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The EU Open Method of Co-ordination: Risks & Chances for Environmental Policy

Paper for the Conference

**‘Sustainable Development in an Enlarged Union –
Linking National Strategies & Strengthening European Coherence’**

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Authors:

**R. Andreas Kraemer
Anneke Klasing
Ingmar von Homeyer**

The views presented in this paper do not necessarily represent the views of the Austrian Federal Ministry of Agriculture, Forestry, Environment & Water Management (Contact: Elisabeth.Freytag@lebensministerium.at, Rita.Trattnigg@lebensministerium.at)

**Ecologic – Institute for international and European Environmental Policy
Pfalzburger Str. 43-44, 10717 Berlin, Germany, <http://www.ecologic.de/>
Tel. +49 30 86880-0; Fax: +49 30 86880-100; Office@Ecologic.de**

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1 Background and Introductory Cornerstones for Debate

The present paper is a contribution to the international conference "Sustainable Development in an Enlarged Union – Linking National Strategies and Strengthening European Coherence" in Vienna, Austria, on 27 to 29 April 2003. Its main purpose is to provide background on the Open Method of Co-ordination (OMC), provide a framework and raise points for discussing the usefulness and limitations of OMC in the fields of environment and sustainable development.

In spring 2003, the issue of governance in general is high on the agenda of European policy debate. The more specific challenges of environmental governance in particular are less visible and may even be at risk of being neglected. The main forums and elements of the debate can be summarised as follows:

- The ("Constitutional") Convention on the Future of Europe is preparing a new Constitutional Treaty to be adopted by an Inter-Governmental Conference in 2004, which would replace the existing EC and EU Treaties after the Treaties of Amsterdam and Nice. Environmental issues, having been sidelined in the much of the constitutional debate so far, are still not adequately reflected in the draft Constitutional Treaty agreed by the Convention on the Future of Europe, which would weaken the primary law basis of European environmental policy in relation to other policies. Instead, it might and should prepare the legal foundations for giving the environment equal weight to the economic and social spheres of sustainable development.
- The Lisbon Process, driving the European Union "to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion",¹ has resulted in remarkable pressures to align economic and social policies among the Member States.² The Lisbon Process works through the (new) Open Method of Co-ordination (OMC) which, particularly in the economic sphere, has become highly influential in shaping the policy agenda at the highest level, notably in the spring meetings of the European Council. Critics of the Lisbon Process point to the neglect of environmental concerns in the Lisbon Process and even detect a reluctance, bordering on aversion, to include them in the Lisbon objectives.³

¹ No. 5 of the Conclusions of the Lisbon European Council.

² Even if there are current concerns about the credibility and practicability of enforcing measures ensuring economic stability and growth, it should be noted that the Lisbon Process and the economic policy debates it triggers easily dominate public policy discourses, in many cases eclipsing environmental policy concerns.

³ Kraemer et alii (2002) have proposed that the European Council should reformulate the strategic goal of the Lisbon Process and call for the European Union to "become a highly eco-efficient economy and use energy and natural resources in a way that respects the carrying capacity of the environment [...]". See also the various Conclusions of the Council (Environment) beginning with 12 December 2001 (at <http://register.consilium.eu.int/pdf/en/01/st15/15287-zzen1.pdf> corrected; original version at <http://register.consilium.eu.int/pdf/en/01/st15/15287-a1en1.pdf>).

- As part of the constitutional debate, but also in relation to the Council Rules of Procedure, there is a progressive debate about reforming the structure and procedures of the Council of Ministers and the European Council to prepare for enlargement. Enlargement can be expected to adversely affect the future adoption of environmental legislation, unless the legislation is directly associated with the internal market or accompanied by financial inducements. In addition, implementation deficits are likely to increase. OMC and environmental conditions attached to financial transfers to new Member States may be important strategies for problem mitigation.
- More specific to the environment and sustainable development, the EU Sustainable Development Strategy (EU-SDS) and the 6th Environmental Action Programme (6th EAP) have established new policy priorities to be pursued and challenges to be met over the coming years. Similarly, the Cardiff Process for Environmental Policy Integration (EPI), giving effect to Article 6 of the EC Treaty demanding such integration, has been re-invigorated and should result in a more sustainable orientation of a number of policies by the end of 2003.
- The World Summit on Sustainable Development (WSSD) 2002 in Johannesburg, South Africa, has provided new impetus for the development and implementation of National Strategies for Sustainable Development (NSSD). This initiative builds on Chapter 8 of Agenda 21, adopted by the 1992 United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro, Brazil, and the seminal work on guidelines for national strategies by the UN and the OECD, among others. For the European Union, there is a specific challenge in linking and providing coherence among the EU-SDS and the NSSDs of its Member States.
- The Council (Environment) has become a considerably more vocal advocate of EPI and has shown a healthy willingness, through formal and regular Council Conclusions, to stipulate environmental protection requirements to be considered in the definition and implementation of other policies. In addition, there is now strong political support for establishing regular, institutionalised and thus dependable follow-ups to policy initiatives.
- Traditionally, the two main vectors of European integration were the Community Methods (CM) and Intergovernmental Co-operation, as for instance in the Common Foreign and Security Policy. As a consequence of the growing political integration of the European Union, these have been complemented by a growing trans-national co-operation among the administrations (rather than the ministries) of the Member States. Such trans-national co-operation is both a precondition and a consequence of political integration, and there are particularly instructive examples to be found in the environmental policy field.⁴ Some of these resemble the OMC, albeit without having a basis in European primary law and without exhibiting the intensity of policy co-ordination achieved in the field of economic and fiscal policy.

⁴ E.g. the IMPEL network of Member States authorities and agencies responsible for enforcement, the Sevilla Process instigated by the IPPC Directive, the Common Implementation Strategy following the Water Framework Directive, or the European Soil Forum.

Against this sketch of the policy background, the OMC and its application are presented, followed by an overview of current European environmental and sustainable development policies. On this basis, the advantages, limitations, risks and opportunities of OMC are discussed before presenting possible building blocks for OMC in environmental and sustainability policies. Finally, a number of these are presented for discussion.

2 What is the EU Open Method of Co-ordination ?

2.1 Roots in Maastricht (Monetary Union)

Like many policy innovations, the Open Method of Co-ordination (OMC) took shape over time before being formally introduced. Its roots lie in the Maastricht Treaty, in the provisions relating to Economic and Monetary Union, the "Maastricht Criteria" for economic and fiscal stability, and the need to bring about a high degree of convergence among the economies of the Member States in the Euro area. Articles 98ff of the EC Treaty established a process:

- For Member States to conduct their economic policies in the context of the broad [economic policy] guidelines, whilst regarding their economic policies as a matter of common concern to be co-ordinated within the Council;⁵
- With the broad [economic policy] guidelines to be 1) proposed by the Commission, 2) drafted by the Council, 3) discussed and concluded upon by the European Council, and 4) adopted by the Council as a recommendation with qualified majority voting;⁶
- Including a "multilateral surveillance" where
 - Member States have to provide information to the Commission about important economic policy measures, and the Commission has to report to the Council;
 - The Council, on this basis, is to 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, and regularly carry out an overall assessment
- Allowing the Council, acting with qualified majority, in cases where the economic policies of a Member State are not consistent with the broad guidelines or risk jeopardising the proper functioning of Economic and Monetary Union, to make "the necessary recommendations to the Member State concerned".

This process is thus based on regarding economic policy as a "common concern" within the European Union. This legitimises the establishment of a common reference framework in the form of "broad guidelines", including quantitative criteria – or "parameters" – as normative benchmarks, against which the economic policies of the Member States are regularly

⁵ The Monetary Committee presented a 'code of conduct' in its report of 14 February 1994.

⁶ The Council is then to inform the European Parliament of its recommendation.

assessed. A Member State found not to be consistent with the guidelines can then be publicly shamed and admonished to redress its economic policies.

Summarised as such, the process is not very different from the regular economic policy assessments carried out by the Organization for Economic Co-operation and Development (OECD) or international financial institutions such as the World Bank. However, a significant difference lies in the fact that heavy fines or penalties can be imposed on EU Member States that do not adhere to the Maastricht Criteria. Such fines are justified by the recognition that there are significant trans-boundary effects of economic and fiscal policies within the Euro area, and that therefore the majority of members in the "Euro Club" must have the power to impose the common rules on any wayward members. The effect of the fines is that the whole process established by the Maastricht Treaty is taken much more seriously than other peer review or benchmarking processes. This effect is amplified by the high public and media attention being paid to the declarations and actions of the European Council and the European Commission in this respect. Consequently, significant resources have been employed, political attention to the process and its results is high, and the institutions involved, notably the Economic Policy Committee (EPC) and the ECOFIN configuration of the Council, enjoy a very high level of influence over the European Council.

2.2 Trunk in the "Lisbon Process"

The European Council meeting in Lisbon (23-24 March 2000) established the "new open method of coordination". It defined as a new strategic goal that the European Union was "to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion".⁷ According to the Lisbon European Council, achieving this goal requires an overall strategy. This was to be implemented "by improving the existing processes, introducing a new open method of coordination at all levels, coupled with a stronger guiding and coordinating role for the European Council to ensure more coherent strategic direction and effective monitoring of progress".⁸ The "existing processes" in the field of economic policy, which would be the "old open method of coordination", were those adopted for achieving convergence in the Euro area as described above.

Today, the "Lisbon Process" is the most visible and influential mechanism in EC policy. The multilateral surveillance has been expanded to include a wide range of issues, in line with the new strategic goal formulated in Lisbon. The Broad Economic Policy Guidelines⁹ have become powerful levers for influencing numerous policies and not merely in the areas of economic and fiscal (or budgetary) policy.

⁷ No. 5 of the Conclusions of the Lisbon European Council.
<http://ue.eu.int/Newsroom/LoadDoc.asp?BID=76&DID=60917&from=&LANG=1>

⁸ No. 7 of the Conclusions of the European Council meeting in Lisbon.

⁹ Council Recommendation of 21 June 2002 on the Broad Guidelines of the Economic Policies of the Member States and the Community <http://ue.eu.int/pressData/en/misc/71359.pdf>, previous editions of the guidelines are at <http://ue.eu.int/emu/broad/en/indexen.htm>.

Indeed, the Lisbon European Council authorised the extension of OMC to a broad range of other policy domains, such as information society, enterprise policy, research and development, education and training, combating social exclusion and modernising social protection. Since then, significant OMC processes have been developed in a number of these fields, especially social protection (inclusion, pensions, health care). At the same time, new ones have begun to emerge in other areas like immigration and asylum, as well as industrial policy, youth policy and disability policy (de Búrca and Zeitlin, no date [2003]).

Since 2000, the guidelines include a short and rather general section variably called 'enhancing sustainable development' or 'enhance environmental sustainability', which have been developed over time but have little or no impact on the annual assessments of Member States' policies.

2.3 Offshoots in Several Directions

2.3.1 Employment

Between the adoption of the Maastricht Treaty and the European Council meeting in Lisbon, OMC has been introduced in other fields. The European Council meeting in Essen (9-10 December 1994) first adopted the concept of OMC, if not the name, to co-ordinate employment policy among the Member States.¹⁰ Following the Amsterdam Treaty providing a new legal basis for employment policies, a procedure modelled on that for economic policy as described above was also established for employment policy (Articles 125-130 EC Treaty, notable Article 128). The OMC approach was first applied to the "European Employment Strategy" (EES) which combines setting up guidelines at the European level which then have to be transformed into National Action Plans (NAP). Based on an evaluation of these policies and the progress made a new set of guidelines for the following year is then established (Schaefer, 2002).

2.3.2 Poverty and Social Inclusion

With the entry into force of the Nice Treaty, OMC has now also been established in the field of poverty reduction and the fight against social exclusion (and other fields of social (protection) policies). Article 137 now empowers the Council to "adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States". Article 144 empowers the Council to establish, after consulting the European Parliament, a "Social Protection Committee with advisory status to promote cooperation on social protection policies between Member States and with the Commission".

¹⁰ Conclusions of the Essen European Council:
<http://ue.eu.int/newsroom/LoadDoc.asp?BID=76&DID=54760&from=&LANG=1>

The tasks of the Committee are to monitor the social situation and the development of social protection policies, to promote exchanges of information, experience and good practice, and to prepare reports, formulate opinions or undertake other work within its fields of competence. In fulfilling its mandate, the Committee shall establish appropriate contacts with management and labour.

2.4 A Direct Comparison of OMC Mechanisms in the Treaties

The three existing OMC mechanisms that are part of or connected to the Lisbon process can be directly compared. They share many essential characteristics ("descriptors" in the following table), but also differ in some respects. There is no formal OMC for the environment and sustainable development. Nevertheless, there are various "OMC-type" features in European environmental policy. These could be expanded for the purpose of establishing an OMC for (part of) environmental or sustainability policy in the EU.

Table 1: Comparison of Mechanisms for Open Method of Co-ordination

Descriptors	Economic/ Monetary	Employment	Poverty/ Social Inclusion	Environment
Treaty base (Articles)	99ff, 133 (introduced by the Maastricht Treaty)	129ff (introduced by the Amsterdam Treaty)	136-140 (introduced by the Nice Treaty)	<i>None to date</i>
Dates from	Council recommendation of 14 February 1994	Luxembourg European council, November 1997	Lisbon European council, March 2000	<i>Gothenburg European Council</i>
Primary focus	MSs and EU	MSs	MSs	<i>EU and MSs</i>
Long-term strategy	Stability and Growth Pact	European Employment Strategy	Social inclusion Strategy	<i>6th EAP & Cardiff Process</i>
Guidelines (including targets, timetables, ...)	Broad Economic Policy Guidelines (BEPG)	Employment Guidelines (consistent with BEPG)	[under development]	<i>None to date</i>
Indicators	Yes	Yes	Yes	<i>Forthcoming</i>
European Council role	Sets priorities at Spring European Council	Sets priorities at Spring European Council	Sets priorities at Spring European Council	<i>Sets priorities at Spring European Council</i>
Advisory Committee	Economic Policy Committee & EFC	Employment Committee	Social Protection Committee [Art. 144]	<i>None to date</i>
Stakeholder participation	<i>None to date</i>	Annual tripartite Social Affairs summit (pre-Spring Council)		<i>None to date</i>
National Action Plans	<i>None to date</i> , 'info on important measures	Yes	Yes (biannual)	<i>Voluntary or within SDS</i>
Performance monitoring	Surveillance by Commission	MS Annual Reports	<i>None to date</i>	<i>None to date</i>
Peer review	<i>None to date</i>	Council peer review	<i>None to date</i>	<i>EPRG; IMPEL</i>
Recommendations to individual Member States	Commission, endorsed by Council	Possible under Treaty	<i>None to date</i>	<i>None to date</i>

Policies	Economic/ Monetary	Employment	Poverty/ Social Inclusion	Environment
Descriptors				
Commission/ Council Report to European Council	Yes	Yes	Joint Social Inclusion; health & long-term care	<i>None to date</i>
Frequency of process	Annual	Annual	Bi-annual	<i>None to date</i>
Sanctions/ Incentives	<ul style="list-style-type: none"> • Sanctions for persistent excessive budget deficits • Support when a MS 'in difficulties' 	<ul style="list-style-type: none"> • European Social Fund • Support for pilot projects; good practice exchanges 	None to date	<i>None to date (Conditionalities for Structural Funds)</i>
Candidate Countries	Not to date	?	Proposed	<i>Proposed (EU SDS)</i>
Other			Health, housing added	

Notes: Table taken from Kraemer et alii (2002: 17).
The mechanisms for OMC are mainly driven by the Council, although in some cases in collaboration with the Commission.

2.5 Summary on Experience with Open Method of Co-ordination in the EU

There are current controversies over the enforceability of the Maastricht criteria and some perceive a need for more flexibility in the fiscal and budgetary policies of the Member States. The controversies, highly politicised in some cases, confirm the power of the Lisbon Process to shape national economic policy debates and their outcomes. The experience with OMC has thus been thoroughly positive for the policy sectors concerned, and for the process of European integration as a whole. This has been recognised by four working groups of the Convention on the Future of Europe (Simplification, Complementary Competences, Economic Governance and Social Europe), which argue for including OMC in the Constitutional Treaty.¹¹ "The reasons for this relatively broad agreement, as expressed in the various reports, stem from widespread recognition of the usefulness, efficiency, and flexibility of this new form of national policy coordination for dealing jointly with issues of common interest to the Member States" (de Búrca and Zeitlin, no date [2003]). De Búrca and Zeitlin develop the argument as follows:

"The value of the OMC, in our view, lies not simply in its general usefulness, efficiency, and flexibility as an instrument of EU policymaking. Because the OMC encourages convergence of national objectives, performance and policy approaches rather than specific institutions, rules and programs, this mechanism is particularly well suited to identifying and advancing the common concerns and interests of the Member States while simultaneously respecting their autonomy and diversity. It is neither strictly a supranational nor an intergovernmental method of governance, but one which is genuinely joint and multi-level in its operation. By committing the Member States to share information, compare

¹¹ With differences in the detail, and there is controversy about whether to provide a "one-fits-all" template for OMC, which would reduce complexity and facilitate the alignment or even integration of OMC processes where desired, or to establish separate OMC processes for individual policy fields, which would allow their structural characteristics to be reflected more easily.

themselves to one another, and reassess current policies against their relative performance, the OMC is also proving to be a valuable tool for promoting deliberative problem-solving and crossnational learning across the EU. It is for precisely these reasons, we believe, that the OMC has so rapidly become a virtual template for Community policymaking in complex, domestically sensitive areas where diversity among the Member States precludes harmonisation but inaction is politically unacceptable, and where widespread strategic uncertainty recommends mutual learning at the national as well as the European level."

In this light, it should not be surprising to find OMC-type mechanisms in many fields. It would also appear that environmental and sustainability policy, where "diversity among the Member States" is high and "inaction is politically unacceptable", would be prime fields for the application of OMC.

There is concern, however, that OMC might be incompatible with or have significant negative effects if applied in a policy area, such as the environment, that is characterised by the Community Method (CM). CM relies on setting strict and legally binding standards for goal attainment and ease in verifying the effectiveness of enforcement. This concern is addressed in the following section

3 European Environmental Policies (and the OMC)

European Union policies for the protection of nature and the environment and for the rational use of natural resources come in three distinct 'regimes', each with its own uses, functions, mechanisms, and power relationships; each is legitimate for different reasons:

- The Internal Market Regime,
- The Environment Policy Regime,
- The Sustainability Policy Regime.¹²

Each of these operates in a different framework and has individual characteristics, approaches, purposes and functions. In consequence, their suitability for OMC-type institutions and procedures varies significantly.

3.1 The Internal Market Regime

Because of its main function, to establish a unitary legal framework for facilitating the free movement of goods (and services) throughout the European Union, the Internal Market Regime is about the replacement of Member State standards, and not about co-ordinating policies. Prima facie, therefore, there can be no place for OMC-type institutions and procedures in this regime, which in consequence will not be discussed here at length. Policy learning, leading to an eventual change in Internal Market legislation, is restricted to highly

¹² This section elaborates on the differentiation developed by von Homeyer (2002).

specific cases, such as an emergency relevant to public health that is specific to a Member State. It should be noted, however, that there may be dynamic developments at the interface between the Internal Market Regime and other policy regimes where OMC-type assessments and policy learning could play an important role.¹³

3.2 The Environment Policy Regime

The Environment Policy Regime covers what most would recognise as "European environmental policy and law" based, since its introduction into the EC Treaty on the Treaty Title "Environment". The policies and measures adopted over the last 35 or so years are highly varied, although most are based on legislative instruments, usually directives. The following examples illustrate a variety of institutional settings EC environmental policy-making with policies at different stages of maturity, and show that OMC-type mechanisms are integral parts of the institutional arrangements developed within the Environment Policy Regime.

- European Soil Forum (ESF): This was an initially loose and informal arrangement for exchanging Member States' experience on aspects of (precautionary or preventive) soil protection policies (as opposed to dealing with contaminated sites). Driven by Member States before European policy is or was being formulated in the field, it served and serves to improve policies in the Member States and clarify where EC co-ordination or harmonisation may be helpful. The ESF is an example of an OMC-type activity, in part based on quantitative data, ahead or up-stream of EC policy. In this instance, OMC can be seen as a precursor to Community policy (with results being awaited).
- Water Framework Directive (WFD) & the Common Implementation Strategy (CIS): The WFD had a long history of discussion (under the name 'ecological quality directive'); as an ambitious attempt to reframe a whole sector of European environmental policy, it was highly controversial. An informal network among heads of departments responsible for water management in the Member States, sub-national states, and river basin agencies emerged as an OMC-type structure. Its discussions and the policy inputs derived from them, served to clear the path for the eventual adoption of the WFD. The institution of 'European Water Directors' can also be seen as an OMC-type precursor to a (substantially revised and reframed) Community policy (with the result now known).

The European Water Directors, with the adoption of the WFD, initiated probably the most dynamic institutional processes for guiding the implementation of the directive, which follows innovative and untested approaches in a number of fields. The WFD, being a process-oriented framework directive, left many issues open and provided much room for adaptation to the Member States. It created a new need to co-ordinate policies and measures within river basins and state boundaries. A

¹³ Examples would be the use of product-related measures as part of waste management and resource policy, the seeking to influence production and consumption patterns in the interest of sustainable development, or the use of sustainability-oriented process and production standards in public procurement.

number of working groups and advisory bodies were established to cover a wide range of issues, primarily to develop specific guidelines for WFD implementation. The institutions and procedures in the CIS are an example of an OMC-type arrangement for implementation after Community policy has been defined.

Together, the institution of the European Water Directors and the CIS demonstrate the flexibility of OMC-type arrangements and their usefulness in various segments of the policy cycle. Neither currently has secure financial resources, and both are maintained primarily through the co-ordination among Member States, even though there is a process of institutionalisation and increasing funding for the CIS from the European Commission. At its heart, the WFD-CIS process remains informal, dynamic and open with respect to its final purpose, shape, and legal form.

- Directive on Integrated Pollution Prevention & Control (IPPC) & the Sevilla Process: As a result of the IPPC Directive, the European IPPC Bureau was established in Sevilla. Its task is to review process and production technologies in industry and to establish guidance for Member States' authorities in issuing environmental permits. The Bureau is a formal structure, with staff and a budget, but the Sevilla Process also draws heavily on the involvement of experts from Member States' administrations, industry, research, and (some) environmental NGOs. The output of the Sevilla Process consists mainly of reference notes on best available techniques, providing much technical detail. Not in themselves legally binding, these notes are increasingly regarded as 'soft law' (instructing authorities in permitting, and courts in interpreting legislation). IPPC and the Sevilla Process are an example of an OMC-type mechanism for the dynamic implementation of secondary legislation. The process is formalised and institutionalised.

More generally, many environmental directives and regulations provide for the creation of "Technical Committees". Depending on the specifics of each case, these formal bodies are to exchange experience among Member States and between Member States and the European Commission, develop guidance for administrative implementation and enforcement, coordinate monitoring and reporting (on implementation to the European Commission). They often also have a role in reviewing and evaluating the success – or otherwise – of the implementation of European legislation, and they advise the Commission in its development of subordinate legislative measures (decisions) or the revision of the directive or regulation through and for which they were established. In many cases, we find that reviews and possible revisions (but no "sun-set clauses") are explicitly foreseen in EC legislation.

In addition, there are a range of networks, bodies and institutions that exist, or existed at least initially, without a formal basis in primary law or secondary legislation. Examples, involving mostly civil servants from the Member States, would be the IMPEL network of environmental enforcement agencies, the Environment Policy Review Group (EPRG), the network of EU Co-ordinators of Member States' Ministries of Environment, or the network known as the 'European Water Directors'. All these tend to focus on information exchange, (informal) policy evaluation and providing input into policy definition. Consequently, they are flexible in their agenda, composition, and range of activities. Lacking significant resources, they do not, as a rule, have stable information systems or formalised reporting and assessment routines.

There are other examples of networks involving both civil servants (from ministries and enforcement authorities or agencies) as well as experts from universities and their like. The Topic Centres established by the European Environment Agency would fall into this category. So would a number of Concerted Actions or other networks and programmes financed as 'research activities' whilst serving evidently useful policy objectives, for instance in the areas of soil protection policies and the management of contaminated sites.

It would appear from the overview that OMC-type arrangements have been found necessary and useful components of the Environment Policy Regime, and that Community legislation – the 'Community Method' – and OMC can be combined quite easily and flexibly. It should be noted however, that the OMC-type arrangements in the Environment Policy Regime exist mostly in the absence of sanctions and incentives. Their legitimacy stems from their function and their usefulness for improving the efficiency and effectiveness of environmental policy. All the examples in this section relate to issues with little or no overlap with other policy sectors and are 'controlled' by the environmental policy community. The situation is different in the Sustainability Policy Regime.

3.3 The Sustainability Policy Regime

The Sustainability Policy Regime addresses issues that are clearly outside the scope of either the Internal Market Regime or the Environment Policy Regime. It is the youngest and least developed regime, and it is the most open and indetermined in its future development. As will be seen, it is the most amenable to 'strong OMC' (with a basis in primary law similar to the OMC in economic policy).

Responding to 'sustainable development' as an overarching objective of both the EC and the EU, the Sustainability Policy Regime is currently based in large part on the principle of Environmental Policy Integration that "environmental protection requirements must be integrated into the definition and implementation of [all] Community" policies and measures.¹⁴ It is a traditional principle of environmental policy found in the 1st EC Environmental Action Programme, later in the EC Treaty Title 'Environment', in the Rio Declaration, and now in Article 6 of the EC Treaty. By its nature, the principle calls for co-ordinated policy action at several levels (European in the 'definition' and Member States (or sub-national) in the 'implementation' of Community policy) and across the traditional frontiers between different policy communities (such as agriculture, transport, competition, trade, or foreign policy). In consequence, there is a high diversity of conditions, and much controversy about the formal (vertical and horizontal) distribution competencies. In addition, each of the policy sectors involved has its own 'policy rhythm' or time-scales for policy formulation and revision.

The Sustainability Policy Regime has given rise notably to the Cardiff Process for Environment Policy Integration (EPI), which has resulted in the staggered development of EPI strategies (or 'Cardiff Strategies') in a number of policy sectors. The adoption of the EU

¹⁴ There are many other policies and approaches that might usefully be included in the Sustainability Policy Regime, such as measures to influence production and consumption patterns, Currently however, environmental policy integration is the dominant element of the Sustainable Policy Regime.

Sustainable Development Strategy (EU SDS) has reinforced the Sustainability Policy Regime by giving it additional objectives, tasks and functions.

The Sustainability Policy Regime relies largely on institutions and procedures that are similar to the fully-fledged OMC in the field of economic policy. As a non-legislative policy-making and policy-coordinating method, it is based on setting short, medium and long-term policy objectives and guidelines, establishing performance indicators, deadlines, and benchmarks, with formal monitoring, reporting and evaluation, including peer reviews. The development of the sectoral EPI strategies depends on social learning and the acceptance and internalisation of the concept of sustainable development. Certain highly-regulated Member States (with advanced environment policy systems) and parts of the European Commission act as political entrepreneurs who diffuse the concept and practicable approaches for its application at European and national levels. However, while sustainable development has been established as a norm that is rarely openly opposed, it does not yet sufficiently pervade the sectoral integration strategies, which still tend to be too vague (von Homeyer, 2002, on the Cardiff Process see also Kraemer et alii, 2001).

The Cardiff Process is in large part perceived to be mainly a task for the Council and the European Council, and some dispute that the Cardiff Process has much relevance for Member States. However, both the wording of Article 6 of the EC Treaty and the various Council conclusions on the matter make it clear that the Cardiff Process does require the active and constructive participation of the Member States.

The OMC character of the Cardiff EPI Strategies and their implementation (as a task also for the Member States) varies considerably among the sectors. Most advanced, and thus similar to OMC in the economic policy field, are perhaps energy and transport. For energy and other climate-related policy fields, the European Climate Change Programme (ECCP) has been developed as a formal mechanism for policy co-ordination across both levels and sectors. In relation to transport, the Transport and Environment Reporting Mechanism (TERM), driven by the European Environment Agency, serves as an example in indicator development, monitoring and reporting. TERM is both a model for other policy sectors and similar to the use of quantitative and qualitative criteria used in economic and fiscal policy. Other policy sectors are also developing systems for monitoring, reporting and assessment, creating the preconditions for policy evaluation and peer review.

In the Sustainability Policy Regime, increasing development of the sectoral strategies results in the institutions and procedures more and more resembling OMC in the economic and fiscal policy field. If current trends continue, the Sustainability Policy Regime will lead to several OMC mechanisms, which will need to be institutionalised and stabilised.

3.4 The Three Regimes in Comparison

The following table gives an overview of the three regimes.

Table 2: EU Environmental Governance Regimes

Regime	Internal Market	Environmental Policy	Sustainable Development
Characteristic			
Main function or purpose	Harmonisation of product standards (essential function for the EU as a whole)	Harmonisation of process standards; Stimulation (and harmonisation) of environmental policy, management and planning	Integration of environmental protection requirements into all policies (implementation at MS level)
Legal Basis	Normally Article 95 TEC	Articles 174-176 TEC	Article 6 TEC (policy)
Environment policy objective or function	High level of protection	'High level of protection' is heavily qualified	Integration (coherence and efficiency of policies)
Sustainability policy objective or function	none explicit [economic expansion through free trade]	Polluter-pays-principle (for economic efficiency), Rational resource use, Consider global dimension	Provides an operative definition of 'sustainable development' in European primary law
Unitary vs. Federal	MS may theoretically adopt more stringent standards, rare in practice	Article 176 allows MS to adopt more stringent standards, practicable	Process largely inter-governmental and trans-national to date; push towards unitary or federal development not yet clear
Legislative procedure	Co-decision (EP strong), Qualified Majority Voting (QMV) in Council	Mostly Co-decision (EP strong), QMV But also consultation (EP weak), unanimity (MS strong – 'veto')	[no legislation to date] Policy driven by Council (working groups); based on European Council Conclusions (EP no role)
Economic logic	In the interest of less regulated MS	In the interest of highly regulated MS	Can void cost of adaptation or correction after policy errors
Decision-making results	In standard-setting, highly regulated MS often prevail (economic reasons)	In policy definition, highly regulated MS often prevail (institutional reasons)	Variable, from ignoring environmental concerns to policy innovation for the environment
Effect	(Reasonably) high levels of protection	(Reasonably) high levels of protection;	Policy learning, policy modernisation (in sectors) Lead to 'Cardiff Process'
Efficacy	High goal attainment (relating to Internal Market)	Medium goal attainment (relating to environmental protection); significant deficits in transposition and application	Slow process with variable results, depending on policy sector

Note: This table is largely based on the differentiation developed in von Homeyer (2002).

4 Pros & Cons: Open Method of Co-ordination in Environment

Having made the principal case for OMC or OMC-type mechanisms for parts of the Environment Policy Regime and the whole of the Sustainability Policy Regime, this chapter is devoted to the discussion of the potential advantage and disadvantages of applying (more) OMC to environmental and sustainability policies.

4.1 Need for Legal Basis in Primary Law

The examples of OMC-type mechanisms in the previous chapter have shown that OMC is highly useful in environmental and sustainability policy, and that OMC mechanisms can evolve 'spontaneously' – i.e. without a legal basis in primary law – as and when the need for them arises. One conclusion from this observation would be that a legal basis in primary law is not necessary, and that OMC can function outside of the procedures established in the Treaties. A contrary conclusion would come from the argument that, as can be seen in many instances in the process of European integration and policy development, practice precedes primary law, and that the Treaties should now formalise and legitimise OMC in environmental and sustainability policy.

4.2 Stimulant or Sedative: Effects on Member States' Policies

In economic, fiscal and social policies, the effect of OMC has been to stimulate policy innovation, diffusion, and adaptation in the Member States.¹⁵ However, the Maastricht Criteria, as reinforced by OMC in economic and fiscal policy, have also hampered some policy reactions, such as fiscal expansion in reaction to threats of recessions, that were and are still seen as necessary in some Member States.

In the fields of environmental and sustainability policy, similar stimulating effects can be expected, and are indeed in evidence in the OMC-type mechanisms that already exist in the Environment Policy Regime and the Sustainability Policy Regime. Concerning the environment and natural resources, there are currently no informal or formal restrictions similar to those imposed by the Maastricht Criteria. In consequence, no similar sedative effect on Member States' policies would need to be anticipated.

It may be that Member States with advanced environmental policy systems have, in the absence of OMC mechanisms, more freedom to act and less outside interference in their domestic policy processes, and might be slowed by being involved in environmental OMC. However, such an effect would not be significantly stronger than the outside interference in domestic debates that can occur without OMC, and, looking at the European environment as

¹⁵ The same cannot be said for the integration of environmental protection requirements into other policies through the Cardiff EPI Process, in spite of the OMC characteristics of the Cardiff Process. The contrast between the policy fields highlights the importance of addressing the structural and institutional weaknesses of the Cardiff EPI Process and the Sustainability Policy Regime.

a whole, it would in any case be outweighed by the stimulating effects on Member States with less developed environmental policy systems.

4.3 Effects on the *acquis communautaire*

A large part of the environmental *acquis communautaire* is characterised by significant shortcomings in formal transposition and administrative enforcement (implementation deficit). The large number of Treaty infringement procedures initiated by the European Commission against Member States bears witness to this observation.

There are some fears that the establishment of OMC in the Environment Policy Regime would undermine even further what is left of the Community Method (CM) in European Environmental Policy. Some even argue that the shift away from directives establishing limit values and quantitative performance standards towards process-oriented framework legislation, such as the Water Framework Directive, is a conscious effort to 'remedy' the implementation deficit by lowering the standard.

Such arguments often overlook the degree to which OMC-type mechanisms are already part of European environmental policy. They also ignore that OMC and CM can obviously reinforce one-another. It was shown in the examples above that OMC can both precede – prepare the ground for – and follow CM measures, and thus strengthen the implementation of policies based on CM.

In principle OMC might therefore strengthen the CM, provided the OMC mechanisms are suited to the existing legal and policy framework. Negative effects on the *acquis communautaire* might ensue if the extant body of EC legislation is repealed, as was the case with the Water Framework Directive. In such cases, the design of the OMC mechanisms to replace the *acquis* would need to be sufficiently robust to mitigate the risk of degrading the environmental performance of Member States.

4.4 Effects on Community Method of Environmental Policy-Making

What might be the effects not on the existing body of Community legislation, but on the development, adoption and implementation of future legislative acts under the Community Method (CM)? First, the argument that OMC can precede CM should be noted.

The effect of 'regime competition', the existence of separate policy regimes with similar or overlapping capacities, each driven by (slightly) different institutional interests and process dynamics, has – as a rule – a stimulating effect on both regimes. Both are instigated to innovate, fix problems, and work speedily in response to policy needs. There is little to suggest that this effect would not occur in relation to European environmental policy.

The combination of CM measures with OMC-type mechanisms is evidently useful in many instances. Given the diversity of bio-regional conditions, economic and social situations, and administrative and political capacities in the Member States and Accession States, such combinations might in many cases be more acceptable solutions than CM measures alone. In consequence, the protection level might actually be raised.

4.5 The Networking Effect of OMC -> Continuity and Stability

There is general agreement that OMC has a significant networking effect that strengthens policy processes at European and Member State levels. By its nature, OMC requires the identification of responsible persons in the participating authorities and agencies. These persons then attend regular meetings which provide formal platforms for the exchange of (positive and negative) experience in the formulation and implementation of policies. There is also room for informal exchanges, with a constructive frankness that cannot normally be found in formal settings. The networking effect can be described as the sum of parts, some of which can be described as follows:

- **Initiation:** In any authority or agency, there is staff fluctuation. The most obvious related problems are a) initiation and b) institutional memory. OMC structures and forums facilitate the initiation of new members of a policy community to the issues, arguments and lessons that have been learned. Encounters between "the old foxes" and the "new kids on the block" help connect new members to connect into processes by providing them with history and context.
- **Continuity:** National policy processes are sometimes subject to abrupt changes, usually as a result of electoral swings. In such instances, OMC can avoid policy disruption by locking Member States (and the Commission) into stable processes. This effect is stronger and more likely to persist if the OMC is formalised and institutionalised, and based on ongoing, indicator-based systems for information gathering, monitoring and reporting.
- **Innovation and Diffusion:** OMC, as a social process of policy learning, provides a platform for giving recognition to (and thus personally rewarding) policy innovators. It thus stimulates innovation. OMC also helps in the diffusion of innovations to Member States with less developed environmental policy systems, by providing opportunities (to the innovators) to present and (to the followers) to hear about policy solutions. This effect, when linked to the networking character of OMC, would be especially strong and important with respect to the needs and capacities of the Accessions States.

4.6 Flexibility of OMC Frameworks and Enlargement

"OMC has [...] rapidly become a virtual template for Community policymaking in complex, domestically sensitive areas where diversity among the Member States precludes harmonisation" (de Búrca and Zeitlin, no date [2003]). This assessment points to a potential strength of OMC, particularly following EU Enlargement. There are widespread fears that enlargement will make it more difficult to adopt ambitious measures as part of the Environment Policy Regime.¹⁶ OMC might actually provide a solution here, by allowing flexibility over time

¹⁶ The assumption is that enlargement changes the institutional setting of the Environment Policy Regime by radically changing the balance between highly and not-highly regulated Member States in Council. One effect might be that, given the existing institutional isolation of the

in the development, implementation and gradual adaptation of policy within a framework of dynamic objectives. At present, administrative, technical and staff resources of environmental administrations in the Accession States are often inadequate. The political priority accorded to environmental issues is relatively low in many instances. In these circumstances, the possibility of entering into an OMC policy process with initially low requirements or levels of ambition may be more attractive than agreeing to harmonising legislation under the Community Method. OMC may be acceptable to future Member States in some cases where CM is not.

Once the OMC measures have been adopted, and the social policy learning process within OMC and the general capacity-building process in the Accession States progresses further, more and more ambitious objectives may be set in the OMC process. OMC, with its collateral need for data gathering, monitoring, and reporting routines, may actually strengthen capacity building in this area. Eventually, the OMC process may then also give way to binding legislation, imposing standards with a high minimum level of environmental protection, adopted under the CM. In that way, OMC can precede and prepare the ground for CM.

Given the many different constellations that would be possible, some general principles should be developed (and possibly agreed upon among the Member States and the European Commission) for deciding when to use OMC and when to stick to CM.

5 Elements of Environmental & Sustainability Policy Co-ordination

A number of building blocks for a fully-developed OMC for environmental and sustainability policy can be identified, other remain to be defined. This chapter presents an overview.

5.1 Contribution to Overarching Objective of the European Union

Part of the strength of the OMC in economic and fiscal policy stems from the fact that it makes an important, even essential contribution to the economic and monetary integration of Europe. The Economic and Monetary Union (EMU) promises great economic benefits and, more importantly, is politically linked to the success of the civilisatory project to create a new form of supranational or intergovernmental governance and to overcome the risks and limitations associated with Westphalian nation states. Economic and fiscal OMC thus derives part of its legitimacy and political weight from it being inextricably linked to the original *raison d'être* of the European Community and Union: the safeguarding of peace and prosperity in a free society throughout Europe. The strength of the legitimacy currently

Environment Policy Regime, the highly regulated Member States lose the strategic advantages that they now enjoy. Should the institutional isolation of the Environment Policy Regime end, and more trade-offs between environmental and other issues be made, environmental protection requirements are expected to receive lower priority than at present. The effect of EU enlargement on the Internal Market Regime is not likely to be significant (see von Homeyer 2002).

enjoyed by EMU and thus economic and fiscal OMC is in part due to the desire to avoid developments that were experienced in Europe's recent past.

OMC in environmental and sustainability policy would serve an additional function. It would not merely be about avoiding the repetition of 'realistic' mistakes from the past, but rather avoiding future and, for many, 'hypothetical' problems of the future. The function of environmental and sustainability OMC is, in consequence, much less 'tangible' than economic and fiscal OMC. Nevertheless, the evident degradation of the global environment, the unsustainable depletion rates of fossil fuels, minerals and many living resources, as well as the accumulation of threats to the integrity of ecosystems everywhere, should provide sufficient justification for action. Europe has a large share of global resources consumption, destruction of habitats and pollution. At the same time, Europe has comparatively high capacities to provide technical, managerial and political solutions, and has accumulated valuable experience in developing multilateral governance systems for a multi-cultural and multi-centric polity. All this places the European Union and its Member States in a special position of responsibility to develop effective institutions for environmental and sustainability policies. Creating an environmental OMC on par with the OMC for economic and social policies would be a credible and creditable response to global environmental challenges.

5.2 Environmental Policy Guidelines and Possible Fields of Application

OMC processes need clear objectives or thresholds, such as the Maastricht Criteria for economic and fiscal policy, or guidelines that allow performance monitoring, benchmarking, and verification of goal attainment. In the field of environmental policy, because of the complexity of cause-effect relationships and the diversity of natural systems among and within the Member States, there are no practicable "lead indicators" as in the economic field. Consequently, it would be necessary to develop Environmental Policy Guidelines, modelled perhaps on the criteria or parameters of the OECD Environmental Performance Reviews. Existing environmental and sustainability criteria can be used for quantitative assessments, ranking and rating.¹⁷

The guidelines would depend on the environmental policy priorities and would change over time, much in the way that the Broad Economic Policy Guidelines develop with experience. The following is a list of possible priorities or fields of application for environmental OMC:

- External environmental policy;
- Support for renewable energies;
- Policy on environmental technologies;
- Phasing-out of atomic power and dealing with its legacy;
- Climate protection policy (building on the ECCP);
- Transport policies (building on the TERM);

¹⁷ It may be instructive to investigate the usefulness of indicators and criteria used in the calculation of "Sustainability Ratings" (or environmental ratings) by credit rating agencies when assessing the sovereign debt of nations.

- Use of economic and fiscal instruments (direct link with economic and fiscal OMC).

Any Guidelines would need to take account of existing priorities and objectives, as well as indicators, reporting and review mechanisms as established in relevant documents, such as:

- Existing EC environmental legislation;
- Multilateral Environmental Agreements;
- The 6th Environmental Action Programme;
- The EU Sustainable Development Strategy,
- Article 6 EC Treaty and the Cardiff Process;
- Outcome of the WSSD in Johannesburg (and UNCED in Rio).

5.3 Sustainability Policy Guidelines ?

Sometimes the question is raised if there can be "Broad Sustainability Policy Guidelines" similar to the Broad Economic Policy Guidelines, and if indeed there should be?

The nature of sustainability policy guidelines would be different from economic policy guidelines. The reasons for this lie in the fact that sustainability policy is relatively new, there is less agreement or alignment of policies, the policy dynamics of sustainability policy are less understood, and there are far fewer standardised data gathering, monitoring and reporting systems. Whereas economic policy has its own – at time controversial – orthodoxy providing conceptual stability over time, sustainability policy still operates much on the basis of general normative principles and common sense rules. As a new policy area, it has no orthodoxy and must leave room for policy experimentation.

That said, it should be recalled that the international community has developed a number of guidelines for sustainable development or sustainability policies, notably in the United Nations and the OECD. These already quite refined sets of guidelines could be used as a starting point for OMC-like guidelines directed at the EU Member States.

6 Concluding Theses

6.1 Two-and-one-half OMCs Needed for Environment and Sustainability

The evidence argues for at least two OMC processes, an "Environmental Policy OMC" for environmental protection and nature conservation policy, and a "Cardiff OMC" for environmental policy integration. The jury is still out on whether a third "WSSD OMC", focusing on sustainability policy and sustainable development strategies, should also be established.

6.1.1 Environment Needs a Level Playing Field with Economic and Social Policies

As has been seen above, OMC is most advanced in economic and fiscal policy, giving these policies a high degree of leverage over the strategic policy agenda at the highest level, in the European Council. In the field of social policies (employment and social protection), two separate but related OMC mechanisms have emerged and will develop, giving the social sphere of sustainable development greater weight in European policy processes.

Economic, fiscal and social policies will tend to harm the environment and nature and lead to excessive use of natural resources unless environmental policy requirements are fully integrated into their definition and implementation. This is not the case at present, however, and given the nature of the relevant policy communities, their value and belief systems, institutional obstacles and policy dynamics, EPI cannot and should not be trusted to bring about a satisfactory modernisation of economic, fiscal and social policies.

In order to achieve a 'level playing-field' for environment and sustainability policy, an "Environmental Policy OMC" is clearly needed in order to serve two distinct but related functions:

- Establish institutional structures that can correspond with the OMC institutions in economic, fiscal and social policies, acting as an 'equal partner for exchange and dialogue';
- Provide for equal-weight input into the Lisbon Process and the deliberations of the European Council, primarily during the spring meetings.

The purpose would be to produce all the benefits of OMC in the field of environment, nature conservation and the rational management of natural resources (see section 2.5 above). The environmental OMC could develop broad policy guidelines to be used in peer review and assessments. Such assessments could be implemented either by incorporating them into the Broad Economic Policy Guidelines under the Lisbon Process (thus following the model of the Employment Guidelines), or by operating an independent environmental or sustainability performance assessment of Member States, perhaps based on the OECD Environmental Performance Reviews.

The "Environmental Policy OMC" would leave the Internal Market Regime unaffected, but would certainly have an impact on the Environment Policy Regime. The OMC would have to be designed to complement existing and future measures adopted under the Community Method. The achievement of consistency and coherence would appear to be no more challenging than the past development of economic OMC with respect to extant legislation in the economic and fiscal fields. Key parts of the Environment Policy OMC would be formalised annual environmental performance reporting to the European Commission or, through an Environmental Policy Committee, to the Council (Environment), and the adoption by the Council of submitted reports and guidance.

6.1.2 How Else?: "Cardiff OMC" needed for Environmental Policy Integration

Given the arguments presented in this paper, one can conclude that the likely benefits of OMC relating to Environmental Policy Integration (EPI) and the Cardiff Process are very

high, and that a formal OMC should be established in this field. The fact that the advanced Cardiff EPI Strategies all lead to the spontaneous development of OMC-type mechanisms is sufficient proof that OMC is needed once EPI becomes reasonably advanced and the data for measuring goal attainment, comparing performances, benchmarking, assessments and peer reviews become available.

Only OMC can handle the policy co-ordination needs across sectors and levels that are implied in EPI. The learning process that OMC would trigger or facilitate would work among Member States, between the Commission and the Member States (traditional), and among policy sectors (novel).

"Cardiff OMC" would have little or no negative effect on the Internal Market Regime or the Environment Policy Regime. It would have to be flexible and allow for the setting up of parallel working structures, one for and adapted to each policy sector.¹⁸ Synergies may be derived from the clustering of certain functions, such as data gathering, monitoring and reporting. Cardiff OMC might be instrumental in stimulating EPI processes at Member States level, which are generally still in an infant stage of development.

6.1.3 Optional Third: "WSSD OMC" Useful for Sustainability Policy & SD Strategies

Sustainability Policy and the development and implementation of National (and European) Sustainable Development Strategies has been given a strong new lease on life by the World Summit on Sustainable Development (WSSD) in Johannesburg. It is not immediately obvious, why an OMC would be needed in Europe, as the process is a global one. However, as a unique multi-level governance structure, the Member States and the Community face the specific challenge of co-ordinating their sustainability policies. This would indicate that an OMC for Sustainability OMC, or "WSSD OMC" would be useful.

"WSSD OMC" would ideally be open to participation from Non-Member States, notably other states with similar levels of development (OECD member countries), sub-national units (California?) or Europe's partner countries in the Mediterranean region.

6.2 Should OMC be Included in the Future Constitution ?

The future constitution of Europe should allow for OMC in environmental and sustainability policy in two ways:

- For the "Environmental Policy OMC", the "Cardiff OMC" and the "WSSD OMC" specific institutions and procedures should be created to put them on the same level as the economic and fiscal OMC. The result would be an
- Environment Policy Committee (from Member State ministries of environment, etc),

¹⁸ Agriculture, transport, energy, internal market, trade, development, industry, economic, fiscal and budgetary, fisheries, general and horizontal affairs, foreign affairs, research, education, etc.

- Environment Integration Committee, or "Article 6 Committee"¹⁹ (from Member State ministries of environment and the offices of the heads of government), along with appropriate Sub-Committees (from Member State ministries of environment and the respective sectoral ministries),
- Sustainability Policy Committee (from Member State ministries of environment and the offices of the heads of government, plus, where appropriate, ministries of development; without Sub-Committees),
- For all OMC applications and OMC-type mechanisms that may from time to time be judged useful, general provisions should be created. The purpose is to ensure that the setting up and financing of OMC-type arrangements is facilitated.

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¹⁹ This suggestion presumes that Article 6 of the EC Treaty will survive the current process of drafting a new Constitutional Treaty for Europe. At the time of writing, however, the outlook is dim. The name "Article 6 Committee" would have to change in line with the renumbering of articles even if the current wording and systematic position of the integration principle can be defended.