooding, IPP, ECCP), others at a consensus on ways forward (eg Lisbon, Sevilla, ETAP) and others on compliance (eg WFD, IMPEL).

Performance of Environmental OMCs and OMC type applications

In terms of mobilisation of input, generation of outputs, outcomes and impacts environmental OMC type measures have performed relatively well:

- *Input:*   the mobilisation of inputs has generally been sufficient to achieve useful outputs;
- *Outputs:* environmental OMC type measures have contributed significantly to learning, but they have performed less well with respect to generating decisions. It should be noted that the likely useful outputs of an OMC process are not always clear at the beginning of an OMC process, which can be positive and negative. If there is flexibility to respond to the changing opportunities in a developing process then positive elements can be obtained;
- *Outcomes:* effects on behaviour are difficult to establish, but there appear to have been at least some desirable effects (led to inputs to CM – work on revision of IPPC Directive);

- *Impact:* a speculative assessment suggests that impacts should mostly be positive (though perhaps often not major and only long term) – IMPEL led work that led to Minimum Criteria for Inspectors should contribute to improving inspection procedures in some countries and hence reduce non-compliance rates in due course. The WFD-CIS has accelerated and considerably improved the implementation of the WFD. Both developments should eventually have positive effects on environmental quality.

There have been clear benefits of learning – in the areas of understanding the problems better, appreciating different national approaches, positions and interests, practice exchange and identifying solutions. There are clear cases where this has fed into the CM system – eg ENAP and IMPEL. There have been constructive contributions to the CM in a number of areas (see next section). Other examples of learning benefits:

- *Learning – exchange of good practice* - with a view to encouraging uptake to improve some performance (eg increase levels of green public procurement, use of EMSs, frequency of inspection). This can be independent of CM area or a contributor to it, depending on the issue (exchange of experience to encourage learning is a staple of CM, but also a core of OMC). This is a diffusion type issue. It can also be done by normal non OMC processes – eg simple workshops and multi-country studies, though there is a question whether workshops in the context of a process, linked to objectives, targets or guidelines lead to more learning than one-off[2] workshops. Note that the exchange of good practice can lead to major shifts in other countries (hence a 'transition', 'thick learning') – eg where sustainable mobility systems or GPP practice from one countries is applied (with adaptations) in another.
- *Learning through benchmarking* - with a view to encouraging laggards to come up to benchmark standards (eg increase performance of inspectors, verifiers, EIA, standards of public vehicles, levels of GPP). This can be independent of CM area or contributor, depending the issue. This is again a diffusion type issue. *Name and shame* is an extreme version of this, though unpopular in some member states.
- *Learning – understand different Member State perspectives* so as to clarify whether there are any needs for amendments to directives (eg as regards levels of thresholds for IPPC installations, inclusion of sectors, or minimum inspection or permit renewable rates). This is therefore an OMC-type, which complements the CM by providing input in the evaluation/revision process. This is real learning, but can be seen as 'thin' learning as it builds on the current system and does not require major changes; some more changes of practice (thick learning) if IPPC extended to new sectors where BAT not yet applied. This involves some element of innovation.
- *Learning - identifying new solutions to problems using perhaps new instruments*. Eg creating a vision for a future EMAS, developing solutions for lifecycle, supply chain or industrial installation issues, how to find more cost effective solutions. These can be much more innovative, and in the case of leading to real changes which change the approach and then can be seen as system changing or 'thick' learning. This is important for 'transition management' - eg moving to a low carbon economy, sustainable mobility etc where major changes are needed. Again this can contribute to CM directly, and CM in a broad process sense (as eventual amendments to a directive are still part of CM process).

---

[2] Though the distinction is blurred in reality, as one-off workshops are also anchored within a process even if less formally linked than workshops within a process such as ENAP.

There are also benefits of *canvassing and obtaining support or avoiding opposition* – in the ENAP case, it is clear that the process helped other member States and the European Commission understand the Dutch ideas and needs for emissions trading for NOx. The ongoing dialogues and technical discussions helped reduce the opposition to NOx trading and opened the door for potential future application. The process can be useful for obtaining support for approaches / solutions that are not known in advance, but rather are identified during the process. In places this can be useful 'agenda setting' - eg encouraging IPPC Directive revision.

Another positive (potential) benefit, is that of obtaining engagement and/or coordinating others' efforts in the area. This can increase the level of commitment and momentum as is expected through the green public procurement work.

On the weaker side of OMCs and OMC type applications, it is clear that:

- It is more difficult to get action if there is no Member State interest – ie the OMC may often be less constraining and cannot guarantee action.
- There is a lack of transparency in the decision making process and this is often greater than the CM, if and where done correctly.
- The European Parliament is not generally involved (though the EP can comment on guidelines).

The latter two are particularly important for any discussion as to future use of OMC. Given that there is a directive on public participation (Arhus), as it is implemented today would in many ways contradict this / side step this. However, the experience of the social inclusion OMC and the WFD-CIS suggests that this may not be an inherent OMC problem. With respect to some OMC types, for example IMPEL or ENAP, participation may also be less important – at least from the point of view of legitimacy. The level of the problem of transparency and lack of legitimacy given EP absence, depends on the measures taken within the OMC process. Efforts to improve transparency – openness of involvement, of process and of outputs (Eg minutes) – can obviously help. Similarly means to involve or at least notify or inform the EP can in principle be incorporated into OMC process where suitable.

Performance factors

The performance of environmental OMC type measures has been affected by various factors:

- *Nature (and timing) of the challenge*: there must be an important challenge / need for solutions and there must be a window of opportunity to come up with a solution or contribute to a solution.
- *Resources*: there needs to be a clear commitment for inputs and continued inputs from one or more champions and range of other contributors. It is generally easier to obtain resources for the start up and more difficult for the continuation, if and where this is still needed.
- *Actor constellation*: there needs to be a leader (or leaders) who provides crucial resources and has a strong interest in obtaining a solution, and the leader needs to be complemented by other stakeholders and a process to ensure that the 'leadership' is deemed acceptable and that there is some 'buy-in' to the process. In cases it is better for a member state led activity and in other cases by Commission led. In the former case, subsidiarity/sovereignty concerns may play a role, and the Commission as

'independent-broker' may be important in the latter case. In any case, strong reliance on leadership is likely to cause tensions between leaders and "regular" participants

- *Institutional factors:* environmental OMC type measures tend to be characterised by a low degree of institutionalisation, at least partly reflecting sovereignty and subsidiarity concerns. Among other things, this may have a negative impacts on trust, broad consultation and, consequently, learning.
- *Legitimacy:* the legitimacy of environmental OMC type measures is primarily based on the principles of subsidiarity and sovereignty, expertise, and output. However, participation may be needed to shore up the democratic legitimacy of OMC types which directly result in important decisions.

Views as to likely areas of growth.

One can certainly expect more OMC processes – though whether these will be labelled as OMC processes is unclear, and one could expect some fluctuation in interest as changes of government can affect OMC type activities' continuity, as would changes in resource availability (eg NGOs) and levels of stakeholder interests. One can certainly expect more CM Directives that build in OMC type processes/elements (eg biofuels type directives).

It is clear that within this Commission that there will be few new environmental directives launched and countries wishing an advance environmental concerns may well need to launch an OMC – if only to lead to some progress and mature the dossier for a potential application under a new Commission in due course. Proactive concerned member states that have environment as a priority or concern could therefore usefully prepare the ground in times when the Commission cannot or does not wish to progress environmental dossiers given other foci or given practical understanding that there is insufficient political will to endorse new environmental measures. There is therefore scope for countries with a long-term vision to use bottom-up OMC type processes.

It is important to note that not all countries share the Netherlands' culture of participative communication and that there will be some limits to growth for OMC type activities, or at least limits to expectations as to who could be part of a core team of initiators and drivers of initiatives. In some cultures strict measures (ie not OMCs) are required for positive results, and this needs to be borne in mind when considering potential ways forward.

Does calling an OMC and OMC help?

The study shows that at a functional level (vis-a-vis learning, exchange of experience, problem and solution identification etc) the contrast between the CM and the OMC is significantly weaker than frequent treatment of the two as two very different processes suggests.

In institutional terms (eg actor involvement, role of targets, benchmarking etc), there is also often a high level of correspondence. As noted – the biofuels Directive, while clearly CM, used OMC type instruments. Even where OMC and CM are not similar, they can be very complementary, with one being the input to the other. This complementarity is not surprising for OMC type processes, which cover certain parts of the policy cycle while other parts of the cycle are often covered by the CM.

However, in political and academic circles there is a lot of heated debate and fixed views regarding what CM and OMC are, can do, and are intend to do. The view is often that OMC is a way of avoiding real action and avoiding commitments and constraints, while the advocates of the OMC argue that the only politically realistic and or legitimate alternative to the OMC would be the status quo. Perhaps more importantly, the political stakes in the discussion are high. Thus it is not surprising that DG Environment is often highly critical of the OMC; given relatively strong EU competencies in the environmental field, DG Environment prefers to concentrate its resources on the CM where it has - not least as a result of the Commission's right of initiative and responsibilities for implementation - a stronger influence than in an OMC framework. Conversely, DG Employment, which has few alternatives to using the OMC, is much more positive in its evaluation of the OMC. Two conclusions follow from this: First, it is essential to evaluate the performance and potential of the OMC independently from the vested interests of the actors concerned. Second, given the significance of these interests in the political process, it may sometimes be pragmatic, if and where OMC processes can offer real benefits, to not title it as an OMC and simply contribute to the progress of the environmental agenda at hand and make efforts to see (and demonstrate) how the OMC can contribute to the CM process.

It is also important to ensure that the OMC is not seen as replacing CM processes where these processes work at least as effectively and efficiently as the OMC – there can be cases where a Member State led OMC type process does similar things as a Commission led consultation process, and the OMC label can lead to confusion and resistance. Better to call the OMC type process simply a technical consultation contributing to normal CM process. In this way there is remains a route for contributions and a change of influence.

Actors and decision positions (eg EP not part of OMC) – the European Commission lead in CM processes, while it is much more open as to who leads in OMC process. The European Commission could coordinate, or a Member state, or group of member sates could co-ordinate. The European Commission could be part of the 'core team', more of an observer and in principle, even be excluded from OMC completely (eg where no role given subsidiarity). In practice, the European Commission plays different roles.

The ambitions for the role of the EP, the Commission and Member States can be important in considerations as to whether to call an OMC type process OMC or not.

IV Recommendations

Building on the understanding of OMC performance and the needs of a range of environmental challenges, we conclude that in a number or areas VROM contributions to OMC type applications could be seriously considered in the following areas (as noted in Chapter 7 and Annex 1). Further specific analysis would of course be needed as to exactly where and how VROM could contribute best and what form initiatives could usefully take.

Areas of potential high interest for VROM include – 1ˢᵗ priority areas:

- ETAP – it important that this initiative is to be made to work, and vital that countries with a constructive approach and ready audience contribute.

- Green public procurement – a specific areas where much progress is needed and possible. Significant gains are to be made and if this works it should have positive effects not only in this areas but also for coordinated approaches in general.

- Carbon dioxide capture and storage in the EU ETS – a real need for a way forward, and the Dutch work on ET and monitoring protocols gives it a natural leadership here.

- Flooding – in the context of the CIS and potentially also linked to regional funding.

Other areas of importance include:

- ENAP type (but not actually ENAP) process – there is more potential in the approach, though a break in the IPPC area may be useful to wait for the results of the commission studies. Other areas have potential, however. There are good arguments for not calling a future initiative, ENAP, as this can create a new institutions reducing the flexibility to adjust the process to the needs.

- Spatial planning - there is a substantial history of existing cooperation in this area; explicit requirement to take forward urban thematic strategy through OMC; planning issues need to be tackled in the context of climate change strategy.

- SDS - There is a need to make sure that the SDSs become useful strategies that have a chance to influence plans and policies with eventual impacts through implementation. VROM's history of constructive NEPPs suggest the Netherlands have useful experience to build on to contribute to driving forward SDSs.

- Sustainable mobility – particularly important for the Netherlands given the high ambient air pollution and needs in relation to the Air Framework Directive and NEC Directive.

Where could OMC processes be usefully applied? – for what function/purpose in the policy cycle

- OMC processes can play a key role in learning – whether to learn from the practice of others, or work together to understand the problems better and identify solutions together.
- OMCs type initiatives can offer useful inputs in the early stages of policy formulation – building the understanding of the problem, needs for solutions, possible solutions. This then feeds into the CM process. It can also then be used again to support the revision of the work as the situation evolves.
- OMC type applications can be helpful as an implementing tool/process, including for Community legislation and objectives.
- OMC processes can be useful to engage commitment to a way forward and can be a useful way forward in areas where there is either little Community competency or little political will or technical capacity to make progress.
- As regards technical capacity, the Commission is generally short of capacity for the range of dossiers/issues, and inputs coordinated by Member States can provide a very useful complement and input to the Commission services efforts – whether for raising information, developing understanding or highlighting possible solutions.

As regards the question of alternatives to CM - in light of the no vote to the Convention, there are clear arguments that there need to be visible opportunities for member states to take ownership of problems and finding solutions. In other words there should be a proactive look at whether and where MS approaches or MS co-ordinated approaches can offer better results than the CM. If these really do offer the same or better results, and there is a real commitment to making it happen, the OMC could be the solution. However, if the likely results are weaker then subsidiary would often argue for the CM. In light of the weaknesses of past and ongoing OMC practice, there needs to be a convincing case made. In short, it has to deliver. In addition the questions of transparency and democratic robustness (lack of EP role) need to be addressed to make the offer of an OMC attractive.

Should it be called OMC?

Not in all cases, and indeed arguably the term should be used very sparingly in the environmental field for strategic reasons. In practice the process is more important than the title, and the use of the word OMC can create resistance (or support, depending on the political-institutional context in which it is used).

How Should the OMC operate?

- *Who coordinates* (Member State(s) or the Europea Commission)? – this depends very much on the issue, the stakeholders and their sensitivity and stage of the process. This has to be defined case by case.
- *European Parliament role*. A lack of EP role weakens the process and efforts should be made to find a role for the EP – whether on guidelines, or commenting on targets.
- *Stakeholder involvement?* It is important that there is an openness of engagement and a transparent process to avoid the problem of 'self appointed' clubs. Obviously there will need to be a core group progressing the issues though there needs to be a clear rationale for the choice of constellation of the group and a mechanism to contribute.

VROM could usefully identify constructive areas where learning is needed or solution identification is needed. However, to some extent this may be an approach that is easier to implement in some Member States, such as the Netherlands, than in others which have different traditions and practices of policy-making There is also currently a focus in the European institutions on non environmental issues, with particular focus no competitiveness and economics, sometimes seeming to miss both the impact of non action on environmental issues on the economy and competitiveness (ie that there is a potential negative effect of not safeguarding or progressing the environment), and to miss the opportunity to improve the environment where there are few costs or acceptable costs. The lack of European level focus is therefore an opportunity for countries like the Netherlands to launch OMC type applications to progress the understanding of problems, the interconnections (environment – economic – social), needs for solutions or recognition of opportunities such that when there is new political will either at Member State or at EU level, the appropriate progress can be more readily supported.

Exploration of options for the Implementation of the Open Method of Coordination for Environmental Policy

1. INTRODUCTION

This is the final report for VROM - *Exploration of options for the Implementation of the Open Method of Coordination (OMC) for Environmental Policy*[3]. The report has been drafted by the Institute for European Environmental Policy (IEEP) together with our sister institute Ecologic (Institute for International and European Environmental Policy), with the support of a steering group led by Jan Pieters of VROM and comprising VROM representatives and external experts.

While the background, aims and objectives of the work are detailed below, it is worth noting up front that the term 'OMC' has begun to be used more frequently in the past few years and there has been considerable uncertainty as to what OMC actually is, where it is, or could be, useful with regard to the environment, and what could be expected of it in the future. There is a range of environmental problems and addressing these is effectively an implementation challenge, which includes a type of negotiation within Europe as to how best – what targets, instruments, processes - to address these. The overall aim of this work is therefore to help address some of the uncertainty surrounding OMC's potential role and how it fits into the broader implementation challenge facing Member States. It is hoped that this report and the discussions on the 22 November in the Hague will increase understanding and help VROM make best use of OMC and its lessons.

1.1 Background to, and Aims and Objectives of, the Work

A quick definition of the Open Method of Co-ordination (OMC)

While an extended discussion on 'what is OMC' and where it has been used is given in Chapters 2 and 3, it is useful to note some key points up front.

The first OMC-type procedures were applied in the field of economic policy co-ordination - with its origin rooted in the 1993 Maastricht Treaty. This was long before the Lisbon European Council formally introduced the term 'OMC'. The European Employment Strategy (EES), launched at the Luxemburg Jobs Summit (November 1997) was a key application on the social side, building on new provisions in the 1997 Amsterdam Treaty. The first environmental OMC recognised as such was the ETAP – the Environmental Technologies Action Plan – launched in 2003 to contribute to achieving the Lisbon goals (see Chapter 2 for details).

The Open Method of Coordination has generally been applied in areas where there is little or no formal legal Community competence. As a non-legal, voluntary instrument, it is generally seen as a less constraining mechanism to achieving EU objectives than EU law. OMC is devised to help achieve (and in some cases agree) EU level goals or objectives, through a series of tools, that can include the use of:

---

[3] Ref: Project Number: 5030.04.0012, VIC 45775 and contract number DGM/SB/S2004115082

- Guidelines and timetables for achieving the goals
- Indicators - which can be qualitative and/or quantitative
- Benchmarking practice across EU Member States
- Regular monitoring and reporting
- Evaluation and peer review of practice
- Some coordination of Member States activities - though it is open whether this is by Member State(s), or by the European Commission

There can also be targets, either pre-dating the establishment of an OMC process, or developed within it.

There is a considerable variety of OMC-type practices and applications, with varying application of the OMC elements listed above (see Chapters 3 and 4). Some are explicitly called OMC, others are not, though they can be described as OMC-type applications.

OMC can be an 'alternative' to the Community Method (CM) – this is obviously the case where there is no formal EU competence to legislate[4]. However, OMC can also be used to help implement measures developed under the CM, or to input into CM (see Chapter 3 on OMC characteristics).

The Community Method

Member State environmental policy is derived in great part from Community law, given the European Commission's right of initiative and competences in this field. A variety of Community 'legislation' exists (set out in Article 249 of the Treaty) - Regulations, Directives, Decisions, Recommendations and Opinions[5]. Of these the Directives are arguably the most interesting from the national perspective as a Directive is binding as to the results to be achieved, but leaves to the Member States the choice of form and methods. This generally gives quite a lot of scope for national perspectives to be taken into account and builds on the subsidiarity principle.

The process of developing Community law is undertaken by the EU institutions through what has been described as the 'Community Method': Proposals for EU legislation are initiated by the Commission; discussed and amended by the Council of Ministers and the European Parliament; implemented by the Member States; 'policed' by the Commission; and enforced by the European Court of Justice. This process involves a clear series of steps in the policy development cycle that can be seen as the CM in practice:

- *Background analysis* of the issue - to work out whether and where important, what causes the problem, what instruments are available etc. This stage can take the form of studies, workshops, expert meetings, consultations or any combination of these. These can include multi-country comparison or benchmarking studies.
- *Public and stakeholder consultation* – through green and white papers, communications, and 'non-papers' as well as workshops.
- *Commission's draft proposal* - drafted by a lead DG, upon which there will be an impact assessment (IA) (including consultation), and inter-service consultation (other

---

[4] Formally speaking this is not a real alternative as there are not two to chose from.
[5] The last two have no binding force and should not properly be regarded as legislative instruments

DG's comment on the draft). Building on the IA and inter-service consultation, the draft is developed into a formal proposal for a directive (or Regulation) that then goes forward to consultation or co-decision (see Box 1) with the Council and European Parliament, eventually to be formally adopted as an item of legislation. Member State input comes directly through the Council, and indirectly through MEPs' links with their constituencies.

- *Adopted legislation* needs to be *transposed into national legislation* by a given deadline (noted in the Directive). There is usually some flexibility for the Member States on how to implement it. This then becomes an *implementation challenge* – for the Member States to draft national legislation accordingly and implement the legislation on the ground ('practical application') with the suitable use of policies and measures and supporting guidance.

- Then *during the implementation phase* – there will normally be a need for regular reporting[6] (on state of environment, or progress vis-à-vis targets etc) to the European Commission. This regular reporting can be supported by guidance documents and the use of multi-country expert meetings[7].

Box 1.1: Community Method: Consultation and Co decision procedures

---

Consultation procedure

In the original Treaty of Rome, all legislation was agreed by the consultation procedure, which requires only one reading in Parliament of a Commission proposal. Under the consultation procedure (now set out in Article 175(2) in relation to some limited areas of environmental policy), the Council may take a decision only after it has sought the opinion of the Parliament, but is under no legal obligation to accept any of its amendments. The consultation procedure still applies to five categories of environmental measure: provisions primarily of a fiscal nature; town and country planning, and land use (with the exception of waste management and measures of a general nature); the management of water resources; and measures which significantly affect the structure of Member States' energy supply . In these areas, the Council also takes decisions on the basis of unanimity.

Co-decision procedure

Most environmental legislation agreed under Article 175 is now adopted under the co-decision procedure (see Figure 2.6.1 below). This procedure was introduced by the 1993 Maastricht Treaty, and its application was greatly extended by the 1999 Amsterdam Treaty. Under co-decision the Council acts by qualified majority, and MEPs have wide powers to amend draft legislation. In the final analysis the Parliament may reject draft legislation entirely, even though a majority of Member States is in favour of it. After a first reading of a proposal by the Parliament, in which MEPs usually amend the proposal, the Council adopts its 'common position', which contains the Council's own changes to the Commission's proposal. Parliament then holds a second reading. If the Parliament does not agree with the Council's common position and makes further amendments, representatives of the two institutions meet in a conciliation committee to negotiate a compromise text, which must be approved by both the Council (by QMV) and the Parliament (by simple majority). Failure of either institution to agree the joint text means that the proposal falls. At any point during this process, the Commission may issue a revised proposal to take account of the views of the Council and Parliament.

Source: *Manual of Environmental Policy: The EU and Britain, IEEP*

---

[6] Sometimes monitoring and reporting requirements come through Decisions – eg Decision 1753/2000 for CO2 from passenger vehicles. These are also part of the CM.

[7] Under 1753/2000 a series of guidance documents were created and series of MS wide expert workshops to adopt the guidelines and check on progress.

The Community Method is interesting in the context of the current OMC study for two reasons:

1. It is a formal, Treaty-based process, with well-defined steps and processes, in which Member States are fully involved through the Council and its working groups. In principle, all major concerns and interests expressed by Member States should be understood and, if seen as appropriate, taken on board.
2. The process incorporates a number of 'tools' – notably the use of cross-country or benchmarking studies, use of guidance materials, regular reporting, and sometimes peer reviews.

The former point underlines that there is scope for Member States to seek to ensure that their concerns are taken on board and reflected in legislation (although QMV in the Council may mean they are outvoted, and MEPs can often table unwelcome amendments). The latter point underlines that some of the tools which are identified as typically OMC- type tools, are already integrated into the CM. Interestingly, some Directives can be perceived as adopting all the OMC type tools, though within a CM process and framework. This is the case of the Biofuels Directive (2003/30/EC), which includes:

- A recommended but not binding target (Member States to set their own indicative targets);
- Member States' own targets are to be assessed by the Commission as to whether they are reasonable and are jointly likely to reach the EU target);
- Annual reporting requirements by Member States – including a description of national measures adopted and resources allocated;
- Commission report every two years, based on and country benchmarking.

In summary, OMCs may build on tools and methods used within some CM practice, and there are cases of CM practice that effectively include most if not all of the things an OMC would do. It is not a black or white picture and it will be important to keep this in mind during the discussions. Part of the aim and objectives of this report is to give advice on where OMC and OMC elements can be usefully applied, including in areas that are subject to CM. The report should also note where the term OMC may not be helpful politically.

Aim and objectives

There has been increasing interest over the past few years in the potential role that OMC could play in environmental policy in Europe. Discussions of its role vary depending on its field of application (eg whether in social, economic or environmental fields), its ambition, and what form it takes and processes it uses. It has also been unclear whether interest in OMC is short term, or whether it is a process of growing use and real potential. Some argue that with an EU-25 and likely EU-27 or more, there are likely to be more OMCs. Some see it as a useful new tool to make progress, others see it as a distraction from CM, where the focus of efforts should remain to secure real progress.

Against this context, VROM launched the current study, with the aim of helping VROM understand what OMC is, what role it can play in environmental policy, and what role VROM could play. As noted in the terms of reference, the outputs of the study should allow:

1. VROM to operate more efficiently in an EU context (also in cooperation with local authorities);
2. VROM to be prepared for the changes in EU policy formulation which result from a greater heterogeneity of the Union; and
3. Assist the 'transition managers' to implement the international cooperation that will be necessary.

To do this the study / this report aims to:

- Discuss what OMC is and can be – as there are different uses of the term OMC;
- Where it has been used and for what purpose;
- Explore what lessons can be gleaned from existing practice, building understanding on what performance has been and what factors affect performance;
- Identify possible areas where OMC can be a useful tool;
- Develop a 'consideration process' to help explore whether the conditions are right for an OMC.

The focus is on obtaining insights on the use of OMCs dealing with environmental issues, though building on lessons from practice more broadly.

General approach

The approach of the study can be summarised as:

Defining the Scope of OMC coverage: It was agreed to interpret 'OMC' widely - covering both processes explicitly described as OMC and processes that were of OMC type or which built in OMC type elements - so as to obtain a wider source base for insights, though ensuring that clarity is maintained as regards different uses of the term OMC. The particular focus of the study is on practice in relation to environment-related policies, though also building on practice in other fields.

Characterising OMC: Developing a characterisation for different OMC applications – OMC, OMC type and OMC-elements - to make sense of the insights and allow a differentiation of the lessons, conclusions and recommendations. Similarly, the team developed a classification for different roles of OMC vis a vis the 'Community Method' – eg whether an input to CM, a bridge, gap filler or competitor (see chapter 3).

Inputs / areas of focus: It was agreed to make use of specific environment case studies to explore the OMC type applications in depth. The ToR required at least 4 in-depth cases studies. It was agreed to examine ETAP, ENAP, IMPEL, and WFD in depth, as well as other strategic processes (Lisbon, Urban Thematic Strategy, etc). It was agreed to complement the analysis of environmental cases with other OMC insights from the social and economic fields (see chapter 2 on experience from these). The use of stakeholder interviews and literature survey allowed the necessary breadth, depth and also 'soft-knowledge' to be obtained.

Outputs: The key outputs were to develop insights to help identify:

- Performance (success and failure) and performance factors.

- What conditions may be necessary or constructive for OMC and to develop a 'consideration process' – of issues to bear in mind when considering whether OMC is an appropriate approach for the challenge at hand.
- Recommendations – looking at a range of areas where OMC could be considered and assessing whether these would be potentially useful or not.

Structure of the report

Chapter 2 looks in more detail at what OMC is, where has it been used, and what lessons can be learnt from the non-environmental applications of OMC. Chapter 3 presents the study approach and method, showing how the OMCs can be characterised and the analysis framework. The characterisation part is important not just for the analysis approach but also for the insights it offers into the different types of OMC. Chapter 4 presents the current application of OMC, OMC types and OMC elements in the environmental domain. Chapter 5 draws on practice in the non-environmental and environmental field to learn lessons on performance and performance factors. This in turn is developed into a discussion of the decision consideration process when exploring whether OMC is the right approach for the challenge at hand (Chapter 6). Chapter 7 then looks at the range of environmental challenges and presents some broad indications of whether an OMC type process or OMC elements could be useful or not. Chapter 8 presents a summary of the study conclusions and recommendations.

This is complemented by Part B of the report, which presents a range of detailed case studies. The case studies give a useful practical insight into OMC type processes and are a valuable complement to this report and hence more than just background annexes.

2.   WHAT IS OMC AND WHERE HAS IT BEEN USED?

2.1   The debate on the OMC

The Open Method of Co-ordination (OMC) has received rapidly growing attention among European policy-makers and in the academic literature since the 2000 Lisbon European Council. The Lisbon Council coined the term OMC and decided to use the OMC to implement the Lisbon Strategy which aims to make the EU "the most competitive and dynamic knowledge-based economy in the world [...]". Following the Lisbon Council, new OMCs have been initiated in a number of areas. The reasons behind this trend are manifold and vary according to the policy area concerned. However, at least two more general reasons are discernible. First, the EU is expanding into new areas, such as pension reform, for which it has no or only very weak legislative competencies. This development is driven by the aim to reform national social security systems and to increase EU economic competitiveness. Rather than giving the EU new legislative powers, Member State governments frequently prefer to use the OMC in the new areas. Second, as a consequence of EU enlargement the number of Member States has risen sharply (and is expected to continue to rise). This has led to greater diversity and a larger number of different interests which need to be reconciled. Against this background, the OMC is expected to aid decision-making by facilitating consensus building through learning and deliberation.

The lively political and academic debate on the OMC is complicated by the fact that there is no generally agreed definition and that existing OMCs vary widely. For example, OMCs may or may not be officially labelled as OMCs. While most OMCs have an important learning element, others emphasis "surveillance" of Member States by the Commission. Similarly, the role of the Commission is relatively weak in many OMCs, but stronger in some. The degree of involvement of civil society also varies widely. The discussion is further complicated by a lack of experience with the OMC which is, after all, a relatively new instrument. In addition, the debate often involves high stakes for certain actors. For example, the European Parliament is only marginally involved in decision-making under the OMC, but it has a strong formal position in the dominant Co-decision legislative procedure. This means that the Parliament might lose influence as a result of a wider application of the OMC. Similarly, the Commission may have an institutional self-interest in using the OMC in areas in which it has only weak legislative competencies, whereas its institutional self-interest are likely to speak against using the OMC in areas where the OMC could prevent a further extension of, or even weaken, its legislative role.

The OMC is typically applied in fields in which the EU has weak powers to adopt legislation, for example social policy, research policy and education. But there have also been discussions regarding possible applications of the OMC in the environmental field where the EU has strong legislative competencies. For example, in 2001 the Belgian EU Presidency initiated a research project[8] and workshop which looked, among other things, at possible applications of the OMC in EU environmental policy. In its 2003 Environmental Policy Review (EPR), the Commission suggests that the OMC could "usefully be introduced" to "better articulate efforts toward

---

[8] Kraemer, R. Andreas, David G. Wilkinson, Anneke Klasing and Ingmar von Homeyer (2002), EU Environmental Governance: A Benchmark of Policy Instruments, study commissioned by the Belgian Federal Department of the Environment, Ministry for Public Health, Food Chain Security & Environment.

sustainable development at all levels of governance".[9] The Environment Council also discussed whether the OMC could be usefully applied. In early 2004, the Austrian EU Presidency held a workshop and commissioned a background paper[10] which explored the potential for using the OMC to increase the effectiveness and efficiency of EU environmental policy. The UK response to the European Commission's consultation paper of 30 July 2004 on the review of the EU sustainable development strategy provides another example. The UK suggests that "the OMC should be tested in a few target areas where there is a general desire to raise performance but little or no role for Community legislation. The most promising candidates are environmental technologies, national sustainable development strategies and sustainable consumption and production".[11]

The interest in using the OMC to support EU environmental policy is fuelled by several factors. These include:

- A larger number of Member States and greater diversity of interests as a result of EU enlargement are expected to make it more difficult to reach agreement on EU environmental legislation;
- The rise of the sustainable development paradigm. Sustainable development requires multi-level, cross sectoral co-ordination. The OMC may help to co-ordinate across sectoral and geographical boundaries because its "voluntary" character and emphasis on learning does not directly challenge existing legal competencies.
- Despite the adoption of numerous pieces of EU environmental legislation, the overall state of the environment has arguably not improved (sufficiently). New governance mechanisms are therefore explored which are capable of complementing legislation, for example by addressing cross-sectoral issues more effectively and by reducing the implementation deficit of EU environmental legislation and improving implementation of broad framework legislation;
- Although recent polls show that EU environmental policy ranges among the most popular EU policies and is supported by a large majority of the population, the EU as a whole is seen much more critically today than in previous decades. Subsidiarity and sovereignty concerns therefore impose more political constraints on the EU capacities to legislate;
- The rise of economic competitiveness concerns on the EU agenda has increasingly focussed attention on the economic costs associated with EU environmental legislation.

In sum, the debate on the OMC in EU environmental policy is inspired by an increasing awareness of the limits of legislation, some of which may be addressed with the help of the OMC. For example, the fact that commitments undertaken under the OMC are not legally binding may make it easier to reach agreement among Member States or, at least, to overcome opposition – albeit at the risk that these commitments may not be kept to the same extent as

---

[9] Communication from the Commission to the Council and the European Parliament 2003 Environment Policy Review - *Consolidating the environmental pillar of sustainable development*, COM(2003) 745 final/2, Brussels, 2.2.2004, p. 6

[10] Homeyer, Ingmar von, Anneke Klasing and R. Andreas Kraemer (2004), Exploring the EU Open Method of Co-ordination, paper for the Workshop 'The Open Method of Co-ordination –Risks and Chances for European Environmental Policy', 22 March 2004, Brussels, commissioned by the Austrian Federal Ministry of Agriculture, Forestry, Environment and Water Management.

[11] Review of the EU sustainable development strategy – UK conclusions and recommendations, http://www.sustainable-development.gov.uk/documents/delivery/Review%20of%20eu%20sds%20-%20UK%20Response%20final.pdf.

legally binding obligations. It may also reduce resistance to cross-sectoral initiatives as legally non-binding commitments pose a lesser challenge to existing sectoral responsibilities and competencies than legally binding rules. The OMC emphasis on learning may help to build consensus, improve knowledge, and raise awareness, of cross-sectoral implications as well as subsidiarity issues. Implementation and economic efficiency may also benefit from learning. In addition, legally non-binding rules and its cyclical character render the OMC much more flexible than legislation. High flexibility may result in effectiveness and, in particular, efficiency gains.

2.2 What is OMC?

What is the "open" method of co-ordination? While there is no authoritative definition, it is plausible to argue that the Open Method of Co-ordination is "open" because a broad range of actors may participate in the co-ordination exercise, but also because there are many OMC variants, each of which is tailored to the specific circumstances in which it is applied. For example, the Council stated in its 2002 resolution on a framework for co-operation in the field of youth: "The OMC will be applied with a *flexible approach in a manner suited to the youth field*, with due regard for the competencies of the Member States and the principle of subsidiarity" [emphasis added].[12] This institutional and procedural openness creates difficulties in defining the OMC. The OMC's highly dynamic evolution further adds to definitional problems. A growing number of OMCs, each with their own specific characteristics, have been established in recent years. Against this background, the 2000 Lisbon European Council's influential definition of the OMC and the example of established OMCs in the areas of employment and economic policy help to understand the OMC's origins and fundamental characteristics. The following sections present the Lisbon European Council's definition and the employment and economic co-ordination OMCs in reverse chronological order, starting with the Lisbon European Council's explicit definition of the OMC.

The Lisbon European Council's definition of the OMC

The 2000 Lisbon European Council coined the term OMC which is, however, not mentioned in the Treaty. The Council's definition (see Box 2.1) applies to the 2000 Lisbon Strategy which aimed to make the EU "the most competitive and dynamic knowledge-based economy in the world [...]". The definition provides a useful starting point for understanding the OMC. It contains a relatively comprehensive list of characteristic OMC features covering aims, general approach, and instruments. According to the definition, OMC aims to achieve convergence towards the main EU goals. This leaves significantly more leeway for diverging national policies than the traditional EU approach of legal harmonisation which frequently leads to detailed prescriptions not only of aims, but also of instruments. To achieve convergence, the OMC is designed to help Member States to develop their own policies by spreading best practice and supporting mutual learning. In this respect, the Lisbon European Council identified several instruments, ie. agreement on goals, guidelines, and timetables; development and use of indicators and benchmarking; translation of goals, guidelines and timetables agreed at the European level into national and regional policies; periodic monitoring, evaluation and peer review; and partnership/networking with Member State authorities, regional and local bodies and societal actors.

---

[12] Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council of 27 June 2002 regarding the framework of European cooperation in the youth field, (2002/C 168/02), C 168/2, Official Journal of the European Communities, 13.7.2002.

Box 2.1: 2000 Lisbon European Council definition of OMC

The OMC is a "[...] means of spreading best practice and achieving greater convergence towards the main EU goals. This method, which is designed to help Member States to progressively develop their own policies, involves:

• fixing guidelines for the Union combined with specific timetables for achieving the goals which they set in the short, medium and long terms;
• establishing, where appropriate, quantitative and qualitative indicators and benchmarks against the best in the world and tailored to the needs of different Member States and sectors as a means of comparing best practice;
• translating these European guidelines into national and regional policies by setting specific targets and adopting measures, taking into account national and regional differences; • periodic monitoring, evaluation and peer review organised as mutual learning processes.

[...] A fully decentralised approach will be applied in line with the principle of subsidiarity in which the Union, the Member States, the regional and local levels, as well as the social partners and civil society, will be actively involved, using variable forms of partnership. A method of benchmarking best practices on managing change will be devised by the European Commission networking with different providers and users, namely the social partners, companies
and NGOs [...]".

Although the Lisbon European Council's definition of OMC provides a good starting point , it is not suitable as a general definition of the OMC because of a lack of conformity of most existing OMCs with this definition. Perhaps most importantly, this applies to two particularly important OMC-type processes in the fields of economic and employment policy, i.e. the economic policy co-ordination OMC and the European Employment Strategy (EES). In contrast to other OMCs, including the Lisbon Strategy, these OMCs are based on procedures that are laid down in considerable detail in the Treaty. Partly because of its strong Treaty base, the EES is often treated as a prototype OMC in academic and policy-oriented discussions. Both, the EES and the economic policy co-ordination OMC, are increasingly integrated into the Lisbon Strategy for which they provide major input.

The European Employment Strategy

Dating back to the 1997 Amsterdam Treaty, the EES is an early OMC. Its main features are laid down in the Treaty (Articles 125-130 TEC, see Box 2.2). Until 2005 the EES relied on an annual cycle of EU-level guideline development (Employment Guidelines)[13] and revision, translation into national policies and reporting, and EU-level monitoring and evaluation. Although the EES was established at a time when the term OMC had not yet been introduced, its modalities and procedures correspond broadly to the Lisbon European Council's definition of the OMC. However, the EES also deviates from this definition in that it goes beyond it in at least three ways:

- First, the EES allows for recommendations to be made to individual Member States;
- Second, an Employment Committee has been established specifically to support the OMC.
- Third, translation into national policy is based on National Action Plans (NAPs) drawn up by the Member States (in 2005 NAPs have also been introduced for the Lisbon

---

[13] Since 2005 the employment guidelines have been integrated with the Broad Economic Policy Guidelines (BEPGs) of the economic policy co-ordination OMC.

Institute for European Environmental Policy (IEEP) and Ecologic

Strategy). None of these instruments which, arguably, are of high relevance for the functioning of the EES is mentioned in the Lisbon Council's definition of the OMC.

Box 2.2: Treaty provisions on employment policy co-ordination

Article 128

1. The European Council shall each year consider the employment situation in the Community and adopt conclusions thereon, on the basis of a joint annual report by the Council and the Commission.

2. On the basis of the conclusions of the European Council, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee, the Committee of the Regions and the Employment Committee referred to in Article 130, shall each year draw up guidelines which the Member States shall take into account in their employment policies. These guidelines shall be consistent with the broad guidelines adopted pursuant to Article 99(2).

3. Each Member State shall provide the Council and the Commission with an annual report on the principal measures taken to implement its employment policy in the light of the guidelines for employment as referred to in paragraph 2.

4. The Council, on the basis of the reports referred to in paragraph 3 and having received the views of the Employment Committee, shall each year carry out an examination of the implementation of the employment policies of the Member States in the light of the guidelines for employment. The Council, acting by a qualified majority on a recommendation from the Commission, may, if it considers it appropriate in the light of that examination, make recommendations to Member States.

5. On the basis of the results of that examination, the Council and the Commission shall make a joint annual report to the European Council on the employment situation in the Community and on the implementation of the guidelines for employment.

Article 129

The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, may adopt incentive measures designed to encourage cooperation between Member States and to support their action in the field of employment through initiatives aimed at developing exchanges of information and best practices, providing comparative analysis and advice as well as promoting innovative approaches and evaluating experiences, in particular by recourse to pilot projects.

Those measures shall not include harmonisation of the laws and regulations of the Member States.

Article 130

The Council, after consulting the European Parliament, shall establish an Employment Committee with advisory status to promote coordination between Member States on employment and labour market policies. The tasks of the Committee shall be:

- to monitor the employment situation and employment policies in the Member States and the Community,

- without prejudice to Article 207, to formulate opinions at the request of either the Council or the Commission or on its own initiative, and to contribute to the preparation of the Council proceedings referred to in Article 128.

In fulfilling its mandate, the Committee shall consult management and labour.

Each Member State and the Commission shall appoint two members of the Committee.

One reason why the EES is frequently treated as a prototype is that it is one of the earliest OMCs. More importantly, the EES provides a particularly clear and undiluted OMC example, the basic features of which are laid down in the Treaty. At the same time, reflecting very limited EU legislative competencies for employment policy, any links with more traditional EU legislative instruments are relatively weak.

The economic policy co-ordination OMC

Rooted in the 1993 Maastricht Treaty and established long before the Lisbon European Council introduced the term, the OMC was first applied in the field of economic policy co-ordination. EU-level economic policy co-ordination relies on multilateral surveillance of national economic policies (Article 99 TEC) and is backed up by the excessive deficit procedure (Article 104 TEC) dealing with a narrow, but crucial sub-field of economic policy, i.e. budgetary policy (see Boxes 2 and 3). Broadly similar to the Lisbon Strategy and the EES, the economic policy OMC is based on annual cycles of European guideline development (Broad Economic Policy Guidelines - BEPGs) and revision, translation into national policies, and European monitoring and evaluation. Like the EES, the economic policy co-ordination OMC also goes beyond the Lisbon European Council's definition: it is supported by a Committee - the Economic Policy Committee - and there is a procedure for issuing recommendations to non-compliant Member States.

But the economic policy coordination OMC also differs from the EES in a number of major ways. For example, it does not rely on NAPs. Perhaps the most fundamental difference with the EES and the Lisbon Council's definition of the OMC lies in the economic policy co-ordination OMC's general orientation which is geared towards top-down multilateral surveillance rather than bottom-up learning. Several aspects illustrate this. First, with respect to excessive budget deficits strong sanctions, including high fines, are available. Given that budgetary policy is closely linked to economic policy, this has indirect implications also for other aspects of economic policy. In addition, the Treaty provisions on the economic policy OMC explicitly foresee the possibility of making public the recommendations to individual Member States. This potentially increases the "shaming" effect of recommendations. And secondly, instruments to promote learning - in particular identification of best practice in the context of peer review - are absent from the economic policy co-ordination OMC.

The economic policy co-ordination OMC

Institute for European Environmental Policy (IEEP) and Ecologic

Box 2.3: Treaty provisions on economic policy co-ordination OMC procedure and excessive budget deficits

Article 99

[...]

2. The Council shall, acting by a qualified majority on a recommendation from the Commission, formulate a draft for the broad guidelines of the economic policies of the Member States and of the Community, and shall report its findings to the European Council.

The European Council shall, acting on the basis of the report from the Council, discuss a conclusion on the broad guidelines of the economic policies of the Member States and of the Community.

On the basis of this conclusion, the Council shall, acting by a qualified majority, adopt a recommendation setting out these broad guidelines. The Council shall inform the European Parliament of its recommendation.

3. In order to ensure closer coordination of economic policies and sustained convergence of the economic performances of the Member States, the Council shall, on the basis of reports submitted by the Commission, monitor economic developments in each of the Member States and in the Community as well as the consistency of economic policies with the broad guidelines referred to in paragraph 2, and regularly carry out an overall assessment.

For the purpose of this multilateral surveillance, Member States shall forward information to the Commission about important measures taken by them in the field of their economic policy and such other information as they deem necessary.

4. Where it is established, under the procedure referred to in paragraph 3, that the economic policies of a Member State are not consistent with the broad guidelines referred to in paragraph 2 or that they risk jeopardising the proper functioning of economic and monetary union, the Council may, acting by a qualified majority on a recommendation from the Commission, make the necessary recommendations to the Member State concerned. The Council may, acting by a qualified majority on a proposal from the Commission, decide to make its recommendations public.

The President of the Council and the Commission shall report to the European Parliament on the results of multilateral surveillance. The President of the Council may be invited to appear before the competent committee of the European Parliament if the Council has made its recommendations public.

Article 104

[...]

9. If a Member State persists in failing to put into practice the recommendations of the Council, the Council may decide to give notice to the Member State to take, within a specified time limit, measures for the deficit reduction which is judged necessary by the Council in order to remedy the situation.

[...]

11. As long as a Member State fails to comply with a decision taken in accordance with paragraph 9, the Council may decide to apply or, as the case may be, intensify one or more of the following measures:

- to require the Member State concerned to publish additional information, to be specified by the Council, before issuing bonds and securities,

- to invite the European Investment Bank to reconsider its lending policy towards the Member State concerned,

- to require the Member State concerned to make a non-interest-bearing deposit of an appropriate size with the Community until the excessive deficit has, in the view of the Council, been corrected,

- to impose fines of an appropriate size.

[...]

Institute for European Environmental Policy (IEEP) and Ecologic

2.3 Working definition of OMC

Table 2.1 summarises the institutional features of the two OMC procedures laid down in the Treaty – ie. the EES and the economic policy co-ordination OMC – and the Lisbon Council's definition of the OMC. The Table emphasises features illustrating important differences between the OMCs. A comparison suggests that, in institutional terms, there are no contradictions between the Lisbon Council's definition and the EES. However, with respect to a number of important features of the EES, the Lisbon Council's definition remains silent. Given that, first, the Lisbon Council's definition is built primarily on the practical example of the EES and, second, the general thrust of both OMCs goes towards bottom-up learning rather than top-down surveillance, the lack of institutional contradictions is not surprising. In contrast, the differences between the Lisbon Council's definition and the EES on the one hand, and the economic policy co-ordination OMC on the other, point to the tensions between bottom-up learning and top-down surveillance which are built into the OMC. Lack of societal participation, more centralised reporting, lack of mechanisms to identify best practices, and the availability of powerful sanctions provide the institutional foundations of these tensions.

Table 2.1: Treaty based OMC features and the Lisbon Council definition

	Launch year	Treaty base	Primary focus	Committee / Council	Societal participation	National Action Plans	Reporting	Peer review	Best practice	Recommendations	Sanctions
Economic policy coordination	1993	Articles 99, 104	MS + EU	EPC/ Ecofin	No	No	COM	No	No	Yes	Yes
Employment policy	1997	Articles128-130	MS	EMCO / LSAC	Yes	Yes	MS	Yes	Yes	Yes	No
Lisbon Council definition	2000	-	MS + EU	-	Yes	-	-	Yes	Yes	-	-

Given the institutional variety of OMCs even among the small sample of particularly significant OMC procedures/definitions covered in the Table it is clear that a definition applying to the full range of OMCs must be broader than the Lisbon Council's definition. Building on the characteristics of the EES, the economic policy co-ordination OMC and the Lisbon Council's definition, a useful working definition is the following:

The OMC is a mode of EU governance which co-ordinates and supports national policy-making through agreement on common targets as well as reporting and monitoring procedures backed up by mechanisms facilitating learning and/or sanctions.

This definition has six main elements:

- *Mode of governance*[14]: the OMC is a non-legislative procedure although it may be embedded in a legislative framework and/or may eventually lead to legislation;
- *Support national policy making*: the OMC aims to co-ordinate and support policy making at the national level;

---

[14] The term "governance" has at least two different meanings: it may be used as a term covering all forms of governing, ie. legislative and non-legislative; a more restrictive definition limits coverage to non-legislative forms of governing only.

-   *Common targets*: based on common objectives, agreed substantive targets provide the operational points of reference for co-ordinating and supporting national policies;
-   *Reporting*: based on common indicators, reporting obligations serve to collect information on Member States' progress in reaching the targets;
-   *Monitoring*: monitoring mechanisms make it possible to analyse and draw conclusions from the information provided as a result of the reporting obligations;
-   *Learning and/or sanctions*: mechanisms which enable learning for example identification of best practices - are key instruments supporting national policy making in meeting the agreed targets. In addition/alternatively, target achievement may be backed-up by soft and/or hard sanctions, such as "shaming" or fines.

In addition to the Lisbon Council's OMC definition, the EES, and the economic co-ordination OMC, this definition covers a broad range of additional OMCs which may or may not be labelled as such in official EU documents.

Although some OMCs - specifically the economic co-ordination OMC – may be backed up by explicit sanctioning mechanisms, learning is key to the success of most OMCs, underlying the formulation of objectives and targets and their achievement. It is important to keep in mind that learning may occur at different stages of the policy-making process and is not restricted to the OMC. For example, legislation may be the result of extensive consultation and expert deliberation which can lead to significant learning. Similarly, as opposed to the OMC itself, the process leading to the adoption of an OMC may also be infused with a high degree of learning – including the realisation that setting up an OMC may be preferable to the transfer of additional competencies to the EU or the adoption of EU legislation. However, at least two factors are likely to restrict the scope for learning in the legislative process. First, the binding nature of legislation and, in particular, the costs associated with changing legislation once it is in place raise the stakes for the adoption of legislation. Reflecting high stakes, governments tend to adopt a conservative position focussing on relatively narrow, short-term interests rather than more risky, innovative solutions. The second factor is related to the first: because legislation is difficult to change, it tends to resist the integration of new knowledge (despite procedures in much EU legislation for "adaptation to technical progress"). In contrast, the cyclical character of the OMC means that, at least in theory, new knowledge can be fed into the process at regular intervals. The scope for learning in the process leading to the adoption of an OMC appears to be somewhat less constrained than the scope for learning in the legislative process because the political stakes are lower; decisions taken under the OMC are legally non-binding and are relatively easy to amend. However, as with the legislative process, the scope for learning in the process leading to the adoption of an OMC is restricted by the fact that, in contrast to the OMC itself, it is not cyclical.

Because learning is an essential aspect of the OMC it is useful to distinguish different forms of learning. First, it is possible to distinguish between "thick" and "thin" learning: "thick" learning implies elements of a paradigm change, whereas "thin" learning does not transcend the basic assumptions of the prevailing "worldview". The distinction between "mutual" and "heuristic" learning refers to the degree of innovation. Mutual learning results from a transfer of *existing* ideas and solutions. In contrast, heuristic learning requires innovation in a more creative, absolute sense; it results in the development of genuinely new ideas and solutions. In practice the distinction between these two types of learning is less clear cut – not least because a simple transfer of policies from one political context to another usually requires some modifications of the policies which may require some degree of innovation. A third distinction

refers to what could be called the "source" of learning. Mutual and heuristic learning reflect improvements resulting from comparing and evaluating practices in other contexts or theoretical reasoning and experimentation. In contrast, reflexive learning occurs if actors attempt to learn from their own past mistakes. Finally, bottom-up learning implies that actors at a lower level inspire higher level learning. Conversely, top-down learning implies that a central authority "teaches" lower level actors.

2.4 Where has the OMC been applied?

Here we look primarily at non-environmental cases of OMC application. Environmental applications are discussed in chapter 4.

Identifying examples of OMC

The OMC has been applied to a wide range of issues. In addition to the Lisbon Strategy, the EES and the economic policy co-ordination OMC, OMCs have been identified in areas such as social inclusion, pensions reform, education, research and innovation policy, the information society, healthcare, taxation, enterprise, immigration, co-operation in the youth field, and environmental technologies. However, depending on the criteria used to identify an OMC, the number of existing OMCs varies. For example, many of the OMCs mentioned above may be only nominal OMCs in the sense that official EU documents refer to the application of the OMC in these areas. The use of substantive definitions of the OMC could yield significantly shorter or longer lists of existing OMCs: for many of the OMCs mentioned above only loosely conform to the Lisbon European Council's definition of the OMC. Conversely, the less restrictive working definition of the OMC used in this study allows for the identification of additional OMCs which have so far not been officially labelled as such. The Common Implementation Strategy (CIS) of the Water Framework Directive (WFD) provides a good example.

The task of identifying existing OMCs is further complicated by the fact that the official documents which led to the establishment of the OMCs mentioned above frequently remain vague as to the procedural and substantive implications of using the OMC. For example, in its 2002 recommendations regarding the framework of European co-operation in the youth field, the Council underlines "the view that these thematic priorities [of co-operation in the youth field] can best be approached in a flexible, phased and progressive way, using, *inter alia, as appropriate, elements of the OMC* as defined in the Lisbon European Council conclusions and subsequently" [emphasis added]. Similarly, the Commission's Communication on promoting the coherence of innovation policies in the context of the European Research Area[15] quotes the Lisbon Council's definition of the OMC at length but only relies on certain aspects of the definition, in particular benchmarking, whereas the formulation of European guidelines and translation into national policies are much less developed.[16]

Typical characteristics of fields in which the OMC is applied

---

[15] Brussels, 20.9.2000, COM(2000) 567 final, Communication from the Commission to the Council and the European Parliament, Innovation in a knowledge-driven economy, p. 16.

[16] Cf. Kaiser, Robert and Heiko Prange (2004), Managing diversity in a system of multi-level governance: the open method of co-ordination in innovation policy, Journal of European Public Policy 11:2, April: 249–266.

Because of the difficulties of defining the OMC, the precise number of existing OMCs and the areas in which the OMC is applied vary according to the definition used. Nevertheless, it is possible to identify certain characteristics typically shared by fields in which the OMC is used.

First, many OMCs are connected to the Lisbon Strategy. The EES and the economic policy co-ordination OMC provided important building blocks when the Lisbon Strategy was devised and have been further integrated into the Strategy since then. Most other OMCs in areas such as social inclusion, pensions reform, education, research and innovation, the information society, healthcare, taxation, enterprise, and environmental technologies are also linked to the Lisbon Strategy. In fact, the Lisbon Strategy may be seen as a kind of super OMC providing a launching platform and important political backing for other OMCs. Depending on the shifting priorities set in the framework of the Lisbon Process, new OMCs may be created and certain OMCs benefit from more political attention than others.

Second, OMCs tend to be established in areas in which the EU has weak legislative competencies and where the introduction of stronger EU legislative competencies is considered undesirable or impossible in the near future. More specifically, in some areas in which the OMC is used, for example in the field of pensions reform, the EU has only very few legislative competencies. In other fields there are stronger EU legislative competencies, but the adoption of legislation requires the unanimous consent of all Member States. Unanimity can be difficult to obtain, and may become more so in the enlarged EU of twenty-five Member States.

As illustrated in Table 2.2, lack of EU competencies or unanimity requirements frequently reflect more fundamental, substantive concerns about sovereignty and subsidiarity. *Sovereignty* concerns arise from issues which Member States consider directly vital for their functioning. For example, taxation is frequently linked to sovereignty concerns. With respect to *subsidiarity* it is possible to distinguish two problems:

- First, there are problems of what might be called "intrinsic" subsidiarity pertaining to certain issues which are, as a matter of principle, better addressed at national and sub-national levels rather than at the EU-level. Issues of national and regional cultural identities arising, among other things, in the field of education provide an example. Different values are at the core of "intrinsic" subsidiarity issues.
- Second, what might be called "structural" subsidiarity refers to firmly-entrenched socio-economic structures, for example labour relations in the area of employment policy. In this case there may be no reasons in principle against strong EU competencies. However, convergence among firmly entrenched national structures is necessary before strong EU legislative competencies may be established. Rather than value differences, formal and informal institutional variations are at the heart of "structural" subsidiarity issues.

Sovereignty as well as intrinsic and structural subsidiarity concerns as causes of absent or weak EU legislative competencies are not mutually exclusive. For example, in the field of research and innovation policy, all three causes play a prominent role: Member States are unwilling to establish strong EU legislative competencies in this field because of the strategic nature of research and innovation in military, but also in economic terms. At the same time, academic freedom and autonomy as well as close links to education support local, regional and national,

rather than European competencies. Finally, research and innovation policy is characterised by widely differing, firmly entrenched national organisational structures.[17]

The reasons explaining the lack of effective EU legislative competencies in many areas in which the OMC is used do not apply in the same way to the application of the OMC. Because the OMC is highly flexible and specific obligations entered into by Member States under the OMC are not legally binding, the OMC raises fewer sovereignty and subsidiarity concerns than legally binding EU competencies. At the same time, the OMC offers the possibility of addressing problems on the basis of alternative, non-legally binding mechanisms. Reflecting the OMC's flexibility, the primary mechanisms on which its effectiveness depends vary to some extent according to the specific challenges addressed by a given OMC. For example, in areas in which sovereignty concerns figure strongly – but where there is a strong EU interest - for example issues related to state revenue and spending, such as the Stability Pact - the OMC is likely to exhibit particularly strong surveillance and sanctioning mechanisms to improve compliance despite the absence of legally binding rules. This seemingly paradoxical consequence reflects the fact that non-compliance would be particularly damaging to the EU in areas closely linked to national sovereignty.

Table 2.2 : Weak EU legislative competencies and the OMC

Motives for concern about strong EU competencies	Example of policy/issue	Reasons for concern about strong EU competencies	Likely OMC orientation
Sovereignty	Public expenditure levels	Issues are directly linked to functioning of Member States as states	Surveillance, sanctions
Intrinsic subsidiarity	Education	Issues are intrinsically closely linked to national or sub-national levels of governance	Technical learning in closed communities
Structural subsidiarity	Employment	Politically highly sensitive and firmly entrenched national structures	Heuristic learning in open networks

Where *intrinsic* subsidiarity is the main concern, OMC is likely to rely primarily on what may be called "learning communities". These relatively closed communities are dominated by experts; professional knowledge and peer pressure have a significant impact on decision-making. The role of learning communities in fields where intrinsic subsidiarity is important reflects the restricted scope for agreement and convergence on "best practice" in a comprehensive sense. Essentially, convergence and best practice are limited to overcoming technical problems which do not strongly affect issues at the core of intrinsic subsidiarity: rather than structural change which could undermine intrinsic subsidiarity, the primary aim is to improve the performance of existing structures. For example, in the area of education, best practices may be more easily identified and accepted across Member States with respect to more technical pedagogical and organisational issues rather than fundamental institutional and cultural questions.

In contrast, if *structural* subsidiary is the main concern, there is more scope for agreement on best practice and, consequently, gradual convergence among structures, because convergence may promise better solutions. In this case, the main challenge for an OMC is the identification of, and agreement on, the most promising structures on which policies should converge. Reflecting the assumption that, frequently, the benefits of convergence are likely to flow as much from the very process of exchanging experience as from the specific "best practice"

---

[17] Cf. Kaiser/Prange (2004).

Institute for European Environmental Policy (IEEP) and Ecologic

structures chosen, this is primarily a heuristic process aiming at the identification of new solutions. Consequently, such a process is likely to be based on what might be called a relatively open "learning network" allowing for a broad range of technical and political factors to be considered. The EES and the search for the "European model" provide examples of efforts to use the OMC to construct new models to guide the structural reform process in the employment field[18].

2.5 The performance of non-environmental OMCs

How have existing, non-environmental OMCs performed so far?

There is a significant amount of literature on the OMC, in particular the EES. However, assessing the performance of the OMC is a notoriously difficult task. First, there is limited experience because the OMC is a relatively new decision-making procedure. In fact, most OMCs have been set up after the adoption of the Lisbon Strategy in 2000. Perhaps more importantly, in many cases, the OMC is used in politically sensitive and particularly difficult areas where it seems unrealistic to expect rapid results. For example, labour market reforms are politically highly sensitive and, once enacted, may take several years to lead to improvements "on the ground". In addition, even if it is possible to observe effects, it is often difficult to establish whether, and in particular how much, the OMC contributed to these changes because the OMC is usually only one of several relevant factors. In addition, given the variation among OMCs and of the circumstances in which they are used, experiences with some OMCs may often not apply to others. The results of studies looking only at a small number of OMCs therefore need not apply to the OMC in general.

Given the difficulties in assessing the performance of the OMC, it is perhaps not surprising that assessments vary widely. For example, Lodge analyses the pensions reform and information society OMCs in terms of "three essential components" - standard-setting, information-gathering and behaviour-modification" - which are necessary "for any regime to achieve a desired system"[19]. He argues that the two OMCs are "fundamentally defect across all three dimensions; a finding that has also found support in other domains and by other authors"[20]. However, the results of recent detailed empirical studies of, in particular, the more mature EES and social inclusion OMCs, are more positive. For example, as illustrated in Box 2.4, Zeitlin et al. identify significant effects of the EES and social inclusion OMCs in terms of substantive policy change, governance structures, participation, and learning.

---

[18] Radaelli, Claudio M. (2003), *The Open Method of Coordination: A new governance architecture for the European Union?,* Report No. 1, Swedish Institute for European Policy Studies, Stockholm.
[19] Lodge, Martin (2005), Comparing new modes of governance in action: the Open Method of Coordination in pensions and the information society, unpublished manuscript, p. 5.
[20] Ibid., p. 18.

Institute for European Environmental Policy (IEEP) and Ecologic

Box 2.4: Performance of the EES and social inclusion OMCs

POLICY CHANGE

Political salience: both OMCs have raised the political salience of the problems which they address at EU and national levels.

Cognitive impact: domestic policy orientations have shifted in accordance with the OMCs. For example, there has been a "shift of emphasis from reducing unemployment to raising employment rates as a core objective, from passive income support to activation services, and from a curative to a preventative approach to fighting unemployment"[21].

Policy change in individual Member States: the EES contributed to policy changes in several Member States, in particular with respect to equal gender opportunities. Other examples include a more preventative and individualised approach to the unemployed, the inclusion of new target groups in programmes, and a generally more comprehensive approach to employment policy.

GOVERNANCE STRUCTURES:

Horizontal co-ordination: in particular in the framework of the NAPs, both OMCs have improved co-ordination among relevant authorities, such as the bodies responsible for labour market policy, regional/local development, education, social assistance, unemployment benefits, pensions and taxation in the case of the EES.

Data collection: the OMCs have also had a positive impact on data collection and assessment, as well as greater national and European harmonisation of statistics.

Vertical co-ordination: reflecting, among other things, co-ordination needs for preparing the NAPs, the OMC improved vertical co-ordination in increasingly decentralised systems.

PARTICIPATION AND TRANSPARENCY:

Transparency: both OMCs lack transparency, in particular with respect to committee deliberations.

Social Partners: relatively weak involvement of the Social Partners even in the EES.

NGOs: significant participation in the social inclusion OMC, but weak participation in the EES.

Local and regional bodies: in some Member States, significant participation in the social inclusion OMC, but generally weaker participation in the EES.

LEARNING:

Heuristic: top-down adoption of new policy orientations at national level (see above "policy change" - "cognitive impact").

Mutual: despite some "contextualised" (rather than direct) policy transfer, overall there are few examples of bottom-up mutual learning among Member States.

Capacity building: better monitoring and evaluation capacities (see above "governance structures" – "data collection").

Reflexive: both OMCs led to a destabilisation of existing beliefs and practices at national level and "contextualised", rather than direct policy transfer ("best practice") from others Member States. However, learning at the EU-level was weak with respect to the revision of the EES.

MECHANISMS OF DOMESTIC INFLUENCE

Peer review, rankings, recommendations etc.: negative reviews prompted governments in several cases to take corrective measures, such as increased spending. However, depending on the context, *public* EU recommendations to individual Member State governments have occasionally backfired.

Learning: see above.

"Leverage": governments, government agencies, the Social Partners, NGOs and local and regional authorities have used the OMCs to justify their positions or criticise the positions of others.

---

[21] Zeitlin, Jonathan, "Conclusion", in Zeitlin, Jonathan and Phillipe Pochet (eds.) with Lars Magnusson (2005), The Open Method of Co-ordination in Action. The European Employment and Social Inclusion Strategies, Brussels: Peter Lang, pp. 447-503.

According to Zeitlin et al.'s assessment of the performance of the EES and the social inclusion OMC, the OMC's clearest impact so far relates to heuristic learning as new orientations for policy making have been adopted and to changes in governance structures. In terms of governance structures, the OMC has contributed to better vertical and horizontal co-ordination structures and to improvements in data collection, assessment, and harmonisation. However, the overall effectiveness of the OMC remains difficult to assess given the limited experience with the OMC and the methodological problems involved in assessing the extent of its impact. Transparency, participation of societal and regional actors, and reflexive learning appear to be the OMC's weakest points.[22] Reasons for low transparency include non-public EU committee deliberations and the absence of common provisions ensuring transparency at the national level. Participation suffers from weak or absent procedural obligations and the dominant role of Member State authorities in the OMC process which allows national governments to act as gatekeepers. In addition, in the case of the EES, weak Europeanisation of the Social Partners, for whom EU policy making remains a minor concern, combines with their ability to restrict access for other, partly competing stakeholders. Insufficient participation by societal and regional/local actors as well as insufficient capacities and provisions for peer review have been identified as important causes of weak mutual learning. Given that mutual learning is primarily a bottom-up process, participation is essential because it increases the supply of, and demand for, examples of "good practice". Finally, weak reflexive learning in the process of revising the EU employment guidelines can be attributed to factors such as the combination of a bargaining mode of interaction among Member States in the revision process and, at least with respect to the Commission, a focus on ensuring compliance with the EES, rather than a critical examination of its substantive approach.[23]

From a more limited perspective focussing on learning, Radaelli[24] assesses the performance of a larger set of OMCs than Zeitlin et al. Comparing the economic policy co-ordination OMC, the EES, the social inclusion OMC, the pensions reform OMC, the innovation policy OMC, and the taxation OMC, Radaelli's conclusions are broadly compatible with Zeitlin et al.'s. In particular, Radaelli concludes that in terms of learning, the OMC's main achievement lies in its contribution to the emergence of new orientations as a result of heuristic learning. His findings also correspond to Zeitlin et al. in that the "embryonic evidence of cognitive convergence from the top", is not matched by evidence for bottom-up learning in terms of the diffusion of "good practice". Weak peer review, and in particular weak participation by societal and regional actors are once again identified as important obstacles for mutual learning.

To a varying extent, the OMC allows for "shaming" of Member State governments by means of public recommendations, rankings etc. It has been noted in the academic literature as well as by practitioners that this OMC sanction appears to be questionable and has occasionally had counterproductive effects. For example, in some cases Member State governments have been reluctant to adopt common indicators and subscribe to ambitious goals for fear of being humiliated in public later if they failed to achieve their aims. Occasionally national publics have also rejected EU recommendations as inappropriate and intrusive.

The Commission has also evaluated the OMC, in particular in the context of the 2005 review of the Lisbon Strategy. The failure by Member States to implement the structural reforms which are at the heart of the Lisbon Strategy is seen as the OMC's most troubling deficit. To improve

---

[22] See also Best (2003), Alternative Regulations or Complementary Methods? Evolving Options in European Governance, Eipascope 2003/1, pp. 9-10.
[23] Cf. Zeitlin (2005).
[24] Radaelli (forthcoming).

implementation at national level, NAPs are to support the Lisbon Strategy in future. In addition, the Commission will introduce bilateral "couching" of Member States. The Commission also seems to have found major implementation deficits with respect to other OMCs that were introduced after the 2000 Lisbon European Council. On the one hand, the Commission recognises that these OMCs have produced some benefits, in particular in terms of information exchange and mutual learning and that it will take time for these effects to lead to policy changes. The OMCs have also allowed the Commission to exert influence in areas in which it had previously had no or only very weak influence. On the other hand, the Commission sees few signs that Member States have acted on their OMC commitments. The implementation problem is compounded by the fact that these OMCs almost exclusively involve administrative actors, while regional and societal actors are largely excluded. In addition, the Commission seems to feel that the numerous reporting requirements under the various OMCs consume significant administrative resources at European and, in particular, national levels and must be streamlined.

In summary, there are both positive and negative assessments of the performance of the OMC. Many questions remain open. This is particularly true for the issue of learning which is an important OMC element. There is some evidence that the OMC has contributed to "heuristic" learning in the sense that it has generated and diffused new ideas among political and administrative elites. Whether and to what extent this has had an impact on actual policy making is, however, less clear. The OMC often allows for a certain "depoliticisation" of issues which are discussed by technical experts. On the one hand, this creates a space for learning that is less distorted by the prospect of binding decision-making than is the case in the legislative process. On the other hand, the link to political decision-makers is often relatively weak. Zeitlin et al. suggest that participation by societal actors may be an important variable in this respect because these actors can put (domestic) pressure on policy makers to stand by their OMC commitments. In the absence of such pressure it may take considerable time for new ideas to actually lead to major policy change. In addition to the time lost, this also implies a risk that other developments may disrupt the process in the meantime, thereby undermining effects. With respect to other forms of learning, in particular mutual learning conceived as the identification and adoption of "good" practice and reflexive learning/learning from past mistakes, there is even less evidence of OMC effects. While, as mentioned above, the Commission sees the OMC as useful in terms of mutual learning, academic studies suggest that little mutual learning has actually taken place. Those instances of mutual learning that have been identified are examples of contextualised "lesson drawing" from experience in other Member States rather than diffusion of "best practice". In fact, it may be argued that the Commission's intention to reduce the administrative burden caused by multiple reporting requirements etc. might further reduce the opportunities for mutual learning if it extends to more than just avoiding duplication, unnecessary formalities etc. Mutual learning is likely to require considerable administrative resources, the lack of which appears to be one of the reasons for the OMC's failure to trigger more mutual learning. Reflexive learning from past mistakes as a precondition for continuous improvement has also been weak due to the Commission's focus on implementation rather than revision and a bargaining approach by Member State governments to the revision of OMC contents.

In terms of actual policy change implementation at the level of Member States tends to be weak. Given that the OMC frequently addresses politically highly sensitive concerns associated with sovereignty and subsidiarity issues, the effectiveness of sanctions is limited. First, if an OMC provides for sanctions, such as fines or public "shaming", Member States tend to be reluctant to impose sanctions on each other as they frequently share sovereignty and subsidiarity concerns and try to minimise the risk of being affected by sanctions themselves in the future. Second, even if

Institute for European Environmental Policy (IEEP) and Ecologic

sanctions are imposed, Member States may not comply because the sanctions are too weak relative to the sensitivity of the respective issues or because sanctions are seen as illegitimate by the wider public. To some extent NAPs appear to improve implementation because they create more detailed commitments. Domestic actors may refer to these commitments to put pressure on governments. Implementation seems to be somewhat better in terms of changes in governance structures and capacities than with respect to policy change. Reporting obligations have led to the creation of new capacities for data collection and analysis as well as to the development of more common indicators. In addition, the formulation of NAPs has in some cases led to improved vertical and horizontal co-ordination among Member State authorities.

With the exception of the social inclusion OMC, participation by civil society and regional actors has been a major weakness of the OMC. Improving participation could help to address several major OMC weaknesses. Mutual learning strongly depends on the presence of an extensive network of actors who can supply and use "good practice" knowledge and experience. Stronger involvement of regional actors and civil society, in particular at EU-level OMC processes, would likely induce more learning. In this respect, open and transparent institutional structures, for example with respect to the committees dealing with OMCs, are relevant. As mentioned above, participation might also help to address the implementation deficit because it would improve the conditions for domestic actors to put pressure on governments to stand by their OMC commitments. In this case, measures to improve participation at national level are crucial. Finally, the democratic legitimacy of the OMC would benefit from broader participation.

3. CHARACTERISING AND ANALYSING OMCS – APPROACH AND METHOD

The analysis of existing and potential applications of the OMC in the field of the environment must take the issues discussed in the previous sections into account, in particular the large variety of existing OMCs and the fact that the OMC has been defined in different ways. Typologies are a useful tool for coping with definitional problems and accounting for/analysing variation. The following typologies focus on differences among OMCs with respect to scope, aims and functions, basic operating mechanisms, relationship to the Community Method/EU legislation, and relevance for the Internal Market and competitiveness. These typologies offer a framework helping to characterise existing and potential applications of the OMC in the field of the environment. Given the breadth of the issues addressed in the typologies, it will not be possible to apply this framework in a fully systematic way in this study. In addition to providing an overview of different OMC characteristics, functions etc., the typologies are used in a more *ad hoc* fashion to analyse the various existing and environmental OMCs.

3.1   Institutional scope: the issue of "OMCness"

Institutional OMCness:
- **full-blown OMC conforming to OMC working definition covering main stages of policy cycle**
- **OMC-type conforming to OMC definition but covering only some stages of the policy cycle**
- **OMC element resembling full-blown OMC or OMC-type, but no full conformity with working definition**

Building on the working definition of the OMC presented above, it is possible to identify three relevant levels of "OMCness":

- **OMCs qualifying as "full–blown OMCs"** Full-blown OMCs cover the main stages of the policy cycle, ie. agenda-setting, decision-making, implementation. The EES provides an example for a full-blown OMC covering the whole policy cycle.

- **'OMC-types'** The Common Implementation Strategy (CIS) of the Water Framework Directive (WFD) exemplifies an OMC-type. While the CIS conforms to the working definition of the OMC, its main focus is on *implementing* the WFD (see Chapter 4). OMC-types are usually coupled with other, non-OMC decision-making procedures which are used at the stages of the policy cycle where OMC procedures are not applied. As in the case of the WFD, application of OMC-types at some stages may often go hand in hand with use of the Community Method at other stages.

- **'OMC elements'** constitute a third level of "OMCness": in this case, procedures and modalities do not fully correspond to the working definition of the OMC, but there must be important similarities with the OMC as defined by the working definition. Although the existence of OMC elements does not constitute an OMC, analysing them may contribute to a better understanding of OMCs because certain insights are likely to be transferable to OMCs. In addition, analysing OMC elements may help to identify areas in which the establishment of full-blown OMCs or OMC-types which build on the OMC elements could be considered. Their coverage also ensures that potential definitions of the OMC which are broader than the working definition are at least to some extent reflected in the scope of the analysis.

3.2   Substantive scope: from macro- to meso-, to micro-level co-ordination

> **OMC substantive scope (macro-, meso-, micro-level):**
> -   **Broad policy co-ordination (environmental, socio-economic)**
> -   **Sectoral focus**
> -   **Sub-sectoral focus**

If compared to EU secondary legislation, the substantive scope of most OMCs is broad. At least, this applies to the nominal OMCs mentioned in Chapter 2 which are often referred to in generic terms such as "employment policy", "pensions reform" and "information society". Whereas OMCs tend to cover whole sectors or large parts of sectors, the scope of secondary legislation tends to be limited to sub-sectoral issues. In addition, the flexibility of the OMC means that, in contrast to secondary legislation, it can easily be broadened to cover additional issues. But the OMC is also used above and below the sectoral level. The most prominent example is the Lisbon Strategy's effort at broad policy co-ordination covering key economic, social and environmental issues. In contrast, OMCs in the areas of specific taxation issues and the promotion of environmental technologies operate at the sub-sectoral level. The same can be said of the WFD CIS. In fact, given that OMC-types and elements tend to co-exist or support secondary legislation, it seems likely that they frequently operate at the sub-sectoral level.

3.3   OMC strategic background

> **What are the main strategic ambitions behind the OMC?**
> -   **Convergence – i.e. encourage convergence of national policies towards common approaches (not only towards agreed substantive targets)**
> -   **Subsidiarity – i.e. respond to subsidiarity needs and potential (eg. national legislation or spending more effective/efficient than corresponding activities at EU-level)**
> -   **Problem-solving – OMC primarily serves to identify new solutions, generate information, knowledge etc.**
> -   **"Smokescreen" OMC – OMC established to prevent CM**

Key actors, such as individual Member State governments, may support the OMC for various reasons. The aim to encourage convergence towards common approaches among national policies may be an important motivation. If this is the case, the OMC goes beyond agreement on common objectives, targets, indicators etc. to include measures and instruments. In fact, this extended focus may reflect an intention to use the OMC as a stepping stone for the adoption of EU legislation and the application of the CM. Use of the OMC may also reflect issues of subsidiarity. Actors may feel that certain issues should be dealt with at national rather than EU-level, but that some EU co-ordination of national policies is necessary. If it is an issue of "structural", rather than "intrinsic" subsidiarity, the OMC may again be intended as a stepping stone for the eventual adoption of EU legislation. Uncertainty of how to address problems and the hope that co-operation and exchange may lead to the identification of new solutions may be the primary motive of actors supporting a given OMC. Finally, support by key actors for the OMC may reflect a strategic move to block a transfer of competencies to the EU-level. Put differently, if some actors push for the adoption of EU legislation, other actors who prefer competencies to remain at the national level may propose the OMC as an alternative to the adoption of legally binding EU rules.

3.4 OMC output

> **The OMC is primarily geared towards**
> - **Consensus – by means of setting common objectives and targets**
> - **Compliance – by means of performance monitoring**
> - **Improvement – by means of continuous learning**

Different OMCs produce different main outputs or combinations thereof. Creating a consensus on common objectives, targets, indicators etc. may be the main output of a given OMC. For example, this seems to have been the case with the Lisbon Strategy (at least until 2005). Compliance with targets may be another main OMC output. Although budget deficits rising above the 3% limit have meant that economic policy co-ordination OMC has recently not been able to secure compliance with key EU targets in the area of economic policy-making, surveillance of compliance remains the OMC's main output. Continuous improvement as a result of learning is another potential main OMC output. In this case, the agreement, updating and achievement of national rather than uniform European objectives and targets is crucial. The EES with its strong reliance on National Action Plans provides an example.

3.5 Operating mechanism

> **The effectiveness of the OMC in producing outputs primarily derives from**
> - **Relatively strong sanctions/incentives**
> - **A loose "heuristic" learning network which primarily serves to generate knowledge and discuss ideas and experiences**
> - **A tight "technical" learning community geared towards identification and diffusion of best practices**
> - **Enhancing legitimacy: the OMC as "lever"**

At least three kinds of mechanisms may operate in OMC, partly reflecting the differing outputs among OMCs. For example, the economic co-operation OMC relies on relatively strong sanctions/incentives, in some cases including potentially high fines (Stability Pact). Other OMCs offer opportunities for the identification and diffusion of best practices in peer groups and through peer pressure. The existence of expert committees, such as meetings of Member States' Water Directors in respect of the CIS, and a sufficiently high technical content of policy-making are important preconditions for the effectiveness of this mechanism. Looser learning networks enable exchange of experience, discussion of ideas and lesson drawing (rather than identification of best practice). The Employment Committee (EMCO) to some extent exemplifies this mechanism in the framework of the ESS. A mix between more technical institutional and organisational arguments on the one side, and political input from, among others, the Social Partners, on the other characterise EMCO's deliberations. Finally, the OMC may also produce effects as a result of the political "leverage" which it may provide to certain actors. For example, Member State governments have referred to the EES to provide additional legitimacy for their policies. Similarly, societal actors have used the EES to criticise governments.

3.6   Subsidiarity

> **Influence/power may be distributed across levels of governance in various ways:**
> - **Bottom-up: influence/power resides primarily below the EU-level**
> - **Top-down: the EU level is dominant**
> - **Mixed: overall, there is a balance between the EU-level and lower levels**

Although the OMC frequently operates in the absence of strong EU legislative competencies, the EU-level may have a dominant influence on decision-making. Arguably, this was the case with the economic co-operation OMC in the first years after the Stability Pact had been agreed. More recently, the reform of the Stability Pact which was driven forward by individual Member States, in particular France and Germany, was indicative of a power shift away from the EU towards the national level. Other OMCs, for example the EES with its strong reliance on National Action Plans, but EU-level guidelines and evaluation, appear to be characterised by a more balanced distribution of power among the levels.

3.7   Relation to Community Method

> **The OMC may serve different functions in relation to the CM:**
> - **Bridge to eventual CM, where CM not yet possible**
> - **Gap filler – no CM possible**
> - **Synergy/complement to CM and CM not desirable**
> - **Competitor and potential substitute or alternative to CM**

In some cases the OMC could pave the way for the establishment of new EU legislative competencies. For example, this could happen if the OMC is used in a situation of wide diversity in policy approaches, where it may help to align national structures sufficiently to allow for application of the CM. Such an effect may or may not be intended. Alternatively, the OMC's function may be described as that of a gap-filler if it is applied in a situation where the CM cannot be used in the short or medium term. This may be the case if EU legislative competencies in a given area are weak (or unanimity is required to adopt decisions) and the possibility of establishing more powerful competencies seems very remote, for example in research and innovation policy. In a situation where the application of the CM is undesirable, for example, because of subsidiarity or sovereignty considerations, the OMC may also complement the CM and create synergies between the two. For example, this may be the case with OMCs helping to implement broadly formulated Community legislation such as the WFD. The co-existence of the European Central Bank's European competencies and the economic co-operation OMC also produces synergies.

Finally, OMC can compete with, and become a substitute for, Community legislation. This can happen in several ways. For example, if certain issues are covered by both the CM and the OMC, actors may for various reasons increasingly use the OMC rather than the CM as a means to escape previous commitments. It is also possible that actors use the OMC rather than the CM to involve the EU in areas in which it has previously not been active. In this case, the OMC would be a substitute for the CM if use of the latter would be justified in terms of subsidiarity and would not seriously undermine sovereignty.

Institute for European Environmental Policy (IEEP) and Ecologic

3.8   *Implications for the Internal Market and competitiveness*

- **Internal Market relevance: OMC has significant direct implications for trade among the Member States**
- **Competitiveness relevance: OMC has significant direct implications for production costs**
- **No significant direct relevance for trade and production costs**

The Internal Market is a core area of EU legislative competence. If an OMC has significant negative implications for the Internal Market, this may result in conflicts with Internal Market legislation, for example if the OMC leads to different standards being applied in different Member States or as a result of implementation deficits due to the "voluntary" character of the OMC. However, it is also possible that the OMC supports the Internal Market if it leads to the gradual adjustment of contextual conditions with indirect effects on trade. Competitiveness may also be relevant for the functioning of the OMC.

On the one hand, a given OMC may have uneven effects on competitiveness across Member States. Given the high political saliency of competitiveness, this would probably undermine the OMC as disadvantaged Member States might not abide by the OMC's "voluntary" commitments. On the other hand, the OMC may work better if it aims to improve competitiveness vis-à-vis third parties, as is the case with the Lisbon Strategy. In this case, the OMC may act as a gap-filler, which does not force Member States to transfer control over strategic decisions affecting competitiveness to the EU-level but nevertheless enables some co-ordination and mutual learning. Finally, an OMC may have neither relevant trade nor competitiveness implications. While this would remove problems arising from conflicts with the Internal Market or uneven effects on competitiveness, it would also deprive the OMC of the political support that is frequently associated with measures to improve the Internal Market and competitiveness.

4. ENVIRONMENTAL OMCS – OVERVIEW AND CASE STUDIES

There have been few, indeed arguably no, formally titled OMCs in the environmental sector – even ETAP is not formally labelled as OMC by many. However, there are a number of areas where OMC type activities have been launched and a number of areas where OMC processes are seriously considered as options. Indeed in December 2003 the Environment Council raised the issue formally. OMC type applications in the environment include:

- ETAP - Environmental Technologies Action Plan
- Urban Thematic Strategy
- ENAP/IPPC - Exploring New Approaches in regulating industrial installations
- CIS – Common Implementation Strategy of the Water Framework Directive (WFD)
- "Sevilla Process"/IPPC
- ECCP – European Climate Change Programme
- IMPEL and AC Impel
- Sustainable mobility
- Early voluntary cross-compliance (Common Agricultural Policy).

The following section provides a more detailed overview of the various OMC type applications. To explore the issue further, we then turn to the in-depth analysis of four OMC type applications - ETAP, ENAP, WFD, and IMPEL – as agreed with the steering group.

4.1 Overview of Practice

Table 4.1 gives an overview of examples of OMC type applications in the environmental field. The table contains a short description of each measure and of characteristics suggesting that the measure is an OMC type application or which are otherwise relevant. The Table illustrates the wide range of environmental OMC type application, but it cannot be excluded that additional environmental OMC type applications exist. It is useful also to classify the range of OMC type applications according to the classifications noted in Chapter 3 (see Table 4.2 below) .

Table 4.1 OMC type examples and their OMC characteristics

OMC Type Example	OMC Characteristics
Environmental dimension of the Lisbon Process Based on the EU Sustainable Development Strategy, the 2002 Gothenburg European Council added an environmental dimension to the Lisbon Process. This is an OMC at the highest political level – an effort in broad socio-economic policy co-ordination. In 2005 a call to relaunch Lisbon[25].	- "High –level" OMC - Illustrates co-existence of OMC with CM as measures to implement the environmental dimension often require the adoption of EU legislation - Inspires/sets agenda for legislation - cyclical structure - Uses targets and indicators - Has been integrated as a single guideline into the new Lisbon Strategy integrated guidelines

[25] See COM (2005) 24 Communication to the Sprint European Council: Working together for growth and jobs. A new start for the Lisbon Strategy.

Institute for European Environmental Policy (IEEP) and Ecologic

ETAP - Environmental Technologies Action Plan (ETAP) A major EU wide plan to encourage the development and uptake of clean technologies, with particular focus on PV, hydrogen and several others through 'technology platforms' .	- Inspired by the Lisbon Process - Commission initiated, with Member states commitment Eg UK lead on public procurement - Regular reporting and meetings - Mirror groups for specific technologies at national levels - Link to green foresight work at national level - Broad objectives will be complemented by concrete targets in due course
ENAP/IPPC - Exploring New Approaches in regulating industrial installations A three year initiative led by VROM to explore - together with Member States from across Europe, the Commission and other stakeholders – ways forward on emissions trading, the use of management systems and industrial installation permitting.	- Member State lead (VROM) - The UK and the Czech Republic were key supporting Member States - There was growing Commission involvement, including active input - PREP group and regular meetings - Comparisons between Member State practices and experiences were made, amounting to quasi benchmarking - Different instruments were explored that could act as bridge, complement or substitute for legislation
CIS - Common Implementation Strategy of the Water Framework Directive (WFD) The WFD covers a very broad range of aspects but provides only broad provisions on implementation. Member States therefore need to develop implementation strategies. Led by Member States' Water Directors, co-ordination of strategy development is taking place.	- The CIS illustrates an OMC type that complements EU legislation/the CM - It provides an example for an implementation stage OMC type - Although the Council is not involved, the CIS has a clearly differentiated structure with more political (meeting of Water Directors) and more technical levels (working groups) - The strategy documents can in some ways be regarded as European guidelines setting objectives etc. - The strategy documents are regularly reviewed and there is continuous improvement and testing of the guidance notes. This has enables significant technical and reflexive learning - There is some reporting, monitoring and use of indicators - There is significant participation by stakeholders

Institute for European Environmental Policy (IEEP) and Ecologic

IMPEL and AC IMPEL – Implementation of Environmental Law network IMPEL consists of the network of government regulatory authorities of the Member States and Candidate Countries seeking to improve the way that environmental law is practically implemented. Amongst other issues it: • Considers what EU law means in practical implementation. • How competent authorities can work better to deliver implementation. • Peer-review analyses of individual Member State authorities.	- Whereas IMPEL was primarily a Member State initiative, AC-Impel was a Commission initiative - IMPEL is led by Member States, although the Commission runs the secretariat - A major focus is to assist in compliance with EU law without formal EU instruments - IMPEL focuses on the EU as a whole and on individual Member States - IMPEL uses a wide range of different working methods • Its work is funded by the Commission and Member States to differing degrees
Sevilla Process/IPPC Directive The Sevilla Process focuses on the development of best available technique (BAT) reference documents (BREFs) for use within the IPPC Directive. The process is one of regular meetings with specific groups of Member State experts deciding together on the appropriate range of techniques that can be regarded as BAT.	• The Commission co-ordinates the Sevilla Process • The process illustrates an OMC-type that complements EU legislation/the CM • The process provides an example for an implementation stage OMC type • Being a type of negotiation for standards, the Sevilla Process serves to co-ordinate Member State inputs • Deliberations of the expert groups are similar to peer review • The process is not cyclical • Reporting, monitoring and indicators are not used • There is stakeholder participation, but industry is dominant • The Sevilla Process is very technical and not organised in a transparent way

Institute for European Environmental Policy (IEEP) and Ecologic

ECCP – European Climate Change Programme ECCP is a major Commission (DG ENV) instigated programme to develop understanding of what measures to combat climate change are possible to implement, what reductions they entail, and how they can be implemented. The ECCP is designed to obtain buy-in into the process (eg through major involvement in working groups by Member States and other stakeholders) and encourage action.	• The ECCP is led by the Committee of climate change national experts • Driven by the Commission, the emissions trading (ET) group was the main ECCP effort. Particularly active Member States, eg the UK, remained overshadowed by the Commission's leadership • Illustrating the bridge function of some OMC type applications, the work of the ET and F-gases working groups led almost in its entirety towards EU legislation. However, this was not the case for numerous other activities • In other groups discussion was less specific on the content of legislation and at most informed legislation that was already being planned, eg on CHP, renewable energy. • The ECCP process as a whole involved a broad range of stakeholders; working groups included both MS experts and technical /stakeholder experts.
Sustainable mobility Sustainable mobility is a major challenge and included in the Gothenburg/SDS objectives (decoupling and modal shift). It is very hard to meet and a range of countries/cities are making progress and some coordinating activities have been launched at EU level as well as MS lead on workshops in this area. There are a series of OMC type activities and also major potential for further activities given the scale of the remaining challenge.	Effectively several OMC type activities initiated and orchestrated by different stakeholders. Key practice: • Joint Expert Group work on strategic best practice in transport policy integration is a unique case study – included two day conference in 2002[26]; • DC Taxud's efforts to stimulate some coordination on vehicle taxation to support CO2 reductions; • MS's weak record on fuel tax harmonization – partly through CM; • Various and very numerous cooperation frameworks and other best practice networks and benchmarking networks (eg BEST - Benchmarking European Sustainable Transport) • Initiatives to pursue Intermodality; • Vehicle technology R&D initiatives; • Deliberations on Sustainable Urban Transport Plans in support of the urban TS; • Development of indicators

---

[26] two-day conference held in Brussels in October 2002 on "Good Practice in Integration of Environment into Transport Policy". See http://europa.eu.int/comm/environment/gpc/pdf/transp_policy_en.pdf which is a DGENV sourcebook noting the key issues from the conference, and is titled: Integration of Environment into Transport Policy - from strategies to good practice

Institute for European Environmental Policy (IEEP) and Ecologic

Spatial planning Co-operation between Member States on issues of spatial planning (including urban and coastal zones management|) which led to the publication of the European Spatial Development Perspective (ESDP)	• Annual informal Council of Spatial Planning Ministers • Committee on Spatial Development • Framework of co-operation provided by European Spatial Development Perspective t • Co-operation on research through European Spatial Planning Observation Network
Urban thematic strategy *as implemented by OMC* The final thematic strategy will only be presented in spring 2006, and while expected to build in OMC type elements, nothing concrete can be said at this stage.	• Council agreed that OMC should be pursued to take forward the urban strategy as per comment on the left.
Flood protection Although flood protection is not covered by the Water Framework Directive (WFD) there are many linkages. Flood protection is therefore discussed within the framework of the Common Implementation Strategy (CIS) of the WFD	• See entries under WFD-CIS. However, flood protection has only recently emerged as a concern under the CIS. In addition, it is a quite specific problem. Therefore only some of the more general CIS characteristics apply
Integrated Product Policy (IPP) Integrated Product Policy is intended to reduce the environmental impact of products and services over their entire life cycle, preventing the transfer between life-cycle phases of environmental damage. In addition, IPP promotes stakeholder involvement, a market-driven approach and an optimal mix of instruments.	• Commission meeting regularly with MS to take forward • National strategies on IPP being developed in the framework of Commission communication and Environment Council conclusions. • Working Group on Reporting Formats developing a template for reporting by Member States to the Commission • New working group on Green Public Procurement proposed to exchange experience, benchmark, and develop possible EU measures • Commission meeting regularly with MS to take forward • Number of pilot projects (by industry) on how IPP can work in practice • Doesn't involve legislation at present but may lead to in future (will also depend on the steer from the TS)

| **EIA – Environmental Impact Assessment.**

The EIA Directive leaves Member States with a wide leeway for implementation. Regular review of the Directive seeks to improve its implementation through the identification of best practices and amendments of the Directive itself | • The Commission leads the review of the EIA Directive
• The regular review of the EIA Directive is an example for an OMC type mechanism that complements EU legislation and acts as a bridge to (the revision of) EU legislation
• The review led to reflexive and mutual learning as a result of a critical evaluation of the Directive itself and the identification of good practice
• Member States are required to provide information on implementation to the Commission, which, in turn, delivers regular reports on implementation. These have triggered revisions of the EIA Directive and improvement of national implementation practices
• The Commission has prepared guidance notes for implementation of the EIA Directive on the basis of the information derived from the reviews of the Directive |

Institute for European Environmental Policy (IEEP) and Ecologic

Table 4.2: OMC, OMC type applications and OMC elements - Categorised[27]

	Scope: institutional	**Scope: substantive**	**Scope/motivation : relation to CM**	**Motivation: strategic ambitions**	**Motivation: Output**	**Motivation: relation to market + competitiveness**	**Operation: mechanisms**	**Operation: level/subsidiarity**
ETAP	OMC type (almost full)	Sub-sectoral	Gap filler	Problem solving	Consensus	Trade and costs	Technical	Bottom-up
ENAP	OMC element	Sub-sectoral	Bridge	Problem solving	Improvement	Costs	Heuristic	Bottom-up (becoming mixed)
WFD	OMC type	Sub-sectoral	Complement	Convergence	Compliance	Little relevance	Technical	Bottom-up + top-down
IMPEL	OMC element	Sectoral	Complement	Convergence	Compliance	Depends	Technical	Bottom-up (becoming mixed)
Lisbon	OMC full	macro	Complement	Problem solving	Consensus	Trade and costs	Heuristic	Top-down
Sevilla	OMC element	Sub-sectoral	Complement	Convergence	Consensus	Costs	Technical	Top-down?
ECCP		Sub-sectoral	Bridge	Problem solving	Improvement	Costs	Technical	Mixed
Mobility		sectoral	Gap filler	Problem solving (poss. smokescreen)	Improvement	Trade and costs	Heuristic and technical	Mixed
Spatial planning		sectoral	Gap filler	Subsidiarity	Consensus	Costs	Heuristic	Bottom-up
Urban thematic str.		sectoral	Gap filler	Subsidiarity	Consensus	Little relevance	Heuristic	Mixed
Flooding	OMC element	Sub-sectoral	Complement	Convergence	Compliance or improvement	Little relevance	Technical	Top-down
IPP		Sub-sectoral	Bridge	Problem solving	Consensus or Improvement	Trade and costs	Technical	Top-down or mixed
EIA		Sub-sectoral	Bridge	Problem solving	Consensus	Cost	Technical	Top-down

---

[27] This table builds on the constructive and helpful suggestions by Prof Andrea Lenschow of the Steering Group

Institute for European Environmental Policy (IEEP) and Ecologic

4.2 Case Study Selection and Summary

The following boxes present a summary of the four core case studies - ENAP, ETAP, WFD-CIS and IMPEL – that were agreed with the steering group as appropriate for more in-depth analysis. An assessment of their successes and failures and the associated performance factors is given in chapter 5.

Case 1 Exploring New Approaches (ENAP) in Regulating Industrial Installations

The project 'Exploring New Approaches in regulating industrial installations' (ENAP) was a three-year project (2001 to 2004), initiated by the Netherlands, though growing from earlier discussions between the Commission and VROM, and benefiting from positive encouragement by the UK. It differs from the other OMC case studies, in that it was a single Member State initiative, with a specific Member State agenda (though that reflected needs wider than just those of the Netherlands), even though there was up some front sharing of and subsequent broadening of the ownership of the process. The project's objective was to provide a platform for a European dialogue on a number of possible alternative regulatory approaches that could potentially be used to achieve a better and more cost-effective environmental performance of industrial installations, including exploring issues relating to the implementation of Community legislation such as IPPC. It therefore provided a valuable opportunity to promote the objectives of the European Community's 6EAP as well as respond to national efforts and interests at exploring better regulation possibilities.

The ENAP project involved governments and stakeholders from across Europe, and in preparing and executing the project, the ENAP Project Team of the Netherlands (VROM) was supported by a preparatory group (PREP Group) consisting of experts from several Member States and (then) Candidate Member States and from the European Commission services.

During the course of the ENAP project, VROM initiatives were complemented by active participation from the Environment Agency of England and Wales and the Czech Environmental Institute for the organisation of the EMS (Environmental Management Systems) and IPPC permitting workshops. The ENAP project facilitated a series of four international workshops and an ENAP conference:

- The ENAP Workshop '*Exploring the scope of permits under the IPPC Directive and alternative approaches for regulating industrial activities - opportunities and constraints*', was held on 26-27 April 2004, and focused on exploring the scope of permits under the IPPC Directive and alternative approaches for regulating industrial activities;

- The workshop '*Emissions Trading in NEC Substances (in particular NOx and SO$_2$)*' was held in The Hague on 21-22 November 2002;

- The workshop '*Connecting (Elements) of Company Environmental Management Systems with Permitting, Inspection and Enforcement*' was held in London on 12-13 June 2003.

- The ENAP Expert Meeting for New and Candidate Member States, held on 21 September 2004 in Szentendre, Hungary, focused on the particular issues of new approaches to industrial regulation in the context of the experience of the new EU Member States and the Candidate Countries.

- The final high level ENAP conference took place on 18 October 2004 in the Hague.

These were quite connected and addressed different aspects of regulation of industrial installations.

The ENAP approach can be seen as an OMC type process – eg a country initiator and coordinator of problem identification, MS practice comparison (quasi benchmarking) and coordinator of learning (problem identification and identification of possible solutions) and on trying to get buy-in to solutions.

Case 2: Implementation of Environmental Legislation (IMPEL) Network

The European Union Network for the Implementation of Environment Law (IMPEL) consists of the networking of government regulatory authorities of the Member States and Candidate Countries seeking to improve the way that environmental law is practically implemented. Amongst other issues it:

- Considers what EU law means in practical implementation.
- How competent authorities can work better to deliver implementation.
- Peer-review analyses of individual Member State authorities.

These represent the type of issues that could be taken forward in an OMC-type framework. While some OMC activities could be considered to be Member State governments working together, it is important to note that IMPEL members can be government agencies, although some are ministerial.

The network has operated since 1992 and undertaken significant work in a variety of areas. It has been critical of outputs from the Community Method and has fed into the CM. There are also interesting relationships with the European Commission. For this reason IMPEL is considered to be a good case example for this study.

IMPEL derived from a number of activities that were taking place at international and Member State level during the late 1980s and early 1990s. Duncan[28] considers that the network can trace its origin to a UNEP meeting in Paris in 1989. This meeting was held to address the nature of integrated assessments to pollution regulation and, eventually, resulted in the Community adopting the IPPC Directive in 1996. However, participants at the meeting recognised that developments in pollution control would result in major challenges to practical implementation. Member State authorities would, therefore, benefit from sharing experiences in an 'informal' way. Thus from these same discussions we can identify two important strands for improving pollution regulation – the IPPC Directive developed using the Community Method and a network of enforcement authorities which was OMC-like. These now form the critical foundation of industrial regulation in the EU today.

The potential benefits of Member States working together was further demonstrated by a 1991 survey undertaken by VROM on organisations in each Member State involved in the enforcement of environmental legislation. This demonstrated different procedures for standard setting, permitting, compliance assessment and enforcement. In particular inconsistencies were found between[29]: Administrative procedures; Permits required; Technical standards applied ; Charges made for permits; Public access to information.

The development of IMPEL to address the issues that it has addressed has not been driven by a question as to whether an OMC-type activity is the appropriate solution to these issues. There were, however, many issues to be addressed, such as how to take forward improvements in regulation and how to address some of the broad concepts in the IPPC Directive. However, co-operative networking to develop discussion documents on good practice and peer review exercises have always been viewed as most appropriate, rather than recourse to the Community Method. It can be considered, therefore, that the need to address the detailed interpretation of the broader issues established in EU law and to develop common approaches are two of the major motivations for the establishment and elaboration of the role of IMPEL.

IMPEL has produced a wide range of products covering many issues, including studies concerning the implementation of EU law, peer-reviews, issues outside of EU competence and other issues of practical concern. It also led to the creation of the Minimum Criteria for Inspection, which is part of the Community Guidance, hence underlining the contribution of OMC type activities to CM. Note that at one stage there was concern by some parties that an initiative started as a mutual learning exercise was suddenly going to lead to EU law. Some argue that it is useful to be clear what the 'rules of the game' are – ie is it a learning exercise of will it lead further. Confusion as to what the intentions are can lead to a lack of buy-in.

---

[28] Duncan, A.G. The History of IMPEL. From: IMPEL website.
[29] Slater, D.\& James, A.W. Establishing international cooperation and regional networks. Paper given at the Fourth International Conference on Environmental Compliance and Enforcement.

Institute for European Environmental Policy (IEEP) and Ecologic

Case 3: Water Framework Directive - Common Implementation Strategy (WFD-CIS)

The Water Framework Directive (WFD) came into force in 2000. It aims to improve water quality in the EU and to achieve "good status" of water quality by 2015.[30] The Directive reflects a broad, integrative approach in at least two ways: First, the WFD covers a wide range of water resources, including rivers, lakes, ground water, and coastal waters. Second, it is concerned with environmental aspects as well as economic considerations linked to the concept of sustainable use of water resources. Given the WFD's comprehensiveness and its relevance in terms of not only environmental regulation but also politically highly sensitive economic regulation of resource use, the substantive contents of the Directive reflect the lengthy and very contentious process that led to its adoption. In particular, the WFD's "framework" character means that many critical issues are left unresolved and must be addressed in the implementation phase either by means of the adoption of "daughter" Directives, by "comitology" (executive decision) or - given the WFD's considerable room for flexibility - by Member States individually or collectively. The concept of "good status" of water quality, which is central to the WFD, is a prominent example of the need, and the ample room for interpretation and specification in the implementation phase as "good status" is only very loosely defined in the Directive.

In practice, the implementation of the WFD has so far been largely facilitated by the Common Implementation Strategy (CIS) of the WFD. The CIS is not mentioned in the WFD. It was established in 2001 as a joint initiative by Member States' Water Directors (usually heading the lead division in the ministry of the environment for the implementation of the WFD) and the European Commission. The CIS was created partly to avoid widely diverging interpretations of the WFD and implementation failures as a result of a lack of co-ordination at an early stage. It is based on a differentiated, three level institutional structure. The biannual meeting of the Water Directors is the highest decision-making level and provides overall strategic guidance to the process. The European Commission chairs the Strategic Co-ordination Group (SCG) which co-ordinates and discusses the activities at the working level and provides input to the meeting of the Water Directors. All Member States are represented in the SCG. Finally, the working groups consult on and draft the legally non-binding technical guidance documents which are the main output of the CIS. The working groups typically comprise around 30-40 expert members. Most working group members are national officials from relevant ministries and agencies, but there is also some participation by regional bodies as well as stakeholders, in particular representing economic interests and environmental NGOs. The individual working groups are supported by a number of ancillary ad-hoc councils and committees, including steering teams (ST), drafting teams (DT) as well as expert networks and workshops. These ad-hoc structures reflect the open and self-organising character of the CIS OMC.

In addition to its original mandate, the CIS operates on the basis of strategic guidance documents which are reviewed and revised on a biannual basis by the meeting of the Water Directors. The review is prepared by the European Commission with involvement of the working groups and other experts in the design of future strategies. Based on the strategic guidance documents, the CIS has so far completed two phases: the first phase resulted in the adoption of legally non-binding guidance documents on a number of issues related to WFD implementation in 2002. In the second phase to 2004 the working groups oversaw testing of the guidance notes in selected pilot river basins. There was also a major reorganisation of the CIS to improve co-ordination among the different activities and to address cross-cutting issues more effectively.

In terms of scope and intensity, the CIS is best classified as a sub-sector OMC-type. The classification

---

[30] For a similar account of the OMC as a "new governance" instrument, see Scott, Joanne and Jane Holder, Law and 'New' Environmental Governance in the European Union Forthcoming in G. de Búrca and J. Scott (eds) New Governance and Constitutionalism in Europe and the US (Hart Publishing, 2005).

as sub-sector is owed to the fact that the CIS is concerned with a particular aspect of environmental policy, i.e. water quality and management, rather than environmental protection in more general terms. The CIS is an OMC-type because its main focus is on a specific phase of the policy cycle, in this case the implementation stage. Although the CIS is not officially labelled as an OMC and has a more limited scope and intensity than the most prominent OMCs in the employment and economic fields, the CIS's institutional structure and working methods are very similar to those of the most prominent OMCs. In fact, it might be argued that the CIS is more similar to the most prominent OMCs than many of the less developed nominal OMCs, for example in research and innovation policy, healthcare, and co-operation in the youth field. This justifies classification as an OMC-type.

As is characteristic for the OMC, the CIS has a "political" level - the meeting of Water Directors - and a "technical" level that is organised as a comprehensive network of experts and stakeholders, i.e. the working groups. In terms of outputs, the political level produces European guidelines - in the case of the CIS the biannual strategic documents - and the technical level utilises the network to enable peer review and to collect and analyse information that leads to the emergence of common understandings and enables mutual learning. The CIS is less concerned with reporting and monitoring than many other OMCs. However, this can largely be interpreted as avoidance of duplication of work because of the reporting requirements under the WFD which obliges Member State authorities to regularly inform the European Commission of the state of implementation of the WFD. Although the European Commission is not obliged to use the benchmarks developed in the framework of the CIS to facilitate reporting, it is in practice both convenient and politically appropriate for the European Commission to do so. Finally, the CIS enables broad participation by stakeholders, including various official bodies, regional actors, economic interest groups and environmental NGOs.

Case 4: Environmental Technology Action Plan (ETAP)

On 28 January 2004, the Commission adopted an Environmental Technologies Action Plan[31] (ETAP) with the aim of harnessing the full potential of environmental technologies to reduce the pressures on natural resources, improve the quality of life of European citizens and stimulate economic growth. In the plan it was emphasised that ETAP is a contribution to the EU Sustainable Development Strategy (SDS) and to the Lisbon Strategy. ETAP itself is a series of separate, though interlinked, initiatives, some progressing faster than others and some more structured than others; and most actions areas quite open in the sense that not yet clear what the outcomes or outcome types can or will be. It should be seen as a process that evolves and hopes for different actions vary widely. A key action under ETAP concerns green public procurement (GPP), which is given special emphasis in this case study. This is the one area where there is palpable potential for developments and sufficient buy in by stakeholders to give hope that some results will be forthcoming.

The objectives of the ETAP are to remove the barriers for environmental technologies such that they can achieve their full potential, ensure that the EU takes a leading role in developing and applying environmental technologies and mobilise all stakeholders in supporting these objectives. It focuses on three pillars:

- Getting from research to markets;
- Creating the right market conditions; and
- Acting globally, ensuring that the international dimension is suitably incorporated.

More precisely, the Environmental Technologies Action Plan contains 28 actions of which 11 were

---

[31] Communication from the Commission to the Council and the European Parliament *Stimulating Technologies for Sustainable Development: An Environmental Technologies Action Plan for the European Union* - COM(2004)38, 20.01.2004

Institute for European Environmental Policy (IEEP) and Ecologic

chosen as priority actions (PAs) for the Commission, national and regional governments, industry and other stakeholders to improve the development and uptake of environmental technologies. The PAs are to:

Getting from Research to Markets
- Increase and better coordinate research (PA1),
- Launch three technology platforms bringing together researchers, industry, financial institutions, decision-makers and other relevant stakeholders (PA2) (see Box 3.2),
- Establish European networks of testing and standardising (PA3),

Improving Market Conditions
- Develop and agree performance targets for key products, processes and services (PA4),
- Mobilise financial instruments to share investment risks (PA5),
- Review state aid guidelines (PA6),
- Review environmentally-harmful subsidies (PA7),
- Encourage procurement of environmental technologies (PA8),
- Raise business and consumer awareness (PA9),
- Provide targeted training (PA10), and

Acting Globally: Promote responsible investments in and use of environmental technologies in developing and economies in transition countries (PA11) – eg through trade agreements; development of cooperation funds.

Open Method of Co-ordination within ETAP: As well as taking action at European level, many of the actions in this plan need to be developed and undertaken by Member States or by other authorities which are even closer to the citizen. Considerable experience of these actions already exists in many Member States and hence there is scope for co-operation and sharing of information on best practice. Examples of where this could be particularly valuable include:
- use of economic instruments at national and sub-national level;
- consumer awareness-raising measures;
- training of key operators, such as entrepreneurs, maintenance workers and
- public purchasers; and
- export promotion activities.

Given the importance of this Action Plan in the context of the Lisbon Process, the Commission considers the "Open Method of Co-ordination" to be the most appropriate way of moving forward. This method for implementing the Lisbon Strategy has been used in several different areas, including in social, employment and research policy, and bearing in mind the need to avoid unnecessary bureaucracy, it is suitable for spreading best practice and helping Member States to develop their own policies and actions promoting environmental technologies.

Areas where the Open Method of Co-ordination could assist in promoting environmental technologies
(a) exchanging information on best practice - Identifying and exchanging information on best practice will raise stakeholder awareness at national, regional and local level.
(b) It will also highlight particularly effective combinations of measures; where appropriate, establishing indicators to compare best practice - Indicators will help to monitor progress towards the overall goal and to enable benchmarking and peer review; and
(c) where appropriate, establishing guidelines and timetables for the action programme for all the EU - This will allow a common view to be formed of how to work together towards the overall objective.

Institute for European Environmental Policy (IEEP) and Ecologic

5.   OMCs - PERFORMANCE AND PERFORMANCE FACTORS

5.1 Introduction

For the analysis of OMCs (and OMC type applications or processes) and its performance, we need to understand (a) what can be seen as its performance – its success or failure, and (b) which factors influence performance - success and failure. The aim of the following sections is to help clarify what is success and what are (or have proven to be) factors for success.

A number of terms are used throughout to facilitate the analysis and discussion. Box 5.1 below summarises some of the definitions used.

Box 5.1 Definitions used in the analysis – learning

There are different types of learning, and it is valuable to distinguish these with some terms used in the literature, that have generally lesser everyday usage. It is a bit 'jargony' but we believe helpful to distinguish the different learning types. As OMC type processes offer benefits primarily in the learning domain, it is worth trying to be precise.

Heuristic learning: This is where there is creative development/identification of new solutions.

Mutual learning: This is where one party learns from the practice of another. The practice is already existing and hence less 'creative' than heuristic learning.

Mutual learning therefore is similar to dissemination or uptake and heuristic learning is more about actual innovation.

Reflexive learning – learning from own past experience and hence distinguishes itself from mutual learning.

Thick learning is where there is a significant change, eg a paradigm shift, ie learning that results in a significant system change (ie the focus of transition management).

Thin learning is where there is learning that takes place but there is no fundamental system change.

There are obviously interactions between all of the above. In addition, some also make a further distinction - with bottom-up learning where actors themselves compare and evaluate practices, and top-down learning, where there is a proactive encouragement by a central authority (eg and instrumentalised through guidelines).

5.2 Assessing performance and contributing factors

There are many types of success and failure and different ways of evaluating these. In this study we use two complementary approaches. First, we use a pragmatic approach that is not based on any particular definition of success or failure or categories of factors of success and failure. Here the evaluation is based on the team's own knowledge and judgements, combined with assessments made by others gathered through a number of interviews and assessments in existing documentation / literature. In the subsequent evaluation we use a more systematic approach, where we categorise types of success and success factors, and look to see if any common lessons can be drawn from the case studies.

Our analysis is based primarily on the four case examples of environmental OMC-types[32] - ENAP, ETAP, IMPEL and WFD-CIS - that are highly diverse. It is complemented by our knowledge/assessment of benefits from non-environmental OMCs (see chapter 3) and understanding of developments in other OMC-type processes in the environmental field less deeply studied (eg the environmental dimension of the Lisbon Strategy). Clearly the number of core case studies is small. The diversity of the 4 cases and the fact that there are but four makes it difficult to draw general conclusions as to success and failure and the factors which are responsible for success and failure for OMCs as a whole. In addition, in so far as general hypotheses are in fact possible, an exclusive focus on these (relatively few) conclusions would come at the expense of accounting for those instances of success and failure, including the relevant causal factors, which are often highly relevant, but case specific. Relying on case specific assessments on the one hand, and a more systematic assessment framework on the other, allows us to accommodate both important case specific and more general factors.

As regards the 'systematic approach' - there are many different ways of conceptualising the success or failure of a policy/measure. For example, with respect to environmental OMCs, the following aspects may be relevant:

- Focus on ultimate policy impacts: what are the environmental impacts of the OMC and has the environmental challenge been addressed?
- Focus on intentions of policy-makers: has the OMC been successful in meeting its objectives, including unstated objectives?
- Focus on legitimacy: has the OMC successfully incorporated key legitimacy requirements (transparency, equity, democratic procedures, and public acceptance of EU policies and measures)?
- Focus on acceptance: Do relevant actors, including stakeholders and the general public[33], accept the OMC instrument?

The importance attributed to the various types of success and failure is actor specific. For example, for an elected politician acceptance by powerful stakeholders and the general public may be a priority, whereas an environment agency, such as the EEA, might consider the ultimate impact on the environment to be the most important criterion of success. For an empirical study such as this one, the following hierarchy of types of success seems useful:

1. Is there a positive impact on the environment?
2. Was the stated or unstated objective of the OMC achieved? (This includes whether the OMC led to the desired choice of instrument or policies)
3. Were the objectives of the main stakeholders (group interests) achieved? (There can be more than one answer to this, as different stakeholders with potentially conflicting interests may be involved).

---

[32] To avoid burdensome prose, some subsequent reference to OMC type applications or processes is noted as 'OMC' in shorthand. At all times readers are advised to recall that when talking of OMC applications in the environmental field, these should be seen as OMC type applications or processes.

[33] Note that in many countries there is an increasing public hostility to measures that are taken in Brussels while by their nature they should, arguably, be taken at the EU level. A due process is not always enough and in some areas the argument stands that an OMC as Member State lead and coordinated can be better. Whether all instances of resistance to Brussels initiatives are in themselves fair or legitimate is another question. Resistance may partly reflect the years of 'blaming Brussels' for failures and national leaders taking claim for the successes. There are arguments that more national initiatives are needed to regain a sense of ownership of the policies.

4. Were the objectives of crucial individuals (personal interests) involved achieved?

Our ultimate success criterion is a positive impact on the environment as this seems to be the least controversial and most objective type of success. However, for the environmental policy-maker, the remaining more subjective types may also be highly relevant. After all, staff has to be motivated, powerful stakeholders need to be accommodated, and political ambitions must be met. In this sense, the "lower" types of success may frequently also be conditions for achieving the ultimate end of a positive environmental impact. Nevertheless, it is important to keep these different types of success apart, because they are not reducible to each other. For example, an OMC that aims to tackle a particular environmental problem and is successful at level 2 may not be successful at level 1 because of unintended/unexpected effects. Note also that the various types of success may clash with each other. For example, an OMC successfully aiming to undermine environmental protection ("smokescreen" OMC) would be evaluated as a second level success - but a failure at the ultimate level of impact on the environment.

In practice, the hierarchy of types of success provides some guidance for evaluating OMCs but, in most cases, no directly applicable criteria. There are many reasons for this. For example, most OMCs have only recently been established and it would therefore be too early to expect significant impacts on the environment. However, even if environmental OMC type applications had a longer history, their impact on the environment might be difficult to establish. As argued above with respect to non-environmental OMCs, it is frequently difficult to identify the effects of the OMC on policy change and impacts as opposed to the effects of other potential causal factors. The following list provides a more directly applicable, "second-best" set of indicators of success - including the impact on the environment as our ultimate measure of success. Note that the other items in the list may sometimes also be indicators for success at this ultimate stage, with "inputs" being the least reliable indicator in this respect.

- **Inputs** - eg resource inputs (number and seniority of staff, quality of expertise, level of financial support etc.), stakeholder buy-in (different Member States, environmental NGOs, business etc.) etc.;
- **Outputs** - eg new information, knowledge, reports, recommendations, commitments to action etc.;
- **Outcomes** - eg national or EU legislation, implementing measures, compliance, adaptive behaviour, policy debates/conflicts etc.;
- **Impacts** – eg reduced pollution levels, reduced health impacts, undesirable/expected effects, increased effectiveness and efficiency (economies of scale), increased acceptance etc.

Note that, as argued above, some types of success and some indicators of success may frequently also be seen as factors for success. For example, this may often be the case with financial resources. The availability of sufficient financial resources can be seen as an indicator of success, but also a factor for success. In contrast, other success factors, for example the "nature of the challenge", cannot be cast as types or indicators of success. The following list presents four general types of success factors:

- *Nature of the challenge ("ideas" dimension)* – the problem which an OMC addresses may have inherent characteristics that make it relatively easily amenable to the OMC or not. For example, the OMC is likely to be ineffective in areas characterised by distributional conflicts. More specifically, if sufficient information and communication

channels are available, but actors cannot agree on the distribution of burdens, there is little room for learning to provide a solution. Conversely, if learning, new knowledge and communication can contribute to solving a problem, the OMC may be an effective instrument. Uncertainty, the availability of knowledge and information, the intensity of ideological and distributional conflicts etc. are important aspects of the nature of the challenge.

- *Actor constellation ("interest" dimension)* – different types of actors and combinations thereof with complementary/similar or conflicting interests may be involved in the OMC, for example technical experts with different professional backgrounds, government representatives from different countries and institutions, various stakeholders. The success of an OMC may be influenced considerably by the "right" or "wrong" mix of actors/interests.

- *Resources ("capacity" dimension)* – even if learning may lead to solutions for a problem and there is a sufficiently supportive actor constellation, the OMC may fail due to resource shortages. Staff, expertise, authority, financial means, political power etc. may be relevant resources.

- *Institutional OMC characteristics ("order" dimension)* – the specific rules and procedures that govern an OMC may have a significant impact on success. For example, is there an OMC committee? Are there provisions for regular reporting and review? Are European guidelines being issued? Who makes decisions and what are the decision-rules?

- *Legitimacy ("acceptance" dimension)* – a perceived lack of legitimacy may lead to resistance against an OMC, for example, if the spread of winners and losers from a substantive OMC measure is perceived as unfair. Perceived violation of decision-making procedures and principles may also undermine an OMC, for example if measures are seen as undemocratic or incompatible with the subsidiarity principle.

5.3 Assessment of the four environmental OMC type applications

In this section we explore the success and failure and performance/contributing factors for each of the 4 case studies - ENAP, ETAP, WFD-CIS and IMPEL - in turn. The first part of each assessment is based on the pragmatic approach which allows for a highly case sensitive assessment. It lists the main performance successes and failures for each case as well as factors influencing these outcomes. While less case sensitive, the second part of the assessment of each case is more systematic, stating successes and failures and their causes in terms of the indicators and types of causes presented above. This allows for some tentative general hypotheses on success and failure and relevant causes to be derived from the four case studies. See also the case study report that complements this main report.

Case 1 Exploring New Approaches (ENAP) in Regulating Industrial Installations

ENAP was a successful three year cross-Europe dialogue involving nearly all 25 Member States and a wide range of other stakeholders. It created a fundamentally better mutual understanding of the implementation approaches taken in Member States to the IPPC Directive, and the activities vis-à-vis environmental management systems and the link to the regulatory process. It also led to a wider understanding of the Netherlands' need for emissions trading for

NEC substances – short term economic sense[34] and a question of viability of meeting the target in the long term. It was therefore a major learning achievement.

The process started well in advance of the official start of ENAP, growing out of an earlier study - *Rightly Responsible*[35] – which effectively identified the need for an ENAP type initiatives and developed the internal mandate for ENAP within VROM – and from a developing dialogue between VROM and the European Commission's DGENV for a period of about a year before the ENAP start. Towards the end of the discussions between VROM and the Commission, it became clear that the Commission would welcome an initiative by VROM to lead an international dialogue on innovative industrial regulation. The ENAP initiative or process therefore did not 'come out of the blue', but had a history and pre development phase. It is important to bear in mind the time line and investment time that goes on behind an initiative.

The ENAP process was more than just a knowledge diffusion exercise (ie more than just 'mutual learning'), however. It was also successful in terms of identifying new solutions and pressure to continue looking for new solutions (ie 'heuristic' learning). The EMS and IPPC workshops each led to a series of recommendations for action – with the suggestions on improved certification/verification capacity being taken up. The Commission also took the results seriously and launched their own complementary studies to continue to explore solutions.

The process was more than learning and solution identification, it was also about obtaining support / reducing opposition to Dutch ideas. This focused notably on the emissions trading and NEC issue. Here while there was no support for amending the IPPC Directive now (arguably achieving an amendment was never one of ENAP's intentions), there was some support for Dutch experimentation with ET for NEC, though only within the constraints of IPPC (hence perhaps slightly less than the ENAP initiators had hoped for). The possible amendment is on the table for the longer term, and arguably more robustly present than would have been the case without ENAP.

The Dutch have also been successful in ensuring that governments and the Commission know of their concerns and it will therefore make it less likely that initiatives counter the Dutch situation will take place, and serious efforts (European Commission studies) are ongoing to explore what can sensibly be done.

The following factors appear to have had a significant impact on the performance of ENAP:

- High level of commitment to the process by the Dutch and continued unwavering leadership in the process;
- Allocation of resources to ensure quality inputs and venues;
- An open approach – listening to Member State approaches and perspectives. As a result people felt that they were heard. There were one or two cases where people felt that there was an exception to this rule though these were not major;

---

[34] The immediate NEC targets can be met without ET, though ET reduces the costs; analysis suggests that longer term NEC targets cannot realistically be met without ET in the Netherlands.

[35] *Report on a European Dialogue on proposals to modernizing Dutch environmental legislation*. Study carried out by the European Institute of Public Administration (EIPA) and the Research School for legislative studies of the University of Tilburg.

Institute for European Environmental Policy (IEEP) and Ecologic

- The issues were timely;
- Support and input by other countries – though these were not integrated early enough, so the results remained perceived as Dutch concerns despite wide efforts to make the outputs representative of Europe wide practice;
- Issues were relatively new and/or important and hence interest was high.

Case 1: ENAP – Indicators of performance and performance factors

Success/failure indicators

- Input: although ENAP was an initiative (primarily) by one Member State (the Netherlands), most Member States and the Commission participated - partly actively - in the project. The level of attendance and contributions can be regarded as a sign of success.
- Output: ENAP improved mutual understanding of national approaches to implementing the IPPC Directive, the role of permit for regulating installations, and the role of EMSs and links to regulatory cycle. ENAP also improved everyone's understanding of the Dutch perspective, and more importantly for the Netherlands of its 'problems' with implementing the NEC Directive given the constraints of the IPPC Directive. Many of the Dutch 'problems' were also problems for other countries and the overall agenda was less 'Dutch' than could be interpreted from their leadership – in many places it was very much a common agenda with a common need for solutions. As regards NEC there was arguably an 'understanding gap' as to what could be done with ET for NOx, and the ENAP work (and supporting studies) has, in parallel to the evolution of the Emissions Trading Directive, helped raise understanding. ENAP also led to the development of some relevant ideas for the review of the IPPC Directive. In addition to sharing examples of practice (mutual learning), the work led to the identification of new solutions (heuristic learning) and the formulation of recommendations. While no immediate decision with respect to the critical issues of Dutch interest in using ET for NEC substances and amending the IPPC Directive, were adopted, DGENV launched the process to explore possible needs for revision, building on the ENAP insights and ENAP generated momentum. This will allow additional reflection on the issue.
- Outcome: recommendations on better verification and certification capacities were taken up; in the wake of ENAP, the Commission continues to explore several relevant issues. ENAP can be argued to have directly led to at least 4 studies by the European Commission exploring issues around the need for a potential revision of the IPPC Directive.
- Impact: too early to tell.

Institute for European Environmental Policy (IEEP) and Ecologic

Success/failure factors

- Nature of the challenge: Given the complexity of IPPC and its economic relevance for creating a level playing field, there is a significant potential for learning to contribute to the generation of better solutions. The nature of the challenge therefore helped to mobilise actors beyond the Netherlands.
- Actors: the actor constellation had both positive and negative effects. On the one hand, the Netherlands provided leadership of the process. While the format of a nationally led process did not impede constructive debate, it seems to have had a negative effect on transforming discussions into decisions on substantive recommendations etc.
- Resources: Dutch leadership had a positive effect on the resources available for the process, although it might be argued that a multilateral or supranational approach could potentially have mobilised a larger total of resources.
- Institutional: the weak institutionalisation of ENAP[36] seems to have contributed to open discussions. However, it also weakened ENAP's legitimacy (see below), thereby contributing to the difficulties of transforming discussions into more tangible political outcomes.
- Legitimacy: the combination of national initiative/leadership and low institutionalisation meant that the legitimacy of ENAP was limited. However, this did not prevent constructive discussions and learning because of the Netherlands' open and transparent approach and limited political power. The generally constructive Commission involvement in the process and overt support by other countries helped give the Dutch leadership an informal 'mandate' which helped support legitimacy.

Assessment

Not least because of the lack of tangible political outcomes ENAP seems so far not to have had any impacts on the environment and future impacts depends on which outputs get picked up and converted in action and when. But, as with OMCs in general, impacts would probably be difficult to establish even if political outcomes had been more tangible. ENAP's set of objectives were not all clearly set – some intentionally as it was important to develop the understanding of what was appropriate as the process developed. However, although somewhat more tangible outcomes had on some parts been hoped for, ENAP appears to have been found helpful in terms of mutual understanding and learning by major stakeholders. Its contribution remains alive through its influence on other issues (eg Commission activities) and the final outcomes will only be clear in due course.

Case 2: Implementation of Environmental Legislation (IMPEL) Network

IMPEL is the only network in Europe which exists to for Member States mutually to examine the implementation of EU law. It has succeeded in growing, developing and being active for 13 years since its inception. While longevity could occur through simple inertia, in this case it reflects widespread support for IMPEL's work. This is due to specific factors:

- Widespread support at start-up: IMPEL began with significant support from important Member States (and analysis of issues by some, eg NL), by the Commission and the Council.
- Participation: since its inception IMPEL has had full participation from its member countries. Relative contributions have varied, but success is enhanced by full buy-in by members. IMPEL also added membership from the new Member States prior to EU enlargement (including current Candidate Countries). Those involved in IMPEL are

---

[36] In contrast to, for example, IMPEL, the WFD-CIS and ETAP, which are open ended co-ordination processes, ENAP had the format of a three year project. This is reflected in the fact that there was no "charter" accepted by the participating Member States setting out the rules for the process.

largely experts in the issues covered (eg inspectors) which enhances confidence in the value of debate and has allowed IMPEL to be sustained over 13 years.

- Initially support from Member States was stimulated by a 'threat' of an alternative approach of a European-wide inspectorate of inspectorates.
- Commission participation: the Commission supported the foundation of IMPEL and since 1997 it has been a full member, co-chair and hosted the secretariat. This has helped provide strategic direction and day-to-day support.
- Finance: IMPEL has received sufficient financial support from its members (including the Commission) to allow its work to be undertaken – therefore it is more than a periodic talking shop.
- Regular meetings: the twice yearly plenary meetings allow for full discussion of issues, review of progress, work planning and decision-making.

IMPEL has produced a wide range of products covering many issues, including studies concerning the implementation of EU law, peer-reviews, issues outside of EU competence and other issues of practical concern. The emphasis of almost all of the work of the network is on mutual learning – what are other Member States doing and why and what can be learnt from this. The success factors leading to this are:

- Project-based work: by undertaking work as projects, this allows for greater involvement of individual staff from members and focused attention to the relevant issues.
- Work programme: IMPEL agrees a multi-year work programme (items reviewed regularly) which allows for longer-term thinking and strategic approaches to its work.
- Undertaking studies which allow for widespread learning among the members.

IMPEL through its range of products (most of which are used by Member State authorities) and the process of cross European collaboration has led to successful outcomes:
- An improved understanding of implementation practices and needs in different country contexts. Not least this has made Member States aware of deficiencies in their own systems that need addressing.
- A dissemination of practice. This has led to very specific changes in Member State practice.
- The creation of guidelines – eg minimum criteria for inspection that are being used to improve inspection approach in Europe, and indeed further afield. This and the learning benefits help implement existing CM legislation.
- The products also influence new CM law - not only the recommendations on the above minimum criteria, but also through feeding into the IPPC review.

Although the performance of IMPEL has been positive in many respects, it is possible to identify a number of failures and shortcomings. IMPEL has failed to resolve its precise identity and purpose. Although such statements have been agreed at plenary meetings, etc, the nature of IMPEL is not totally shared among its members. This particularly reflects differences from Member States and the Commission and, to some extent, between old and new Member States. Factors contributing to this include:
- Commission participation: While also an important success factor, the role of the Commission has become too dominant for some Member States, to the extent that its financial support (and procedures) has caused arguments over what work IMPEL should undertake.

- The nature of the origin of IMPEL: while, in practical terms, an initiative of the Member States (and not necessarily always focused on EU law), AC-IMPEL was an initiative of the Commission and focused on EU law. Bringing the two together has not yet resulted in a shared view.

IMPEL has found it particularly difficult to interact with 'high' policy development. Indeed, when its work on minimum criteria for inspections was taken on by the Commission as a Recommendation, some members reacted negatively to this development. IMPEL has discussed the need for its practical experience to be taken account of in law-making (Community Method), but this is difficult to achieve. Reasons for this include:

- Members are 'practitioners' and these often are not high-level policy officers from the ministries. This means that while discussion of practical issues occurs, interaction with high-level policy development can be problematic as this is a ministerial function.
- Legal basis: IMPEL has no legal basis in EU law, ie it is an informal network, which means that its relationship to EU level processes, including policy development has been patchy, can only be advisory at best and even though its theoretical importance is recognised (eg in the 6EAP), practically this has little impact at this level.
- Project based work: while also a strength, the project-based work does not lend itself to relatively rapid production of EU-wide positions of issues and, therefore, a difficulty in feeding into policy developments.

Case 2: IMPEL – Indicators of performance and performance factors

Success/failure indicators
- Input: Member States and the Commission have actively participated in IMPEL over a sustained period. Member States have volunteered to be peer reviewed and, together with the Commission, have provided financial support for projects.
- Output: IMPEL promoted mutual understanding and learning with respect to implementation practices at Member State level. It has produced a large number of reports, guidelines for minimum inspection criteria, and fed into the review of the IPPC Directive. IMPEL has produced little explicit agreement that could serve as a basis for common decisions.
- Outcome/impact: it seems highly likely that, overall, the work of IMPEL has affected the way in which Member States implement environmental legislation and that this has led to some convergence of implementation practice and policies as well as contributed to better and more effective implementation.

Success/failure factors

- Nature of the challenge: The implementation deficit of environmental legislation suggests that implementation poses a considerable challenge. IMPEL has been used by Member States and the Commission to address a wide range of issues in the context of implementation of environmental legislation. In this sense the "nature of the challenge" has been a success factor. However, some IMPEL projects were more successful than others for which different methods might have been more appropriate.
- Actors: the composition of IMPEL has been an advantage because the areas of expertise and the seniority of its members have generated a sustained interest in IMPEL's work. However, the considerable involvement of the Commission and differences in the responsibilities of actors from the "old" Member States and some "new" Member States have created tensions.
- Resources: Although financial resources have been available, funding depends on the willingness of the Commission or a Member State to bear the costs of a particular project. Therefore the provision of financial means tends to be problematic, in particular the Commission's large contribution.
- Institutional: IMPEL's mandate is unclear. This is partly compensated for by a simple, but well established institutional structure, including regular meetings and the adoption of work programmes. It might in fact be argued that, given existing tensions among IMPEL members (see actors), the lack of a clear mandate combined with relatively ineffective but stable institutional structures, contributes to the legitimacy of IMPEL (see below).
- Legitimacy: IMPEL must maintain a precarious balance between Member State competence for implementation and the benefits of involving the European Commission in terms of problem-solving and effectiveness. While this leads to relatively ineffective institutional arrangements, these structures also enable IMPEL to survive.

Assessment

IMPEL is likely to have had a positive impact on the environment, although the significance and extent of this impact remains unclear. Because IMPEL's mandate is somewhat unclear, it is difficult to assess whether IMPEL has lived up to its mandate. However, given the circumstances - ie. weak institutionalisation and tensions among Member States and the Commission regarding IMPEL's role – IMPEL seems to have performed relatively well.

Case 3: Water Framework Directive - Common Implementation Strategy (WFD-CIS)

The WFD/CIS has been remarkably successful in achieving substantive change. Perhaps most importantly, it has resulted in the adoption of guidance documents which have been used by Member State authorities to implement the WFD. This has not only significantly accelerated the implementation of the Directive, but it has also contributed to a certain convergence of national implementation practices. Given the WFD's framework legislation character and the history of problems and infringement procedures resulting from conflicts between differing national implementation practices of EU water legislation, convergence has probably made a significant contribution to avoiding future conflicts about implementation. However, there are some indications that the success of the CIS in terms of policy change has been limited to some extent by the fact that some Member States have made more extensive use of the guidance documents than others. In particular, some large "old" Member States have tended to take the guidance less seriously than many small and "new" Member States. In addition to the guidance notes, the CIS has also led to several other substantive changes. In particular, the CIS enabled discussion and may provide guidance on some issues that are not covered by the WFD, but nevertheless constitute important conditions for its implementation, for example flood protection and wetlands management.

With respect to changes in governance, the CIS has had significant impacts. In particular, it has accelerated the creation of administrative capacities for implementing the WFD at the national level. The CIS has also strengthened the European Commission's capacity to monitor the progress made in implementing the WFD. This is because the CIS has resulted in agreement on targets, benchmarks and indicators which can be used by the Commission for monitoring purposes. The CIS has also provided for improved transitional co-ordination that is required, in particular, for the river basin management approach that is foreseen in the WFD. In addition, as mentioned above, the CIS is increasingly emerging as a forum for discussing issues which are relevant for the implementation of the WFD, but are not formally covered by the Directive.

If compared to most other OMCs, the CIS was characterised by a high degree of participation by civil society and regional actors. Initially, environmental NGOs regarded the framework character of the WFD as highly problematic. However, both commercial interest groups and environmental NGOs have gradually increased their involvement in the CIS process, participating in meetings at the technical level and of the Strategic Co-ordination Group. As environmental NGOs complain that they are still excluded from the most important decisions taken by the Water Directors, there is even some discussion about whether and how to open up the meeting of the Water Directors.

The CIS is widely regarded as highly successful in "filling the gaps" in the WFD, thereby greatly accelerating implementation and facilitating a convergence of implementation practices in the Member States. However, the medium to long-term future of the CIS is somewhat unclear given that the "gaps" are gradually being filled. Under these circumstances it remains to be seen to which extent the CIS can maintain its momentum by increasingly re-focusing its activities on, for example, the continuous review and revision of "best" or "good" implementation practices and, as has already happened to some extent, dealing with issues, such as flooding, that are not formally covered by the WFD but are relevant for its implementation. It is possible, for example, that the work of the CIS will expand to cover parallel activities if/when a Marine Framework Directive is adopted.

Case 3: WFD-CIS – Indicators of performance and performance factors

---

Success/failure indicators
- Input: the CIS has benefited from input by a broad range of technical experts and by the more political level, i.e. the Water Directors. Albeit less intensively, stakeholders, in particular environmental NGOs, commercial and regional interests have also been involved.
- Output: Main outputs were the guidance notes on the implementation of the WFD and the strategic documents setting out the WFD-CIS priorities. The WFD-CIS resulted in a considerable amount of mutual, heuristic and reflexive learning.
- Outcome: the CIS outputs have affected the way in which Member States implement environmental legislation, in particular in the "new" and smaller Member States.
- Impact: it seems highly likely that, overall, the CIS has contributed to a certain convergence of implementation practices has policies as well as to better and more effective implementation of the WFD.

Success/failure factors
- Nature of the challenge: the legally binding character of the WFD coupled with the framework character of the Directive created a significant level of pressure and uncertainty with respect to implementation. In addition, previous implementation problems with EU water legislation could have been reduced, had implementation practices been more co-ordinated. This created further incentives to establish the CIS. The timely establishment of the CIS and uncertainty as to the practical requirements of the WFD increased the scope for learning.
- Actors: although the quality of some guidance documents suffered from conflicts among Member States and some Member States feel that the Commission's role in the CIS is too strong, the impact of the actor constellation appears to have been small. This can probably to some extent be explained with the fact that all Member States are legally obliged to implement the WFD. Consequently, they are interested in relevant guidance as offered by the CIS.
- Resources: sufficient resources have been available. However, resources may become a problem in the future, if the CIS extends its activities. In addition, some actors have expressed criticism that the Commission's influence is too strong, in particular because the Commission provides the CIS Secretariat.
- Institutional: the CIS relies on a relatively differentiated, increasingly formalised institutional structure. This has been a major factor in coupling various forms of learning with relatively effective decision-making structures. Arguably, it has also helped to involve a broad range of stakeholders in the process.
- Legitimacy: the CIS relies on a mix of expert (working groups) and more political authority (Water Directors) as well as stakeholder involvement. Stakeholder involvement was an important factor as it increased the legitimacy of the CIS and, indeed the WFD, in the eyes of environmental NGOs. However, there are tensions between Member States and the Commission and between influential and less influential Member States.

Assessment

Because the CIS accelerated the implementation of the WFD it is likely to have a positive impact on the environment. The CIS seems to meet its objectives and actors involved in the process appear to appreciate the CIS. Nonetheless, tensions between Member States and the Commission and between influential and less influential Member States may give rise to conflicts in the future.

Case 4: Environmental Technology Action Plan (ETAP)

ETAP overall – ETAP is being repeatedly used as the process to link environment to Lisbon goals and to promote the triple-win objectives of using clean(er) technologies as a driver for economic development (new markets, and lesser resource use in existing processes, enhancing competitiveness), for social issues (job security and new jobs) and environmental gain (lesser resource use, lower pollution levels). It is therefore a success in terms of policy dialogue reference.

However, ETAP is not yet regarded as a 'success', is still in early stages, and some areas are stronger than others. While ETAP contains a long list of actions and medium list of priority actions, hope for progress rests with only a few areas and there is some disappointment that more political momentum does not yet exist in some areas (harmful subsidies reform). Some see ETAP as a too open process, not in the sense of 'openness to actors', but rather in terms of clarification of likely outcomes. This reduces enthusiasm and commitment of some parties. If it were clear that the Commission is looking seriously at the possibility of backing up the results with a directive in due course, then there would be more enthusiasm and buy-in to the process. Now many countries and stakeholders are holding back, so that there are very loose discussions

that do not seem to lead to specific common views of the challenges. The incentive for action or the costs of non-action are not clear enough.

On the other hand, a key area of starting success is that of GPP. This is the one area where there appears to be a clearer commitment to progress and realistic hope for a solution. The latter point is quite a fundamental one; there will be engagement and buy-in only if parties can hope for a result.

As regards technology platforms there is less enthusiasm or at least scepticism in some quarters, though the game is far from over; the Commission in its ETAP newsletter [37] talks of 'good progress' with setting up the platforms (steel, hydrogen, fuel cells). For the technology platforms there is one clear perspective, namely that of how to develop the future research agenda. The platform does not, however, build on national authorities. Technology platforms are built on the assumptions that industry and research institutes take the lead. On the positive side there is a building of networks as a number of people 'find each other' more or less successfully. These people often have, however, different mandates, and there is often little commitment by industry given concerns of giving away commercial advantages, but more commitments by R&D institutes. Intellectual property rights issues relate to industry. In principle, the concept of the technology platforms is a good one – as a discussion point, but the mandate to move forward is somewhat more limited. It is somewhat unclear what the Commission can do with the results. The Commission has high expectations. Due to a lack of commitment of industry, these hopes may be somewhat dashed. Note also that the Research agenda will only reflect part of the agenda as not all industries put their ideas on the table; this will lead to some missed opportunities. In short, there is networking, but the hoped for strategic alliances or collaborations are more limited than the aspirations. It will be a challenge to make them work, but there is a high level political commitment, so efforts will be made.

There is also scepticism that much progress will be made with elements such as reforming harmful subsidies, and some disillusionment in some quarters that only a small subset of actions are likely to receive sufficient inputs to bear fruit. Some would argue that talking about the success of GPP support can distract from the need to ensure that other actions are made to work. If effort is made to turn rhetoric to action, then perhaps the fortunes of ETAP can change for the better.

Green Public Procurement (GPP) – It is still too early to say whether a success or not in terms of outputs and impacts, but at least a success in terms of:

- Start up phase – enthusiasm, interest and buy-in by parties
- Allocation of resources for inputs seems real.
- Commitment seems likely to be maintained in the long term.
- Many good ideas from a range of countries to form a base to work from including UK, Netherlands, Finland Austria. It is expected that the UK leadership in a GPP working group – a significant player taking it seriously - will help ensure that others stay around the table and should lead to some progress.

There is a major potential benefit of moving towards real GPP. Selective efforts can lead to technologies getting from prototype to test version and allowing learning – whether with fuel cell or dedicated biofuels buses or photovoltaic systems or modal shift infrastructures. It can

---

[37] *Clean, Clever, Competitive*. Issue 2, July 2005. European Commission web-site.

Institute for European Environmental Policy (IEEP) and Ecologic

also allow a critical mass to be created – eg expectation that biofuel buses can be a catalyst for further developments. There are then subsequent potential knock-on benefits for the greening of the supply chain, though this will be a long process, and greening of funding programmes as authorities get used to including environmental criteria in tendering procedures and project evaluations.

Performance Factors

ETAP overall - there is the political effort at getting the rhetoric right, though there is scepticism whether a European programme can really catalyse Europe into fast track technology innovation. Some argue that regulation does a far better job at technology forcing than top down programmes. There is however a clear need for ETAP in Europe, so that performance issue is in place.

Regarding *platforms* – there was and is some lack of trust as to what industry and countries are looking to do with the platforms. There is a lot of potential for winners and losers given domestic industries and hence less collaboration than some had hoped. There is therefore less trust than arguably could have been the case.

As regards GPP, there is a real need. GPP is something that needs to be addressed - on environmental, economic and social grounds and had potential to move forward. The solutions are not unimaginable and there is therefore realistic perspective of progress. There are a lot of linkages with other initiatives – not only Lisbon strategy, but also a range of concrete initiatives, including funding programmes. Some of these were in place in advance – eg public procurement handbook, and revision to state aid guidelines – and hence some of the ground already prepared. Other intiatives launched at the same time – eg linked efforts to look at the role of venture and risk capital, as this will tackle the issue from another angle. There is a Potential to play a very important role in funding programmes and hence the stakes are high.

Case 4: ETAP – Indicators of performance and performance factors

Success/failure indicator
- Input: Member State engagement and the availability of financial and other resources varies among different ETAP activities, not all of which are based on the OMC. With respect to Green Public Procurement (GPP), UK leadership has provided important input.
- Output/outcome/impact: ETAP is not yet fully operational. Therefore outputs mainly concern the process of setting up mechanisms to make ETAP work. In the field of GPP good progress has been made towards establishing OMC mechanisms such as targets, benchmarking etc. The fact that public procurement (as opposed to using private services) partly covers different areas in different Member States has caused some problems for establishing common targets etc.

Success/failure factors
- Nature of the challenge: using the OMC for ETAP is promising because subsidiarity is a major concern with respect to research and innovation policy and GPP. However, ideological differences among Member States concerning the role of the state in innovation policy and the provision of services cause difficulties.
- Actors: in general, the Member States are committed to ETAP, but the Commission has exerted important leadership. Particularly good progress has been made with respect to GPP. This is partly the result of UK leadership. Industry commitment and input less than could be hoped given intellectual property right / commercial interests constraints.
- Resources: so far, resources seem in general sufficient.
- Institutional: the various ETAP structures are still in the process of being established. As to GPP, OMC structures, in particular for benchmarking etc., are envisaged.
- Legitimacy: sovereignty and subsidiarity concerns speak in favour of using the OMC to implement ETAP. However, as illustrated by GPP, different views about the role of the state may complicate and eventually undermine the effort.

Assessment

At least in some areas, such as GPP, in which the use of the OMC is envisaged good progress towards establishing a functioning process have so far been made. This is due to Commission and Member State commitment. However, in a sense it is too early even for a preliminary assessment because it is not yet clear how emerging problems, such as different conceptions among Member States concerning the role of the state in innovation policy and GPP, are going to be addressed.

5.4 Synthesis – how successful has the OMC been and what are major factors of success?

As mentioned above, given the low number and high diversity of the four in-depth case studies, any general hypotheses as to relevant factors for success and failure would need further testing before they could be regarded as robust conclusions. Keeping this in mind, the case studies suggest that OMC type measures have certain strengths and weaknesses in terms of input, output, outcome and impact. Specific factors relating to the nature of the challenge, the actor constellation, available resources, institutional factors and issues of legitimacy can explain some of these strengths and weaknesses.

Performance indicators

Input
Despite some variation, the four environmental OMC type measures have generally, though with some partial exceptions, been able to mobilise sufficient inputs in terms of personnel and financial resources, expertise, and political authority to generate useful outputs. This does not mean that the mobilisation of inputs was unproblematic. On the contrary, given the relatively low institutionalisation of the OMC type measures, the mobilisation of inputs was a permanent challenge. However, the OMC type measures have so far been relatively successful in addressing this challenge. In spite of the general sufficiency of inputs, the OMC type measures frequently suffered from the fact that inputs have tended to come from a limited number of sources, in particular the Commission and a relatively small number of Member State administrations. Other Member States, the European Parliament, and relevant stakeholders frequently do not contribute significantly. There are also some limits to the role of industry within some parts of ETAP which can make progress in some areas less likely than others. Note that the timing of input is a key issue – there needs to be a winder of opportunity for

there to be chance of success, and only a chance of success if there is a real, and arguably, compelling need. Without this there will not be the political support necessary for the relevant inputs to be made available.

Output

The OMC type measures tended to be more effective in producing knowledge than in facilitating decision-making. This is not surprising given the OMC's reliance on learning. As a result, OMC type measures, such as IMPEL and ENAP, resulted in reports discussing existing practices and innovative solutions. The OMC type measures appear to have been particularly successful in facilitating political learning understood as increased mutual understanding. This was an important output of most OMC type measures with the partial exception of ETAP. In contrast, mutual learning in the strict sense of a transfer of "best practice" from one country to another has hardly occurred. Contextualised mutual learning - where practices from one country are adapted before they are used in other countries or at the EU level - have been more widespread, for example with respect to the elaboration of the WFD-CIS guidance documents. Similarly, heuristic learning appears to have occurred in the ENAP, IMPEL and WFD-CIS cases. Reflexive learning appears to have been limited mostly to the WFD-CIS. Most learning that occurred has been "thin" in the sense that existing general approaches were improved rather than replaced. However, the OMC type measures have also facilitated some "thick" learning, for example with respect to recognition of the far-reaching implications of the WFD.

In terms of decision-making, the OMC type measures tended to be weak although IMPEL and ENAP have led to some generally accepted, concrete recommendations. To some extent, the WFD-CIS is an exception in that it has generated several detailed guidance documents.

Outcome

It is difficult to determine the effect of the OMC type measures on the behaviour of key actors. As mentioned above, this is partly due to the fact that these measures are relatively new. Perhaps more importantly, observed behavioural changes may be caused by factors other than the OMC type measures. Nonetheless, most of the OMC type measures appear to have had at least some positive effects. For example, IMPEL has complemented EU environmental legislation by improving implementation; indicating a (weak) potential bridge function of ENAP, the European Commission has taken up some of the ENAP results in its related work; Member States have also drawn on the WFD-CIS guidance documents in their efforts to implement the WFD. However, as significant variation in the actual uptake of the guidance documents indicates, actors were only weakly constrained in their reaction to OMC type measures. Behavioural changes therefore seem to be highly actor specific. For example, effects may vary between large Member States, which have sufficient capacities to develop and implement solutions on their own, and small Member States.

Impact

For the reasons mentioned above, impacts are even more difficult to establish than outcomes. In fact, it seems merely possible to speculate about impacts. Against the background of the OMC's reliance on learning and the fact that input into OMC type measures was generally sufficient, the solutions developed under OMC type measures should normally not be of poor quality, and there should be few negative effects on the environment of the initiatives themselves. Certainly within the ENAP case, potential developments discussed at some stages that could have lead to some weakening of environmental protection were dismissed as inappropriate, given stakeholder ability to raise concerns, and others suggested would

strengthen protection (eg more use of EMS for industrial estates). A separate question of course is whether the impacts will be that positive or as positive as they could be (eg through other means) – certainly some have positive potential (eg minimum criteria of inspectors), others are clearer less likely to offer the hoped for benefits (eg some risks of this with some of the ETAP actions and some of the platforms' outputs) A further issue is that of follow-up and whether the suggestions get translated into action; here the results are variable as many initiative, while leading to learning, have not yet been translated into practice. In some cases this is a timing issue. At least in the short term, impacts could be uneven as a result of the low level of constraints imposed on actors

Performance factors

Nature of the challenge
The analysis of the four environmental OMC type measures suggests that three aspects of the nature of the challenge had a particularly significant impact on performance:

First, sovereignty and subsidiarity concerns frequently influenced OMC type measures. This is not surprising, given that the OMC tends to be used in areas in which these concerns are prominent. In the sense that sovereignty and subsidiarity concerns render OMC type measures appropriate and legitimate, they can be said to have had a positive impact on OMC type measures.

Second, the mobilisation of resources for OMC type measures appears to have benefited significantly from a strongly perceived need among key actors to address a particular problem while respecting sovereignty and subsidiarity concerns. For example, in the 1990s implementation of IPPC and the implementation deficit of EU environmental legislation more generally were recognised as important challenges. IMPEL addresses these challenges while respecting Member State competencies for implementation. Broadly similar arguments apply to ETAP, the WFD-CIS, and ENAP.

Third, uncertainty appears to have had a positive impact on the mobilisation of resources. Political rather than substantive uncertainty was particularly important. In situations of interdependency, political uncertainty causes co-ordination problems as actors do not know the strategies and interests of relevant other actors. Political uncertainty provided incentives to use OMC type measures to achieve better mutual understanding. In the case of the WFD-CIS, uncertainty about the policy and practical implications of the vague provisions of the WFD were also highly relevant.

Resources
Clearly, the availability of sufficient resources is a precondition for successful performance of OMC type measures. As noted above, the mobilisation of resources benefited from the fact that key actors perceived OMC type measures as appropriate instruments to address certain important problems and uncertainties. However, the resulting resource dependence of OMC type measures on relatively small groups of Member States or even single Member States and the Commission has also had negative implications for the performance of the OMC. In particular, dependence on a limited number of actors for the provision of resources has led to tensions among Member States and between Member States and the Commission. For example, in the cases of IMPEL and the WFD-CIS at least some Member States feared that the Commission might use the considerable resources which it invested in these OMC type

processes to undermine sovereignty and subsidiarity. Similarly, the Netherlands' sponsorship of ENAP to some extent undermined the trust of other Member States in the process.

Actor constellation
Frequently, active leadership by a relatively small number of key actors seems to be a crucial driving force behind OMC type measures. However, the degree to which this was the case differed significantly among the OMC type measures. ENAP is a particularly clear case of national leadership, because it was initiated, planned, financed, and organised by the Dutch government. Reflecting financing commitments, single Member States also often assume leading roles in IMPEL projects. In the case of the WFD-CIS leadership seems to be more functionally differentiated: the meeting of water directors provides strategic leadership, the Commission provides leadership in day-to-day management, and a relatively small number of large Member States dominate at the technical level in the working groups.

Because of the low institutionalisation of most OMC type processes, the provision of resources and leadership are relatively closely linked (institutional rules are only a weak intervening factor). This means that the conflicts arising from resource dependency (see above) also arise with respect to leadership. There are tensions among different groups of Member States and between Member States and the Commission. These conflicts tend to weaken the effectiveness and efficiency of OMC type measures.

Participation of non-state stakeholders and regional and local actors in OMC type measures varies strongly. There was no, or very little participation in IMPEL and ENAP. In contrast, there is significant industry involvement in ETAP, in particular in the technology platforms. Environmental NGOs and commercial interests are involved to a significant extent in the WFD-CIS.

Institutional factors
With the exception of the WFD-CIS, the institutional structure of the OMC type measures was relatively undifferentiated. Decisions were usually taken by a committee of Member State officials and implemented by more or less *ad hoc* structures. The Commission had a supporting role which was more or less influential depending on the case. At least to some extent low institutional differentiation seems to reflect subsidiarity and sovereignty concerns, ie. the wish on the part of Member State governments to prevent OMC type measures from acquiring capacities that would allow them to operate more independently from Member States. Low institutional differentiation may have a negative effect on learning because it results in limits on the variety of types of input, such as highly technical expertise. However, it may also allow for open discussions and better mutual understanding.

The WFD-CIS provides an example of higher institutional differentiation with separate and increasingly formalised bodies for strategic decision-making and oversight (meeting of water directors), day to day management (steering group), and technical implementation (working groups). Learning seemed to have benefited from this arrangement as appropriate bodies for political as well as highly technical input were available.

Legitimacy
The legitimacy of the OMC type measures primarily derived from a combination of two factors: first, OMC type measures respected the principles of subsidiarity and sovereignty; second, they derived legitimacy from the authority of expert knowledge and the provision of

useful outputs (output legitimacy). As mentioned above, subsidiarity and sovereignty concerns are an important issue which OMC type measures must address. Undermining these concerns - for example as a result of an overly dominant role of a particular group of Member States or the Commission in an OMC - may lead to crisis. The tensions associated with the role of the Commission and certain Member States, in particular in the WFD-CIS and IMPEL cases, on the one hand, and the dominant role of experts in all four OMC type measures on the other hand, illustrate this point. In most cases, legitimacy based on the principles of subsidiarity/sovereignty as well as expert knowledge and output seemed to be sufficient to offset a low degree of procedural legitimacy (legitimacy derived from rule following) which reflected the low institutional differentiation of most OMC type measures and their legally non-binding character.

Legitimacy based on the principles of subsidiarity/sovereignty as well as expert knowledge and output appeared to be sufficient for OMC type measures which operate in spheres that are sufficiently detached from actual decision-making, for example ENAP. By contrast, the legitimacy of OMC type measures which results in important (though legally non-binding) decisions, such as the guidance notes produced by the WFD-CIS, may need to be shored up by additional measures. In the case of the WFD-CIS, participation by societal actors had a beneficial effect on the WFD which had initially been viewed very critically by some environmental NGOs.

The case study insights in the light of experience with non-environmental OMCs

When looking at the results of the four case studies in the light of assessments of the use of the OMC in non-environmental fields it is important to keep in mind that (a) the four environmental case studies look at OMC types rather than full blown OMCs and (b) the environmental field differs from the typical fields in which the OMC is used in that the EU has strong legislative competencies in the environmental field. Variation in the performance between the four environmental OMC types and non-environmental OMC may frequently be linked to these differences.

Overall, the environmental OMC type measures were more successful in terms of learning than the full blown OMCs. However, this does not apply to all types of learning. Full blown OMCs have been relatively successful with respect to heuristic and even "thick" learning, but mostly failed to generate mutual and reflexive learning. The environmental OMC type measures appear to have been similarly (or perhaps somewhat less) successful than full blown OMCs in terms of heuristic learning, but generated significantly more mutual learning and - in the case of the WFD-CIS - also considerable reflexive learning. It may be possible to attribute these differences to some extent to the fact that the space for heuristic learning tends to be more limited for OMC type applications than for full blown OMCs because OMC type applications only concern particular stages of the policy process. Because other stages are not covered by the learning process, the scope for new ideas and orientations remains limited. These constraints are less relevant for less fundamental, mutual forms of learning and reflexive learning. In fact, with respect to these types of learning, OMC type applications seem to benefit from their relatively narrow focus on particular stages of the policy process and, frequently, sub-sectoral rather than sectoral issues. A narrow, more technical focus enables professional standards, deliberation and mutual understanding to prevail over a more antagonistic bargaining style of interaction.

Whereas full blown OMCs tend to have some impact on governance structures and capacities - for example the establishment of better co-ordination routines among departments or the creation of new capacities for data collection and analysis - the impact of environmental OMC type measures on governance structures appears to be highly variable. For example, ENAP had hardly any direct impact on governance structures, whereas the WFD-CIS had a considerable impact. To a significant extent this variation seems to reflect the fact that OMC types only cover particular stages of the policy process. It is clear that an OMC type measure such as ENAP, which primarily aims to influence agenda-setting, has few direct impacts on governance structures whereas an OMC type measure that aims to improve implementation, e.g. the WFD-CIS, has a much stronger impact – in particular if Member States are under pressure because, as in the case of the WFD, implementation is, ultimately, a legally binding commitment.

As with full blown OMCs, it is difficult to assess the outcomes and ultimate impacts "on the ground" of environmental OMC type applications partly because it is too early to expect significant outcomes and impacts. In addition, the monitoring and reporting arrangements of environmental OMC type applications appear to be weak. IMPEL is a case in point. Even the WFD-CIS has only weak monitoring and reporting arrangements, although relevant provisions in the WFD (rather than the CIS) to some extent compensate for this.

Similar to full blown OMCs, environmental OMC type measures suffer from a lack of transparency. However, a lack of transparency appears to be somewhat less relevant for environmental OMC type measures because accountability requirements tend to be lower, reflecting the limited scope of these measures in terms of the policy cycle and, frequently, also in terms of substantive focus. A similar argument applies to participation by societal and regional and local actors. As with full blown OMCs, participation tends to be generally weak, although there are exceptions. More participation would frequently be desirable to increase democratic legitimacy and create additional opportunities for mutual learning. Yet, because of the relatively limited scope of environmental OMC type measures, the need to improve participation is less urgent than in the case of some full blown OMCs.

Environmental OMC type measures appeared to suffer less from resource constraints than full blown OMCs. At least to some extent, this reflected the existence of incentives for particular Member States and the Commission to provide resources and the relative ease with which at least some kinds of OMC type measures can be set up (e.g. ENAP). As a result of providing resources, these actors tended to occupy leadership positions in the OMC type processes. This gave them the opportunity to exert disproportionate influence. Such incentives appear to be weaker at least in the case of the most developed full blown OMCs. Part of the reason might be a higher degree of institutional differentiation of these OMCs which makes it more difficult for single countries or the Commission to exert strong leadership on the basis of resource input.

Finally, it is interesting to note that environmental OMC type measures do not rely on benchmarking/league tables and public shaming to the same extent as at least some of the full blown OMCs. Once again, the more limited scope of environmental OMC type measures may at least partly explain the absence of public shaming. After all, it seems unlikely that the general public would be sufficiently interested in the limited range of issues on which environmental OMC type measures tend to focus.

Summary assessment

In terms of mobilisation of input, generation of outputs, outcomes and impacts environmental OMC type measures have performed relatively well:

- *Input:* mobilisation of inputs has generally been sufficient to achieve useful outputs;
- *Outputs:* environmental OMC type measures have contributed significantly to learning, but they have performed less well with respect to generating decisions;
- *Outcomes:* effects on behaviour are difficult to establish, but there appear to have been at least some desirable effects;
- *Impact:* a speculative assessment suggests that impacts should mostly be positive.

The performance of environmental OMC type measures has been affected by various factors:

- *Nature of the challenge:* in a situation of political and/or substantive uncertainty, key Member States must perceive an important challenge which should be addressed primarily in term of co-ordinated action among Member States (rather than primarily at EU-level). There needs to be a compelling need for action, and a perception that no alternative by coordinated action will be able to meet the challenge;
- *Resources:* although the perception by key actors of a challenge (see above) which should be addressed by means of the environmental OMC type mechanisms generally seems to ensure that necessary resources are made available by the same actors, the resulting resource dependence of the environmental OMC type on these key actors may often give rise to tensions;
- *Actor constellation:* given the low institutionalisation of most environmental OMC type measures and their legally non-binding character, leadership seems to be particularly important. Tensions/lack of trust may arise if - as is frequently the case - leadership is exerted by an actor who provides crucial resources and has a strong interest in the substantive issues addressed by an environmental OMC type measure.
- *Institutional factors:* environmental OMC type measures tend to be characterised by a low degree of institutionalisation, at least partly reflecting sovereignty and subsidiarity concerns. Among other things, this may have negative impacts on trust, broad consultation and, consequently, learning.
- *Legitimacy:* the legitimacy of environmental OMC type measures is primarily based on the principles of subsidiarity and sovereignty, expertise, and output. However, participation may be needed to shore up the democratic legitimacy of OMC types which directly result in important decisions.

Full blown non-environmental OMCs and environmental OMC type measures differ in scope as the latter merely cover some stages of the policy process and often have a limited substantive focus. Some of the differences in performance between full blown OMCs and OMC type measures can at least partly be explained by the differences in scope. Environmental OMC types are more successful than full blown OMCs in generating mutual and reflexive learning. However, their impact on governance structures varies more widely. As with full blown OMCs, effects on policy outcomes and impacts are difficult to ascertain. While transparency and, in most cases, participation tends to be low, both appear to be somewhat less essential with respect to environmental OMC type measures than with respect to full blown OMCs.

6. OMC CONSIDERATION PROCESS

In environmental policy there is a range of needs for solutions. The decision as to whether to adopt an OMC type process or other approaches to address the needs should take into account a range of factors, that build on the lessons of what does and does not work. The appropriate solution depends closely on the nature of the problem. In addition to what the instrument or process is (eg OMC or CM or simple initiative not titled as either), there is also the question as to what to call it and how the stakeholders will respond to the 'title' of the instrument.

Many stakeholders see the question of whether to use OMC as one of whether to oppose the community method (CM) or not, and supposedly win some room for national policies and ideas from an arguably overly centralising Community process. There are obvious subsidiarity benefits of this, as well as some national public perception benefits. Others see OMC as a means of watering down commitments that could otherwise be achieved under the CM. There is a potential for conflict in perception.

Yet in reality, OMC type processes can play a range of different roles vis-à-vis the CM. OMC can help implement the CM, it can also be a constructive bridge to CM and a gap filler where CM does not work, is not appropriate or is simply impossible to achieve agreement on. In all of these cases there can be little or no competition between OMC and CM. (See Box 6.1)

Box 6.1: OMC and relation to CM – insights from the analysis

In non-environmental areas the OMC has usually been applied in fields with weak EU legislative competences. Consequently, the prospect of conflicts between the OMC and the CM was relatively small. However, in the environmental field, the EU has considerable legislative competences. In some quarters, the OMC is therefore seen as a decision-making procedure that may potentially weaken the CM. The most prominent concern is probably that the OMC might weaken the effectiveness of EU environmental policy as its application in place of the CM would result in the adoption of legally non-binding rules rather than legally binding legislation. While this is a valid concern, the contrast between legally binding legislation and non-legally binding rules should not be overstated. First, as the Biofuels and Renewables Directives with their non-binding targets illustrates, formal legally binding rules may in fact be largely voluntary in terms of substantive obligation. In addition, there is a considerable implementation deficit of EU legislation that is partly due to the fact that EU legislation is backed-up only by relatively weak sanctions against Member States.

The four case studies suggest that OMC has so far not undermined CM/binding legislation. On the contrary, it has complemented legislation in various ways, in particular with respect to implementation, but also as a gap-filler (ETAP) and with respect to the revision of legislation (ENAP).

Conclusion: the contrast between OMC and CM is often overstated. Behind this there may be various political reasons such as genuine concern for the environment but also reasons that relate to weakening or strengthening of actors in the political process. It is important to analyse each case on its own merits.

Furthermore, the elements of an OMC process are not as new as the term itself. OMC can contain target setting, benchmarking, regular reporting, guidance, national efforts, stakeholder dialogue and involvement etc. These can lead to learning (understanding each other, appreciating existing solutions), creative development/identification of new solutions (heuristic learning), development of mutual support or reductions of (potential) opposition, and coordination. But the CM itself often contains a number (and sometimes all) of the above 'OMC-elements'. The biofuels and renewables Directives have guidance targets, requests for national targets, regular reporting, benchmarking and mechanisms to coordinate Member States

(as seen by Commission responses to 'low' biofuels targets for a number of countries). It is important to understand that OMC process elements can be supported and engaged is independent of whether a process it titled OMC or not. Conversely, the CM can result in legislation that is only superficially legally binding because it contains substantive provisions that set out voluntary measures. It might be argued that, at least from a focus on substance (rather than the process of adoption), it would be more transparent to refer to such legislation in OMC terms.

It is also important to understand that perspectives, perceptions and preferences will vary depending on the culture and nature of the member state, the Commission, industry, NGOs and also from individual to individual. Not all are equally open to a more open approach as the OMC, and not all will go into an OMC with the same intentions.

In summary, there are a number of factors to bear in mind when considering applying OMC type elements and also a context of perception to bear in mind when considering whether to launch it as / title it an OMC. With these warnings noted, below are some key decision considerations.

Ideally this report would present not just a decision consideration process in general form, but would look at the decision consideration process from the perspectives of different stakeholder types and different geographic origins. This could help inform those interested in engaging in OMC type activities more fully. This is, however, a non-trivial exercise and beyond the scope of the possible for this work. It clearly important to bear in mind when considering an OMC type application the different possible motivations for involvement of different stakeholders, the different likelihood that words will be changed to action across different countries – whether due to internal processes, procedures, legal and institutional contexts, capacities, mandates of those involved, and/or attitudes.

6.1 The decision consideration process

Is there a potential problem that needs to be identified, or understood further? *(this presumes of course that the policy makers have identified a problem).* This is obviously the starting point. If there is no problem, there is no need for solution. Having said that it may on some occasions make sense to work out whether a problem exists but has not yet been identified. But this hardly needs a fully fledged OMC process, and existing mechanisms of discussions with experts, colleagues, equivalents in other countries offer ample solutions. Returning to the problems needing a solution, there are many types:

- Is there an environmental problem that is not appropriately addressed and that needs addressing and where there is a potential chance of being addressed?
- In which case is it one that is not covered by legislation (eg a gap), one that is covered but not appropriately covered (wrong solution), or is it one that is covered but not implemented (implementation gap), partially implemented or ineffectively implemented?
- If it is not covered by European legislation, is it potentially addressable by EU legislation? (ie. is there a realistic chance that EU legislation might be adopted within a given time-frame)
- Are there monitoring needs – eg to get more data to quantify the problem?

All of these questions can be addressed by developing a good understanding of the problem, its causes, and possible solutions. Adding cases to the questions and expanding the above list a little:

- Is there an environmental problem that still needs a solution (gap)
    - Eg integrating life cycle issues in permitting process – covered under ENAP
    - Eg flood management
    - Eg co-existence of GMOs and conventional agriculture
- Is there an environmental problem due to a lack of effective implementation?
    - Eg IMPEL, WFD, protocols for ET, Carbon storage etc
- Is there a potential for a more effective solution to the environmental challenges at hand (eg better design, alternative more effective instrument, faster implementation)?
    - Eg WFD: Implementation of EU law to achieve objectives prior to formal reporting, etc.
    - Eg Integration of Environment in the Lisbon Process
- Is there a potential for a more efficient/ cost-effective solution to the environmental challenges at hand (eg better design, economies of scale)?
    - ET and NEC substances to implement the NEC Directive – covered in ENAP
- Is it a problem where sovereignty/subsidiarity issues suggest that a local/national solution is needed?
    - pesticides, urban, flooding, WFD, IMPEL, ETAP etc.

This in turn leads to the question as to whether learning is required, whether new solutions are needed, how to create solutions and consensus on what the problems are and what the solutions may be and how to obtain buy-in on the way forward – ie agreement on what should be done and agreement to do something oneself. Addressing different issues in turn.

Is there need for learning?

This can relate to an issue of outcomes – in terms of identifying solutions, outcomes, in terms of ensuring that these are implemented, and impacts, which result from their implementation.

- Is there a scope for a better uptake of technologies, instruments, mechanisms (eg protocols) where these technologies, instruments and mechanisms already exist? This can be regarded as 'thin' learning[38], with diffusion and uptake of existing learning / solutions, but with no actual innovation.
- Is there a need for understanding or developing new knowledge (solutions, including 'technical;' issues such as protocols), but where this knowledge is not revolutionary though still innovative? Again this can be regarded as 'thin' learning. Others also use the term 'heuristic learning' for this.
- Is there a need for a real system change (transition) – eg change of approach or application (eg transition in transport from private to reliance on public transport; transition to a low carbon economy). There can be knowledge on how to do this and why or simply knowledge of why do to this but where the how is to be decided. Both of these are cases of 'thick' learning.

---

[38] It is helpful to distinguish between thin and thick learning. While this is a bit jargony it is a useful distinction. Thin learning is where there is learning that takes place but not change the fundamental system in which we are. Thick learning is where there is a significant change, eg paradigm shift, something that occurs where there is a real system change.

Institute for European Environmental Policy (IEEP) and Ecologic

If it is clear that there is a problem and there is a need for a solution, then one needs to understand whether an OMC approach offers any particular benefits.

Are there any particular benefits for a country or group of countries to initiate an OMC?

Initiating an OMC, and continuing with the process requires a major commitment by the lead country over an (often) extended period of time. Commitment by partners will inevitably be less, but can still be there. This raises questions as to the benefits that the country can obtain through the process. The benefits are an issue that is related to impacts in the aforementioned inputs-outputs-outcomes-impacts categorisation.

- Is there a particular benefit from learning that will accrue to countries, in particular those willing to invest themselves in the process?
  - Eg learn of solutions from other countries
    - Eg learn of flexibility that was not perceived to date and hence allow new thinking as to domestic solutions
  - Eg learn of diversity of approaches and hence encourage tolerance of different solutions which can facilitate national approaches.
- Can an OMC lead to an increase in the effectiveness of environmental policy, while not harming competitiveness ?
- Would an OMC result in leading countries reaping first mover advantages? (ibid for those joining the leaders)?
  - Eg ensuring the own agendas/situations are not overlooked
  - Ensuring that final solutions are compatible with domestic situations
- Are there interests in fending off EU regulation and ensuring subsidiarity?
  - Eg particular domestic public to respond to (eg following 'No' votes to the constitution)
- Is there a benefit from OMC to ensuring legitimacy - in the sense of remaining close to local circumstances and local environmental preferences or offering better involvement of stakeholders, for example in the implementation phase?

Is there a potential need for, or particular interest in having, an OMC? What are the issues to consider in the decision making process?

- Is there an existing CM?
  - If yes, does it work well?
    - If yes, then generally 'no' for OMC
    - If yes, is it sufficiently comprehensive?
      - If no, then OMC might fill the 'gap'
  - If yes, could a better solution be feasible?
    - Then could an OMC get around the weaknesses?
    - If yes, consider OMC
  - If yes, and the solution is the right one, is it a case of the solution not being effectively implemented?
    - If yes, then can an OMC offer an answer to the implementation problem?
    - If yes, consider an OMC
  - If no, then explore whether and what type of OMC could be useful
    - Is CM possible and appropriate and just not in place
      - If yes, can OMC be a bridge to this (Eg by clarifying the problem and identifying solutions that can be picked up by CM)?

- ▪ Is CM is not really possible?
  - • Can OMC fill the gap?
  - • What are the advantages and disadvantages of calling it an OMC?
- • Is the environmental challenge and the solution sufficiently clear / stable for a CM type solution?
  - o If no, then look seriously at whether OMC is a potential solution approach. If and where understanding is not good enough, and OMC could lead to learning and identification of solutions, which at a later stage may or may not be translatable into CM.

*A **question of inputs*** *– for an OMC to work a range of inputs are arguably necessary to have in place.*

- • Is there an existing **OMC champion or champions** willing and able to take the lead - either at MS level or Commission level?
  - o If no, then generally 'no' for OMC
  - o If yes, is the commitment for long enough to obtain the results?
  - o If yes, is there trust/sufficient political power or potential for trust/sufficient political power in this leadership?
    - ▪ If no, then generally 'no' for OMC
  - o If yes, do they have the resources (right level experts, time, and budget) and can commit resources to ensure quality inputs?
    - ▪ If no, then generally 'no' for OMC
  - o If yes, are the benefits of their commitments of time and energy worth the possible/likely benefits from involvement (ie cost benefit ?) – economically, or politically (can gain negotiating capital for example)
    - ▪ If no, then generally 'no' for OMC
  - o If yes, are there concerns that they may over-dominate the process?
    - ▪ If there are concerns, how politically influential are they and is it possible to address these?
- • **OMC involvement / buy-in.** Are there sufficient numbers of countries potentially willing to be engaged to support the process?
  - o If no, then generally 'no' for OMC
  - o If yes, have they been 'sounded out' for potential support? (the willingness will tend to depend on whether countries feel party to the process and when this starts)
- • Is the issue sufficiently important and with sufficient longer term political interest and benefits from involvement to ensure that the process will face long term investment and commitment?
  - o If no, then generally 'no' for OMC
- • Is there involvement of NGOs, parliament and other stakeholders in the process?
  - o If no, is there a risk of loss of legitimacy?
    - ▪ Consider whether an important loss and address (eg find suitable point in the process for (E)P involvement)
  - o If no, is there a possible weakening of environmental issues in the process?
    - ▪ Involve suitable NGO, or address using other means.
- • Is there any opposition – countries, parties, public, industry other stakeholders - to the process (See box 1 for possible reasons for opposition) and is it of critical importance?
  - o If yes, then generally 'no' for OMC

Institute for European Environmental Policy (IEEP) and Ecologic

      o   Are there potential measures/initiatives possible to reduce the opposition?
             ■   If yes, then generally OMC can still be considered an option

- Is there sufficient proactive or reactive support or potential support for the OMC initiative by countries, parties, public, industry and other relevant stakeholders?
  - If no, then generally 'no' for OMC

From outputs to impacts

- If and where the OMC is a potential substitute for CM - are there particular benefits from the OMC that could not be achieved by CM?
  - If yes, then explore further the nature of the benefits and how they could be achieved in practice
- Would subsidiarity arguments speak in favour of OMC?
  - If yes, then explore further the nature of the benefits and how they could be achieved in practice.

It is clearly important to check up on potential stakeholder resistance to the idea of an OMC to deal with the problem/opportunity at hand, and if and where potential resistance is identified, to check whether this can be addressed. If not, it raises questions as to the likely success and effectiveness of the instrument/initiative.

- Where the OMC builds on a Member State initiative and lead, the Commission may feel that its right of initiative is threatened.
  - This could have arisen within the ENAP project, but the use of the PREP group which included the Commission and regular discussions, led to the increasing buy-in into the process by the Commission and less resistance that could otherwise have been the case.
- Where the OMC type activity builds on a Member State initiative that run in parallel to Commission initiatives in the same area and the issue is a 'sensitive' one, then this may lead to the Commission considering the OMC type activity as potentially unhelpful.
  - Generally this is not the case, and will be issue and personality specific. Some issues and individuals are more open to inputs from other sources. Important to gauge whether there is a real opportunity for contributing.
- Lack of trust or clarity in the OMC leadership, their ambitions and (hidden) agenda – this can come from any stakeholder grouping.
  - Eg Dutch initiatives linked to ETAP – will they support ETAP and be done within the context of ETAP or will they try creating a parallel structure? There is some uncertainty here and hence resistance.

Does the solution have to be defined as OMC or could it also be CM?
- It can be either as the process elements can be integrated into CM or could be launched independent of CM?
  - Then consider whether it really makes sense to call it 'OMC'. In other words decide between:
    - go for CM (Eg as in biofuels directive),
    - OMC or
    - simply a process with no new title, which gets the same benefits without the labelling. A conference or learning process or series of workshops on

a theme would do, or initiative to find solutions, improve implementation

There are therefore a range of issues to bear in mind. No list, however long, can cover all eventualities and all key decision points. Ultimately, it is an issue of understanding the problem and the need for solutions in sufficient detail and making an assessment of politically realistic options. This will generally identify a range of possible solutions that need to be subjected to the usual ex ante assessment (for legal proposals) including public consultation.

There is clearly some temptation after the 'No' votes to the Constitution, to opt for OMC as a means of showing that one regains the reigns of environmental policy in national hands. Similarly, there are arguments that OMC can involve a wider and better set of stakeholders and hence be a better and more acceptable process. These are both arguments that have to be looked at very carefully as there are dangers of misreading the benefits of OMC and interests in OMC. Environment is one of the domains in which the European level initiatives are seen as particularly constructive, despite some cases of bad press. Having said that, there remain very clear cases where local or national approaches offer the best solutions. This can be, but does not need to be a question for OMC. Ultimately what is important for OMC is:

OMC rather than CM
   a) Are solutions most effective /legitimate at national level?
   b) Are there benefits to be gained from ensuring compatibility of national systems?
   c) Are there benefits of learning?
   d) Is there is there a strong added value in a country or series of countries inputting into a multi member states process without part?

OMC as a bridge
   a) Does the CM not work or not yet work and can a coordinated Member States approach help create an interim solution?

OMC as a gap filler
   b) Does the CM not work or unlikely to work, while a coordinated national approach can?

OMC as an implementation tool for CM
   c) Can a coordinated MS approach help implement CM? This can be the case of sovereign concerns but need for national framework.

And perhaps most importantly, do you wish to call it an OMC? Ultimately if it is the process that one is interested in, given the insecurities regarding the use of OMC, it is best to simply apply the process, and not use the term. The various elements of OMC have been used before, and formal OMCs have not generally shown the results hoped for. Any titling as OMC raises certain expectations that can complicate progress.

Ultimately, results show that the main area of interest for OMC is in the field of learning.

The next chapter goes through the range of potential areas that could be conceived of as possibly appropriate for OMC, some arguments for or against their being treated by OMC and the team's identification of areas where VROM's attention could most usefully focus.

7. POSSIBLE AREAS AND ROLES FOR OMC

7.1 Introduction and overview

Overview of possible areas

During the project a long list of areas was developed as to where OMC type processes could be useful. As the list developed it became clear that there are in fact a very wide range of areas where 'learning' and 'comparing and contrasting' practices (quasi benchmarking) is valuable. If we take OMC to mean applications to encourage learning, comparing and contrasting we then quickly arrive at an almost open ended list. This is of course not helpful. We have therefore noted some obvious and important areas. This list also includes areas where experts have suggested some scope for initiative or continued initiative.

We include in this list existing areas being covered by OMC type activities where there are argument for further potential for OMC activities. This covers OMCs, OMC types and OMC elements (ie where a process similar to parts of OMC are used).

This list of possible areas is (with a brief introduction to the issue noted in some cases; see the subsequent table for more detailed comments):

- ETAP – certain elements are OMC type and need engagement to ensure appropriate momentum - notably Green public procurement and encouraging appropriate use of risk and venture capital
- ENAP/IPPC - Exploring New Approaches in regulating industrial installations – further elements could be covered (though arguably not best done under ENAP): PRTR/EPER and in the current climate - reducing administrative burdens - building on Dutch list of 11
- Sustainable mobility – certainly room to ensure not only that we learn from each other, but that we coordinate some developments – this covers inter-operability (can be CM of course) (eg of road pricing schemes), mutual learning on modal shift solutions, public infrastructure investments and congestion charges and other fiscal measures (eg registration taxes)
- Flooding (although a Directive is to be proposed, most 'hard' actions will still be at Member State level)
- Oil pollution – need for coordination and learning of emergency response
- Integrated Product Policy (IPP) - significant room to identify and learn from appropriate mechanisms for this to work
- EIA – Environmental Impact Assessment – eg how to improve EIA. An implementation OMC type process
- Soil – help implement the soil thematic strategy and build on national solutions. There is ample scope for mutual learning around the issue of soil quality maintenance, erosion et al
- ECCP linked: carbon dioxide storage in the EU ETS
- Sustainable Development Strategy – coordination of national and European Strategies
- Environmental Policy Integration - environmental issues are far from fully integrated into sector policies or indeed into programmes (Eg inclusion of

environmental criteria in regional funding). There is real potential for mutual learning.

- GMO coexistence – a difficult area given lack of scientific certainty and high public concern and an important area for mutual learning and potentially coordinated action

- Environmental taxes and charges – there is some need for this, but unlikely that most countries would accept coordination by others. Best practice and benchmarking better and certainly don't call it OMC.

- Pro-environmental subsidies - a lot of potential to learn from each others' practices and ensure compatible systems. The experience of 'competition' between different systems to support renewables underlines that identifying an agreed common approach can have some benefits.

- (Environmental harmful) Subsidy reform - clear need for coordinated approach as many countries do not wish to be the first given concerns of negative competitive implications on their industry. There is real need here, what is lacking is political will, despite the rhetoric.

- Environment and Health Strategy – much potential for learning, such as through comparison on NEHAP implementation and EH as a complex, integrated issue requires more flexible approaches that possible through CM alone.

- EU pesticides policies – limited role for OMC (on stimulating general use reduction), as much now driven by CM. Some arguments for OMC as regards internal market.

- Sustainable Consumption and Production – major potential from mutual learning; wide range of areas, would need focus on particular issues to allow concrete progress.

- Urban planning – zoning, lessons on planning wrt hazardous industrial installations (eg to support implementation of the Seveso Directive Article 12), infrastructure development (strong links to public transport planning).

The long list is presented in more detail in Annex 1 of this report.

7.2 The Short list of possible areas

One of this study's objectives was to arrive at an indication of areas where VROM could seriously explore in more depth the potential for OMC type processes. Any final decision would of course be VROM's and would have to be based on more analysis than possible within the context of the current contract. The following are areas where evidence and our judgement suggest that VROM attention could be valuable.

Areas of potential high interest for VROM include – 1st priority areas:

- ETAP – it important that this initiative is to be made to work, and vital that countries with a constructive approach and ready audience contribute.

- Green public procurement – a specific areas where much progress is needed and possible. Significant gains are to be made and if this works it should have positive effects not only in this areas but also for coordinated approaches in general.

- Carbon dioxide capture and storage in the EU ETS – a real need for a way forward, and the Dutch work on ET and monitoring protocols gives it a natural leadership here.

- Flooding – in the context of the CIS and potentially also linked to regional funding.

Other areas of importance include

- ENAP type (but not actually ENAP) – there is more potential in the approach, though a break in the IPPC area may be useful to wait for the results of the commission studies. Other areas have potential however,

- Spatial planning - there is a substantial history of existing cooperation in this area; explicit requirement to take forward urban thematic strategy through OMC; planning issues need to be tackled in the context of climate change strategy.

- SDS - There is a need to make sure that the SDSs become useful strategies with an impact. VROM's history of constructive NEPPs can give a natural audience to any intiatives.

- Sustainable mobility – particularly important for the Netherlands given the high ambient air pollution and needs in relation to the Air Framework Directive and NEC Directive.

These are all learning based OMC types, though some more revolutionary than others. There is real need and potential for a paradigm shift in mobility and particular important for the Netherlands in doing so.

Details of the 4 priority areas are given below; details of other areas are given in Annex 1.

Thematic Area # 1: ETAP

Arguments for supporting OMC type application (Pros) - There are no strong EU legal competencies in R&D (strategic relevance/sovereignty concerns/budgetary control), but coordination can potentially produce synergies and spill-over effects. There are many issues that are naturally Member State issues given subsidiarity and effectiveness of action issues - eg public procurement, subsidies/investment programmes etc – and different Member States have different lead competencies and interests that can be harnessed through an OMC. (eg UK lead with sustainable procurement taskforce). ETAP Action Plan suggests applying OMC as such there's at least some political commitment .

Arguments against supporting OMC type application (Cons) - There will be free riding in some areas – as some countries may feel that they make the efforts organising and others watch and take advantage of the process when and where. Conversely some countries may feel that others reap all the competitive advantages. Industry, where it feels that its intellectual property rights or commercial interests will be at risk will contribute less, restricting the number of areas where progress is possible (Eg some technology platforms).

Conclusion - Overall, a high priority OMC type application to be involved in, though selection of where to input will be important. It important that this initiative is to be made to work, and vital that countries with a constructive approach and ready audience contribute. VROM has major contributions to make.

Thematic Area # 2: Green public procurement

Arguments for supporting OMC type application (Pros) - A major area where progress is possible and Member State input is vital. Significant public procurement at Member State level and also regional and local (eg municipal) level and hence significant potential to build on this for positive environmental (and economic, social) benefits.   There are a range of examples to build on and hence learn from (eg Finnish municipality selection of low emissions buses), and clear needs (eg needs for encouraging clean urban transport and development of technologies through GPP of hydrogen or (suitable) biofuel buses). There is already some UK leadership, so possible to link in to a natural partner.

Arguments against NL role supporting OMC type application (Cons) - UK already has the lead.

Conclusion - a specific area where much progress is needed and possible. Significant gains are to be made and if this works it should have positive effects not only in this area but also for coordinated approaches in general. Efforts should be made to find ways of encouraging the uptake of appropriate GPP; including contribution to both Commission led activities and to UK led activities, as well as supporting multi-municipality efforts.

Thematic Area # 3: Carbon dioxide capture and storage in the EU ETS

The issue - There are as yet no European rules or guidelines for monitoring and reporting for Carbon capture and storage (CCS) and the link to ET. It is unclear whether all member states will have the same licensing and operating regulations. The Commission will not let CCS into the EU ETS unless it is confident that national regulation is sufficiently robust; at the same time no one MS is likely to be willing to invest in the effort of developing a regulation domestically and in isolation to other (European) countries given the need for a consistent approach. There is scope for learning from each other and a real need to work together on technical issues to arrive at solutions that fit the range of countries' situation. There are other efforts – eg IPCC – and ECCP2 and upcoming Commission Communication that should result from that. It is therefore a live issue, where there is a window of opportunity for initiative to bear result. , while avoiding possibilities of each MS playing to their strengths.

Arguments for supporting OMC type application (Pros) - There is a bone fide need for progress – people clearly want some type of coordination and do not know what to do. Furthermore, the Netherlands is a leader in research in this field and have an interest in taking this forward. A lot of the research in this area is international in scope anyway and can be built on. If a country wishes to take advantage of European policy measures (eg ETS) then co-ordination with this at a European level could be constructive. There is likely to be a Communication on this issue and hence valuable for coordinating inputs. It is also clear that it is in other MS's interest to take this forward to there is an opportunity to develop a core collaboration than can help galvanise progress. A domestic-only approach could lead to having a system that will be ;rejected; or needing to be changed in the future and hence a waste of resources.

Arguments against supporting OMC type application (Cons) - Is international in scope, where progress is needed beyond European level as well (e.g. coordination with IPCC methodologies). There are differing national circumstances (in everything from energy policy to geology) mean coordination may be very difficult (and hence costly), and leadership by one MS could be viewed as self-interest. The Netherlands, (as in other MS) have the ability to regulate national licensing issues themselves and hence do not necessarily need outside inputs that could be seen as unhelpful or not relevant to the national regulatory environment

Conclusion – There is a real need for a way forward, and the Dutch work on ET and monitoring protocols gives it a natural leadership here.

Thematic Area # 4: Flooding and Flood prevention

The issue - Work on flooding is being undertaken within the context of WFD CIS, using a 'working group' approach. There is not a fully separate 'entity', so full OMC characteristics might not be apparent. It is expected that the Commission will bring forward a proposal for a Directive in the near future.

Arguments for supporting OMC type application (Pros) - This is an area with limited EU competence, where MS can work together and an area of increasing importance, not least to the Netherlands and arguably this area will become more and more important if the predictions about climate change are to prove real. There are a range of solutions available of very different natures (construction of barriers on the one hand, and maintenance of natural protection areas on the other) and significant scope for different types of learning.

Arguments against supporting OMC type application (Cons) The OMC may possibly be limited to sharing of information and coordinating research and some parts are linked to a possible Directive – so there are arguments for following and contributing to the CM route. A further question is not whether co-operation with other Member States in this area is useful, but whether pan-EU co-operation is particularly beneficial to the Netherlands rather than working with those in the same river basins, etc.

Conclusion – It is not clear if a proposed Directive will be acceptable to all MS, so that OMC might be required as a 'back-up' in this area.

Institute for European Environmental Policy (IEEP) and Ecologic

8. SUMMARY CONCLUSIONS AND RECOMMENDATIONS

8.1 Conclusions

OMC practice

- OMC, in the formal sense of the term, has been applied more in the economic and social fields, areas with lesser Community legislative competence, than in the environmental field, where there is greater Community competence.
- In the areas of lesser community competence, there were ambitions to encourage convergence of national policies (or at least outcomes/performance). In the areas of environmental policy, convergence of practice is less often the primary ambition, though there are examples where compatibility is sought or a move towards minimum standards is sought and supported (eg IMPEL work leading to minimum criteria for inspections, Sevilla work on BAT – see further below).
- Any evaluation of the performance of the OMC strongly depends on which yardstick is used to assess performance. Using the status quo as a yardstick makes sense in areas in which it seems politically unrealistic that the Community Method (CM) could meaningfully be applied. Conversely, using the CM as a yardstick makes sense if it seems politically realistic that using the CM would actually lead to the adoption of legislation.
- The experience with the OMC is definitely mixed. Some still see OMC as little more than a talking shop, while others have seen OMCs to definitely offer more in terms of learning and addressing issues which could for political reasons otherwise not be addressed at the EU level.
- On the one hand, broad experience indicates that Member States do not approach OMCs with the same level of commitment as they would mandatory measures.
- On the positive side, in many cases Member States have committed themselves to address problems, which they would probably have refused to address through binding legislation.
- There have been some OMC successes in their role at encouraging learning. They have also led to improvements in governance structures in certain cases such as co-ordination structures and monitoring and evaluation capacities.
- In the social field there have been some successes – where the OMC was linked to funding (case of European Employment Observatory and links to European Social Fund monies).
- OMC type applications in practice have not proved to be good at encouraging action if and where Member States are not interested in acting. In other words it cannot be really useful to achieve needed results if there will be potential resistance by actors whose compliance is needed to achieve overall satisfactory outcomes.
- The Commission itself has recently been quite critical of the performance of OMCs in certain areas, notably as regards Lisbon (see Box 8.1).
- Generally, there is an increasing use of certain of the tools and processes that are found in OMCs, but the high hopes that have been associated with the OMC as a formal process in some quarters have so far been disappointed.
- Yet, there is some evidence that the OMC process and toolkit is maturing. The peer review process is one area where the instrument has gained strength over the years. Similarly, benchmarking and target setting have improved. There appears to be greater sensitivity to the possibilities and limits of mutual learning ("best practice").

- There are still some arguments that if there is insufficient political will/legitimacy (subsidiarity/sovereignty concerns) for a mandatory approach, and a mandatory approach will only lead to a long protracted process where the end result is so 'watered-down' that the legislation actually does nothing, that it is better to go for an OMC type process, possibly with the expectation that if no progress is made then a mandatory approach will be launched (the 'stick behind the door'). If there are positive results, then the OMC is a success, and if there are no results, there is at least a possibility that the political commitment to do something real develops and hence sufficient argument and momentum to legislate (OMC bridge function).

Box 8.1 Commission views on OMC for Lisbon

The Commission has also evaluated the OMC, in particular in the context of the 2005 review of the Lisbon Strategy. The failure by Member States to implement the structural reforms, which are at the heart of the Lisbon Strategy, is seen as the OMC's most troubling deficit. To improve implementation at national level, NAPs (national Lisbon Action Plans) are to support the Lisbon Strategy in future. In addition, the Commission will introduce Lisbon guidelines for Member States and introduce bilateral "coaching" of Member States. The Commission also seems to have found major implementation deficits with respect to other OMCs that were introduced after the 2000 Lisbon European Council. On the one hand, the Commission recognises that these OMCs have produced some benefits, in particular in terms of information exchange and mutual learning and that it will take time for these effects to lead to policy changes. The OMCs have also allowed the Commission to exert influence in areas in which it had previously had no or only very weak influence. On the other hand, the Commission sees few signs that Member States have acted on their OMC commitments. The implementation problem is compounded by the fact that these OMCs almost exclusively involve administrative actors, while regional and societal actors are largely excluded. In addition, the Commission seems to feel that the numerous reporting requirements under the various OMCs consume significant administrative resources at European and, in particular, national levels and must be streamlined.

OMC practice in environmental field

There are hardly any formal OMCs in the environmental field. There are a number of OMC-type applications, though these are generally not called OMCs[39]. Experience with OMC-types show some significant results in terms of new governance structures and capacities as well as learning (see performance later on). There are very few examples of concrete results in terms of policy outcomes and impacts. However, it is often inherently difficult to attribute results to OMCs. In addition, many of the applications are relatively recent and the results may not yet be fully visible.

OMC type applications play different *functional roles* depending on the example:
- *Gap filler or bridge to CM*
  - Under ENAP - exploration of use of EMS for supply chain issue, life-cycle issues or industrial estates.

---

[39] Where discussing the environmental cases, that use of 'OMC' can sometimes be a shorthand for OMC-type applications or OMC processes or elements, and should be read as such. Where there is specific importance of mentioning that it is an OMC type application, then the full term will generally be used in the text.

- Other gap fillers include sustainable mobility, spatial planning, and urban thematic strategy
- Other bridges include EIA, IPP and ECCP
- *OMC(type application) a complement to CM*
  - ENAP IPPC work - contributes to better understanding of development needs and expected to contribute to revision of Directive
  - Other complementing OMC type applications include the Sevilla process (IPPC link; defining BAT), flooding
- *A CM-Implementing OMC* (hence also CM complement)
  - IMPEL – to help improve implementation of CM legislation
  - WFD-CIS – to help implementing the WFD
- *'Alternative' to CM*
  - eg GPP under ETAP.

OMC processes are also increasingly found in CM and hence the distinction is not as strong as some would perceive them to be – eg biofuels and renewables directives.

A range of OMCs and OMC processes are ***motivated by ambitions for convergence*** across the EU, notably – IMPEL (convergence of inspection etc), WFD, and Sevilla process (adopt same range of BAT to avoid too great disparities across the EU). Some of this convergence is based on countries adopting others' solutions (hence mutual learning), while others can follow from agreed ways forward following positive results from an OMC type project with ***problem solving*** as an objective or ambition (hence heuristic learning, to use the jargon). As regards problem solving - ENAP, ETAP, IPP are three key ones; EIA, ECCP and Lisbon also.

There is also ***subsidiarity motivation*** – ie do it nationally. These include, spatial planning, subsidiarity, mobility issues (though there can be some ambitions to block Community interests in having a role – hence 'smokescreen' role)

It can also be useful to categorise by ***motivation for output***. Some OMC type applications look for improvements (eg flooding, IPP, ECCP), others at a consensus on ways forward (eg Lisbon, Sevilla, ETAP) and others on compliance (eg WFD, IMPEL).

Performance of Environmental OMCs and OMC type applications

In terms of mobilisation of input, generation of outputs, outcomes and impacts environmental OMC type measures have performed relatively well:

- *Input:*   the mobilisation of inputs has generally been sufficient to achieve useful outputs;
- *Outputs:* environmental OMC type measures have contributed significantly to learning, but they have performed less well with respect to generating decisions. It should be noted that the likely useful outputs of an OMC process are not always clear at the beginning of an OMC process, which can be positive and negative. If there is flexibility to respond to the changing opportunities in a developing process then positive elements can be obtained;
- *Outcomes:* effects on behaviour are difficult to establish, but there appear to have been at least some desirable effects (led to inputs to CM – work on revision of IPPC Directive);

- *Impact:* a speculative assessment suggests that impacts should mostly be positive (though perhaps often not major and only long term) – IMPEL led work that led to Minimum Criteria for Inspectors should contribute to improving inspection procedures in some countries and hence reduce non-compliance rates in due course. The WFD-CIS has accelerated and considerably improved the implementation of the WFD. Both developments should eventually have positive effects on environmental quality.

There have been clear benefits of learning – in the areas of understanding the problems better, appreciating different national approaches, positions and interests, practice exchange and identifying solutions. There are clear cases where this has fed into the CM system – eg ENAP and IMPEL. There have been constructive contributions to the CM in a number of areas (see next section). Other examples of learning benefits:

- *Learning – exchange of good practice* - with a view to encouraging uptake to improve some performance (eg increase levels of green public procurement, use of EMSs, frequency of inspection). This can be independent of CM area or a contributor to it, depending on the issue (exchange of experience to encourage learning is a staple of CM, but also a core of OMC). This is a diffusion type issue. It can also be done by normal non OMC processes – eg simple workshops and multi-country studies, though there is a question whether workshops in the context of a process, linked to objectives, targets or guidelines lead to more learning than one-off[40] workshops. Note that the exchange of good practice can lead to major shifts in other countries (hence a 'transition', 'thick learning') – eg where sustainable mobility systems or GPP practice from one countries is applied (with adaptations) in another.
- *Learning through benchmarking* - with a view to encouraging laggards to come up to benchmark standards (Eg increase performance of inspectors, verifiers, EIA, standards of public vehicles, levels of GPP). This can be independent of CM area or contributor, depending the issue. This is again a diffusion type issue. *Name and shame* is an extreme version of this, though unpopular in some member states.
- *Learning – understand different Member State perspectives* so as to clarify whether there are any needs for amendments to directives (eg as regards levels of thresholds for IPPC installations, inclusion of sectors, or minimum inspection or permit renewable rates). This is therefore an OMC-type, which complements the CM by providing input in the evaluation/revision process. This is real learning, but can be seen as 'thin' learning as it builds on the current system and does not require major changes; some more changes of practice (thick learning) if IPPC extended to new sectors where BAT not yet applied. This involves some element of innovation.
- *Learning - identifying new solutions to problems using perhaps new instruments*. Eg creating a vision for a future EMAS, developing solutions for lifecycle, supply chain or industrial installation issues, how to find more cost effective solutions. These can be much more innovative, and in the case of leading to real changes which change the approach and then can be seen as system changing or 'thick' learning. This is important for 'transition management' - eg moving to a low carbon economy, sustainable mobility etc where major changes are needed. Again this can contribute to CM directly, and CM in a broad process sense (as eventual amendments to a directive are still part of CM process).

---

[40] Though the distinction is blurred in reality, as one-off workshops are also anchored within a process even if less formally linked that workshops within a process such as ENAP.

Institute for European Environmental Policy (IEEP) and Ecologic

There are also benefits of *canvassing and obtaining support or avoiding opposition* – in the ENAP case, it is clear that the process helped other member States and the European Commission understand the Dutch ideas and needs for emissions trading for NOx. The ongoing dialogues and technical discussions helped reduce the opposition to NOx trading and opened the door for potential future application. The process can be useful for obtaining support for approaches / solutions that are not known in advance, but rather are identified during the process. In places this can be useful 'agenda setting' - eg encouraging IPPC Directive revision.

Another positive (potential) benefit, is that of obtaining engagement and/or coordinating others' efforts in the area. This can increase the level of commitment and momentum as is expected through the green public procurement work.

On the weaker side of OMCs and OMC type applications, it is clear that:

- It is more difficult to get action if there is no Member State interest – ie the OMC may often be less constraining and cannot guarantee action
- There is a lack of transparency in the decision making process and this is often greater than the CM, if and where done correctly.
- The European Parliament is not generally involved (though the EP can comment on guidelines)

The latter two are particularly important for any discussion as to future use of OMC. Given that there is a directive on public participation (Arhus), as it is implemented today would in many ways contradict this / side step this. However, the experience of the social inclusion OMC and the WFD-CIS suggests that this may not be an inherent OMC problem. With respect to some OMC types, for example IMPEL or ENAP, participation may also be less important – at least from the point of view of legitimacy. The level of the problem of transparency and lack of legitimacy given EP absence, depends on the measures taken within the OMC process. Efforts to improve transparency – openness of involvement, of process and of outputs (Eg minutes) – can obviously help. Similarly means to involve or at least notify or inform the EP can in principle be incorporated into OMC process where suitable.

Performance factors

The performance of environmental OMC type measures has been affected by various factors:

- *Nature (and timing) of the challenge*: there must be an important challenge / need for solutions and there must be a window of opportunity to come up with a solution or contribute to a solution.
- *Resources*: there needs to be a clear commitment for inputs and continued inputs from one or more champions and range of other contributors. It is generally easier to obtain resources for the start up and more difficult for the continuation, if and where this is still needed.
- *Actor constellation*: there needs to be a leader (or leaders) who provides crucial resources and has a strong interest in obtaining a solution, and the leader needs to be complemented by other stakeholders and a process to ensure that the 'leadership' is deemed acceptable and that there is some 'buy-in' to the process. In cases it is better for a member state led activity and in other cases by Commission led. In the former case, subsidiarity/sovereignty concerns may play a role, and the Commission as

'independent-broker' may be important in the latter case. In any case, strong reliance on leadership is likely to cause tensions between leaders and "regular" participants

- *Institutional factors:* environmental OMC type measures tend to be characterised by a low degree of institutionalisation, at least partly reflecting sovereignty and subsidiarity concerns. Among other things, this may have a negative impacts on trust, broad consultation and, consequently, learning.
- *Legitimacy:* the legitimacy of environmental OMC type measures is primarily based on the principles of subsidiarity and sovereignty, expertise, and output. However, participation may be needed to shore up the democratic legitimacy of OMC types which directly result in important decisions.

Views as to likely areas of growth.

One can certainly expect more OMC processes – though whether these will be labelled as OMC processes is unclear, and one could expect some fluctuation in interest as changes of government can affect OMC type activities' continuity, as would changes in resource availability (eg NGOs) and levels of stakeholder interests. One can certainly expect more CM Directives that build in OMC type processes/elements (eg biofuels type directives).

It is clear that within this Commission that there will be few new environmental directives launched and countries wishing an advance environmental concerns may well need to launch an OMC – if only to lead to some progress and mature the dossier for a potential application under a new Commission in due course. Proactive concerned member states that have environment as a priority or concern could therefore usefully prepare the ground in times when the Commission cannot or does not wish to progress environmental dossiers given other foci or given practical understanding that there is insufficient political will to endorse new environmental measures. There is therefore scope for countries with a long-term vision to use bottom-up OMC type processes.

It is important to note that not all countries share the Netherlands' culture of participative communication and that there will be some limits to growth for OMC type activities, or at least limits to expectations as to who could be part of a core team of initiators and drivers of initiatives. In some cultures strict measures (ie not OMCs) are required for positive results, and this needs to be borne in mind when considering potential ways forward.

Does calling an OMC and OMC help?

The study shows that at a functional level (vis-a-vis learning, exchange of experience, problem and solution identification etc) the contrast between the CM and the OMC is significantly weaker than frequent treatment of the two as two very different processes suggests.

In institutional terms (eg actor involvement, role of targets, benchmarking etc), there is also often a high level of correspondence. As noted – the biofuels Directive, while clearly CM, used OMC type instruments. Even where OMC and CM are not similar, they can be very complementary, with one being the input to the other. This complementarity is not surprising for OMC type processes, which cover certain parts of the policy cycle while other parts of the cycle are often covered by the CM.

However, in political and academic circles there is a lot of heated debate and fixed views regarding what CM and OMC are, can do, and are intend to do. The view is often that OMC is

a way of avoiding real action and avoiding commitments and constraints, while the advocates of the OMC argue that the only politically realistic and or legitimate alternative to the OMC would be the status quo. Perhaps more importantly, the political stakes in the discussion are high. Thus it is not surprising that DG Environment is often highly critical of the OMC; given relatively strong EU competencies in the environmental field, DG Environment prefers to concentrate its resources on the CM where it has - not least as a result of the Commission's right of initiative and responsibilities for implementation - a stronger influence than in an OMC framework. Conversely, DG Employment, which has few alternatives to using the OMC, is much more positive in its evaluation of the OMC. Two conclusions follow from this: First, it is essential to evaluate the performance and potential of the OMC independently from the vested interests of the actors concerned. Second, given the significance of these interests in the political process, it may sometimes be pragmatic, if and where OMC processes can offer real benefits, to not title it as an OMC and simply contribute to the progress of the environmental agenda at hand and make efforts to see (and demonstrate) how the OMC can contribute to the CM process.

It is also important to ensure that the OMC is not seen as replacing CM processes where these processes work at least as effectively and efficiently as the OMC – there can be cases where a Member State led OMC type process does similar things as a Commission led consultation process, and the OMC label can lead to confusion and resistance. Better to call the OMC type process simply a technical consultation contributing to normal CM process. In this way there is remains a route for contributions and a change of influence.

Actors and decision positions (eg EP not part of OMC) – the European Commission lead in CM processes, while it is much more open as to who leads in OMC process. The European Commission could coordinate, or a Member state, or group of member sates could co-ordinate. The European Commission could be part of the 'core team', more of an observer and in principle, even be excluded from OMC completely (eg where no role given subsidiarity). In practice, the European Commission plays different roles.

The ambitions for the role of the EP, the Commission and Member States can be important in considerations as to whether to call an OMC type process OMC or not.

8.2 Recommendations

Building on the understanding of OMC performance and the needs of a range of environmental challenges, we conclude that in a number or areas VROM contributions to OMC type applications could be seriously considered in the following areas (as noted in Chapter 7 and Annex 1). Further specific analysis would of course be needed as to exactly where and how VROM could contribute best and what form initiatives could usefully take.

Areas of potential high interest for VROM include – 1st priority areas:

- ETAP – it important that this initiative is to be made to work, and vital that countries with a constructive approach and ready audience contribute.

- Green public procurement – a specific areas where much progress is needed and possible. Significant gains are to be made and if this works it should have positive effects not only in this areas but also for coordinated approaches in general.

- Carbon dioxide capture and storage in the EU ETS – a real need for a way forward, and the Dutch work on ET and monitoring protocols gives it a natural leadership here.

- Flooding – in the context of the CIS and potentially also linked to regional funding.

Other areas of importance include:

- ENAP type (but not actually ENAP) process – there is more potential in the approach, though a break in the IPPC area may be useful to wait for the results of the commission studies. Other areas have potential, however. There are good arguments for not calling a future initiative, ENAP, as this can create a new institutions reducing the flexibility to adjust the process to the needs.

- Spatial planning - there is a substantial history of existing cooperation in this area; explicit requirement to take forward urban thematic strategy through OMC; planning issues need to be tackled in the context of climate change strategy.

- SDS - There is a need to make sure that the SDSs become useful strategies that have a chance to influence plans and policies with eventual impacts through implementation. VROM's history of constructive NEPPs suggest the Netherlands have useful experience to build on to contribute to driving forward SDSs.

- Sustainable mobility – particularly important for the Netherlands given the high ambient air pollution and needs in relation to the Air Framework Directive and NEC Directive.

Where could OMC processes be usefully applied? – for what function/purpose in the policy cycle

- OMC processes can play a key role in learning – whether to learn from the practice of others, or work together to understand the problems better and identify solutions together.
- OMCs type initiatives can offer useful inputs in the early stages of policy formulation – building the understanding of the problem, needs for solutions, possible solutions. This then feeds into the CM process. It can also then be used again to support the revision of the work as the situation evolves.
- OMC type applications can be helpful as an implementing tool/process, including for Community legislation and objectives.
- OMC processes can be useful to engage commitment to a way forward and can be a useful way forward in areas where there is either little Community competency or little political will or technical capacity to make progress.
- As regards technical capacity, the Commission is generally short of capacity for the range of dossiers/issues, and inputs coordinated by Member States can provide a very useful complement and input to the Commission services efforts – whether for raising information, developing understanding or highlighting possible solutions.

As regards the question of alternatives to CM - in light of the no vote to the Convention, there are clear arguments that there need to be visible opportunities for member states to take ownership of problems and finding solutions. In other words there should be a proactive look at whether and where MS approaches or MS co-ordinated approaches can offer better results than the CM. If these really do offer the same or better results, and there is a real commitment to

Institute for European Environmental Policy (IEEP) and Ecologic

making it happen, the OMC could be the solution. However, if the likely results are weaker then subsidiary would often argue for the CM. In light of the weaknesses of past and ongoing OMC practice, there needs to be a convincing case made. In short it has to deliver. In addition the questions of transparency and democratic robustness (lack of EP role) need to be addressed to make the offer of an OMC attractive.

Should it be called OMC?

Not in all cases, and indeed arguably the term should be used very sparingly in the environmental field for strategic reasons. In practice the process is more important than the title, and the use of the word OMC can create resistance (or support, depending on the political-institutional context in which it is used).

How Should the OMC operate?

- *Who coordinates* (Member State(s) or the Europea Commission)? – this depends very much on the issue, the stakeholders and their sensitivity and stage of the process. This has to be defined case by case.
- *European Parliament role*. A lack of EP role weakens the process and efforts should be made to find a role for the EP – whether on guidelines, or commenting on targets.
- *Stakeholder involvement?* It is important that there is an openness of engagement and a transparent process to avoid the problem of 'self appointed' clubs. Obviously there will need to be a core group progressing the issues though there needs to be a clear rationale for the choice of constellation of the group and a mechanism to contribute.

VROM could usefully identify constructive areas where learning is needed or solution identification is needed. However, to some extent this may be an approach that is easier to implement in some Member States, such as the Netherlands, than in others which have different traditions and practices of policy-making There is also currently a focus in the European institutions on non environmental issues, with particular focus no competitiveness and economics, sometimes seeming to miss both the impact of non action on environmental issues on the economy and competitiveness (ie that there is a potential negative effect of not safeguarding or progressing the environment), and to miss the opportunity to improve the environment where there are few costs or acceptable costs. The lack of European level focus is therefore an opportunity for countries like the Netherlands to launch OMC type applications to progress the understanding of problems, the interconnections (environment – economic – social), needs for solutions or recognition of opportunities such that when there is new political will either at Member State or at EU level, the appropriate progress can be more readily supported.

Annexes

(see also Part B: Case Studies)

The Long list: what are the OMC characteristics and arguments for and against investigation as case studies.

Possible OMC area / NL focus	OMC Characteristics (for existing ones that can be taken forward) or OMC potential characteristics/elements (for new ones)	Arguments for supporting OMC type application *(include comment on specific NL interest if and where relevant)*	Arguments against seeking OMC type application *(include comment on specific NL interest where relevant)*	Working conclusion OMC – very interesting (+3) to v. inappropriate (-3)
Existing OMCs – hence areas for further attention				
ETAP - Environmental Technologies Action Plan (ETAP). A major EU wide plan to encourage the development and uptake of clean technologies, with particular focus on PV, hydrogen and several others through 'technology platform'.	- Commission initiated, with Member states commitment - Regular reporting and meetings - Mirror groups for specific technologies at national levels - Link to green foresight work at national level - Broad objectives will be complemented by desirable targets in due course - Some elements are more amenable to OMC type activities than others	- No strong EU legal competencies in R&D (strategic relevance/sovereignty concerns/budgetary control), but coordination can produce synergies and spill-over effects - Many issues naturally Member State issues given subsidiarity and effectiveness of action issues - eg public procurement, subsidies/investment programmes etc – and different Member States have different lead competencies and interests that can be harnessed through an OMC. (eg UK lead with sustainable procurement taskforce) - ETAP Action Plan suggests applying OMC as such there's at least some political commitment	- Free riding in some areas – as some countries may feel that they make the efforts organising and others watch and take advantage of the process when and where. Conversely some countries may feel that others reap all the competitive advantages. -	+3 as in some areas MS lead, and coordination/galvanisation of MS key for progress.

Possible OMC area / NL focus	OMC Characteristics (for existing ones that can be taken forward) or OMC potential characteristics/elements (for new ones)	Arguments for supporting OMC type application *(include comment on specific NL interest if and where relevant)*	Arguments against seeking OMC type application *(include comment on specific NL interest where relevant)*	Working conclusion OMC – very interesting (+3) to v. inappropriate (-3)
ENAP/IPPC - Exploring New Approaches in regulating industrial installations; a three year initiative led by VROM to explore - together with Member States from across Europe, the Commission and other stakeholders – ways forward on emissions trading, the use of management systems and installation permitting.	- MS lead (VROM) - Key MS support (UK, CR) - Growing Commission involvement (from informed, to active inputs) - PREP group and regular meetings - MS comparisons …quasi benchmarking - Explore role of different instruments that could act as bridge, complement/synergy and substitute instruments	- Useful OMC-type process to gain understanding of issues, needs and potential solutions in a range of further areas – eg scope for more on administrative burdens and smarter legislation (which links to efficiency, economies of scale and competitiveness issues) – Dutch standard cost model approach could be a useful base; - An areas could be looking at reporting requirements and issues of double tasks and issue of compatibility and comparability - Might usefully complement more technical Sevilla Process – a purely technical focus may limit effectiveness and efficiency of IPPC. There is scope for ongoing contributions. - Scope for several issues not fully resolved to receive further attention – eg IPP, life-cycle issues for installations, industrial estates etc.	- Overlap with IPPC comitology? - Unclear whether countries other than NL would take up the leadership baton given that ENAP is so heavily identified with the NL. Others may be seen as paying for NL to get the credit.	+2: it would be a missed opportunity and a partial waste of the development of the process and constellation to let it die down. For the moment no major overriding issues of concern suggest that it should be a +3, but if the process is ongoing then it gives the capacity to respond quickly.

Institute for European Environmental Policy (IEEP) and Ecologic

Possible OMC area / NL focus	OMC Characteristics (for existing ones that can be taken forward) or OMC potential characteristics/elements (for new ones)	Arguments for supporting OMC type application *(include comment on specific NL interest if and where relevant)*	Arguments against seeking OMC type application *(include comment on specific NL interest where relevant)*	Working conclusion OMC – very interesting (+3) to v. inappropriate (-3)
Water Framework Directive (WFD) and the Common implementation strategy (CIS) - the WFD covers a very broad range of aspects but provides only vague provisions on implementation. M/ember States therefore need to develop implementation strategies. Informal co-ordination of strategy development is taking place.	- Illustrates co-existence with CM - Example for synergetic OMC - Example for implementation stage OMC - Dual structure: low level meetings; supervisory function of water directors - Likely to illustrate more success than failure of OMC - Is informal - Likely to involve significant stakeholder participation	- CIS speeds-up implementation of WFD as setting-up of more formal structures takes time - CIS is flexible to respond to new issues emerging in the implementation process - CIS manages to address sensitive issues which would be more difficult to address under a legally binding framework - CIS supports "ownership" as a largely self-organising process which implementing authorities can shape themselves - The informal., "problems-solving" focus of the CIS has enabled civil society to participate, thereby increasing legitimacy of WFD	- Potential overlap with emerging formal structure to implement WFD	+2 to continue support/role in the ongoing CIS. This is not a new area.

Possible OMC area / NL focus	OMC Characteristics (for existing ones that can be taken forward) or OMC potential characteristics/elements (for new ones)	Arguments for supporting OMC type application *(include comment on specific NL interest if and where relevant)*	Arguments against seeking OMC type application *(include comment on specific NL interest where relevant)*	Working conclusion OMC – very interesting (+3) to v. inappropriate (-3)
Sevilla Process/IPPC – The development of best available technique reference documents (BREFs) for use within the IPPC Directive. The process is one of regular meetings with specific MS expert groups deciding together appropriate range of techniques that can be regarded as BAT.	• Commission coordination • Synergies with CM • Implementing CM • Sort of peer review but not cyclical and no reporting/monitoring/indicators • Member state inputs coordinated • Type of negotiation for standards • Stakeholder participation but industry dominance • Low transparency • Very technical	Ongoing process that needs Member States input (though this is not an OMC specific argument) •	• The process can be hostage to Member State interests – arguably some of the BREFs have been weakened given NL interests given earlier agreement on too tough NECs. • Complaints that BREFs are difficult to apply "on the ground" because "users" are not sufficiently represented	+1 some ongoing support to the Sevilla process though this should not really be seen as an OMC effort.

Possible OMC area / NL focus	OMC Characteristics (for existing ones that can be taken forward) or OMC potential characteristics/elements (for new ones)	Arguments for supporting OMC type application *(include comment on specific NL interest if and where relevant)*	Arguments against seeking OMC type application *(include comment on specific NL interest where relevant)*	Working conclusion OMC – very interesting (+3) to v. inappropriate (-3)
ECCP – European Climate Change Programme – a major Commission (DGENV) instigated programme to develop understanding of what measures are possible to implement, what reductions they entail, and how they can be implemented; obtain buy-in into the process (eg through major involvement in working groups by Member States and other stakeholders) and encourage action. A further ECCP is scheduled to be launched later in 2005	*Past ECCP process :* • ECCP process as a whole, involvement of stakeholders and working groups which included both MS experts and technical /stakeholder experts. • Emissions trading and F-gases working groups: two of the few cases that led to almost in their entirety towards a directive/regulation…(but what is OMC specific in the sense of setting this apart from Commission advisory committees involved in the preparation of legislation?) • In other groups discussion was less specific on the content of legislation….discussion at most informed legislation already in mind eg CHP, renewable energy. • Committee of climate change national experts. • ET group was the main effort of the ECCP and the Commission was driving the process. MS who could have had an interest in over-influencing the process (Eg UK given their own system) did not do so. The strong leadership by Commission was undoubtedly helpful here.	• For the ECCP 2005+ to work it needs to understand what MS's possibilities, needs and potential contributions to solutions are. • To engage the solutions, it may be the case that MS leadership will prove helpful.	• Probably less MS leadership/initiative that would be the case for an OMC type application • Commission coordinating inputs	• Worth exploring what form the ECCP will take and then assess whether there is a real scope for OMC type activities.

Possible OMC area / NL focus	OMC Characteristics (for existing ones that can be taken forward) or OMC potential characteristics/elements (for new ones)	Arguments for supporting OMC type application *(include comment on specific NL interest if and where relevant)*	Arguments against seeking OMC type application *(include comment on specific NL interest where relevant)*	Working conclusion OMC – very interesting (+3) to v. inappropriate (-3)
IMPEL and AC Impel	- Contrasting origin (IMPEL – Member States, AC-Impel was Commission) - Member States leadership - A major focus is to assist in compliance with EU law without formal EU instruments - Focuses on EU as a whole and individual MS - Has formal secretariat in Commission, yet much direction is by MS - Many different working methods. - Funded by Commission and MS to differing degrees	- IMPEL addresses detailed implementation issues that might be too 'sensitive' in other contexts - It is flexible to concerns of implementing authorities as they identify implementation problems - NL has been supportive in the past.	It is a relatively slow process and is non-binding, so cannot deliver objectives that require such characteristics There are limitations where a MS seeks to push an 'agenda', as seen by the NL taking ENAP outside of the IMPEL framework.	It is a very interesting example of OMC as a 'learning' activity which has continued scope for application. +1 given that other areas more important and no clear advantage of major increase in contribution to the IMPEL process for the moment – but look out for opportunities (hence +1)

Possible OMC area / NL focus	OMC Characteristics (for existing ones that can be taken forward) or OMC potential characteristics/elements (for new ones)	Arguments for supporting OMC type application *(include comment on specific NL interest if and where relevant)*	Arguments against seeking OMC type application *(include comment on specific NL interest where relevant)*	Working conclusion OMC – very interesting (+3) to v. inappropriate (-3)
Sustainable mobility – the challenge of the Gothenburg/SDS objectives (decoupling and modal shift) very hard to meet	Many and various aspects: • Joint Expert Group work on strategic best practice in transport policy integration is a unique case study; • DC Taxud's efforts to stimulate some coordination on vehicle taxation to support CO_2 reductions; • MS's weak record on fuel tax harmonization – partly through CM; • Various and very numerous cooperation frameworks and other best practice networks; • Initiatives to pursue inter-modality; • Vehicle technology R&D initiatives; • Deliberations on Sustainable Urban Transport Plans in support of the urban TS; • Development of indicators	• VROM has already made an intervention in this field through *Energy in Motion* conference and hence has some ownership of the initiative • Many different aspects where OMC could be explored further • A very major need for progress • High profile (now CARS 21) • Major issue for NL given the high ambient pollution concentrations and problems with local air quality standards in the air framework directive. Potentially important constraints for new builds/investment and therefore important that tackled.	• Not very positive examples in some areas • Local authority cooperation often better than MS level – though perhaps some MS coordination could work	+3 given Dutch leadership in some areas.,

Possible OMC area / NL focus	OMC Characteristics (for existing ones that can be taken forward) or OMC potential characteristics/elements (for new ones)	Arguments for supporting OMC type application *(include comment on specific NL interest if and where relevant)*	Arguments against seeking OMC type application *(include comment on specific NL interest where relevant)*	Working conclusion OMC – very interesting (+3) to v. inappropriate (-3)
Spatial planning and links to Urban Thematic Strategy Co-operation between Member States on issues of spatial planning (including urban and coastal zones management|) which led to the publication of the European Spatial Development Perspective	• Annual informal Council of Spatial Planning Ministers • Committee on Spatial Development • Framework of co-operation provided by European Spatial Development Perspective • Co-operation on research through European Spatial Planning Observation Network	• Early example of OMC-type activity as an alternative to CM (limited EU competence) • Later attempt to bring process into CM by subsuming the Committee on Spatial Development into the ERDF Committee • Precursor of OMC for implementation of Urban Thematic Strategy • Spatial Planning issues led at EU level by NL • +ve possible collaboration with Germany, as interested in the subject .	• Difficult area – lack of agreed definition of spatial planning between Member States. • Informal meetings of Member States more about influencing existing EU policies than benchmarking of national policies • Also some rivalry within the Commission of ownership of this portfolio - DGRegions or DGEnv.	+2 substantial history of existing cooperation in this area; explicit requirement to take forward urban thematic strategy through OMC; planning issues need to be tackled in the context of climate change strategy.
Flooding	- Undertaken within context of WFD CIS - Working group approach - Not a fully separate 'entity', so full OMC characteristics might not be apparent	- Is an area with limited EU competence, where MS can work together - Developing area of importance, not least to Netherlands and arguably this area will become more and more important if the predictions about climate change are to prove real.	- OMC possibly limited to sharing information and coordinating research - Some parts are linked to possible Directive – so arguments for CM.	It is not clear if a proposed Directive will be acceptable to all MS, so that OMC might be required as a 'back-up' in this area. +3 given importance of the issue, need for coordination and NL leadership/high concerns.

Possible OMC area / NL focus	OMC Characteristics (for existing ones that can be taken forward) or OMC potential characteristics/elements (for new ones)	Arguments for supporting OMC type application *(include comment on specific NL interest if and where relevant)*	Arguments against seeking OMC type application *(include comment on specific NL interest where relevant)*	Working conclusion OMC – very interesting (+3) to v. inappropriate (-3)
Integrated Product Policy	• Commission meeting regularly with MS to take forward • National strategies on IPP being developed in the framework of Commission communication and Environment Council conclusions. • Working Group on Reporting Formats developing a template for reporting by Member States to the Commission • New working group on Green Public Procurement proposed to exchange experience, benchmark, and develop possible EU measures • Number of pilot projects – 2? - (by industry) on how IPP can work in practice • Doesn't involve legislation at present but may lead to in future (will also depend on the steer from the TS) • Relatively high profile with link with waste and natural resources thematic Strategies	• Need for learning as to how and where to apply • Diverse area where competence of both the EU and the Member States is limited	•	
EIA – Environmental Impact Assessment.	• OMC role in the revision of the EIA / reporting led / OMC type process. • OMC process a driver for change in legislation and practice • Some interesting issue of economies of scale and informal standard setting.	• Due to different administrative structures in the Member States, there can only be a relatively general standard approach to EIA. OMC-type may serve learning, identification of best practices and improve comparability. This would also have a positive effect on competitiveness (intra-EU)	Little interest to VROM	

Institute for European Environmental Policy (IEEP) and Ecologic

Possible OMC area / NL focus	OMC Characteristics (for existing ones that can be taken forward) or OMC potential characteristics/elements (for new ones)	Arguments for supporting OMC type application *(include comment on specific NL interest if and where relevant)*	Arguments against seeking OMC type application *(include comment on specific NL interest where relevant)*	Working conclusion OMC – very interesting (+3) to v. inappropriate (-3)
Soil		• Perhaps useful to use OMC as a defensive strategy. A potential useful application for smaller countries who have lesser 'reach'.		
Carbon dioxide capture and storage in the EU ETS	There are as yet no European rules or guidelines for monitoring and reporting for Carbon capture and storage (CCS) and the link to ET. It is unclear whether all member states will have the same licensing and operating regulations. The Commission will not let CCS into the EU ETS unless it is confident that national regulation is sufficiently robust; at the same time no one MS is likely to be willing to invest in the effort of developing a regulation domestically and in isolation to other (European) countries given the need for a consistent approach. There is scope for learning from each other and a real need to work together on technical issues to arrive at solutions that fit the range of countries' situation. There are other efforts – eg IPCC – and ECCP2 and upcoming Commission Communication that should result from that. It is therefore a live issue, where there is a window of opportunity for initiative to bear result. , while avoiding possibilities of each MS playing to their strengths.	There is a bone fide need for progress – people clearly want some type of coordination and do not know what to do NL: a leader in research in this field and have an interest in taking this forward A lot of the research is this areas is international in scope anyway. If a country wishes to take advantage of European policy measures (eg ETS) then co-ordination with this at a European level could be constructive. There is likely to be a Communication on this issue and hence valuable for coordinating inputs. It is also clear that it is in other MS's interest to take this forward to there is an opportunity to develop a core collaboration than can help galvanise progress. A domestic-only approach could lead to having a system that will be ;rejected; or needing to be changed in the future and hence a waste of resources.	*It is international in scope, where progress is needed beyond European level as well (e.g. coordination with IPCC methodologies)* Differing national circumstances (in everything from energy policy to geology) mean coordination may be very difficult (and hence costly), and leadership by one MS could be viewed as self-interest. Nl (as in other MS) have the ability to regulate national licensing issues themselves and hence do not necessarily need outside inputs that could be seen as unhelpful or not relevant to the national regulatory environment	+2 or +3, for an OMC learning type application that may also identify ways forward that can input into any eventual communication.

Institute for European Environmental Policy (IEEP) and Ecologic

Possible OMC area / NL focus	OMC Characteristics (for existing ones that can be taken forward) or OMC potential characteristics/elements (for new ones)	Arguments for supporting OMC type application *(include comment on specific NL interest if and where relevant)*	Arguments against seeking OMC type application *(include comment on specific NL interest where relevant)*	Working conclusion OMC – very interesting (+3) to v. inappropriate (-3)
Sustainable Development Strategy– coordination of national and European Strategies	• Higher level objective but no binding requirements • There are, however, commitments for national SDSs – a single strategy, with no requirement for being updated.	• Useful to increase ownership of SD strategy and encourage quality national strategies where performance is measured and tracked; naming and shaming • Also benefit of coherence of national strategies within the EU • Very topical and indeed suggested that OMC type tools could be useful	• does not involve EP and therefore weaker	+2 There is a need to make sure that the SDSs become useful strategies with an impact. VROM's history of constructive NEPPs can give a natural audience to any intiatives.
Sustainable consumption - At European level a broad range of measures to promote sustainable consumption and production is in place, although no SCP framework exists. The measures include the EU Eco-Management and Audit Scheme (EMAS), the EU Eco-label, the new community framework for taxation of energy products and electricity and the Integrated Product Policy (IPP) initiative.	• Production and consumption patterns are often firmly entrenched in national economic structures and cultures, • Broad set of stakeholders to be involved (i.e. industry, consumers, administration,..), • co-ordination of the existing variety of relevant instruments necessary.	• Exchange of experience and learning under an 'SCP OMC' could help to develop a common, more specific understanding of SCP and its implications among the Member States, the Commission and stakeholders. • The fact that the promotion of SCP is a stakeholder-based process in which the role of state authorities is limited, implies that the respective activities rely primarily on network based, OMC-type arrangements rather than legislative initiatives. • Real need, and international pressure for EU action	• No forum established yet. • Very wide	+1 to +2 NL has the lead in some areas

Possible OMC area / NL focus	OMC Characteristics (for existing ones that can be taken forward) or OMC potential characteristics/elements (for new ones)	Arguments for supporting OMC type application *(include comment on specific NL interest if and where relevant)*	Arguments against seeking OMC type application *(include comment on specific NL interest where relevant)*	Working conclusion OMC – very interesting (+3) to v. inappropriate (-3)
Environmental Policy Integration – coordination of national and European Strategies	• Higher level objective and commitment by Councils to take forward – rather than MS. But need to extend EPI to Member States to underpin Cardiff at EU level • Many national approaches exist, which could be co-ordinated in a better way	• Fundamentally needed for SD (no OMC specific argument) • EPI is partly about intra-sector learning. This could be helped by OMC • OMC may be used to set and pursue additional environmental objectives of a particular sector for which it seems inappropriate or unrealistic to impose objectives via environmental legislation	- Some sector environmental objectives which could be imposed by legislation may be defined via less binding OMC	+1
GMO coexistence – rules for ensuring that conventional and GMO crops can coexist, and under what conditions.	• Need for coordination of national approaches	• major topical issue with MSs having v different approaches • Uncertainty about possible and suitable solutions offers significant potential for learning • Appropriate solutions may vary significantly among Member States and regions due to differences in the natural environment and agricultural practices • OMC might be used to implement a broadly formulated legislative framework on co-existence	• Given waning Commission resistance, the prospects for the adoption of legislation are improving • There may be cross border effects which might need to be regulated in a legally binding way. There may be implications for trade if levels of GMO contamination differ among Member States	Exclusively OMC: -2 OMC-type implementing broad legislation: +2

Possible OMC area / NL focus	OMC Characteristics (for existing ones that can be taken forward) or OMC potential characteristics/elements (for new ones)	Arguments for supporting OMC type application *(include comment on specific NL interest if and where relevant)*	Arguments against seeking OMC type application *(include comment on specific NL interest where relevant)*	Working conclusion OMC – very interesting (+3) to v. inappropriate (-3)
Environmental taxes and charges -	• There is some country to country comparison and learning from practice of others, but this is far from OMC type. • Some efforts by DGTaxud and also DGENV to coordination national tax systems (eg through Communications).	• There is a commitment to the PPP and getting prices right, and yet great competitiveness concern have few countries will go it alone – some sort of coordinated approach could get around this. • OMC may be a compromise between countries with relatively high eco taxes which would like others to adopt similar taxes (often for competitiveness reasons) and those which resist • OMC may alleviate some more general sovereignty concerns in the field of taxation	• Major MS resistance to having anyone (try to) coordinate or influence their fiscal policies. • OMC may not deliver as competitiveness concerns might outweigh OMC impact in countries with low domestic pressure for eco taxes. • OMC may result in weak eco-tax targets which do not reflect PPP	-2 gives MS veto. Room for lessons, best practice et al only, but already being done – EEA, OECD etc.
Green Public procurement – there have been calls for coordinating EU practices on green public procurement, and moving towards an EU target	There is need for guidelines – eg through the handbook on green purchasing, to be supplemented by new methodologies for assessing exactly what constitutes green procurement and how much there is. There is also a need for (aspirational) targets and country benchmarking and exchange of best practices so as to encourage the suitable uptake of green procurement practices. Existing OMC type application – UK lead	• A major area where progress is possible and MS input is vital. Significant public procurement at Member State level and also regional and local (eg municipal) level. • Already UK leadership, so possible to link in to a natural partner.	• Argument against NL OMC role - UK already has the lead.	+3

Possible OMC area / NL focus	OMC Characteristics (for existing ones that can be taken forward) or OMC potential characteristics/elements (for new ones)	Arguments for supporting OMC type application *(include comment on specific NL interest if and where relevant)*	Arguments against seeking OMC type application *(include comment on specific NL interest where relevant)*	Working conclusion OMC – very interesting (+3) to v. inappropriate (-3)
Pro-environmental subsidies – these exist for cleaner cars, for energy savings et al – with wide ranges of different practices across Member States	• EU State Aid guidelines exist • Bone fide Commission role given internal market – at least in checking that subsidies are acceptable. • No commission role in requesting subsidies. • Regular reporting on subsidies, though not really coordination publication.	• Growing area and the need for this instrument is clear and more insights are needed as to which instruments can be usefully applied effectively and where. • Room for coordination of national practice – or at least learn from each other. • Some competition between different approaches, and diversity of approaches - could benefit from common practice (Eg use of accelerated depreciation etc)	• Some Member States may not wish to have others' comment on or try to influence domestic environmental subsidies issues.	+2 given the arguably large needs for this type of instrument.
Subsidy reform - there is ongoing rhetorical support for the reform of environmentally harmful subsidies and without coordination across Member States this will not really proceed given competitiveness concerns	• There could be a benefit of country benchmarking / comparisons on subsidies. • This could create some peer pressure.	• One Member state will be reluctant to move forward on its own given concerns of competitiveness, or at least arguments of competitiveness concern that political level decision makers have to be seen to be taking seriously	No likelihood of subsidy reform for Environmental purposes. Therefore likely to be a little bit of a waste of effort.	-2
Environment and Health Strategy	• High level agreement • Action plans agreed underneath it • Consultative and Working groups	• The Netherlands, being in the centre of Europe and with the most high population densities face high ambient pollution levels and hence potential health benefits from addressing this. • EH is a complex interaction of factors requiring flexible approaches available through OMC	• Very long term issues where benefits come much later • Few easy early wins.	+2 Elements of the EH Strategy need to be taken forward through OMC. This could, for example, build on peer-review assessments of NEHAPs.

Institute for European Environmental Policy (IEEP) and Ecologic

Possible OMC area / NL focus	OMC Characteristics (for existing ones that can be taken forward) or OMC potential characteristics/elements (for new ones)	Arguments for supporting OMC type application *(include comment on specific NL interest if and where relevant)*	Arguments against seeking OMC type application *(include comment on specific NL interest where relevant)*	Working conclusion OMC – very interesting (+3) to v. inappropriate (-3)
EU Pesticides policies	• fragmented market currently in Europe and hence big companies are not preparing pesticides for European markets etc	• create a market large enough to attract manufacturers • does not need to be allEU25 to make it work	• NL a relatively small player; apart from for certain niches	+1 Market mechanisms to reduce pesticide use could be developed through OMC, but much action is via CM

Institute for European Environmental Policy (IEEP) and Ecologic