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Social Policy at EU Level: from the Anti- Poverty Programmes to Europe 2020

Background Paper



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Bart Vanhercke
Co-director
European Social Observatory

www.ose.be

rue Paul Emile Janson 13 / 1050 Bruxelles / tél: 32 (0)2 537 19 71 / fax: 32 (0)2 539 28 08 / e-mail: info@ose.be

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Summary

The paper identifies ten *milestones that brought about* the Social OMC: (1) the EU's Poverty Programme (1975-1994) in a context of constitutional asymmetry; (2) two symbolic Council Recommendations in 1992, providing a premature version of OMC; (3) Commission activism and Nordic enlargement during the nineties; (4) the politics of indicators and "technical" cooperation through the Administrative Commission; (5) the Court of Justice applies competition law to social protection and rules on "Poverty IV"; (6) the Treaty of Amsterdam: social policy becomes a joint responsibility; (7) a strategic Communication in 1999 from a resigning European Commission; (8) a sense of urgency in a new – social-democratic – landscape; (9) the Lisbon rubberstamp; and (10) the development of the basic architecture (2001-2002).

To answer the question *why the OMC was launched* in 2000, we refer to four explanations: first, the European Commission as "norm entrepreneur"; second, Member States self-interest; third, an advocacy coalition to set off economic pressure; and fourth, the role of ideas. We conclude that the "soft law dilemma" – showing sufficient flexibility so as to remain politically relevant, while recognizing the historical process the OMC emerged from, is embedded in and constrained by – remains at the heart of any further (fundamental) revisions of the Social OMC.

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1. Introduction: reinvigoration of “open coordination” under the Europe 2020 Strategy

It came as a surprise to quite a few observers that the Social Affairs Ministers of the Member States of the EU declared, in June 2011, that the Open Method of Coordination for Social Protection and Social Inclusion (Social OMC) had proved a flexible, successful and effective instrument and that it would be “reinvigorated” (read: *relaunched*) in the context of the new Europe 2020 Strategy (Council of the EU, 2011). The earlier political objectives of the Social OMC (Council of the EU, 2006) were reconfirmed: the method will continue aiming at a decisive impact on the eradication of poverty and social exclusion, the promotion of adequate and sustainable pensions and the organisation of accessible, high-quality and sustainable healthcare and long-term care in the Member States. So, Ministers confirmed the wide scope of the Social OMC: it will continue to cover not only social inclusion, but equally pensions, and health and long term care.

The key question raised in this paper is *why the Social OMC emerged in the first place*. In answering that question, we identify some of the key milestones that brought about the OMC. Clearly, a sound understanding of the Social OMC’s historical development can contribute to understanding the opportunities and limitations of the further development of this policy tool under the Europe 2020 framework.

One important caveat is due: the current paper merely provides “a” history of the Social OMC(s), and other versions thereof can certainly be considered (PPT slide 2). Indeed, any historical account of the OMC will vary a great deal depending on the period under consideration (OMC *avant la lettre*; Lisbon (I, II, III); Europe 2020), the specific OMC under study (or even strands within one OMC); the range of domestic or EU actors considered; and finally the yardstick used (comparison of the OCM with what exactly?). Since the emergence and development of the Social OMC was intertwined with the development of (rather intense) academic production in this area, this implies that many researchers also have a ‘stake’: any account of the Social OMC’s story will therefore be selective (PPT slide 3). So in a way, we are back at the image of Donald Puchala when he described the blind men touching an elephant: each blind man touched a different part of the large animal, and each concluded that the elephant had the appearance of the part he had touched (Puchala, 1972; PPT slide 4).

2. From Paris (1972) to Lisbon (2000): ten steps towards the Social OMC

The first question when touching this particular elephant is: where does one begin when telling the “history” of social policy coordination (PPT slide 6)? One could go back as far as the landmark Messina Declaration which was signed on 3 June 1955 by the governments of Germany, Belgium,

France, Italy, Luxembourg and the Netherlands. The Declaration begins with the statement that “the establishment of a *united Europe* must be achieved through the development of common institutions, the progressive fusion of national economies, the creation of a common market, *and the gradual harmonization of their social policies* (1) (Messina, 1955:1; our emphasis). Our own process tracing starts somewhat later, with the EU’s constitutional asymmetry and the Paris Summit in 1972.

2.1 The EU’s Poverty Programme (1975-1994) in a context of constitutional asymmetry

Arguably any account of the Social OMC’s emergence should start with the well-known finding that the EU is facing at least two institutional asymmetries (PPT slide 8): the first one favouring policy-making by non-political actors and impeding political action at the European level; and the second (constitutional) one favouring negative integration and impeding specific policies of positive integration (Scharpf, 1999). High consensus requirements for such positive integration still hamper European legislation, even after the Lisbon Treaty, and generally favour status-quo positions. According to Scharpf (2010) the EU can, therefore, not be a ‘social market economy’. Social policy is indeed a shared competence between the EU and its member States, where most policy tools remain firmly in the hands of the Member States (PPT slide 9). Clearly, at least in this respect, the Messina Declaration remained dead letters.

These institutional asymmetries explain why it was only in 1972, at the Paris summit, that Heads of State and Government (prudently) agreed to foster the Community’s ‘social dimension’ by establishing a European Social Action Programme. The Council endorsed, amongst others, specific measures to combat poverty (2), and a European anti-poverty programme was implemented (Bauer 2002: 385). From 1975-1994 the European Commission funded three Poverty Programmes where anti-poverty groups attempted to discover innovative ways of addressing poverty at a national level and also between different Member States (PPT slide 10). These anti-poverty programs co-funded pilot schemes (testing and developing new methods), research (to improve the understanding of the nature, causes, scope and mechanics of poverty) and the exchange of good practice regarding the fight against poverty (national reports).

The first European anti-poverty programme developed a multiplicity of micro-projects and poverty overviews for each country. Perhaps its biggest contribution was the debate it sparked regarding a proper definition for “poverty”, which was included in the Council Decision that launched the programme in 1975. This definition signaled, for the first time, a convergence of views among

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1. The Declaration specifies that “As for the social field, the six governments believe it is essential to study the progressive harmonization of regulations now in force in the different states, particularly those relating to the length of the work-day and the payment of additional benefits (overtime work, Sunday and holiday work, the length of vacations and vacation allowances)” (Messina, 1955: 2).
 2. *OJC* 13 1974: 3.

Member States on the nature of the phenomenon. According to the Council, being poor refers to persons, families and groups of persons whose resources (material, cultural and social) “are so small as to exclude them from the minimum acceptable way of life of the member state in which they live” (Council of the EU, 1975: Art. 1.2). The first programme ended in 1980, and was followed by a second anti-poverty programme (1985-1989), which financed a range of projects as well as comparative research into the various definitions and measures of poverty (legal, income-related, subjective). There was an emphasis on the idea that poverty affected all Member States and incorporated insecurity, marginalization, deprivation, and relative and absolute poverty.

The third anti-poverty programme (1989-1994), known as “Poverty III”, included a range of model actions and innovatory measures. It again financed research and – crucially – established the European Observatory on National Policies to Combat Social Exclusion (1991-1994) ⁽³⁾. This Observatory produced four annual reports which were accompanied by a number of thematic reports (all of these based on national reports). The European Observatory on National Policies to Combat Social Exclusion can be seen as a prototype of a European “epistemic community” that had a considerable influence on (policy) thinking in this area.

More generally, the activities in the EU Poverty Programmes during the 1980s paved the (political) way for two Council Recommendations which saw the light in 1992.

2.2 Two symbolic Council Recommendations in 1992: A Premature Version of the OMC

In socio-economic terms, the 90s were characterised by low economic growth, high unemployment, and poverty was increasingly becoming a concern on the agenda of governments. Social protection throughout Europe was seen as ‘under siege’. In this context, the second milestone in raising social protection to the European agenda was taken in 1992, when the Council of the EU adopted 2 (largely but not purely) symbolic Recommendations (PPT slide 11). The first essentially identified commonly held objectives (“guiding principles”) with regard to social protection and refers to “organize regular consultation with the Member States on the development of social protection policy” (Council of the EU, 1992a:II.2). The other pertained to the definition of common criteria to assure sufficient resources and social assistance in the social protection systems of the Member States (Council of the EU, 1992b). In the latter Recommendation, the Commission is asked, more particularly:

1. to encourage and organize, in liaison with the Member States, the systematic exchange of information and experiences and the continuous evaluation of the national provisions adopted;

3. <http://www.ciaris.org/community/library/page/96?node=723>

2. to submit to the European Parliament, the Council and the Economic and Social Committee, on a regular basis, reports based on information supplied by the Member States describing the progress achieved and obstacles encountered in implementing this recommendation". (Council of the EU, 1992b: II)

De la Porte and Pochet (2002: 41) rightly point out that the method proposed at the time to implement these Council Recommendations "resembles a premature version of the OMC, consisting of regular reporting on the steps taken in the Member States, measured according to appropriate criteria, agreed upon with the Member States".

2.3 Getting through the nineties: Commission Activism and Nordic Enlargement

And yet, neither the Green Paper nor the White Paper on European Social Policy issued by the Commission at the beginning of the nineties (European Commission, 1993 and 1994a), produced tangible progress in the formulation of an EU-wide approach to social protection. The same can be said about the 2 European Commission Communications that followed suit: the one on "The Future of Social Protection" (which merely proposed a wide range of issues for discussion), the other on "Modernising and improving Social Protection" (European Commission, 1995a and 1997; PPT slide 12).

Thus, it seems correct to claim that while the two Council Recommendations of the beginning of the nineties prepared the ground for enhanced EU co-operation based on common objectives and multilateral surveillance, the European level returned, by the end of the nineties, to a scenario in which the direct involvement of the EU with social protection was limited to the co-ordination of social security of migrant workers, with the aim of assuring free movement. Even though these regulations have been used by migrant workers and, more exceptionally, visitors, to claim various benefits from a host Member State, none of this "fundamentally challenged the organisational principles of national welfare systems. While social welfare [...] never constituted a reserved domain entirely protected from incursion by EU law, the Court nonetheless seemed to implicitly acknowledge that it had to proceed with caution in this area (Bernard, 2005: 260).

And yet, it can be said that the European Commission actively continued to nurture the debates, including through its regular Reports on "Social Protection in Europe". These reports were published as a follow-up of the 1992 Recommendations every two years (covering the years 1993 ⁽⁴⁾, 1995 ⁽⁵⁾, 1997 ⁽⁶⁾ and 1999 ⁽⁷⁾). The reports described and analysed the social protection systems operating in the various Member States, the way they are developing, and the challenges

4. European Commission (1994b).
5. European Commission (1995b).
6. European Commission (1998).
7. European Commission (2000).

they face. In doing so, the Commission made it very clear that the European level could indeed act as a platform for the exchange of experience.

The fact that no additional progress was made in getting "social Europe" on track may very well be related to the very complex negotiations (esp. in the areas of environment, agriculture, energy and fisheries) at the time of the 1995 EU enlargement to Austria, Finland and Sweden (Dinan, 2005:137). These three affluent member new states with their strong welfare models (all net contributors to the EU budget), did not only bring a greater concern for environmental issues and more progressive *national* social policies. This enlargement "also brought with it another streak of Euroscepticism", which even led to the widespread belief by the end of the 1990s that a majority of the Swedes would vote to leave the EU (ibid: 142). In such a context, any progress in developing a "Europe of social protection" was bound to be slow. Keeping the debate going throughout the nineties - through regular Commission Communications, (coloured) Papers and Reports - seemed the only realistic option at the time. We consider this Commission activism as our third milestone.

2.4 The politics of indicators and "technical" cooperation through the Administrative Commission

A fourth milestone towards the Social OMC was equally placed throughout the nineties: the establishment of the European Community Household Panel (ECHP, PPT slide 13). Over an eight year period (from 1994 to 2001), the ECHP ran in 14 of the then 15 Member States (with the exception of Sweden). The ECHP was an input harmonised survey conducted in eleven Member States, based on common requirements defined at EU level. Importantly, concepts, definitions, classifications and procedures (such as weighting, imputation, data editing and a 'blue print' questionnaire to be used by all the involved Member States) were defined by Eurostat jointly with the ECHP Working Group and applied nationally (European Commission, 2007).

Three characteristics make the ECHP a unique source of information. These are (i) its multi-dimensional coverage of a range of topics; (ii) a standardised methodology and procedures yielding, for the first time, more or less comparable information across countries; and (iii) a longitudinal or panel design in which information on the same set of households and persons is gathered to study changes over time at the micro level. From the beginning, the ECHP project suffered from quality problems: mainly, incomplete geographical coverage, reliability and timeliness. And yet, it was the primary source of data used during the period 1994-2001 for the calculation of indicators in the field of income, poverty and social exclusion. The role of the ECHP has therefore been crucial for the first two rounds of EU-15 National Action Plans on inclusion in 2001 and 2003 (European Commission, 2007).

ECHP has also been key in two other respects: first, it informed (and thereby influenced) an enormous amount of academic and policy-relevant research (which has been conducted using ECHP data); second, discussions between Member State representatives in the ECHP Working Group regarding indicator development often involved difficult deliberations which went beyond the mere “technical” aspects. Robert Salais (2006) refers to the “politics of indicators”. With the aims of solving the ECHP technical problems, of conforming to the internationally agreed definition of income and of extending the data collection to the enlarged EU (and beyond), the decision was taken to stop the ECHP and launch EU-SILC (Community Statistics on Income and Living Conditions) in 2005.

Another “technical” committee that met regularly was the “Administrative Commission on Social Security for Migrant Workers” which was responsible for handling any question of interpretation arising from the provisions of Regulation 1408/71 on the coordination of social security systems (Council of the EU, 1971 (8)). What is sometimes overlooked is that an additional task of the Administrative Commission was “to foster and develop co-operation between Member States in social security matters, particularly in respect of health and social measures of common interest” (Council of the EU, 1971: Article 81c). As a consequence, this group of representatives of the governments as well as the European Commission kept the debate about the European dimension of social protection going. This went well beyond the “technical” requirements of Regulation 1408/71 and contributed to trust-building between leading civil servants of each EU country. Trust was (and still is) indeed a key factor in the Administrative Commission, where the most important decisions were ruled by unanimous decision making on very complex, and politically sensitive, issues.

2.5 The Court applies competition law to social protection and rules on “Poverty IV”

What brought social protection back to the European political agenda? There is strong evidence that a number of rulings by the European Court of Justice throughout the nineties of the past century contributed to creating the political momentum of a more ambitious EU initiative on social protection (PPT slide 14). This, in 1995 the judgement of the Court in *FFSA* sounded a warning bell against the risk of too hasty a conclusion of non-applicability of internal market rules to social protection (European Court of Justice, 1995). Indeed, the Court (perhaps unsurprisingly) found that a pension fund supplementing the basic and compulsory pension fund for self-employed-farmers consisted an undertaking engaging in economic activity, since affiliation was optional and the rules reflecting an idea of solidarity were of limited import in the overall scheme. It was therefore subject to competition law. In 1996 and 1997 legal proceedings started in the now famous ‘Dutch Pension Funds cases’: *Albany, Brentjens and Drijvende Bokken* (European Court of Justice, 1999a, b, c). The judgements in these cases confirmed that the Court would scrutinise

8. This Regulation was later replaced by Regulation 833/2004 (EP and Council of the EU, 2004).

carefully the characteristics of the prima facie non-economic character of the activities of entities entrusted with the management of social welfare funds, before coming to a conclusion as to the applicability of internal market rules. Importantly, the Court does not treat any single feature as per se determinative but uses a range of criteria to weigh public and private aspects of the schemes (Bernard, 2005: 267-268).

In sum, these judgements of the second half of the nineties clearly signalled that if and insofar as "pensions come to be increasingly provided by private companies, the rules on State measures restricting competition will become increasingly important, and the rules of competition applicable to enterprises will become applicable" (Temple Lang, 2005:46). Clearly, this must have casted some doubts in the heads of some political leaders and civil servants around Europe about the actual freedom of the Member States to organise their social security as they like. These doubts were certainly not lifted by the fact that, in parallel to these 'pension rulings', a spate of cases resulted from the application of competition law and, more importantly, free movement law to healthcare provisions (Mossialos et al., 2010). Even though the probability that these cases with regard to pensions and healthcare would throw national welfare systems into disarray seemed extremely low, they did constitute a certain shift towards a market logic in welfare services. What is most relevant here is that Member States came to realize, from the second half of the nineties onwards, that social welfare services may be capable of falling within the ambit of internal market rules. They are thus confronted with the limits of their freedom to organise their social security as they please.

Another crucial ruling by the European Court of Justice at the end of the nineties was linked to social inclusion policies. In order to continue and extend the existing "Poverty III" Programme (see 1.1 above) to combat poverty and social exclusion, the Commission submitted, on 22 September 1993, a proposal for a Council Decision establishing a "Poverty IV" programme. By late June 1995, it was apparent that the proposal would not be adopted by the Council, notably because of German resistance. The European Commission then decided that it would use part of the 1995 general EU budget which was earmarked for the Poverty IV proposal to fund 86 projects to combat social exclusion. Following this decision, the United Kingdom government, seized the European Court of Justice for annulment of the decision by the European Commission. The European Court of Justice judged that the purpose of the contested projects was, contrary to what the Commission had argued, not to prepare future Community action or launch pilot projects. The Court therefore concluded that the Commission was, as the UK claimed, not competent to commit expenditure necessary to fund projects to combat social exclusion. The Commission's decision to fund these projects was therefore annulled (European Court of Justice, 1998), in spite of attempts of the European Commission to 'open up' to NGO's "in the hope that the NGOs would be able to avert that political blockage" (Interview EC officials, 2002).

Clearly this ruling by the European Court of Justice meant a serious blow for the European Commission. But it also created a momentum, together with the cases relating to pensions and healthcare discussed above, to launch a more ambitious EU project with regard to social protection. For example, the ECJ ruling on the Poverty IV programme was instrumental in stimulating European-wide mobilization of social NGOs, who pressed for the incorporation of the social inclusion competency in the Treaty (9). This was also the period when the European Anti-Poverty Network (EAPN) was created (in 1989), with invaluable support from the European Commission, which “can make common cause with NGO’s, against the member states, [who are] in the middle if you like” (Interview EC officials, 2002).

2.6 The Treaty of Amsterdam: social policy becomes a joint responsibility

The momentum created by the Poverty IV ruling was obviously strengthened by the entering into force of the Amsterdam treaty on 1 May 1999, which confirmed that social policy falls under the joint responsibility of the European Community and the Member States. The new Treaty granted the Union explicit competencies with regard to combating social exclusion and social security and social protection of workers (10).

As importantly, the Amsterdam Treaty also included a new Title (VIII) on Employment, thereby giving a specific legal base to the Employment Process which had been launched by the 1997 European Council of Luxembourg. In turn, the EES found its roots in the Broad Economic Policy Guidelines which were introduced by the Treaty of Maastricht (1992) and which involved non-binding recommendations from the Council to Member States to monitor the consistency of national economic policies with those of the European Monetary Union. Thus, a number of pre-existing European policy co-ordination processes have retrospectively been interpreted as full or partial examples of OMC *avant la lettre* (i.e., before the Lisbon European Council labelled the policy instrument as such). Apart from the BEPG and the Luxembourg process, one could also mention the Cardiff Process for structural economic reforms, the Bologna Process for cooperation in European higher education, and the code of conduct against harmful tax competition (Zeitlin 2005:20). Some have argued that policy processes such as that the OECD Economic Surveys (11),

9. Obviously the inclusion of a Treaty provision for the fight against poverty would provide these organisations with a strong formal source of institutional support for its action.

10. The Treaty of Amsterdam incorporated into the EC Treaty the Maastricht “Agreement on social policy” (see Chapter 1 of the new Title XI and new Articles 136 to 145). Under Article 137 the Council may adopt, by qualified majority in co-decision with Parliament, measures designed to encourage the combating of social exclusion. Unanimity in the Council remains the norm with regard to social security and social protection of workers.

11. To ensure that OECD Member States follow the code of conduct for sound economic policies laid down in the OECD Convention, the OECD produces, every 12 to 18 months, an Economic Survey for each country (Schäfer 2004a: 5).

the Employment strategy undertaken by the Nordic Council ⁽¹²⁾ and the Article IV Consultations by the International Monetary Fund (IMF) ⁽¹³⁾, all of which have been up and running for at least 2 decades, are OMC-types of cooperation between countries as well (Schäfer 2004a; Nedergaard 2005).

2.7 A strategic Communication from a resigning Commission

The European Commission rapidly seized the opportunity provided by the Amsterdam Treaty and published, in July 1999, a Communication in which it proposed a “Concerted Strategy for Modernising Social Protection” (European Commission, 1999a). Interestingly, the Communication was published almost 4 months *after* the Santer Commission had resigned ⁽¹⁴⁾, and yet was still in office, as the Treaty requires, until a new Commission was in place. It should indeed be noted that the publication of this Communication was not kept “on hold” until the start of the new Commission, only a few weeks later, i.e. September 1999. The resigning Santer Commission underlined in its resignation Statement that it had “decided to exercise our powers in a restrictive manner, i.e. to deal with current and urgent business, and to comply with our institutional and legal obligations, but not to take fresh political initiatives” (European Commission, 1999b: §3-4).

Was this Communication “current and urgent business”? What the Commission proposed in its “Concerted Strategy” Communication, was to launch a European strategy for social protection systems, which aims at deepening the co-operation between the Member States and the EU, based on common objectives, mechanisms for exchanging experience and monitoring of ongoing political developments in order to identify best practices (European Commission, 1999a: 12). Work would be organised around 4 key objectives, which are key issues of concern to all Member States: “to make work pay and to provide secure income; to make pensions safe and pension systems sustainable; to promote social inclusion and; to ensure high quality and sustainable health care” (Ibid: 12-14).

The European Commission furthermore proposed that Member States would designate high level senior officials to act as focal points in this process. The result of the work (starting from the 4 key objectives) would be published by the Commission every year in a “report on social protection”, which would be based on contributions by the Member States and would be submitted to the Council together with the Joint Employment report (Ibid: 15). In sum, the European Commission did no less than what the European Parliament had called on the institution to do: “to set in motion a process of voluntary alignment of objectives and policies in the area of social protection,

12. The Nordic cooperation in the employment field involves Iceland, Finland, Norway, Sweden, Denmark, Greenland, the Faroe Islands and the Aaland Islands (Nedergaard, 2005: 19).

13. The “Article IV Consultations” consist of an annual multilateral surveillance procedure, used with a view to “firm surveillance” of the exchange rates of the IMF members (Schäfer 2004a: 7).

14. The Santer Commission collectively resigned on 15 March 1999 (European Commission, 1999b :§1).

modelled on the European employment strategy" (EP, 1999). One could label this a "fresh political initiative" indeed, while the Commission had restricted itself to engaging only in "current and urgent business".

2.8 A sense of urgency in a new political landscape: social-democrats adopt a "concerted strategy"

The reason why the Commission could follow this 'proactive' (rather than the formally required 'restrictive') course of action seems eminently political: by the time of the publication of the Communication in 1999, eleven out of fifteen governments were headed by social democrats (Schäfer, 2004b: 10), who tend to be more supportive of European social policy initiatives. Consider the contrast with the situation in at the beginning of the nineties, when only 2 out of 12 member states were governed by the left (ibid: 6). Thus, it will not come as a surprise that a majority of the Member States supported the approach proposed by the European Commission in its Communication on a 'Concerted Strategy'. Interestingly, some of the written contributions from the Member States at the time even stated that the proposed machinery for bringing together the Commission and the Member States could usefully be more ambitious than what the Commission proposed, so that social protection is accorded at least some of the status enjoyed by the Union's handling of its employment policy.

This large (socio-democratic) support explains why *merely 4 months* after the publication of the Commission Communication, the Council adopted a Concreted strategy on social protection. This does not mean that Member States were not critical towards the Commission's initiative: "although this process clearly does not violate the current distribution of competences, some Member States were suspicious" (Vandenbroucke, 1999: 15).

After the aforementioned political decision by the Council to launch a "Concerted Strategy" on social protection, the Finnish Presidency of the EU (July - December 1999) acted quickly to operationalise it. In fact, this should not be a surprise since the aforementioned Council Conclusions not only supported the Commission's suggestion to establish a group of high-level officials, but stressed "the necessity to create this group *as soon as possible*, and in the meantime asks the Member States and the Commission to designate, *as soon as possible*, for an interim period, high level officials to launch the above-mentioned debate". To underline the urgency of such initiatives, the Council added that "Work should begin *immediately* and a progress report should be prepared in the context of the European Council in June 2000" (Council of the EU, 1999a: §12, our emphasis).

The Finnish Presidency acted accordingly. On December 13 1999, i.e. *within 2 weeks* after the decisive Labour and Social Affairs Council (and even a few days *before* its Conclusions were

formally adopted, by another Council formation, on December 17 1999), the acting President of the Council, requested her colleagues to appoint 2 high level civil servants: one member and one deputy member. In the letter she wrote, the President of the Council urged Member States to appoint these officials *within a month's time*: thus, it was argued, the interim High Level Group would be able to meet for the first time during the last week of February 2000, i.e. at the very beginning of the Portuguese Presidency (Council of the EU, 1999b). The first meeting of the Interim High-Level Working Party on Social Protection (the predecessor of the Social Protection Committee) indeed took place on January 26 2000, i.e. less than one month after the formal adoption (on 17 December 1999) of the "Concerted Strategy". Some actors indeed created a "sense of urgency" (which we consider as the eight milestone), which allowed to get the process on tracks very quickly.

2.9 The Lisbon Rubberstamp: Let a 1000 Flowers Bloom

As a result, merely two months after that first meeting of the High-Level Working Party, which prioritised 2 issues (social inclusion and pensions), the concerted strategy was politically approved at the highest level: the Lisbon European Council considered that "modernising the European social model, investing in people and combating social exclusion" was part of the overall strategy that was needed to reach the aforementioned new "strategic goal for the next decade (European Council, 2000a: §5). The social protection OMC's were on (fast) tracks: the OMC provided a new Europe-wide approach to social inclusion (winter 2000), pensions (winter 2001) and health care (autumn 2004).

It is being implemented by a Social Protection Committee which was created through a Council Decision in 2000 that provided the Committee with a strong political mandate. It inherited the working methods of the Employment Committee, incl. the fact that civil servants report directly to the competent ministers (i.e., deliberations from the SPC go straight to Council, without going through COREPER) (PPT slide 22). At a later stage the SPC even became a Treaty-based Committee (Article 160 of the Treaty on the Functioning of the EU).

It should be noted that the Lisbon Council Conclusions stipulated the introduction of the OMC "at all levels" (European Council, 2000a: § 7), and, apart from social exclusion, explicitly referred to the use of the OMC with regard to information society/e-Europe (Ibid: § 8), innovation and research and development (Ibid: § 13). Furthermore, even though the term "OMC" was not explicitly used with regard to social protection (pensions more particularly), enterprise promotion, economic reform and education and training, the wording of the Lisbon Council Conclusions were such that they gave, de facto, authorisation to launch or strong political backup to continue open

co-ordination in more than ten policy areas ⁽¹⁵⁾. Furthermore Zeitlin (2005:20) points out that since the Lisbon European Council “OMC-type processes and approaches have also been proposed by the Commission and other European bodies as mechanisms for monitoring and supplementing EU legislative instruments and authority such as immigration and asylum [...] ⁽¹⁶⁾, as well as in areas like youth policy where the Union has few if any legal powers”.

In other words: it seems that at Lisbon (our ninth millstone) the Member States “let a 1000 flowers bloom” (PPT slide 23), creating OMC’s that “together constitute a cookbook that contains various recipes, lighter and heavier ones” (Vandenbroucke 2002: 9, PPT slide 24). These OMC’s indeed significantly differ from each other, first in terms of the (subjective) pressure they create for Member States; second, with regard to the precision of the objectives they propose; third with regard to the legitimacy for the Commission to propose ‘soft recommendations’ to Member States; and fourthly, in terms of (formal and informal) participation of (sub-) state and non-state actors, both at national and EU-level.

2.10 From a blueprint to a detailed architecture (2001-2002)

Following adoption by the social Protection Committee, the December 2001 Council meeting of Ministers for Employment and Social Policy adopted a battery of social inclusion indicators; and it approved the first Commission and Council Joint Report on Social Inclusion (Council of the EU, 2001:16). This Joint Report analysed the National Action Plans on Social Inclusion (NAPs/Incl.) which had been submitted in June by the Member States and was structured around the Common Objectives adopted by the Nice European Council in December 2000 (European Council, 2000b).

The same session of the Council also welcomed the final agreement that was reached, in conciliation with the European Parliament, on a Community Action Programme that would support the OMC on social inclusion (EP and Council of the EU, 2002) ⁽¹⁷⁾. Still in December 2001, the set of indicators and the Joint Report were endorsed at the highest political level, by the Laeken European Council (European Council, 2001). Even if the Heads of State and Government gathered in Barcelona did not accept the Commission’s proposal to set an *EU-wide* target “for significantly

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15. With regard to social protection, reference was made to “strengthening cooperation between Member States by exchanging experiences and best practices”, and a study on the future evolution of social protection, particularly pension systems, was requested (European Council, 2000a: § 31). The European Council also referred to launching “a benchmarking exercise” with regard to enterprise promotion (especially SMEs, Ibid: §15); and to stepping up work on “structural performance indicators” on economic reform (Ibid: § 18). Finally, the Council meeting proposed 6 specific targets with regard to education and training and referred to “concrete future objectives” and “common concerns and priorities” in this policy area (Ibid: § 26-27).
 16. Other examples are environmental protection, disability, occupational health and safety, and fundamental rights.
 17. The Programme covers the period 1 January 2002 - 31 December 2006 and “shall be part of an open method of coordination between Member States to give a decisive impetus to the elimination of social exclusion and poverty” (European Parliament and Council of the EU, 2002:3).

reducing the number of people at risk of poverty and social exclusion by 2010", they did agree to introduce the requirement to set *national* targets in their National Action Plans (European Council, 2002: 9).

In other words: in 2 years' time (2000-2002) the OMC social inclusion evolved from a blueprint to a detailed architecture, using nearly all instruments available to it. As we know now, an agreement on the Europe 2020 poverty reduction target (which was only reached after difficult and imminently political debates) would simply not have been possible without these preparatory milestones (PPT slide 15).

3. Why did they do it? About windows and opportunities

While we now understand *how* the Social OMC came about, the question still is: *why did actors decide to launch* of EU co-operation through the OMC in 2000, after almost a decade (since 1992) of futile efforts to do so (PPT slide 17)? The answer to the "why did they do it" question is that there were multiple explanations at work, which at a given point in time were (rather skilfully) engineered into a "window of opportunity".

3.1 The European Commission as "norm entrepreneur" and political spillover

Section 2 illustrated how the European Commission was an important 'norm entrepreneur' (PPT slide 18) which kept the debate about social protection going throughout the 90s, by regularly publishing policy documents. Crucially, when it felt the time was ripe, it published an important political document that contained the outline of the future co-operation on social protection (European Commission, 1999a) whereas it should have restricted itself to "ongoing business" in view of the fact that the Commission had resigned. Also note that a number of member states themselves, in their 1999 reactions to the Commission Communication on a Concerted Strategy, indicated the Commission as a "broker" in the area of social protection. In sum, the European Commission did not seem to reflect intergovernmentalist's image of supranational organizations that would remain "more-or-less obedient servants of the member states" (Pollack, 2005: 361).

Rather, it would seem, that the launch of the social protection OMCs is a textbook example of what has been labeled as "cultivated spillover". Thus, van Riel and van der Meer (2002: 13) argue that the concerted strategy on social protection can be considered as a political spillover of EMU, "prompted mainly by a need to enhance the support and legitimacy of the EU's policy, by indicating to voters that the EU is concerned about issues that matter to citizens, such as work and income security". One could argue, that especially for the new Member States (Austria, Finland and Sweden joined the EU in 1995) this was an important issue (remember that Danish voters in

1992 rejected the Treaty in a referendum). But the legitimacy crisis was more substantial than that: there was the “resignation of the Santer Commission, but also the referenda results in [...] Ireland, Norway and France throughout the past decade, and the record abstention to the 1998 European Parliament election” (Chalmers and Lodge, 2003:12).

A strong case could be made that the OMC is in fact the result of the intentional and strategic interaction of actors who want to counterbalance the dominance of economic *and* employment issues in the EU. Indeed, one could suspect that Commission officials and social security ministries alike, observing that their counterparts from employment Units/Ministries strengthened their national (negotiating) role through the EES, saw a similar exercise on social protection as a way to rebalance their own position. On the other hand, one could argue that the policy networks involved in employment and social protection at the time facilitated learning from one field to another, which explains why the coordinated strategy was, from the very beginning, very much inspired by the European Employment Strategy. The ‘Social’ OMC should then be seen as a spillover of the European Employment Strategy, and not of the EMU.

In any case, the emergence of the social protection OMC’s perfectly illustrates how institutions emerge from and are embedded in concrete historical processes. It is clear that the concrete architecture of the social protection OMC is mirrored on the Employment Strategy (and is thus constrained by past institutional choices).

3.2 Member States’ self-interest: money and pre-emptive strategies

Obviously the EU institutions were not playing the game by themselves. Member States’ interest played a key role in the emergence of EU co-operation on social protection (PPT slide 19). For example some have argued that by the late 1990s, EU cohesion policy had run its course as the central plank of the centre-left at the EU level, amongst others because Swedish, Dutch and German social-democrats were increasingly reluctant to contribute to EU Social Funds (Hooghe, 1998). Thus, an alternative explanation to the spill-over hypotheses could be that the theme of social protection - with its electorally popular connections to employment policy and active labor market policies - promised a new common platform for the centre-left. Put differently: adopting a concerted strategy on social protection could be seen as a self-interested move of the large majority of the social democratic governments, because it brought the “rich” social-democrats (some of whom may have considered the OMC as ‘cheap talk’) back on board.

Adding to this intergovernmentalist argument, some would convincingly argue that ‘accepting’ the social protection OMC’s to be launched at the Lisbon European Council was nothing more than a condition to Tony Blair and others, who ‘compromised on the margin’ at Lisbon to obtain a political commitment for a largely neo-liberal political agenda focussing on jobs and growth. And thus the

launch of the social protection OMC's could be interpreted as part of the usual 'hard bargaining' at the EU level, which may also have involved pre-emptive strategies by some of the (new) member states, who may have hoped that launching the OMC would decrease that chance that "other" EU instruments (read: legislation) would, someday, be applied to the sensitive issue of social protection. In that sense the prudent integration through the OMC on social protection can be seen as preventing (at least for the time being) stronger forms of integration on this issue.

Finally, it is clear that some of the Member States who played a major role in launching the social protection OMCs had domestic interests in doing so. Three examples can illustrate the latter point.

- Firstly, the Belgian minister for Social Affairs and Pensions, Frank Vandebroucke, returned to the Belgian government in 1999 after being elected with the "European poverty norm" as the main campaign issue, and he saw the OMC as the means to get there. By the end of the Belgian Presidency of 2001 Vandebroucke claimed to have delivered on this electoral promise (referring to the Laeken indicators).
- Secondly, the French minister for Employment and Social Affairs, Martine Aubry was running in the local elections in 2000 and resigned from the government the day after she had obtained an agreement in the Council of the EU on the Common Objectives regarding social inclusion (Erhel *et al.*, 2005: 233).
- Finally, during the 1997-1999 period Finland showed the highest increase in poverty in the EU. It was an issue on the national agenda, while Finland was also concerned about negative social effects of Economic and Monetary Union.

3.3 An Advocacy Coalition to set off economic pressure

The step-by-step description of the launch of EU-co-operation on social protection (section 2 above) made it clear that *neither* the European institutions, *nor* the Member States have played a truly *dominant* role in this process. Instead, it seems that the dominant arena in which EU-cooperation on social protection emerged was a policy network, or rather an advocacy coalition (PPT slide 20), consisting of the social democratic ministers (including consecutive EU Presidencies) of a majority of the member states, key people within DG Social Affairs of the European Commission and representatives of a number of European NGO's, especially EAPN. Even "top" social scientist were closely involved in the political engineering of the process, through reports and personal advise to EU Presidencies in 1999, 2000 and 2001. Arguably one of the goals of this advocacy coalition was to off-set pressures from the side of employment ministries (who had gained influence through the EES, *cf. supra*) as well as from the ECOFIN Council and DG ECFIN within the Commission, which seemed to form another advocacy coalition that had been dealing with the pension issue for some time.

According to Schäfer (2004b) the social-democratic advocacy coalition in 1999 (11 out of 15 governments were headed by social democrats, *cf. supra*) can also help to explain why this centre-left coalition relied on soft-law for social protection policy (and mimicked the 'soft' employment strategy), while a centre-right coalition opted for hard law in monetary and fiscal policy in Maastricht. Indeed, the 'magical return' of social democrats by the end of the 90s brought New Left to power, most prominently New Labour in Britain. Thus, "[w]hile the Christian democratic-liberal coalition at Maastricht scored high on integration-mindedness, support for further transfers of power subsequently plummeted with the ascending social democratic majority", even if the latter tended to support European social policy (Schäfer, 2004b:12).

It seems important to also consider the role of European anti-poverty-NGO's here: the European Commission actively sponsored "a new social exclusion lobby" (Peterson, 2004: 122) which helped to raise the salience of the issue of the fight against poverty, both at national and domestic level. "This is clearly an example where "the Commission retains 'virtually a free hand in creating new networks' (Marks *et al.*, 1996: 359) and is often empowered to by its position at the 'hub of numerous highly specialised policy networks' (Marks *et al.*, 1996: 359). The European anti-poverty-network (EAPN), more particularly collaborated closely with the Finnish Presidency in 1999 and had regular contacts with the European Commission as well as with key people within the Portuguese Presidency in 2000. Key people of EAPN afterwards held key positions within DG V of the European position, seemingly resulting in important inputs by EAPN in the social protection strategy. In sum, this seems to be an application of Hecló's (1974) warning that looking for the web of the few who are powerful, we tend to overlook the influential (*cf. supra*). The important agency and impact of small Member States (like Finland, Belgium and Portugal) during the launch of the social protection OMC's seems to be another illustration of the value of Hecló's claim, and of policy network analyses more generally.

3.4 The role of ideas: body and soul to the European Social Model?

Finally, the emergence of the Social OMC draws attention to the role of ideas. Arguably, the incoming Finnish Presidency and the European Commission were able to further influence the political agenda regarding the issue at stake through the high-level Conference they organised at the beginning of 1998 on the "Social Challenges of Economic and Monetary Union" (18). Closely related to the role of ideas, is the issue of 'selling' these ideas in a convincing way. Arguably the 1999 'Concerted Strategy' Commission Communication was not so different from what was proposed in 1997: the major element of change is that Commission officials were more successful

18. High-Level Conference on the "Social Challenges of Economic and Monetary Union", Brussels, 20th January 1998. Organised by the Belgian Ministry of Social Affairs in collaboration with the Finnish Ministry of Social Affairs and Health, with the support of the European Commission.

in framing EU cooperation in this field in an acceptable discourse. That way, they succeeded to “occupy the territory” (Interview Commission official, December 2006).

For some, getting the Social OMC going meant launching a platform for giving “body and soul” to the elusive notion of the “European Social Model”, and for exchanging good practices between Member States about common challenges (PPT slide 21).

Conclusion: Mind the Soft Law Dilemma

The “Open Method of Coordination” (OMC) was formally coined by the Lisbon European Council in 2000 as a new (and at the initial stage rather *experimental*) regulatory instrument for the EU. It raised high hopes as a mechanism for coordinating (sensitive) domestic policies in a wide range of areas where the EU has limited or no formal competencies. In the social field, the open method “launched a mutual feedback process of planning, examination, comparison and adjustment of the social policies of Member States, and all of this on the basis of common objectives” (Vandenbroucke, 2001:2). In other words: in terms of governance, the open method of coordination is a “soft” tool: there is in principle no “hard” legislation involved, but rather “governance by persuasion” (Streeck, 1996: 80) or “governance by objectives”. Precisely this (in our view misunderstood) “softness” of the process led to political and academic questioning about its relevance and cost-effectiveness in the period 2003-2004, which resulted in the *streamlining* of the Social OMC that was formalised in 2006. In spite of an increasingly sceptical attitude of scholars and politicians towards the OMC - it is often seen as a weak instrument and its flaws supposedly contributed to the failure of the Lisbon Strategy – the Social OMC *matured* and enjoyed relative institutional stability within the revised Lisbon Strategy (Tholoniati, 2010).

With the adoption of the Europe 2020 Strategy in 2010, however, the political context changed once again and forced the actors involved to start looking for a new place for the social OMC within the new framework. It is in this context that the Social Affairs Ministers of the Member States of the EU declared, in June 2011, that the Open Method of Coordination for Social Protection and Social Inclusion (Social OMC) had proved a flexible, successful and effective instrument and that it would be *reinvigorated* (read: *relaunched*) in the context of the new Europe 2020 Strategy (Council of the EU, 2011). While this reinvigoration quickly led to a number of options being taken about the OMC’s further development (incl. its priorities, reporting and indicators), the Social Investment Pact (EP, 2012) that has been announced for February 2013 will provide the needed further clarifications.

This background paper illustrated that the Open Method of Coordination has shown a great deal of elasticity (some would say instability) since it was formally launched in 2000: through the different

stages of its life so far -*experimentation, streamlining, maturity and reinvigoration* – the actors driving the process adapted (at times reinvented) the procedural routines so that the OMC could “sustain policy activism at the highest EU political level in order to supply the EU agenda” (Tholoniati, 2010: 94). At the same time, however, the OMC should ensure sufficient *institutional predictability*, so that the actors involved continue to adhere to “their” process.

This soft law dilemma – showing sufficient flexibility so as to remain politically relevant, while recognizing the historical process it emerged from, is embedded in and constrained by – remains at the heart of any further (fundamental) revisions of the Social OMC (PPT slide 28). This may imply a reflection about the “minimal features”, or a “basic architecture” that would be required in order to label a certain EU cooperation as an “OMC” (PPT slide 29).

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