

Expert Seminar on  
*Social Protection and Social Inclusion in the EU:  
Interactions between Policy and Law*

Antwerp University, February 10-11, 2011

**Beyond the Open Method of Coordination:  
Towards Hybrid Governance of Health Care**

Presentation by Bart Vanhercke,  
European Social Observatory (OSE) and K.U.Leuven (CESO)

# Outline of the talk

## (paper)

- Introduction
  - Place of HC OMC in literature and Methods
  - A wee bit of methods (for the lawyers)
- Emergence and key features
  - EC's purposive optimism - foot-dragging MS
- [The best kept secret in Brussels
  - Visibility and (lack of) stakeholder participation]
- Looking for a needle in a haystack
  - (Limited) domestic impact of the healthcare OMC
- Tracing EU impact
  - Interactions between policy and law
- Conclusions



# Introduction

- ‘Social inclusion’ and ‘pensions’ strands of the Social OMC rather well studied, (emergence and ‘impact’).
- Flying blind with regard to the healthcare OMC
- Rather recent: formally launched in 2004, implemented as from 2006
- Thus: need for empirical evidence

# Methods

- Belgium: case study, enriched with evidence from other MS where possible
- Assessment based on two waves of interviews
  - European, national, and subnational civil servants, politicians and stakeholders (social partners and NGO representatives)
  - working in poverty and social exclusion, pensions and health care.
- 32 interviews in 2007, 20 interviews in December 2010

# Methods

- November - December 2010: on-line survey
  - 59 experts
  - 40 closed questions
- Triangulation: corroboration of any of the claims made respondents
  - views of other interviewees, primary and secondary sources

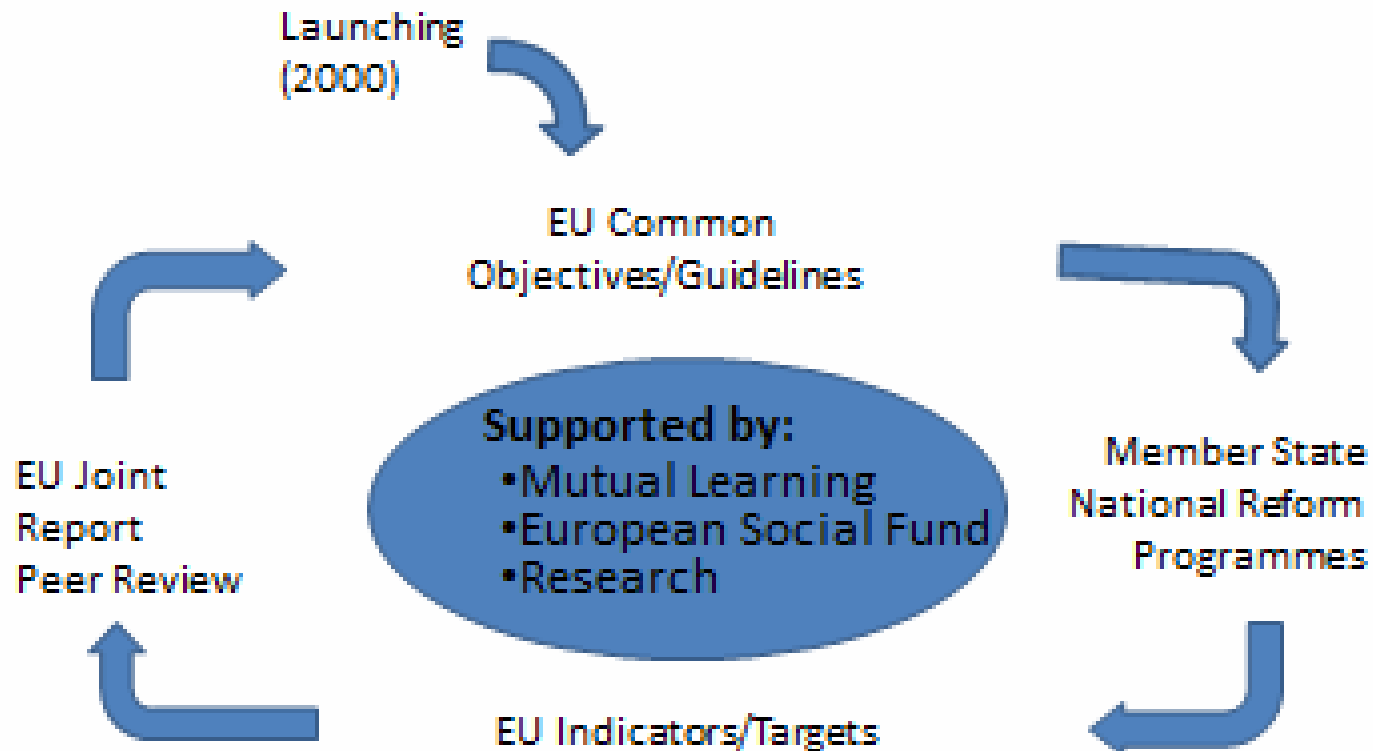
# Emergence

- EC's purposive optimism: *pulling* the Member States (beginning of the 1990s) to start some kind of EU cooperation in health
- Member States were *dragging their feet*
  - afraid to lose grip over important policy area.
- Still the case when awareness grew that Europe was entering national health care systems by the back door of the internal market (ECJ rulings)

# Emergence

- In the end: rather OMC than health policy (only) made by the ECJ, DG MARKT and possibly ECOFIN (“enlightenment”)
- “Respecting subsidiarity” and “taking into account national differences”
- Operational in 2006: “health care and long term care” strand in “streamlined” Social OMC (SI, Pens)

# Open Method of Coordination: process cycle (3y)





# Key features

- *National Strategy Reports*: “container of measures taken” or a “report to Brussels” rather than forward-looking or strategic document
- *Joint Report on Social Protection and Social Inclusion*: agreement normally only reached after hard negotiations, and ultimately political comp
- Notably around “Country Fiches” addressing MS’s most important challenges (‘recommendations’ to the MS)

# Key features

- UK asked to:
  - “look at ways of improving integration of health and long-term care services and addressing discretion in the assessment of needs and eligibility rules”, as “co-payments and additional user charges that are not covered for persons above the means-tested threshold can act as barriers to accessibility” (NSR 2009)

# Key features

- Germany - EC Commission concluded with regard to quality in long-term care that:
  - “even though quality has been steadily increased during the last years, quality controls show clearly that there is still a lot of scope for improvement” (NSR 2009)

# Key features

- Messages may come across as rather “light” for the outside observer, they are highly contested and inevitably give rise to extensive bilateral negotiations “damage control”.
- Messages were not felt as “soft” (at all)

# Indicators

- Work within health care strand lagged behind for a long time, as compared to the areas of pensions and (especially) social inclusion
- In 2008, SPC adopted new list of indicators for monitoring of the health care and long-term care objectives of the Social OMC
- New list is comprehensive, but still “preliminary” and “incomplete”

# Indicators

- European Scrutiny Committee of the House of Commons (UK) refused to scrutinize EC that extended OMC to HC.
- Minister said he detected no wish by Member States to use the OMC as a means to devise ‘new legislation or new targets or new EU indicators’ and that ‘we are not having [new] targets foisted upon us by anyone’
- Again, OMC might look ‘soft’ but, in some cases, it feels quite hard to those who are touched by it.

# Peer Reviews

- Many Member States are interested in sharing experiences at EU level.
- After “all this hesitation, the Member States now ‘discovered’ the OMC. If we were to follow all the issues they proposed, it would completely flood the Social Protection agenda for years to come” (interview senior EC civil servant)
- Total of 50 Peer Reviews (2005-2010) - organised through the PROGRESS programme (11 on HC and LTC)

# Peer Reviews

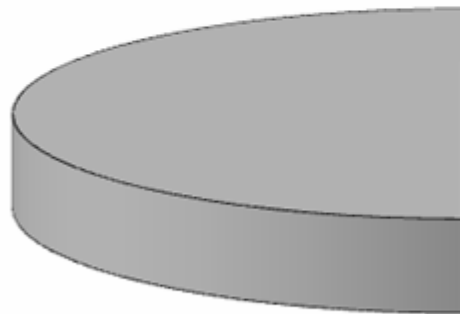
Attended Peer Reviews (as host of participant)					
Number	7-8	5-6	3-4	1-2	0
	France Poland	<b>Germany</b> Finland Luxembourg Czech Republic Netherlands United Kingdom Slovenia Sweden	Estonia Malta Romania Ireland Austria Portugal Greece	Belgium Italy Lithuania Hungary Spain Bulgaria Latvia Cyprus (Norway)	Denmark Slovakia
Total	2	10	7	9	2



### 3. Looking for a needle in a haystack: the impact of the healthcare OMC at the domestic level

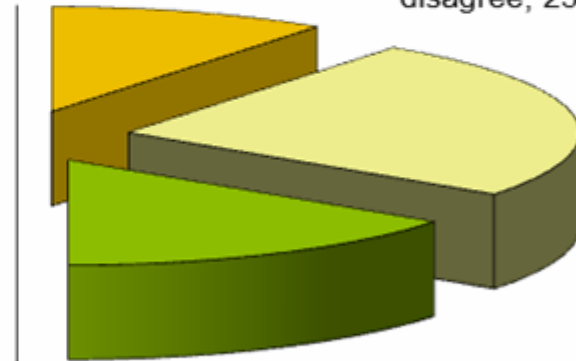
**Graph 3. The ideas associated with the Social OMC are reflected in the policy decisions in my country (amendments/adoption of laws/governmental and ministerial orders and other legal acts) (Online Survey 2010).**

No comment; do not know; 50%



Agree; 10%

Neither agree nor disagree; 25%



Disagree; 15%

# Looking for a needle in a haystack: the impact of the healthcare OMC at the domestic level

- “*Prudent mirror effect*”.
  - Real added value of the NSR process: creates *platform for discussion* between levels of government, and domestic expert
  - health care section of NSR considered to be only document in Belgium that provide an encompassing overview of health care policies of all levels of government

# Looking for a needle in a haystack

- Similar experience in Germany
  - 2007 report (federal Ministry of health): *first attempt* to systematically compare and contrast the German health care system with other EU Member States (using EU indicators), not only at the national level, but *also* with regard to all sixteen of Germany's Länder
  - Report highlighting 3 best performing countries within the tables

# Looking for a needle in a haystack

- Second “impact”: practice of organising “peer reviews” spreading in Belgium
  - federal (e.g. on active ageing, communication in pension systems), regional (e.g. on integrated services for target groups, access to housing and inclusive education) and local level (including on child poverty)

# Looking for a needle in a haystack

- Third element: contribution to national steering capacities (e.g. *use of data and indicators*).
  - more systematic *comparison with other countries* is cited by most of the actors - in the three strands - as one of the most important contributions of the Social OMC
  - OMC did not introduce this, but rather *institutionalised* awareness of policies, practices, and performances in other countries

# Looking for a needle in a haystack

- Fourthly, interviewees claimed that EC's insistence on "health inequalities" (JR, indicator development, n SPC Opinion, PROGRESS funding etc. increased awareness about this issue.
- German interviewees claim that EU focus on "quality management in long-term care" somewhat changed perceptions
- Claims not clearly confirmed by "triangulation" (combining different sources)

# Tracing EU impact: Interactions between policy and law

- First: Barroso Commission continued to propose new OMC processes when faced with need for joint action in politically sensitive areas
- Many of ‘other’ Commission-led governance processes on health care sooner or later refer to the OMC as a ‘goal to attain’.

# Tracing EU impact:

- OMC seems to have become a “template” for EU soft law mechanisms. New proposals for launching OMC processes organ donation and transplantation, nanosciences and nanotechnologies, obesity and cancer screening, e-health



# Tracing EU impact:

- Second, substantive message coming from the Social OMC have been used to -selectively - influence “harder” forms of soft governance
  - 2006-2008 Integrated Guidelines (BEPG) Broad Economic Policy Guidelines.
  - *Integrated Guideline 10* (Europe 2020 Strategy).
- “Occupying the health care territory vis-à-vis the Economic Policy Committee and the High Level group on Health Services and Medical Care’

# Tracing EU impact

- Third, OMC is interacting with another EU instrument, i.e. the *Structural Funds*.
- The ESF Regulation for the 2007-13 programming period explicitly refers to the Social OMC
- No reason why certain elements of the health care OMC would not be taken into account by the Commission to determine whether expenditure is eligible for assistance under the Fund

# Tracing EU impact:

- Fourth, OMC-type mechanisms are finding their way into the community method
  - Social OMC ensures a regular follow-up of certain non-discrimination Directives.
  - proposed Directive on patient's rights in cross-border healthcare, contains five types of cooperation which are clearly inspired by the OMC.
- Possibly spill-over, including further harmonisation

# Tracing EU impact:

- Fifth (more cautious): adjudicating by the European Court of Justice “in the Shadow of the informal settlement”.
- European Employment Strategy and the Bologna Process on Higher Education ECJ takes elements of OMC into consideration

# Conclusion

- More nuanced discussion about ‘hard’ and ‘soft’ law in the EU is needed
- Indications of ‘hybrid’ policy instruments

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Cécile Barbier

[www.ose.be](http://www.ose.be)

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



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