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

Final Report – Executive Summary

by

Patrick ten Brink
Andrew Farmer
David Wilkinson

Ingmar von Homeyer
Nicole Kranz

Institute for European Environmental Policy

Ecologic

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Executive Summary

I Introduction

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

To do this the study / this report aims to:

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

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

II The Study Approach and Case Coverage

The approach of the study can be summarised as:

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

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

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

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

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

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

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

Table E1 OMC type examples and their OMC characteristics

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

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

III Conclusions

OMC practice

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

down' that the legislation actually does nothing, that it is better to go for an OMC type process, possibly with the expectation that if no progress is made then a mandatory approach will be launched (the 'stick behind the door'). If there are positive results, then the OMC is a success, and if there are no results, there is at least a possibility that the political commitment to do something real develops and hence sufficient argument and momentum to legislate (OMC bridge function).

Box E1 Commission views on OMC for Lisbon

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

OMC practice in environmental field

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

OMC type applications play different *functional roles* depending on the example:
- *Gap filler or bridge to CM*
  - Under ENAP - exploration of use of EMS for supply chain issue, life-cycle issues or industrial estates.
  - Other gap fillers include sustainable mobility, spatial planning, and urban thematic strategy
  - Other bridges include EIA, IPP and ECCP

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

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

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

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

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

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

Performance of Environmental OMCs and OMC type applications

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

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

in some countries and hence reduce non-compliance rates in due course. The WFD-CIS has accelerated and considerably improved the implementation of the WFD. Both developments should eventually have positive effects on environmental quality.

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

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

There are also benefits of *canvassing and obtaining support or avoiding opposition* – in the ENAP case, it is clear that the process helped other member States and the European Commission understand the Dutch ideas and needs for emissions trading for NOx. The ongoing

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

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dialogues and technical discussions helped reduce the opposition to NOx trading and opened the door for potential future application. The process can be useful for obtaining support for approaches / solutions that are not known in advance, but rather are identified during the process. In places this can be useful 'agenda setting' - eg encouraging IPPC Directive revision.

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

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

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

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

Performance factors

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

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

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

Views as to likely areas of growth.

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

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

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

Does calling an OMC and OMC help?

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

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

However, in political and academic circles there is a lot of heated debate and fixed views regarding what CM and OMC are, can do, and are intend to do. The view is often that OMC is a way of avoiding real action and avoiding commitments and constraints, while the advocates

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

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

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

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

IV Recommendations

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

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

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

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

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

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

Other areas of importance include:

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

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

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

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

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

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

As regards the question of alternatives to CM - in light of the no vote to the Convention, there are clear arguments that there need to be visible opportunities for member states to take ownership of problems and finding solutions. In other words there should be a proactive look at

whether and where MS approaches or MS co-ordinated approaches can offer better results than the CM. If these really do offer the same or better results, and there is a real commitment to making it happen, the OMC could be the solution. However, if the likely results are weaker then subsidiary would often argue for the CM. In light of the weaknesses of past and ongoing OMC practice, there needs to be a convincing case made. In short, it has to deliver. In addition the questions of transparency and democratic robustness (lack of EP role) need to be addressed to make the offer of an OMC attractive.

Should it be called OMC?

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

How Should the OMC operate?

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

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

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Part B: Case Studies Annex

by

Patrick ten Brink
Andrew Farmer
David Wilkinson

Ingmar von Homeyer
Nicole Kranz

Institute for European Environmental Policy

Ecologic

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Part B

This is Part B of the IEEP-Ecologic report to VROM - *Exploration of options for the Implementation of the Open Method of Coordination for Environmental Policy*. It contains the 4 core case studies analysed during the project.

These are presented in turn below.

These are case inputs to the OMC analysis and should not be seen as full evaluations of the case. In places there are other initiatives evaluating performance, most notably an evaluation of IMPEL has recently been completed for DGENV of the European Commission.

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

Case Study - Exploring New Approaches (ENAP) in Regulating Industrial Installations

Working Draft for comment by the Steering Group

1.   Introduction

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

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

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

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

- The workshop '*Emissions Trading in NEC Substances (in particular NOx and SO₂)*' was held in The Hague on 21-22 November 2002;

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

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

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

These were interconnected elements of the analysis of the wider question of regulating industrial installations.

Each of the ENAP workshops built on background reports and presentations of experience and perspectives by different stakeholders and led to the publication of extensive proceedings. Each

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includes conclusions and recommendations on different new approaches and instruments – building on and extending and developing the insights obtained in the background studies, and reflecting the broader experience and contributions of the 100 or so participants in each workshop. Two of the background reports – on the IPPC directive and permits, and that on EMSs and the regulatory cycle – included comparisons of different practice across Member States and some attempts at understanding good practice.

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

2.   The challenge being addressed, the tool and its OMC characteristics

ENAP addressed both a general challenge – how to make use of instruments to improve regulation of environmental aspects of industrial pollution, focused on IPPC installations, and a series of specific ones, some based on understanding, some based on solution identification.

The challenge has arisen from the growth in legislation and instruments regulating the environmental aspects of industrial regulation and a range of concerns regarding how to achieve a coherent internally consistent whole that is efficient and effective without burdening administrations or business more than is necessary to achieve the objectives. Box 1 below summarises the main context of the challenges and broad challenges – as noted in the ENAP conference discussions document. After the box, we note specific challenges being addressed in terms of looking for understanding, identifying solutions and obtaining support for ideas.

It is important to note that the process started well in advance of the official start of ENAP, growing out of an earlier study - *Rightly Responsible[1]* – which effectively identified the need for an ENAP type initiatives and developed the internal mandate for ENAP within VROM – and from a developing dialogue between VROM and the European Commission's DGENV for a period of about a year before the ENAP start. Towards the end of the discussions between VROM and the Commission, it became clear that the Commission would welcome an initiative by VROM to lead an international dialogue on innovative industrial regulation. The ENAP initiative or process therefore did not 'come out of the blue', but had a history and pre development phase. It is important to bear in mind the time line and investment time that goes on behind an initiative.

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

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Box 1: Context of the ENAP challenge.

Industrial Regulation, its Developments and Challenges

As noted in the ENAP booklet, several trends and issues can be seen in environmental regulation of industrial installations, each raising its own challenges:

1. A move from an unregulated industry to one regulated through command and control, and further on to one where a wider range of instruments is used in an instrument mix that may select from several options, e.g. permits, taxes and charges, voluntary agreements, emissions trading, environmental management systems, etc. This raises the challenge of obtaining the optimal instrument mix, one that forms a coherent and consistent set that offers the greatest effectiveness and efficiency;

2. An increasingly diversity of national contexts within a growing Europe – now at 25, and shortly at 28. This has led and continues to lead to an increasing appreciation that different national contexts can require different approaches to achieve the same objectives, and at the same time an increasing call for a 'level playing field' across Europe which argues for some limits to national flexibility;

3. An increasing coverage and complexity of regulation of installations and increasing argument for improved coherence, consistency and avoidance of overlap – the broad better regulation debate. Where can the present complex regulatory framework be fine-tuned to give a more effective and efficient whole;

4. A continued need to address environmental challenges deriving from industrial activities (climate change, acidification, lifecycle issues and industrial estates, sustainable productions etc.) through the use of existing or new instruments. In some cases this is a case of improved regulation or prioritising and in others cases more an issue of 'filling the gaps' in regulatory coverage;

5. Economic considerations are again a major item on the current agenda – resource or capacity constraints by regulators to fulfil their missions, and arguments of cost effectiveness, competitiveness, high administrative cost and of business efficiency;

6. A broadening of responsibility and the sharing of responsibility for action (monitoring, reporting) between regulators and regulated industries and for deciding how best to meet environmental objectives (e.g. use of instruments or measures);

7. An increased commitment to the principles of transparency, public access to information and increased role of public participation.

ENAP - a response to trends and challenges: The development of new approaches to industrial regulation – a core focus of ENAP– needs to respond to these trends and challenges, while at the same time bearing in mind the overall vision of ensuring a high level of environmental protection as a whole in Europe, which needs to deal with global, European, national and local issues, needs and perspectives. At the same time, there is the additional ongoing challenge of offering flexibility to allow effectiveness. Developments and opportunities lead to a number of choices where the right balance is needed:

*   Where to draw the line between enough flexibility and too much flexibility? Clearly it makes sense to have Member States say how best to implement objectives, but flexibility should not lead to insufficient or late implementation. Where is uniformity required for single market purposes?

*   Sharing responsibility between industry and the regulator – where is it appropriate, and where would it be an irresponsible loss of regulatory authority? Where and under what conditions can a regulator usefully share parts of its responsibility with industry?

*   Where to balance improved cost effectiveness with environmental effectiveness? Is the right point that improved cost effectiveness should only achieved when there is no loss of environmental effectiveness – in other words no trade-off? Where some argue for acceptable trade-offs, then is a danger that hard won gains for environmental improvement are lost to economic arguments?

Source: Exploring New Approaches (ENAP) in Regulating Industrial Installations - Discussion Document for the ENAP Conference (18 October 2004, the Hague) and the ENAP Expert Meeting for New and Candidate Member States (21 September 2004, Szentendre, Hungary). Report by Patrick ten Brink and Andrew Farmer of IEEP for VROM.

More concretely, the ENAP process looked at the following learning activities (understanding and good practice dissemination, and solutions identification), as well as obtaining support for ideas (hence a type of coordination and harmonisation role) – as given below:

Understanding – the aim to improve understanding should be at two levels – the general level and the technical level. In the former case, the ENAP process looked to understand the diversity of Member States responses to legislation and to opportunities for flexibility inherent in this legislation. At the technical level, there were a range of specific questions as given below. Insights on the former are useful generally for environmental policy formulation, and insights on the latter useful for the specific challenges represented by the legislation in question. Details on concrete learning ambitions are:

- *IPPC and Permitting:*
  a) How are the terms 'installation', 'associated activities', 'technical connection' understood across the EU, what diversity is there and for what reason, and are there any needs to address and divergence of interpretation?
  b) What are the gaps in environmental regulation relating to IPPC installations – ie those that are inadequately addressed by permits?
  c) How can issues of industrial estates, lifecycle issues and supply chain be addressed – what role for permits and what role for other instruments?
- *ET and NEC:*
  a) How can emissions trading (ET) work and what benefits does it offer, and what countries are interested in potentially applying it for NEC substances?
- *EMS and regulatory cycle:*
  a) What are the current links between EMSs and the regulatory cycle?
  b) Who benefits, and in particular do permitting and inspection authorities benefit from EMSs existence?
  c) Which countries do what to build on these benefits – eg by offering incentives?
  d) What cost savings are possible across the range of themes?

Identification of solutions

- *IPPC and Permitting:* What can permits do and what should other instruments do re IPPC installation pollution? Notably what is the role of EMSs, corporate permits, ET and voluntary agreements?
- *EMS and regulatory cycle:* What should be done regarding regulatory incentives for EMSs?
- *ET and NEC:* What role can ET play to allow a cost effective solution to environmental challenges?

Obtaining support for ideas

The VROM 'agenda' was never fully clear, and, in some cases, naturally not clear as there was an attempt to use the process to learn from and develop (new) solutions. It seems clear, however, that:

- VROM sought support for ET for NEC experimentation in the Netherlands and avoid opposition from the Commission – for the short term.

- VROM sought support to look seriously at the need for a revision of the IPPC Directive to avoid costs in certain areas – at least for the long term.

- VROM wished to see if there was any mileage in the idea of simplified permits.

- VROM wished to see if there was any mileage in the idea of corporate permits.

- VROM wished to see what recommendations could lead to a more level playing field across Europe to avoid 'unfair' advantages to certain countries (eg improve quality of certification in countries to at least a minimum standards so that countries do not obtain ISO or EMAS too easily).

- While talking of EMSs, VROM did not wish the discussions to head for a preference for EMAS given Dutch support from ISO14001 under a strict interpretation.

- For most other areas VROM seemed to be happy to see what conclusions the workshops and reports themselves came out with.

It seemed therefore to be a process where a number of concrete objectives were in mind at the outset, some issues were to be tested (without strong preconceptions as to the answers) and other ideas were to be explored openly. The genuine openness in some areas was important for the buy-in and authenticity/stakeholder perception of the legitimacy of the process.

To obtain support in practical terms requires not just ideas but also inputs to existing processes. The focus here was on:

- Attempting to develop support for new approaches across Member States and reduce opposition – to improve the likelihood that NL ideas would land on fertile soils.

- Attempt to bring the Commission in on the process and to ensure that their understanding of issues and the Dutch perspective would lead to support, reduce opposition and perhaps lead to other initiatives.

- Identify mechanisms as one went along.

- Attempts at getting the issue on the agenda of an informal Council meeting.

3.   Why was OMC chosen as the route to take?

An OMC type process was chosen as member state buy-in to the process was key as it would add weight to any Dutch ideas that managed to get through the process and would reduce any Member state opposition. It was also important so as to get an open process with high representation to explore possible solutions to problems. It was also vital as VROM wished to learn of interesting practice in other countries and to test ideas that were being touted in certain circles in the Netherlands. Other countries contributing or simply participating could likewise test their ideas.

A three year, PREP group backed, annual workshop and background report covering member states experience, was chosen to give a broader momentum to the questions and add (a perception of) legitimacy to the process. There was the possibility that countries with interesting experience could get their voices heard either in the process (eg PREP group meetings), in the background reports (country coverage not restricted) and in the workshops, and proceedings were open to sometimes extensive PREP group discussing, ensuring that that they fulfilled the ambition of being impartial records of events.

Given the importance of the issues and the clear interest in influencing the short, medium and long term agenda for environmental regulation for industrial installations, a lot of Member State involvement was obtained as they did not wish to miss out on the developments, the chance to learn and/or make sure their perspectives were taken on board, and of course not be caught out by developments where they were not present. It was more than just a best practice and learning process, but had objectives of influencing policy. Regarding strategic roles, therefore the ENAP process played three different roles at the same time:

a) Learning on how to better implement what is already there – hence implementation type OMC

b) Identification of gaps and exploration of instruments that could potentially fill the gaps – hence bridge to CM (if that becomes the outcome) or simple gap filler.

c) Exploration of potential changes to legislation to allow alternative instruments – eg relaxing IPPC to allow ET of NEC substances. This is the old question of what should the right allocation of competence between MS and the EU (CM) and hence what level of subsidiarity should be. As it is not a direct challenge to IPPC's existence, but rather an attempt to fine tune IPPC, then most would not regards it as a direct challenge to the CM and hence being a 'CM-substitute'.

The process was chosen also to take account of an understanding that there was a mixture of diverse understanding of and approaches to the problem (IPPC directive), with a range of experiences showing difficulties with the current set of instruments (IPPC installation specific permits with BAT requirements, formal EMSs, NEC targets). There was therefore interest and concern from a range of quarters to try to understand what others are doing, what problems there are, what needs to be done and what solutions are possible and which should be supported. In short, it was felt that stakeholder support and interest could be obtained relatively easily and hence become a core part of the dynamic to making it work. Engaged support from the UK facilitated the exercise as did constructive support from the PREP group.

Even while there was always a clear danger to the position of the Commission and EU acquis – in that the shadow of the challenge to the IPPC Directive was always evident – the Commission considered the process constructive and worthy of its own involvement in the process, recognising the need and benefit of learning from member states' experiences and needs and understanding what solutions were being tested in the fora. The Commission entered with cautious interest and ended as an integral part of the stakeholder makeup. The listening has led to a number of significant calls for study recently that build on the ENAP experience.

Some additional insights on the reason for the use of the instrument are noted in the box below

Box 2: Drivers for the use of ENAP

International economic competition   - Competitiveness concerns and reducing the regulatory burden of meeting current and future legislation was a key driver for VROM initiating the ENAP process.

· It was felt too costly to meet the NEC directive without Domestic trading of NOx and hence support was needed for domestic efforts here (ie make sure no problems with the Commission, see if there could be broader MS support for this route or at least supporting Dutch experimentation). Currently the Nox targets within NEC can be met without ET, though ET will reduce the costs. In the future there are arguments stating that without ET that it will be very difficult, if not practically impossible to meet the targets without ET.

· Similarly, there were interests in understanding whether the benefits of certified EMSs could lead to reduced burden for industry and regulators – eg reducing double reporting, facilitating permitting etc.

· With regards to IPPC installation specific permitting, a question was whether cost savings could come from corporate permits.

First mover advantages - An important but not major factor in ENAP. ENAP helped set the agenda for industrial regulation and ensure that inputs focused on areas of Dutch concern. There was some openness for others' agenda items to be on the table, but this was through 'giving an opportunity' rather than active encouragement of other's needs.

Uncertainty regarding solution - Important for certain areas within the ENAP project – the issue of supply chain and lifecycle environmental issues management is currently a gap that needs solving

Problem pressure (incl. Effectiveness of existing instruments) - very important issue of cost-effectiveness regulatory burden reduction interests; also major cost concern regarding meeting NOx targets under NEC)

Political sensitivity/sovereignty concerns - This ranged from little importance to very important depending on which ENAP subject. Sovereignty concerns were high in the case of:

·   Allowing national experimentation with different means of meeting the NEC directive for NOx

Knowledge intensity - this was quite an important aspect for certain elements of the work, notably:

     o   Early ET workshop helpful in understanding what the various elements of the instruments were and actual practice and lessons

     o   The work on the link of EMS and regulatory cycle helped clarify the different approaches and what worked for whom.

4.   OMC elements and processes

This section looks at what the main elements and processes of the OMC are, how it works and who makes it work. It also looks at what is not included and why. OMC Elements are presented in the table below. In short, key OMC elements:

- *Coordination* of MS to explore and compare practice, engage a *learning process* – to identify problems and needs, and identify possible solutions.

- Some type of *quasi benchmarking* across MS.

- Some coordination with a view of getting buy-in to solutions.

- Less peer pressure than peer learning, though some peer pressure.

A number of elements in full OMCs were not in place in ENAP, and ENAP should therefore be regarded as having OMC elements. Given the lack of real benchmarking (though this could have taken place had the ambition and resources been there for that), the lack of a cyclical structures based on regular review, arguably weak decision-making structures ?, no overall stated and measurable objective, ENAP cannot really even be seen as OMC type. This does not mean that the process could not be built on and extended to make a more extensive OMC type process. However, that was not the intention, and indeed not necessary given the objectives of the exercise.

Institutional / OMC measures *possible range of measures and corresponding ENAP practice*		
Institutional (requirement for) OMC measure	**In place or not** *(Yes (required); yes (optional though agreed); required/agreed but not used; not required/agreed)*	**Factor for success or failure**
Committee	PREP Group, comprising range of Member States and the Commission Held in the Commission building.	Important element keeping the MS and Commission buy-in working throughout the process
Regular Review	Ad hoc reviews within the context of the background studies and presentations – regular only in the sense of timing was yearly.	Quite useful for comparing practice, but not really a benchmarking exercise. Little real influence on 'naming and shaming' into changes of practice. More role of supporting understanding and disseminating interesting practice.
Nat. Action Plan (NAP)	No	

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Targets	No	
Guidelines	No guidelines as inputs. Though recommendations includes requests for a series of guidelines	Guidelines were an output and a type of success indicator. Not a success factor for the process itself, though an indicator of success.
Indicators	Various internal indicators used here and there to describe applications and processes (eg number of EMAS and ISO, length of permit periods etc). Not really indicators in the OMC sense.	Not really relevant to the success of the process
National Reports	Not really – country case examples though	Useful to have to show practice and reasons for different practice
Commission Report (Eg Benchmarking Report)	No, at least not yet, the Commission is launching some cross country comparative work in the area	
Commission Recommendations	There was some request for Commission recommendations – eg to support the ambition of improving the quality of certification and verification. *There was, however, no Commission Recommendation pushing the ENAP process*	
Country Visits	By the study team and country presentations. Not comprehensive and main aim for finding information, not part of peer review, coordination or naming-shaming type processes of typical OMC	+Ve for the buy-in to the process and developing the knowledge base
Decision-Making Procedure	Not very developed. Background studies highlighted issues, breakout discussions looked at what measures/steps needed to improve the situation. Workshop democratic vote in effect deciding which issues could be called for more strongly than others.	+Ve – buy in by countries where was common support, and strength of voice where there was common support -ve – where there was little support, difficult to 'progress' – though this can be seen as +Ve if dealing with non-pro-env issues (such as company permits)
Council Role	Some attempt at getting the item on the agenda of an informal council, but not the case in the end.	The lack of final inclusion in the agenda reflect the fact that no politically major output came out of the process that required council discussion.
Legal Base	None.	
Other Institutional Factors		

The process of the ENAP was essentially simple and built on existing approaches of EU wide (or international) thematic workshops supported by background reports showing diversity of MS approaches and needs for solutions. In many ways there were few differences from an OECD type international workshop on a theme looking at collating and dissemination practice and best practice; essentially a learning exercise. In the OECD's case learning tends to be gently guided towards a

liberal economics perspective. In the ENAP case, the learning was towards (a) how to do things better - essentially pragmatic, and searching for cost-effectiveness and reducing burdens; (b) identifying solutions, again essentially to allow environment to be protected but at lower costs; (c) creating a momentum towards obtaining changes in practice and legislation. The last element is critical to the difference with general learning workshops. The different sub-components of ENAP (background studies and workshops on a particular theme) are also similar in scope and participation to an IMPEL project (see IMPEL Case Study). However, by keeping the ENAP process outside of the IMPEL framework, it allowed the Netherlands (with Prep Group support) to maintain a tighter and flexible control of the agenda.

To summarise the process there was:

- Background report (on ET and NEC)[2], workshop leading to recommendations, proceedings - for Theme 1 (ET)
- Background report (Europe wide coverage)[3], workshop leading to recommendations, proceedings – for Theme 2 (EMS)
- Background report (Europe wide coverage)[4], workshop, workshop leading to recommendations, proceedings for Theme 3 (IPPC permit)
- Background paper , workshop across the three themes (including recommendations from CEE perspective), proceedings - for specific stakeholder group (CEE, new MS)
- Background report (booklet, discussion document), high level workshop, proceedings (all themes, all

In each case recommendations were pulled together in the workshop itself, and while there was some expectations from VROM in terms of the type of conclusions that would be drawn, they left the process reasonably open which encouraged open contributions, and general buy-in to the conclusions – though with cases of agreement to disagree where the diversity required it.

Stakeholders from across European administrations were invited and actively sought for participation (as speakers, respondents, part of the PREP group) – see also Box 3 on 'Actor Constellation'. Significant efforts were made to ensure that representatives from as many countries as possible were present to ensure that the dialogue was truly a European dialogue, learning from European experience, and testing own ideas, and not a club of like minded nations clarifying a predetermined common way forward. Industry was present, in arguably lesser force than ministries of environment, but implicitly there through the subject matter and the overarching objective of finding cost effective solutions. It would be mistaken to say they were under-represented given the flavour of the analysis and discussions. NGOs were invited, but clearly in far lesser numbers. . Within the public sector, efforts were made to ensure not just policy makers, but also practitioners (ie inspectors), and representation included regional bodies as well as national (still core constituency though). IEEP/Field were invited to do background studies to ensure an impartial contribution covering Member State practice that also helped addressed some skepticism as regards any Dutch agenda. Ample space was given not only to presentations of practice, but also for facilitated break-out sessions to explore practice, problems, needs and solutions. Generally speaking this allowed a buy-in to the process – with a primary focus on Member States buy in (see if one can create an greater 'us'), with the Commission in some cases as

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[2] *Assessment of the Relationship between Emissions Trading and EU Legislation, in particular the IPPC Directive* by Juergen Lefevere (FIELD), Andrew Farmer (IEEP) and Patrick ten Brink (IEEP) 2002.

[3] *Analysing View, Policies and Practical Experience in the EU of Permitting Installations under IPPC and Alternative ways of Regulation that go beyond Installation Permitting* by Patrick ten Brink and Andrew Farmer (IEEP) 2004.

[4] *Linking Environmental Management Systems with Permitting, Inspection and Enforcement* by Patrick ten Brink, Andrew Farmer, Astrid Ladefoged (IEEP) & Juergen Lefevere (FIELD). A report for VROM. 2003.

a key 'audience'. It was felt that industry buy in was already present in many areas). Some skeptics remained as regards the Dutch ambitions, but enough enthusiasm was generated to allow progress. (see box on actor constellation below)

All proceedings went through PREP group vetting and it seemed that the final products were acceptable as representative of the discussions and issues. The PREP group was a Dutch initiated steering group that included around a dozen member states, the Commission and the IEEP/FIELD team supporting the work. Attendance was generally high, notably from the UK, Germany, Austria, Sweden, France and the Commission pretty well always represented, and repeated attendance by Finland, Czech Republic and Hungary. The PREP group circulation also included Spain and Italy, but their attendance record was weak. The PREP group meetings were chaired by VROM, though with an open discussion on points, and a process of agreeing to disagree if and where agreement could not be reached. Importantly, documents (eg drafts of proceedings) were circulated well in advance to ensure efficient meetings, and wording changes were openly circulated among the group with efforts made to explain changes - in other words to arrive at an agreed consensus by understanding and not through 'insistence' or chairman's control. This helped in the buy-in to the products. The process was not without faults or difficulties and on at least one occasion a developed text (on recommendations from the IPPC workshop) was seen as too influenced by the Dutch agenda and debate and text changes were extensive. Similarly there were a range of issues around stances on EMAS and ISO that led to a flurry or text suggestions. A lesson here is to identify the difficult points early.

The final high level workshop was an attempt to get high level buy in to the conclusions.

Box 3: Actor Constellation

Actor constellation - *was there the right combination of stakeholders, and right links between them to make it work?*

- *Leading state actor/coalition at MS level* – the Dutch. Without their leadership and financial and time support the process would have been much weaker.

Coalition with the UK in particular, and to a lesser extent the Czechs. Also active support by different countries from the PREP Group, which included Germany, Austria, Sweden, France, Finland, Hungary, and in principle some other countries and the Commission

- · Austria and Sweden consistently open and constructive in approach; regular attendees.
- · Finland and Hungary again constructive, but less often present.
- · Germany, generally constructive, but also somewhat wary of where the Dutch agenda was leading and hence sometimes critical.
- · France moved from more an observer role to a more involved role, notably on the IPPC installation specific permitting where they had something important to say.
- · Spain and Italy in principle part of the PREP group, but lesser involvement in the PREP group, though input through the questionnaires.

- The most interesting aspects of the dynamic was the natural Dutch-UK link, the caution by the Germans, open constructive role of the Austrians and Swedes and the focused efforts of the French. Each contributed to the dynamic in their own way. The mix was important, including having critical elements.

*Leading state actor/coalition at EU level (*eg what the commission or the commission together with another institution (Eg EP) leading and was this a positive or negative factor and why?)

- No European Parliament role. The Commission role developed from an interested and cautious observer and contributor from the sides (presentations) to one who played an increasingly open constructive role (more proactive inputs in meetings and workshops). Over time an atmosphere of trust

was developed between the ENAP team and the Commission desk officer linking to the work. This was important and helped the openness of the dialogue and created a feeling that good ideas would be listened to.

Commercial interests – (eg were there commercial interests encouraging the use OMC, pushing for certain outcomes, and what influence did this have?)

- Some for the Dutch and UK positions as this encouraged an analysis of options that could reduce the regulatory burdens.

*Public interests (*what were they, were these represented, on board and what influence?)

- Regulators involved - core representative of public interest for the environment.
- Some NGO involvement to complement this; perhaps not as much as could have been the case.
- No public representation bodies – not felt to be a particular weakness.

5. OMC Results and factors of success

OMC results

It is useful to note the results in terms, of inputs, outputs, outcomes and impacts – an overview is given in the table overleaf – noting also which were positive and negative. In terms of concrete issues, the main immediate results - in terms of our scheme of inputs, outputs, outcomes and impacts – outputs - are the recommendations. There are noted below in boxes 4 and 5 for the two main MS wide workshops.

There are items for Member States, items for the European Commission and items for other stakeholders. It is therefore more complex than simply an attempt to push to commission in a particular predefined way or avoid European legislation.

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Box 4: Key output of ENAP Workshop 2

ENAP Workshop 2 Joint workshop to examine connections between environmental management systems and permitting, inspection and enforcement in regulation

Workshop Summary Recommendations - "The Chelsea dozen"
The workshop participants recommended to:

Clarify and Communicate
- Terminology on EMS, certified EMS and verified EMS
- Roles and responsibilities of certifiers/verifiers and regulatory authorities, including assessment of legal compliance
- Roles of EMS within the overall regulatory process
- Role of EMS in EU legislation
- Whether EMS aims for a large number of small benefits or small number of large benefits

Ensure
- Focus on environmental outcomes, not the tools
- Quality of certification and verification
- Clear brand image
- Involvement of front-line practitioners in development of EMAS 3 and related legislation

Develop
- Suitable method for facilitating the uptake of EMS for small and medium enterprises
- A clear strategy on references to (elements of) EMS in EU legislation and policies
- The next generation of voluntary instruments:
    - *Beyond environment*
    - *Beyond site*
    - *Toward sustainable development*

Box 4: Key output of ENAP Workshop 3

ENAP Workshop 3 - Exploring the scope of permits under the IPPC-directive and alternative approaches for regulating industrial activities - opportunities and constraints

Workshop Conclusions - The "Prague Principles"

This note summarises the workshop conclusions presented by the Chairmen from both day 2 and day 1, discussions from the workshop, as includes insights and conclusions from the background paper where these offer additional clarity to the conclusions drawn in the plenary sessions. The term 'Prague Principles' used by the Chairman at the end of the conference has been kept for the developed 'Prague Principles' noted in this workshop report to facilitate recognition and engage commitment.

Disclaimer: Note that different opinions of the participants to the workshop, described in this report and in the Prague Principles, do not necessarily reflect the official views of the administrations or the organizations they represent.

While the details of the Prague Principles are noted at the end of these proceedings, the headlines are:

1. The IPPC Directive is the key piece of Community legislation ensuring that the environmental aspects and impacts of industrial installations are properly regulated.

2. The flexibility in the key terms of the IPPC-directive, e.g. "installation", "operator" and "permit", allows tailor made solutions in the different member states. This flexibility should be instrumental to protecting the environment. Exchange of best practices would be useful.

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3.   Clarification of the way in which Member States interpret the terms 'directly associated activities', 'technical connection' and 'site' in the definition of "installation" is desirable.

4.   A useful starting point for defining the 'scope' of the IPPC-permit is one permit covering technically connected and/or directly associated activities on the same site under the control of the same operator. From there benefits of and preconditions for wider scoped permits can usefully be explored.

5.   Disintegration of installations and 'salami slicing' could lead to less effective regulation of industrial sites.

6.   To manage industrial estate issues, various regulatory and voluntary arrangements can be used to take account of any interactions between different activities.

7.   Possible benefits and constraints of, and conditions for, corporate approaches should be further explored.

8.   Negotiated agreements can complement IPPC permitting, and potentially offer additional benefits and help avoid additional regulations.

9.   The IPPC Directive is not the main vehicle for regulating supply chains and lifecycle issues. However, it does offer possibilities to address the use of raw materials and the prevention of waste. Guidance on the possibilities is desirable.

10. Information should be exchanged on the interaction between IPPC permitting and complementary instruments such as: voluntary agreements, emissions trading and environmental management systems.

Obviously, successful development of recommendations is one thing, and successful impact of these recommendations a very different one. It is still too early to talk of a definite ENAP results in terms of outcomes and impacts, but the table below gives a useful start. In short, there were a range of inputs that the lead, coordinating party (VROM) has to ensure were in place to ensure a solid basis for the work – eg background reports, good venues, appropriate agendas, right speakers etc. Here there was an open (open to all member states), method (background reports, appropriately structured presentations and discussions, and development of recommendations in the workshop and noted in proceedings) that was coordinated by the ENAP team of the Netherlands (VROM and Infomil, with support by IEEP/Field and the PREP group). Most of these were inputs. The recommendations that came from the workshops are outputs, and what was done with them – outcomes with impacts to develop in due course. See table. Note that here, the 'method' obviously only contains elements of a full OMC toolkit, and the coordination is MS rather than Commission, but nevertheless there are important OMC elements.

	Inputs	Outputs	Outcomes	Impacts
ENAP/IPPC - Exploring New Approaches in regulating industrial installations; a three year initiative led by VROM to explore - together with Member States from across Europe, the Commission and other stakeholders – ways forward on emissions trading, the use of management systems and installation permitting.	+ve: High attendance from across Europe and stakeholders at 5 workshops / conferences, main ones 100 attendees, over half MSs. +ve: High level speakers from across the EU and further +ve: High response rate to questionnaires +ve: Good venues +ve: High level of financial support for travel and hotels and background studies +ve: Broad country coverage in the PREP group and active involvement of this group. +ve: CEE workshop useful to obtain buy-in, understanding of possibilities and capacity building and NL capital building. -ve: final high level conference too formal – people felt pushed and yet the recommendations were not as concrete as could have been. -ve: more attention could have been given to targeting the full range of areas where the results could be lodged so as to be inputs in others processes -ve: too much a Dutch-only process to start with and too strong NL branding, such that the conclusions were seen by the EEB as Dutch, and the hoped for ENAP 2, under some other Member State leadership, has so far not materialised. *Summary: inputs of all kinds was of high quality. No input problems in terms of quality, though perhaps one of timing, given the timescales to feed into the policy development process.*	+ve: Generally constructive recommendations that showed ways forward – learning, sharing best practice, actions to commission and MSs – some of these taken up in other spheres. -ve (process): few concrete recommendations of more fundamental nature spelling out a major step forward were agreed upon – in part due to country disagreement on how to proceed, and in part as countries already have enough to do (Eg with IPPC), and in some cases concern for the (local) environment (+ve). The lack of concrete recommendations also weakened the ENAP high level conference (not enough to really debate about). +ve: Good reports as i.a. high level of country coverage in the reports given the high questionnaires response (indicating buy in to the process) +ve: Good proceedings *Summary: outputs of all kinds were of <u>high quality</u>. But, less interest in experimentation or new approaches currently, therefore <u>little buy in</u> for new approaches.*	***Industry*** has to continue with site specific permitting: +ve for environment; -ve for business admin burdens. ***+ve Commission*** take up of ENAP identified insights and initiatives - in communications, and a series of new projects to be launched. +ve EMS links to permitting work, led to Maltese government (***MS***) positively recommending idea for domestic application. +Ve EMS work taken up in others spheres – eg Chelsea dozen input to international accreditation forum -ve: some more effort could have been made to lodge outputs in the right areas to optimise likelihood of uptake - there was perhaps insufficient strategic placement of the results and left for others to pick up if interested in the message	Too early to say really. In the <u>short to medium term</u>, mo negative ***environmental impact*** for the moment. IPPC will stay core instrument in the short term. ET for NOx will work for the Netherlands, but under constraints, therefore some ***cost savings*** for industry. ***Industry*** will not make savings through company wide permits, as not possible – though the savings were never fully realistic or convincing anyway. In the <u>long term</u>, some potential to move to more cost-effective regulation without compromising environment (if implemented properly). In the very long term, possibility of improved environment if the savings issue can be turned into an argument to reduce resistance to further environmental measures.

Overall the view is that the ENAP process was successful for discussion across Europe helping to understand different practices, how one's own practice compares and offering ideas for improvements of the system. It was a valuable process that fed into the Commission processes and also other processes. It helped clarify some areas of how to go forward, some areas of what needs to be studied further (hence recent Commission proposals), openness to an eventual (though not current) fine-tuning of IPPC, and helped clarify that certain possible options were not really viable (eg single corporate permits) and not worthy of major support, and highlighted dangers to be avoided (eg do not replace regulatory supervision responsibility by EMAS or ISO auditor roles).

Note that finding possible options non-viable is in itself a real result as airing a theme and showing it to have no sensible future, allows the item to be closed for a while. This can then get rid of what can be unhelpful distractions. Similarly, the process has been valuable in showing the diversity of approaches and the thinking behind the approaches, which has led to countries understanding more clearly that in many cases there are no obvious better ways of doing things – this can therefore reduce uncertainty and reduce distractions. In short, regulators understood that offering regulatory benefits for EMS does take place here and there, but there is no overriding argument for all countries to do so and no obvious model to follow. Countries can take the information as they please and fine tune their systems if needed.

From the Dutch perspective, ENAP was very successful in getting its concerns known and listened too. There was director level interest in the European Commission, several policy documents referred to ENAP, and a range of studies were launched due to ENAP by the Commission. The Dutch developed some constructive capital with the Commission given the appreciation for taking forward an issue, making good progress on a range of technical issues and contributing to the long term agenda. It is important to note that the Commission is often looking to improve its understanding of Member States practice, interests and needs, and an ENAP type process can be perceived as very constructive in this regard. While a politically sensitive issue (ENAP was recognised as such), and hence potentially making life difficult for the Commission, the benefits outweighed the concerns.

It is also important to note that many of the Dutch 'problems' were also problems for other countries and the overall agenda was less 'Dutch' than could be interpreted from their leadership – in many places it was very much a common agenda with a common need for solutions. As regards NEC there was arguably an 'understanding gap' as to what could be done with ET for NOx, and the ENAP work (and supporting studies) has, in parallel to the evolution of the Emissions Trading Directive, helped raise understanding

Another interesting observation concerns that of targeting the outputs to have an effect. There are obviously different strategies – from very focused targeting (ie searching for the right point in the right process to make the right contribution) to wider 'targeting' (eg simply offering useful insights and disseminating widely and see if anyone picks them up), with a range of options between the two extremes. While ENAP arguably did less focused targeting than could have been expected/useful for some themes, the results did on at least one occasion 'find a home' in a non targeted area (hence underlining the importance of the latter approach). For example the 'Chelsea dozen' conclusions have been lodged in the international accreditation forum. This is also because there was little work on EMS and the regulatory cycle before, while a range of past and parallel activities were present for emissions trading and IPPC.

Where ENAP was less successful concerned outputs. At the beginning of the process many were expecting something harder than what was obtained. So the outputs were less good than was hoped for. Furthermore, where they were good (eg good practice), then success needs to be measured by the level of uptake – if no uptake, no result.   So far it is still difficult to see the outcomes. Having said that, it is perhaps a bit unfair as the implications are still working their way through the various systems. Some would argue that the ENAP project effectively ended early and that after the final conference, there ought to have been a phase of lodging the outputs. Getting the outputs is fine, but it is important to ensure that they influence things. The EMS debate will feed into EMAS revision, but less in a targeted fashion and more as a 'here are the results,

do with them what you may' approach.   Similarly the IPPC permit is feeding into the IPPC review process, but exactly how it will contribute is now dependent on Commission considerations.

One perceived weakness of the result is that the ENAP process did not get real buy-in by countries to take it to an ENAP phase 2 – though some argue that it reached the end of its constructive life having dealt with the issues. Part of the reason for the process not continuing was due to a lack of ideas as to areas where such a process could continue to be constructive. Part of this was also due to the fact that the ENAP process was seen very much as a Dutch initiative – despite the quite considerable efforts by the ENAP team to broaden the ownership of the process, through the links to UK and CR and the use of the PREP group with its multi-country representation and through the multi-country coverage of the background studies that were also vetted by the PREP group.

Factors affecting success

Overall success is the result of everyone working together and that everyone feels that it has been a success for him/her. A sign for failure is if there is a feeling that someone needs to be blamed. For ENAP there was more a feeling that the process was a success for all concerned than one where the search is on for someone or something to blame. It was not a clear cut success and far from a failure. ENAP arguable did do very well in some areas and hence it is important to understand what drove this success, and at the same time not be left with the feeling that everything needed was achieved, and hence it is important to understand what could have been done better and what lessons to learn.

As noted in the table there were a range of factors affecting the success of the ENAP process. Resources (see Box 6) inputting to the process were definitely all in place. Table 2 gives further insights also into the factors of success – here looking at the stakeholder/institutional involvement and broader 'method' or process issues.

Box 6: Factors of Success: Resources

Resources – which of the following resources, if any, was key to the success or failure of the OMC? Where relevant (ie high importance – either for success or failure), note what resources were available, what was the quality and what impact did it have for?

- Attendance – very important factor: good people; good country coverage

- Seniority - important factor for the high level meeting, and technical experts had sufficient authority to ensure that the messages would not only be taken home, but listened to.

- Expertise – very important – people felt that useful material was discussed by knowledgeable people.

- Representativeness - the lesser coverage of Latin countries in the PREP group and in analysis of practices was a weakness; efforts were clearly made so that there was little loss of 'legitimacy' of the process, though some loss of practice. The Hungary workshop, had a major positive effect on feeling that the process was sufficiently inclusive of practice and interests in the new MS and Candidate Countries.

- Data – the basis of country information/practice was key in the knowledge transfer and the feeling that real situations were being taken into account.

- Financial means – very important as supported attendance.

- Trust – important, but equally important was the potential for trust. There was always some concern that the Dutch agenda would drive things too much, but the Dutch openness helped avoid that such concerns negatively affect the outcome. Main 'suspicion' felt to come from the Germans, but they contributed time and thoughts to the process.

- Credibility (independence) – important aspect that the documents on the table were done by independents not trying to support a particular agenda.

Table2: Factors influencing the outcomes – stakeholder involvement

Input items potential in place or absent	In place, or notably absent	Impact / importance
Electoral/parliamentary input - *EP, national parliaments, role of elected actors (rather than appointed) etc.*	Little role	Higher up in the policy cycle, so perhaps less important. Nevertheless a weakness, given that the EP is inclined to be sceptical on OMCs, in part given lack of their role.
Procedural legitimacy/"due process" - *are clear decision-making rules correctly applied?*	The process generally seen as fair; the role of the PREP group valuable	Without this the process would have been a series of workshops whose results would not have been taken as seriously as they were.
Transparency	Reasonably OK. Generally good transparency, sometimes less good.	Generally supporting legitimacy
Mobilisation of civil society - *have NGOs, political parties etc. taken an interest?*	Some NGOs involvement. Perhaps less than could have been expected	No major loss of legitimacy
Public debate - *has the public at large taken an interest, for example as reflected in mass media coverage of relevant issues?*	Generally absent; some press coverage (eg of EMS work, and of final ENAP high level workshop).	
Openness of decision-making/opportunities for participation of stakeholders etc.	Overall agenda set by the Dutch. Wide range of stakeholder representation, however.	Dutch agenda seen as a weakness by some as led to less ownership of results.
Responsiveness of process - *ie was the process not just listening, but also hearing, and indeed also responding to what was heard?)*	ENAP did listen to practice from other member states and other views – though with varying degrees of intensity.	Positive feeling that practices and views would be heard and reflected in the work; some suspicion from some parties given less good listening.

There are always things that *could have been done better* as it is always easier to say this retrospectively. Some points are:

- The ENAP initiative should have been launched/badged as a multi-country initiatives (eg joint NL/ UK event) early, or had a broader grouping with a more open agenda. This could have avoided it being seen as too much as a Dutch event and got more buy-in than it received. This would, of course, have run the risk that someone else's priorities got discussed. Having said that, VROM made considerable efforts to broaden the ownership.

- Making additional efforts to work constructively with the Germans could potentially have avoided some unnecessary opposition/hesitation.

- In places there could have been more openness and transparency - it was sometimes felt that VROM was not putting all its cards on the table.

- Most importantly, on one occasion the 'chairman's comments' were developed in a manner that aroused some suspicion. Constructively, this was dealt with in an open and fair manner.

- The final workshop with a Dutch chair was seen by some as too much like a council meeting – too official and unhelpful. It also went against the brand image of the earlier more informal participatory

workshops. People felt forced to take a decision before they were ready. This proved a little unhelpful to the process to some participants.

- A further point to note is that one ENAP theme - NEC and ET – gained in importance given that the NL agreed to tight targets for NEC emissions. Some argue that it would have been better for VROM to have done more policy and cost analysis and developed more realistic les costly emissions reductions ambitions. Now some view the NL as trying to weaken BAT. And this weakens BAT for all Member States which is actually a very negative outcome. It also creates some negative capital for the Dutch; for some stakeholders this outweighs the positive impact of ENAP.

6.   Lessons for other applications of OMCs

ENAP was not a 'typical' OMC, and really can only be regarded as having OMC elements. There is scope for more such OMC elements and the process as such is one that can be expected to continue well into the future, though perhaps under other banners than ENAP. Lessons include:

- Preconditions – there must be a window of opportunity – for ENAP and ET, there was the review of CAFÉ, CO2 and ET directive being passed and review of NEC. It is therefore important to spot the windows of opportunities (mid term reviews etc).

- VROM obtained two mandates for ENAP – one internal as the initiative built out of the Rightly Responsible report/initiative, and the other external, as discussions with the Commission led to the suggestion the VROM explore the questions on industrial regulation more widely. This also underlines the point that a lot of background work can be necessary before an initiative is mature for launching.

- Getting good inputs is a valuable, necessary (but not sufficient) condition – for buy in, learning and overall success. This was a strength of the ENAP process.

- Repeating messages alone does not work; it is important to work out which countries have the same approach.

- Flexibility in objectives is also important – in an OMC type process some of the possibilities and opportunities only occur during the process and there needs to be flexibility to be able to respond to this. Developing objectives too clearly up front and sticking too them inflexibly can be counter-productive as others will see the exercise simply as agenda pushing. The ENAP exercise was helpful in that it was able to drop things that proved unrealistic and focus on issues that held promise.

- Efforts at ensuring representativeness and coverage of the process is vital for the feeling that the outputs are owned more widely and hence taken more seriously. A much cheaper alternative is clearly a national position statement.

- To make OMC type activities work there needs to be a coalition, ie to get other countries on board (or, alternatively, a more sophisticated institutional structure that allows for a higher degree of interest intermediation) Interestingly in Europe in general one needs to find like minded countries to take an issue forward, but then have a wide spectrum of argument. For the NL a natural partner is the UK – and this was integrated in the ENAP work

- It is also important, in the context of European diversity, to understand each other, or at least try to understand each other and to be seen to be trying – the first two are obvious, but the last point is often forgotten, and is key to buy-in and commitment to the process and the perceived legitimacy of the process.

- Either there needs to be a powerful 'OMC-champion' willing and able to take the lead and continue with the process to fruition or a more sophisticated institutional structure that is capable of maintaining the necessary momentum. There needs to be political support for the length of the process.

- National leadership on an issue builds both positive capital, and hence is useful for the country in other venues, but also builds some suspicion. On the latter point, all countries have their national interests and so some suspicion is inevitable and healthy, so that positive effects are more likely than the negative ones. There was enough trust in the process and this is key.

- If no-one picks up the good practice/recommendations, then there is no result in the end. It is important therefore to target areas/stakeholders/processes and points in the processes to get uptake of the recommendations/good practice. This is the case not only during the process, but also at the end of the process. It is important not to define the end too early. There needs to be an implementation phase – to turn outputs to outcomes – and hence help it realise its ambitions of agenda-setting.

- Start early and don't rush it. MS led initiatives to contribute to policy take time. The ENAP process results will not all be felt for a while. Note there is a time lag. For example compare to the Royal Commission on Environmental Pollution - every time they do a report, the immediate response is 'nice, but not practical', after 5 years 'nice, and interesting' and then in year 10 'implement it'. More concretely, to be successful it is necessary to think 6 years in advance. There was no expectation to get an IPPC amendment for NOx in the ENAP timescale, but now it is on the table for the medium term.

There is still arguably a need for further ENAP initiatives, though not in some of the immediate areas covered by ENAP – notably ET and IPPC areas. These are being analysed by the Commission services now through a series of contracts. Other areas where there is still scope include:

- Administrative burdens and smarter legislation. An ENAP style programme could help this. The Dutch Table of 11[5] and methodology using the standard cost model (also being used by the Danes) has been mentioned as a potentially valuable initiative. The focus could usefully be at an operational level – to identify operational level ideas.

- National flexibility in implementing EU acquis and the use of instruments to assess what is best to do. This could be a valuable benchmarking analysis which could lead to a wide range of best practice exchanges, improvement in the process of using different assessment tools, as well as potential support for more MS flexibility in EU legislation.

- *Awareness/knowledge related*: monitoring protocols. The Commission has a 40 page monitoring protocol for CO2 and for other gases there is far less guidance. Need help with other pollutants. How ELVs are set - common approaches and measures – different some per day, some per year, some per hour. For some compliance is 95%, though this is not the only meter. In practice it is impossible to benchmark what is going on in a meaningful fashion. EPER is the only benchmark. Country comparison, and solution identification is needed here.

There are good arguments to say that ENAP itself should not be continued – it has served its purpose and new initiatives building on it do not necessarily need to follow the same process and under the same banner. It can be useful to design each initiative according to the needs.

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[5] See http://www.oecd.org/dataoecd/61/62/34499651.pdf section 1.2.4

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

Case Study - Environmental Technologies Action Plan (ETAP)[6] (and GPP)

Working Draft for comment by the team

1.   Introduction

On 28 January 2004, the Commission adopted an Environmental Technologies Action Plan[7] (ETAP) with the aim of harnessing the full potential of environmental technologies to reduce the pressures on natural resources, improve the quality of life of European citizens and stimulate economic growth. In the plan it was emphasised that ETAP is a contribution to the EU Sustainable Development Strategy (SDS) and to the Lisbon Strategy. ETAP itself is a series of separate, though interlinked, initiatives, some progressing faster than others and some more structured than others. It should be seen as a process that evolves. A key action under ETAP concerns green public procurement (GPP), which is given special emphasis in this case study.

Box 1: Environmental Technologies

> The ETAP defines environmental technologies to include all technologies whose use is less environmentally harmful than relevant alternatives. This is therefore quite a broad definition that allows both true clean technologies (eg zero emission closed circuit processes), cleaner technologies (eg more efficient processes or products) and also end-of-pipe technologies (eg filters).

2.   The challenge being addressed, the tool and its OMC characteristics

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

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

More precisely, the Environmental Technologies Action Plan contains 28 actions of which 11 were chosen as priority actions (PAs) for the Commission, national and regional governments, industry and other stakeholders to improve the development and uptake of environmental technologies. The PAs are to:

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

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[6] This case study is built on a range of sources and discussions. One useful source has been the IEEP work on ETAP for the Danish EPA in 2004. Where suitable this case study borrows text from the DEPA work. This case study obviously goes much further than the DEPA work, but acknowledgement should nevertheless be made. Source: Ladefoged A and P ten Brink (2004) *EU's Environmental Technologies Action Plan. A study of possible Danish contributions* A report to DEPA by Astrid Ladefoged and Patrick ten Brink Institute for European Environmental Policy.

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

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- Establish European networks of testing and standardising[8] (PA3),

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

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

There is also a plan for moving forward, which includes regular reviews of the situation, the setting up of a European Panel on Environmental Technologies (EPET) and the use of the open method of coordination (OMC) – with the term OMC being used initially in the ETAP communication (see box below) but less so recently.

The novel approach of OMC in the field of environment was seen as something to be tested – the European commission launched the idea of using OMC in ETAP and the council supported that this possibility be explored. The need to clarify the limits of the Open Method of Co-ordination was stressed in the High Level Working Group in May 2004. In applying the Open Method of Co-ordination in implementing ETAP, the Commission favoured a gradual and flexible approach, focussing on a limited number of areas and on exchange of experience and best practice. The Commission wished to avoid discussions on theory/structures and start with the substance and then, based on that, see how common work evolves. In other words, start the process, learn and evolve the process.

According to the Plan, every two years, the Commission is to report on the implementation of the ETAP to the European Council and the European Parliament.

Box 2: The ETAP communication (2004): Reference to OMC

Open Method of Co-ordination

As well as taking action at European level, many of the actions in this plan need to be developed and undertaken by Member States or by other authorities which are even closer to the citizen. Considerable experience of these actions already exists in many Member States and hence there is scope for co-operation and sharing of information on best practice. Examples of where this could be particularly valuable include:

- use of economic instruments at national and sub-national level;
- consumer awareness-raising measures;
- training of key operators, such as entrepreneurs, maintenance workers and
- public purchasers; and
- export promotion activities.

Given the importance of this Action Plan in the context of the Lisbon Process, the Commission considers the

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[8] Note that Canada and the USA already have environmental technology verification centres, which are linked with international markets, such as China and Indonesia. Any EU move to having testing networks could usefully have an international component to ensure the connection to global markets. Note that the certificates produced should help in procurement, technology recognition, reducing concern as regards technological risk, and may help link to funds (Eg structural funds).

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"Open Method of Co-ordination" to be the most appropriate way of moving forward. This method for implementing the Lisbon Strategy has been used in several different areas, including in social, employment and research policy, and bearing in mind the need to avoid unnecessary bureaucracy, it is suitable for spreading best practice and helping Member States to develop their own policies and actions promoting environmental technologies. The box below sets out some of the areas where the Open Method of Co-ordination could be used to help promote environmental technologies.

Areas where the Open Method of Co-ordination could assist in promoting environmental technologies

(a) exchanging information on best practice - Identifying and exchanging information on best practice will raise stakeholder awareness at national, regional and local level.

(b) It will also highlight particularly effective combinations of measures; where appropriate, establishing indicators to compare best practice - Indicators will help to monitor progress towards the overall goal and to enable benchmarking and peer review; and

(c) where appropriate, establishing guidelines and timetables for the action programme for all the EU - This will allow a common view to be formed of how to work together towards the overall objective.

Implementing ETAP

The High Level Working Group

A new High Level Working Group, consisting of government officials from the 25 Member States and Norway, was created to ensure the implementation of ETAP. The first meeting of the group took place on 3 May 2004 in Brussels. According to the minutes[9] of the meeting, all delegates who expressed their views confirmed the high priority dedicated to ETAP by their countries, the need for the Action Plan to produce rapid results and to mobilise and closely involve relevant stakeholders in its implementation.

A number of actions were suggested by delegates as to be prioritised, among these were:
- Green procurement,
- Performance targets,
- Dissemination of R&D results and more generally the need to share good examples of technologies,
- Funding mechanisms,
- Economic instruments including taxes, the review of state aids guidelines and of environmentally-harmful subsidies, the development of pilot projects in key technological domains,
- The work on specific sectors such as energy-efficiency or water and resources management,
- The enhancement of producers and consumers awareness on environmental technologies,
- Technology platforms (see box 2 below)

Overall, in 2004 the European Commission had what one can call quite an open or loose approach in ETAP – looking at areas of interest, establishing priorities, developing what can be developed without too much constraining 'guidance' and the look for appropriate further developments subsequently. The first prioritisation exercise led to 4 to 5 priority areas (ie shorter than the initial prioritisation list and only a selection of the above suggestions) - and for these to start by building on 'best' practices – ie learning from others, hence dissemination rather than innovation. The main area with more 'structure' was that of green public procurement (GPP) – *see next section.* As regards progress, activities are underway in a number of areas – technology platforms (as in box below), testing centres, integrating ETAP concerns in Cohesion policy regulations and future framework programme for Competitiveness and Innovation, clarifying ways forward for risk funding (Dutch presidency initiative kicked off this process), and green public procurement step forwards (see below). See the 2004 ETAP report[10]. The Commission will report on the implementation of ETAP to the 2007 Spring European Council and include comment on the result of co-operation with the Member States.

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[9] These are seen by some as 'informal' as the minutes do not have a formal status.

[10] Source: COM(2005) 16 final: Report on the Implementation of the Environmental Technologies Action Plan in 2004.

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Box 3 Technology Platforms and ETAP

Technology Platforms are a mechanism to bring together all interested stakeholders to build a long-term vision to develop and promote a specific technology or solve particular issues. In total there are around 20 platforms, many of which are not environmental – platforms are therefore of broader application than just ETAP. Indeed the first platforms were launched in 2001, well ahead of ETAP. ETAP is therefore using an already existing instrument. Platforms are launched by the Commission and industry, and, in general, for the ETAP, launched in those cases where the targeted technologies are considered to have significant environmental, economic and social potential. It is understood that the Commission invites representatives to be on the panel.

In addition too the platforms at EU level there are also numerous national 'mirror platforms'.

As regards ETAP, the status of the selection of platforms is:

- Hydrogen and fuel cells - *In place (2004)*
- Photovoltaics – *In place (2004)*
- Steel – *In place (2004)*
- Water supply and sanitation technology platform – in place *(2005)* (see http://www.wsstp.org/default.aspx)
- Others to come – eg currently discussions underway whether to have one on Chemicals.

The aim of the platforms is to help develop a coordinated long-term strategy for developing the technology or marketing its results. The situation can be summarised as: at the beginning, the different actors are unaware of each other's plans, and generally have no long-term strategy for developing the technology or marketing its result. *Therefore, in these technology platforms we first draw up a research agenda together with all the relevant actors, identifying the research needs for the short and medium term, as well as scenarios for market developments in the long term. This should enable all the actors – including the EU – to share in the same vision and to plan their research and investments accordingly.*"[11]

These platforms are generally industry lead, with the commission trying to facilitate the process. There is extensive member state involvement, and in some areas specific country support and initiatives are key. However, the platform process itself cannot truly be called an OMC process.

For a fuller list see ftp://ftp.cordis.lu/pub/technology-platforms/docs/tp_report_defweb_en.pdf
See also ftp://ftp.cordis.lu/pub/technology-platforms/docs/tp_report_council.pdf

Green public procurement (GPP)

If public procurement becomes "greener", this could in principle lead to a step change in the uptake of environmental technologies and hence contribute significantly to the ambitions of ETAP and Lisbon. In the EU public procurement represents about 16% of GDP. This is one area where particular positive expectation exist re prospects for progress.

- o There are existing guidelines on green public procurement (see later)
- o A new study has been launched to propose/assist MS in national action plans and development of EU target for GPP, and should be finished by May 2006. (See later, box 4)
- o There is willingness to encourage more involvement of the 10 new Member States through, inter alia, special conferences and meetings on the topic with their representatives.
- o There is a call for all Member States to develop national action plans for green public procurement, to establish objectives and benchmarks as well as offering guidance and tools.

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[11] Source: http://www.cordis.lu/itt/itt-en/04-3/prog01.htm

- o Country intiatives in this areas are already in existence, notably in Austria, Denmark, Finland, the Netherlands, Sweden and the UK. And green public procurement levels are already quite high in some of these countries (see Box 4)
- o There is commitment to try to move towards clear coordination and targets: guidelines to public authorities.
- o Focus has been put on having environmental performance targets for products – this can build into green procurement decisions.
- o The UK is leading the working group on green public procurement (see box 5)Finally, commitment has been shown also at local lever, e.g. Leicester City Council has led a Europe wide project, LEAP (funded by LIFE and running 2003-2006), to support local authorities in procurement by developing support tools and guidelines.

This is the closest to OMC, though DGENV do not call it an OMC. As regards performance and inputs, it is viewed that GPP is a very good start. Some insights on positive and negative factors:

- o +ve Willingness by UK to be country champion.
- o +ve Local administrations initiatives
- o +ve A range of good practice in a range of member states to build on.
- o +ve Strong relation ship with community policies – IPP, ETAP – and programmes (eg DGResearch and increasingly the community funding programmes).
- o +ve People know that they are working together
- o +ve Willingness to make the new Member States more acquainted with the topic
- o –ve *(more to come) Maybe reason that there is some hesitation regarding the Dutch proposal for partnership is that the Commission do not know whether it will be linked to ETAP or not,* hence there is a bit of unease as to whether it be a complement, hence hesitation. Would be good to be a bit more open. – here there is less trust than there could be.
- o –ve Some competition between DGENV and DGENTR
- o –ve Capacity implications. DGENV does not have the capacity to talk to industry as much as would be ideal.

It is mostly up to the Member States to take action in this field, in the framework of the EU directives on public procurement and other related initiatives. The Commission has recently published a Handbook on Green Public Procurement[12], detailing how procurers (such as central, regional and local authorities) can take into consideration environmental aspects in the relevant stages of purchasing procedures. This should stimulate the industry to present "greener" offers, as they will have potentially bigger chances of winning contacts. The Commission has also recently launched a tender (see Box 6) to contract experts to help measure the level of green procurement across the EU and hence create a benchmarking exercise, as well as assess what could be a reasonable target for green public procurement. In short, GPP is a clear case of an OMC type process – with a target, guidance, benchmarking and in due course regular reporting – albeit currently in early phase given that they are still working towards targets, benchmarking etc and hence greater 'structure'.

The intiatives are also being supported by the European Commission from other parts. There was the Proposal on competitiveness and innovation of 6 April 2004[13] – which includes a framework programme on green procurement. Now have to develop rationale and support scheme. This initiative will lead to work with MS on how to make it work.

In parallel, the European Commission (DGTREN) has drafted a proposal for GPP of 'clean vehicles'. This has an important potential to develop a new and unified market for advanced vehicle designs. A key feature

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[12] http://europa.eu.int/comm/environment/gpp/guidelines.htm#handbook and
http://europa.eu.int/comm/environment/gpp/pdf/gpphandbook.pdf
[13] http://europa.eu.int/comm/enterprise/enterprise_policy/cip/index_en.htm and
http://europa.eu.int/comm/enterprise/enterprise_policy/cip/docs/com121_en.pdf

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will be to define standards (via technology or environmental performance) which will qualify technologies for the purpose of GPP. This is one part of the broader initiative to define product standards as also outlines as an action under ETAP. This is a CM outcome – given that it was foreseen to become a proposal for a directive (result depends on inter-service consultation). The second formal element of the proposal as it stands would be to mandate a certain percentage of vehicles to be procured by public authorities to meet the designated clean vehicles standards or to undergo retrofits. This part of the proposal, however, has already raised concerns among member states that it may be unsuitable or too inflexible as currently framed to meet the different arrangements in Member States. In particular, fleets that are public fleets in some member states are privately operated in others, and there are many questions as to how far such a mandate could be extended beyond core public sector operations. If this element of the proposal is to be adopted, it is quite possible that the targets it contained would need to be non binding or more flexible than those currently proposed. If this takes place then it become a directive like the biofuels or renewables directives in its operation and hence uses OMC type elements and processes to achieve the targets.

Box 4: Commission initiatives to contribute to OMC on green public procurement

> **Service Contract to Develop a Measurement Tool and Measure the Current Level of Green Public Procurement Across the EU and Make Available Examples of Environmental Technical Specifications for a Series of Product and Service Groups Identified as Most Suitable for 'Greening'**
>
> o   Propose a working definition for what is green public procurement
>
> o   Propose a method for measuring the level of green public procurement – by public and semi public bodies in the EU
>
> o   Develop a surveying tool
>
> o   Measure the current level of GPP across the EU and define statistics
>
> o   Assess its prevalence and importance in relation to total public procurement (known as around 16% of GDP for public procurement as a whole in the EU[14])
>
> o   Assess the best performance / interesting practice and assess the transferability of practice
>
> o   **Make recommendations as to what might be appropriate targets**
>
> o   Analyse opportunities for dissemination of best practice
>
> o   Identify product groups most suitable for GPP / search for appropriate environmental specifications (ie what makes it regardable as GPP/good enough for specific support)

Box 5 UK Working Group on Green Public Procurement.

> United Kingdom decided to take the lead of a working group on Green Public Procurement, aimed at helping DGENV on the drafting of the studies related to the Service Contract. Eight Member States participated to the work of the steering group, namely: Austria, Czech Republic, Denmark, Finland, the Netherlands, Norway, Spain and the UK (TO BE VERIFIED). The Working Group turned out to be more of an informal group, dealing with technical specifications, and aimed at providing DG ENV with the first results of the study on GPP and its opinion on the main findings.

Box 6 Member States and Integration of Environmental Issues in procurement processes.

> The results of a study realised for the Commission in 2003 show that there are two EU States with a high-level of commitment to green purchasing: Denmark with 40 % of administrations that include environmental criteria for more

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[14] See COM (2003) 704 final *Some Key Issues in Europe's Competitiveness – Towards an Integrated Approach*. Page 14

than 50 % of their purchases and Sweden with 50 % share of administrations that include environmental criteria for more than 50 % of their purchases. Germany (30 %), Austria (28 %) and the United Kingdom (23 %) range above the average of 19 % in the EU.

Source: http://europa.eu.int/comm/environment/gpp/background.htm

Other area: Mobilisation of financial instruments within ETAP - mobilisation of venture capital

Another area where there is a need and some activity concerns financing instruments and the attempt to mobilise venture capital with a view of financing sustainable innovation. Some activities were:

- o The Dutch organised a conference in 2004 on financing sustainable innovation – though while this has been positively received as helping kick-off the process, this has yet to lead to a clear way forward; some stakeholders felt that it was a bit unclear as to what the Dutch were looking to do, and therefore some lack of leadership.
- o The initiative was not strictly inter-governmental as it deals with investment /venture capital and hence private involvement, but it is an area where Member States do not know what to do – the Dutch conference imitative was therefore a learning one – where they were hoping to obtain some insights as to how to go forward. It was recognised (ETAP 2004 report) as providing useful preparatory work.
- o The issues will remain, and it may therefore come back to the table.
- o There was an explicit link to DGResearch STREP. The Commission looked to fund a project looking at investment capital (risk and venture capital) potentials to fund innovation, but there were no submissions for the tender and hence it has to be launched again.

3rd part. The Dutch Presidency drew attention to the economic opportunities of eco-efficiency in its informal environment Council from 16-18 July - Clean, Clever and Competitive. While this was linked to Lisbon agenda, and ETAP it was nevertheless perceived by some in the European Commission as not giving sufficient emphasis on ETAP and some were left wondering whether all the energies would be going to support ETAP or whether some other game plan was in mind.

Some of the ideas endorsed by the environment ministers are to stimulate the development of environmentally friendly innovations and thereby improve European industry's competitiveness were:

- a European system for 'green' investments;

- the abolition of subsidies which are ecologically undesirable (all agree that this is useful though few agree on where to start or who should start first);

- governments to use green criteria in their public procurement, and

- the promotion of clean, quiet and economical cars[15].

This was also planned for launched at end of 2006 a partnership of industry and stakeholders on sustainable innovation. Finally, there is also a DGEnterprise initiative on sustainable production – also hesitating as to what follow up to have.

3.   Why was OMC chosen as the route to take?

For ETAP (and indeed Lisbon), the way forward depends on significant roles for Member States, and also for industries. Many of the areas where action is possible are within Member State remit, given subsidiarity

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[15] www.eu2004.nl and http://www.euractiv.com/Article?tcmuri=tcm%3A29-128658-16&type=News

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issues. There can be a guidance role, coordination role, or at least benchmarking role that the Commission could usefully carry out to contribute to the process. Hence the use of OMC.

OMC is not, however, the process for all actions under ETAP, but actually only applicable to a couple. As noted above this is for Action 28 and for green public procurement. There was also mention of the possibility for the use of economic instruments at national and sub-national level; consumer awareness-raising measures; training of key operators, such as entrepreneurs, maintenance workers and public purchasers; andexport promotion activities. We cannot go into all of these here, though it is worthy to note that the economic instruments one, despite obvious needs for this, face severe difficultites through member state opposition to having their tax systems coordinated from outside.

Box 7: Drivers for the use of ETAP / GPP

International economic competition - Competitiveness is the core of the ETAP – with ETAP aiming to be a key element of the Lisbon process, which itself it to be implemented with recourse to OMC in a range of areas. The aim is to have environmental technologies offering a win-win-win – competitiveness improvements through more efficient processes or the creation of new environmental technologies sectors that can play in the global market place; social benefits through the employment gains to be made; and environmental benefits as the use of cleaner technologies should lead to lesser resource use and pollution.   Similarly, the reason for having the action of reforming environmental harmful subsidies on the list is given that getting rid of these should support the competitiveness of EU plc. The reason for sluggish uptake of this issue is of course perceived concerns that competitiveness of subsidised industries would be harmed without the subsidies and that this is more important than broader interests/benefits.

First mover advantages - Appears to coincide largely with competitiveness issues as first mover advantages may be realised primarily vis-à-vis US and Japan (env technology). The issue of concern that others will get a first mover advantages within Europe is however, slowing down progress in some areas given lack of trust (eg some technology platforms).

Uncertainty regarding solution – For ETAP, uncertainty as to how best to promote environmental technologies and Member states and indeed private responsibility in this area, has suggested that an OMC type process be used – to learn as to what can be done. The uncertainty of solutions have encouraged the development of ETAP, but as a driver for progress since ETAP's launch, this is weaker as focus is one areas where concrete progress is perceived as possible. For GPP, the solutions are more clear, or rather the it is clear what is uncertain and how that can be addressed and addressing this should not lead to major comparative advances from one country to the next.

Problem pressure (incl. Effectiveness of existing instruments) - A significant driver – in the sense that there is a need to address a range of environmental problems, most notably climate change.

Political sensitivity/sovereignty concerns - Appears to be important as priority areas reflect infrastructure areas which are politically highly sensitive

Ideological divisiveness/world views – there are differing views as to the role of the state in encouraging environmental technologies and a tension between the need for some help and industry wishing to go it alone. This pulls in both directions hence not really a driver for ETAP.

Knowledge intensity - Important with respect to some issues, eg. ETAP

4.   **OMC elements and processes**

Key OMC elements and processes have been noted in the descriptions above, the tables below give additional elements and comment, where possible on whether a factor for success or failure.

Table 1 Institutional / OMC measures

possible range of measures and corresponding ENAP practice		
Institutional (requirement for) OMC measure	**In place or not** *(Yes (required); yes (optional though agreed); required/agreed but not used; not required/agreed)*	**Factor for success or failure**
Committee	ETAP: EPET group	Important element keeping the MS and Commission buy-in working throughout the process
Regular Review	Report every two years.	Is likely to be valuable to keep the political pressure up. Once yearly would be too much paperwork.
Nat. Action Plan (NAP)	Proposed for ETAP – as a road map. To be done by the end of 2005 – national ETAP implementation action plans. Proposed for GPP – as action plans. To be ready by the end of 2006	Too early to say and depends on the ambitions for the issue at member state level. Potential for positive role.
Targets	Being developed for green public procurement – idea is to have a European target and national targets.	Will be valuable if the uptake is there nationally. Will be interesting to see if there are city targets also.
Guidelines	Handbook on Green public procurement created Also some 'guidelines' though ECJ cases allowing GPP and clarifying what is allowed.	Handbook: much discussed so at least some positive impact. Unclear what the practical impact is yet. ECJ cases a helpful contributor by clarifying what can be done and highlighting good practice in two member states – Finland and Austria
Indicators	Work on public procurement definitions, indicators and measuring approaches en route. Innovation indicators also exist	Too early to comment; obviously promising.
National Reports	Plan for national reports on implementing ETAP and on GPP every two years	Too early to comment; obviously promising.
Commission Report (Eg Benchmarking Report)	Commission regular reports on progress of ETAP. One report in 2005 (the 2004 ETAP report), and next one in 2007. Green procurement- unclear, at least a study report is about to start. Likely to try to move toward regular benchmarking report.	
Commission Recommendations		
Country Visits		
Decision-Making Procedure		

Council Role	Informal Environmental Council under Dutch presidency raised the issue through Clean Clever and Competitive. Unclear what future role will be at this stage.	
Legal Base		
Other Institutional Factors?		

Box 8: Action Constellation

Actor constellation - *was there the right combination of stakeholders, and right links between them to make it work?*

- *For the GPP case there seems a positive 'feeling' that there is a good actor constellation, with Commission contributions complemented by national efforts, with a range of countries contributing.*
- *Leading state actor/coalition at MS level –* GPP: the UK

*Leading state actor/coalition at EU level (*eg what the commission or the commission together with another institution (Eg EP) leading and was this a positive or negative factor and why?)

- Commission lead on ETAP helpful.

Commercial interests – (eg were there commercial interests encouraging the use OMC, pushing for certain outcomes, and what influence did this have?)

- Environmental technologies companies are clear supporters.
- Vested interests in the technologies of the technology platforms a big issue – this holds back progress in some areas.
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5.   OMC Results and factors of success

Some key points for ETAP and GPP respectively below and in Table 2.

ETAP overall

What was successful about it?

ETAP overall not yet regarded as a 'success' and still in early stages. Some areas are stronger than others. A key area of starting success is that of GPP. As regards technology platforms there is less enthusiasm or at least scepticism in some quarters, though the game is far from over; the Commission in its ETAP newsletter [16]talk of 'good progress' with setting up the platforms (steel, hydrogen, fuel cells). There is scepticism that much progress will be made with elements such as reforming harmful subsidies, and some disillusionment in some quarters that only a small subset of actions are likely to receive sufficient inputs to bear fruit. Some would argue that talking about the success of GPP support can distract from the need to ensure that other actions are made to work.

What factors were particular important?

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

GPP

What was successful about it?

Too early to say whether a success or not in terms of outputs and impacts, but at least a success in terms of:

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

What factors were particular important?

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

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

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Table 2: Success and Success factors – inputs, outputs, outcomes and impacts

	Inputs	Outputs	Outcomes	Impacts
ETAP - Environmental Technologies Action Plan (ETAP). A major EU wide plan to encourage the development and uptake of clean technologies, with particular focus on PV, hydrogen and several others through 'technology platform'.	+ve : regular meetings attracting high level people -ve: some view that less collaboration between MS as more effort is on watching what others do. Fewer quality inputs. +ve decisions to have platforms to focus discussions and attract high level experts. -ve: a lot of issues that will not see great support – eg looking at harmful subsidies, coordinating tax policies etc		*Expect:* commitments to fund and increased rate of development and uptake/diffusion of technologies.	*Expected:* sped up development and uptake of certain technologies should support Lisbon goals of win-win-win – supporting environment, economy and employment (in developed industries). Unclear whether this will be a major +ve impacts or not as early days.
Green public procurement	+ve: guidelines on public procurement +Ve effort to find method to measure green procurement, develop indicators, benchmark these, and set target	*Expected* +ve output of a target that can be used as part of OMC *+ve learning of what is the state of GPP in the countries and examples of good/interesting practice*	*Expect*: greater use of green public procurement given additional understanding on what it is and how to do so without running into state aid laws.	

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Box 9: Factors of Success: Resources

Resources – which of the following resources, if any, was key to the success or failure of the OMC? Where relevant (ie high importance – either for success or failure), note what resources were available, what was the quality and what impact did it have for?

- Attendance – very important factor: high level involvement in ETAP

- Seniority - important factor for the high level meeting

- Expertise –

- Representativeness - good coverage of countries in ETAP EPET

- Data – so far information is weak. Within Green public procurement this is being looked at.

- Financial means – major potential through links to municipal budgets on the one end, and European funding programmes (Eg SF) at the other.

- Trust – some lack of trust in and around the Technology Platforms.

- Credibility (independence) – the process is credible for some initiatives and not others. No one credibly expects progress on harmful subsidies reform or coordinating tax systems, though no harm in putting them on the table to remind again that this is an area where progress is needed.

6.   Lessons for other applications of OMCs

- A process is never fully independent of its origins and some argue that the idea of the technology platform builds firmly on the French model, which raises the question as to whether the process favouring one country too much. This has led to some hesitance of involvement by some parties. Certainly the Dutch have felt manipulated in this area.
- Sometimes not being explicit about ones ambitions for an issue can lead to reduced support given a lack of clarity (ie operational trust lack, rather than any fundamental trust loss).
- If there is a base of interesting experience across a range of countries, then a critical mass of countries can be engaged and this is a positive factor for possible success.
- If there is a real and recognised need - without obvious reasons for there to be barriers - then progress is possible. Hence GPP progress is possible, reform of harmful subsidies less likely (some lobbying to block reform by companies affected).

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

Case Study - IMPEL

Introduction

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

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

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

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

The Problem being addressed and the foundation of IMPEL

IMPEL derived from a number of activities that we taking place at international and Member State level during the late 1980s and early 1990s. Duncan[17] considers that the network can trace its origin to a UNEP meeting in Paris in 1989. This meeting was held to address the nature of integrated assessments to pollution regulation and, eventually, resulted in the Community adopting the IPPC Directive in 1996. However, participants at the meeting recognised that developments in pollution control would result in major challenges to practical implementation. Member State authorities would, therefore, benefit from sharing experiences in an 'informal' way.

Thus from these same discussions we can identify two important strands for improving pollution regulation – the IPPC Directive developed using the Community Method and a network of enforcement authorities which was OMC-like. These now form the critical foundation of industrial regulation in the EU today.

The potential benefits of Member States working together was further demonstrated by a 1991 survey undertaken by VROM on organisations in each Member State involved in the enforcement of environmental legislation. This demonstrated different procedures for standard setting, permitting, compliance assessment and enforcement. In particular inconsistencies were found between[18]:

- Administrative procedures
- Permits required
- Technical standards applied
- Charges made for permits
- Public access to information

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

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The issue of networking was discussed at an informal meeting of the Environment Council in December 1991 resulting in the UK hosting the first meeting of the network in Chester in 1992. Although the Council stated that it was desirable that the network consist of 'representatives of relevant national authorities and the Commission in the field of enforcement', it was not until 1997 that the European Commission formally became a member. The Chester meeting discussed a document prepared by Her Majesty's Inspectorate of Pollution which considered various regulatory activities and questions that the network might address[19]. These overwhelmingly focused on national level activities (although they would relate, in part, to implementation of Community law also).

During 1993 the 'Chester Network' revised its terms of reference. These aligned the work of the network with the Community's Fifth Environmental Action Programme and widened its mandate covering wider issues relating for regulation of environmental legislation with a focus on Community law, but also of that of the Member States. This represents two important early strands of interest in the discussion on OMC:

- Member States working together to discuss how better to implement EU law.
- Member States working together to learn from each other in how better to implement national laws beyond any Community requirements.

Thus if one asks whether OMC is used to enhance the Community Method, ie an additional mechanism to improve EU legal implementation, or to be used alongside (or instead) of the Community Method, it can be seen that both elements are found in the origins of IMPEL.

The Fifth Environmental Action Programme (Chapter 9) proposed the creation of a network. It is interesting to note how this is phrased:

'an implementation network comprising representatives of relevant national authorities and of the Commission in the field of practical implementation of Community measures. It will be aimed primarily at the exchange of information and experience and at the development of common approaches at the practical level, under the supervision of the Commission. The Network can help to promote consistency in the practical application of Community policy and rules as between the Member States.'

Note that this initially follows the earlier Council recommendation for Commission membership. However, it also states that the network should also:

1. Operate under the supervision of the Commission.
2. Be focused on the implementation of Community policy (no mention of national law).

The role of the Commission would be an issue that would become more important in later years. Thus it was not until 1997 that the Commission agreed to contribute to the costs of the work programme and host the IMPEL Secretariat with a seconded national.

The advantages to first movers, if any, has been difficult to determine. The fundamental focus of IMPEL has been developed fully in concert with all Member States and the EU institutions, so it is unlikely that first movers affected this aspect. In terms of later work, it is important to note the driving importance of funding sources. Thus the Netherlands and UK can be viewed as important first movers. They have also had significant input into developing and running projects. However, this is often because they have also supplied significant funding for these. The Commission, which was not an early member, but active in early development, has had significant influence also for this reason.

In establishing a network to improve enforcement in the Member States it is useful to consider whether alternative approaches were considered. At the time of the Chester meeting there was discussion of an

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[19] Network of EC Environmental Enforcement Agencies. First Meeting: 3-6 November 1992. Overview of Issues of Common Interest. Her Majesty's Inspectorate of Pollution and Environmental Resources Limited.

'inspectorate of inspectorates' (or 'audit inspectorate') to be established at EU level (indeed this also formed part of the early debate on the role of the later European Environmental Agency). At the Chester meeting the UK Environment Minister stated[20]:

'What we have in mind for the Audit Inspectorate is a small body to scrutinise the capability of enforcement agencies within Member States to meet their obligations under Community legislation. There is room for debate about its place in the institutional structure. But I must emphasise that it would not involve the Community usurping the role of national Inspectorates. It would put in place a system of quality control which will provide more and better information to the Commission who are charged under the Treaty with responsibility for monitoring the implementation of policy. Far from infringing the principle of subsidiarity, such a body, by creating a mechanism for quality control over national agencies, would enable us to resist pressure from the centre for more direct enforcement.'

This statement identifies a number of issues. Firstly, the network was established at a time when there was concern in (some of) the Member States that the Commission might become more actively involved in determining how regulators operate. Secondly, the network is viewed as consistent with a possible development of an 'audit inspectorate'. Such a body would, in the context of this study, be viewed as an example of the Community Method. It would presumably have been founded under a Community Regulation (as is the EEA) and would take forward Community policy initiatives (within its remit) (even though the Minister viewed this a reducing direct Commission interference). This would, according to the Minister, include quality control over Member State authorities. However, such a body was never created (not least due to concerns over the Commission having any enforcement role within Member States[21]) and initiatives on quality assessment and quality improvement of national authorities have been taken forward by the network. Thus where there was a consideration of dividing roles between an OMC-like network and a Community Method body, all initiatives (or almost all) were subsequently taken forward by the OMC-like approach.

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

International economic competition can be viewed as a driver in the establishment of IMPEL, at least as far as the effective operation of the single market is concerned. Concern over the variability of Member States to implement environmental legislation has always been an issue in the operation of the single market and thus a focus on improving implementation through IMPEL was important. However, few explicit comments to this effect were made at the foundation, with the main stress being placed on improving environmental protection.

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[20] Reported in the Bulletin of Her Majesty's Inspectorate of Pollution. 3-6 November 1992.

[21] Sbragia, A. (1999). Environmental Policy. Economic constraints and external pressures in policy-making in the European Union. In: Wallace and Wallace (Eds). Policy Making in the European Union. Oxford University Press, Oxford.

How is IMPEL managed?

IMPEL Plenary meetings are the forum for the agreement of strategic developments, approval of the work programme and final reports from IMPEL projects. Plenary meetings occur twice a year and include all members, ie representatives from all Member States and Candidate Countries and the European Commission[22]. Each meeting is chaired both by the authority from the Member State which holds the Council Presidency at that time and by DG Environment. The members also act as focal points in each Member State. IMPEL plenary meetings are attended by representatives of the regulatory authorities. These often have direct regulatory experience (although not always), but their major role is to co-ordinate activity within their institutions. Thus they are often the most appropriate representatives. For IMPEL projects staff from authorities that are directly involved in the issues being addressed participate in the meetings and other work, which is the most appropriate form of participation.

Between Plenary meetings IMPEL is managed by a 'Troika' representing five or six countries selected on a rotating basis. These are charged with representing IMPEL to stakeholders, etc. Management of IMPEL is also supported by a Secretariat located in the offices of DG Environment. The Secretariat is responsible for day to day administrative tasks.

IMPEL's activities focus on the exchange of information and experience on implementation and enforcement of existing EU environmental legislation. This results in outputs aimed at improving implementation in the Member States and comments on EU law itself. Much of the work is now focused around the Recommendation on minimum criteria for environmental inspections (2001/331/EC). Most of the work is undertaken through a project system, whereby individual activities (eg a study on problems with a particular Directive) are addressed. The initiation of such projects is agreed by the Plenary and final reports also agreed by the Plenary. However, project activity is normally led by one IMPEL member (which might fund or co-fund the project) and participation might involve a sub-set of members or, occasionally, all members. Projects take place in the context of a multi-annual work programme (currently running from 2002-6).

It can be seen, therefore, that IMPEL has a highly participatory management structure supported by a small permanent secretariat. This ensures both a wide consensus for its work and practical implementation. However, it can also result in some delays in taking work forward. This might, however, be viewed as an inevitable result of wide membership organisations. The management structure is important in the wider OMC context in that it has formed a stable system whereby Member States have worked together. Whether it forms a model for other co-operative initiatives deserves debate. This very flat management sturcutre contrasts to some extent with the (formal) OMC where you usually find a hierarchy with the Council or a group of high level "poltical" appointees at the top and a more technical committee at the bottom. The lack of a hierarchy in IMPEL work means that IMPEL is often very dependent on the initiative of particular members which in turn can result in a problem of focus.

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[22] Schout, A. and Claessens, F. (1999). The European Network for the Implementation and Enforcement of Environmental Law (IMPEL) – the strengths and weaknesses of an informal network. In: Eversen, Michelle, et al. The Role of Specialised Agencies in Decentralising EU Governance. Report to the European Commission.

OMC Elements and Processes

Following from the above sections on the development and management of IMPEL it is possible to make some comments on the institutional issues surrounding IMPEL as an OMC-type process. These can be summarised as:

- IMPEL results in co-ordination of the Member States to compare practice. Thus it is an important learning process for the implementation of EU law. The lessons learnt assist in enhancing the Community Method.
- IMPEL does result in some forms of benchmarking of Member State activity. Where this relates to less prescribed issues (eg on inspection) this is widely accepted, but some members are concerned if this activity would result in quasi assessments of EU law implementation.
- IMPEL focuses on peer-learning, but a by-product is peer-pressure on those Member States with less progress in selected areas.
- There is a regular review of progress (on individual activities and work programme).

IMPEL is not a full OMC, not least because it lacks true benchmarking and has relatively weak decision-making structures. It also has a relatively nebulous overall objective (in terms of better law implementation), which is only translated into the individual objectives of projects. The following table outlines the specific OMC characteristics in place within the IMPEL structures and processes and the following sections consider IMPEL outputs and activities in more detail.

Institutional / OMC measures		
Institutional (requirement for) OMC measure	**In place or not** *(Yes (required); yes (optional though agreed); required/agreed but not used; not required/agreed)*	**Factor for success or failure**
Committee	Yes – the IMPEL Plenary. This agrees all decisions regarding the work of IMPEL	All MS authorities and DG Environment participate
Regular Review of Member States	So no, there is only occasional, voluntary review of individual member states.	
Nat. Action Plan (NAP)	No. NAPs are not currently developed, although they could be appropriate to take forward some IMPEL conclusions in the future	
Targets	No. IMPEL does not set targets, as it produces only guidance and conclusions.	
Guidelines	Yes. However, this is only in the sense that IMPEL's reports can be viewed as guidelines, such as that on minimum criteria for inspections.	Accuracy, utility, timeliness. Actual direct impact on Member State practice is difficult to measure.
Indicators	In the conclusions of its reports IMPEL does identify good practice and success factors (such as on inspections). These can be regarded as indicators.	
Peer review	Yes. IMPEL has undertaken (and continues) peer-review studies of the regulatory authorities of MS authorities.	A key factor is the willingness of MS to be open to review. A second

		factor is the use of professional staff from reviewing MS to undertake the review
National Reports (ie. in which MS report on progress in implementing guidelines, reaching targets and objectives)	No	
Commission Report (Eg Benchmarking Report)	No – not appropriate	
Commission Recommendations	No. It is possible that the IMPEL review might lead to these.	
Country Visits	Yes. These are undertaken within the peer review studies and occasionally on other occasions.	See above.
Decision-Making Procedure	Yes. The Plenary agrees the multi-annual work programme and adoption of reports through consensus.	A common sense of purpose is important to such a consensus approach. However, this also means that more controversial issues might be put to one side. It might be argued that ENAP is an example of agenda setting by a MS on issues that might be too controversial for an IMPEL approach.
Council Role	No, except as support during initiation	
Legal Base	No? IMPEL is referred to in EU law (eg the 6th EAP), but not established by it.	
Other Institutional Factors?	The 'bottom-up' character of IMPEL has been important in ensuring is acceptance and maintenance over its history.	

The factors affecting the management and other inputs to IMPEL are explored further in the following table. It can be seen that a number of possible elements of MOC processes are absent, although this is not considered to be a problem for the particular operation of IMPEL.

Input items potential in place or absent	In place, or notably absent	Impact / importance
Electoral/parliamentary input - *EP, national parliaments, role of elected actors (rather than appointed) etc.*	Absent	Unimportant
Procedural legitimacy/"due process" - *are clear decision-making rules correctly applied?*	The decision-making process is truly consensual. However, concern has been expressed over the 'weighting' of views of different members, including that of the	

	Commission.	
Transparency	There is transparency for the IMPEL members, but details of many activities are obscure to other stakeholders.	There has been no statements of concern from stakeholders on this issue, so it is unclear if there is any importance.
Mobilisation of civil society - *have NGOs, political parties etc. taken an interest?*	No	It is likely that much IMPEL deliberation is at the wrong 'stage' for significant NGO input.
Public debate - *has the public at large taken an interest, for example as reflected in mass media coverage of relevant issues?*	No	Unimportant
Openness of decision-making/opportunities for participation of stakeholders etc.	Decision making is not open for stakeholder participation.	This is not important, given the focus of IMPEL work.
Responsiveness of process - *ie was the process not just listening, but also hearing, and indeed also responding to what was heard?)*	Very responsive. IMPEL work has taken considerable pains to examine views and practices in MS and reach consensus on ways forward.	This is important not just for the acceptability of individual outputs, but for the continuing support by members to IMPEL as a whole.

Reviews of Member State activities

IMPEL has undertaken reviews of the inspectorates and inspection procedures in several Member States. To date reviews have been published for Spain, France, the Netherlands, Ireland and Belgium. Currently it is undertaking a review of Sweden. These reviews are undertakenby an expert team from selected other IMPEL members which examine the practices in the host country. The final report makes recommendations for improvement. These recommendations can not only benefit the host country, but also others with similar practices, etc.

IMPEL does not have systems for systematic regular review and benchmarking, even given the above review projects. Having said this, the individual projects do highlight the nature of systems within the Member States which does place some peer pressure on their activities, although this remains informal.

This type of activity is interesting in relation to the wider consideration of OMC-type activity. The focus is on the implementation of the Recommendation on minimum criteria for environmental inspections, but this also has to take account of specific Directives, such as IPPC. In this case, other Member States are taking an in depth examination of how to improve the implementation of aspects of EU law in another Member State in a way that the Commission rarely (if ever) does. It is also not undertaken in the context of any legal status, so that the host country is generally welcoming of what it views as a capacity building exercise, rather than an attempt at compliance monitoring. Thus OMC-type activities can assist Member State implementation in an informal way where direct input from EU institutions might prove more problematic.

Outputs

IMPEL's outputs are largely in the form of reports on specific issues. Over forty have been accepted by the Plenary. These include:

- Management Reference Book for Environmental Inspectorates (Nov 2003)

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- IMPEL Reviews of Member States.
- Best Practices concerning Training and Qualification for Environmental Inspectors (March 2003)
- IMPEL Reference Book for Environmental Inspection (Jun 1999)
- Minimum Criteria for Inspections
- Waste related conditions in environmental permits (Dec. 2004)
- Information Exchange on e-Reporting (June 2004)
- Better Legislation Initiative (Nov 2003)
- Implementing Article 10 of the SEA Directive 2001/42/EC (February 2003)
- Finnish report on energy efficiency in environmental permits (Dec 2002)
- General Binding Rules (June 2001)
- Dutch Comparison Programme (June 2001)
- Integrated pollution control, compliance and enforcement of EU Environmental legislation to Industries (IPPC and non IPPC) of the food production/processing sector (June 2001)
- Best Practice in Compliance Monitoring (June 2001)
- Criminal Enforcement of Environmental Law in the European Union (Dec 2000)
- IMPEL Workshop on Integrated Permitting (Dec 2000)
- Diffuse VOC Emissions (Dec 2000)
- Complaint procedures and Access to Justice for citizens and NGOs in the field of the environment within the European Union (May 2000)
- Report on the Interrelationship between IPPC, EIA and SEVESO Directives and EMAS Regulation (Dec 1998)
- Report of a Workshop on Licensing and Enforcement Practices in a Cement Plant using Alternative Fuel (Dec 1998)

It can be seen that some projects have focused on individual Directives or single articles, etc, within them. Others have taken wider strategic or technical questions. The quality of these reports has varied, often due to the willingness of members to provide information or the perceived importance of the issue. However, they are generally welcomed as positive contributions and certainly can help implementation of EU law. This is important in examining OMC issues more strategically. Such products can, however, also lead to interactions with the Community Method, as illustrated by the next section on minimum criteria for environmental inspections. These outputs are a measure of success in terms of activity. It can, however, be difficult to judge concrete success in terms of changed behaviour. Such success is probably best seen in the most technical of IMPEL projects, where the project has enabled regulators to examine issues over which they have direct control. The work on minimum criteria for inspection was also used as the basis for much Commission review of activity in the Candidate Countries, with a positive practical outcome.

In conclusion, a summary of some of the input, output and outcome issues relating to IMPEL is given in the following table.

OMC Type process	Inputs	Outputs	Outcomes	Impacts
IMPEL. Co-operation between MS in a formal framework aimed at improving the implementation and enforcement on EU environmental law	Resources come from DG Env and MS authorities. The balance has shifted to the former in recent years. Most IMPEL work is input via projects with sub-sets of MS tackling a specific issue. +ve/-ve: depending on the issue being explored. In some cases inputs high (country response rate, involvement levels), in others low.	+ve/ -ve Largely as reports with recommendations either to MS authorities or to EU institutions. Each report is adopted at a plenary of all IMPEL members. Some reports useful others less so. For example, that on minimum criteria for inspections led to law under CM, while that on GBR under IPPC was of less impact given the lack of developments by MS +ve: Minimum criteria for inspection *Summary: guidelines / minimum criteria agreed (though some MS not that happy with this)*	Probably many small outcomes in MS policy, such as from peer-review studies. Obvious outcome in relation to minimum criteria for inspection. This has had some impact, at least in new MS, although some MS regret this outcome.	*Expected:* from Min. Criteria of Inspection, expect better inspection and hence higher levels of compliance. Measurements of impacts have not been made,

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Interaction with the Community Method: Minimum Criteria for Environmental Inspections

In 1997 IMPEL produced a paper on the Minimum Criteria for Environmental Inspections which examined the nature of different types of inspections that regulators undertake and set out basic criteria for how these should be carried out, ie good practice. This has subsequently formed the basis for the Community's own Recommendation on Minimum Criteria for Environmental Inspections. This forms an interesting case of evolution between an OMC-like initiative and a Community measure, with some political recommendations.

It is important to note, however, that the Commission's proposal was not stimulated simply by the work of IMPEL. In a Commission Communication of 5 November 1996 it proposed the establishment of guidelines at Community level in order to assist Member States in carrying out inspection tasks and reduce the disparity between Member State inspections. The Council subsequently (in October 1997) invited the Commission to take this forward based on the IMPEL work[23] and the Parliament had earlier (in May) called for Community legislation on environmental inspections.

The Council (20.3.2000) argued that the different systems for inspections in the Member States should not be replaced. However, Community guidelines for minimum standards should be adopted to improve performance. It acknowledged that a later Directive could be needed (if improvements did not take place). The Parliament argued during the adoption process for a Directive, but this was rejected.

In a simple view of these developments we can see an initiative taken by the OMC-like Network being incorporated into the Community Method. However, it can be asked why this was considered necessary. The IMPEL paper set out the criteria to be addressed by its members. It certainly had had no time to be taken forward by any national authority before the Commission decided that Community level action was needed. Thus the OMC-like measure was given no time to succeed or fail. Having said this, the final result of the Community Method was a Recommendation, which has no obligatory impact in the Member States. Clearly, if the Parliament had had its way the legal consequences would have been different. The only reason, therefore, to have such a Recommendation is some lack of confidence by the EU institutions in the IMPEL initiative. By the date of the adoption of the Recommendation it would have been difficult to identify strong concrete examples of IMPEL guidance having an impact. Thus the Commission's view of a need for a higher profile Recommendation could be justified. How far this lesson extends to other OMC-type activities would relate to the expected outputs of these activities. If these are expected to produce Community wide 'guidance' that is expected to be followed, then one might expect them to have some impact. However, 'authority' is not a quality strongly associated with IMPEL outputs, even though the members have such a strong basis for developing their conclusions. Whether this is a particular weakness of IMPEL itself or is of wider concern in similar situations deserves consideration.

This developmental process has had some political consequences for the work undertaken by IMPEL. We are aware of IMPEL representatives who were distinctly displeased that IMPEL's work was used by the Commission in this way. They have indicated that they would not, therefore, wish to take part in similar initiatives within IMPEL fearing that a similar fate would fall to these developments. This could be an important lesson on the interaction between OMC-like and Community Method initiatives (or it might be an isolated problem).

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[23] OJ C 321, 22.10.1997

The Scope of the Network

At its foundation in 1992 the Network agreed that its focus should be on industrial pollution control. However, its activities quickly went further than this, as illustrated by its long running work on waste shipments. The scope of work largely reflected the nature of the IMPEL members. The extension of IMPEL to include members from the countries that joined the EU in 2004 and from the current Candidate Countries has raised the question of scope.

Many regulators in central and eastern Europe also address, to different degrees, nature protection. As a result there is currently consideration being given to the extension of IMPEL's work to include nature protection. The Commission has stated (Amsterdam Plenary) that its view on this issue will await the results of the current review of IMPEL. Thus proposals by the Czech Republic for work on cross-compliance and a comparison programme for inspectors in nature conservation are on hold.

On the surface one might consider that if new members of IMPEL wish to work together on issues beyond the original scope of IMPEL then there should be no fundamental objection. However, for work to be agreed and reports to be adopted this presumes that the members from all Member States are competent to make such decisions. Clearly, however, IMPEL lacks the participation of some of the major nature conservation authorities from some western European Member States.

One solution to this issue is to increase IMPEL membership to include all relevant authorities responsible for implementing environmental law in its widest sense. This could result in a large, impractical organisation.

IMPEL could simply work in new areas of interest to some of its members. However, the results of this work would clearly lack the authority of overall collective acceptance.

Finally, the converse is possible, whereby IMPEL restricts its work to those areas common to all of its members. Given the diversity of organisations involved, this could prove unduly restrictive.

We do not seek in this discussion to give any opinion as to what the scope of IMPEL should be. However, it does illustrate an issue that affects OMC initiatives more widely. Where an OMC initiative is tightly focused, then membership from the Member States is probably relatively straightforward. However, when the initiative has a broad remit (as with IMPEL) then the interaction between the boundaries of this remit and the member organisations from the Member States might be difficult to determine and organisational difficulties could arise.

Involvement of the Commission – resource issues

The role of the Commission within IMPEL has changed over time (see introduction). This has been mirrored by a change in perception by the IMPEL members. Initially suspicious of the Commission's motives, members became more accepting and this acceptance increased with the decision of the Commission to host the Secretariat. However, those from the IMPEL members tend to see greater synergies between themselves (as 'practitioners') than with the Commission and are generally in more frequent contact with each other than with the Commission.[24] It is interesting to note that concern about the Commission's role is more likely to be found in the 'old' Member States rather than the new and, therefore, enlargement might change this relationship.

IMPEL is financed through two sources – the contributions of its members (staff input, eg for projects and contributions to consultants, etc, for project support) and by the Commission. At its height the

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[24] Martens, M. 2005. Double-hatter agencies on the European scene? A case study of the IMPEL network. Working Paper. Centre for European Studies, Oslo.

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Commission contribution amounted to around €400,000 per year[25]. The Commission contribution represents around 50% of the total budget, although this is difficult to assess, given the large amount of in-kind support from the Member States. Spending of all funds, including from the Commission, on projects is agreed by all members at the plenary meetings. However, the Commission's contribution make it difficult for members now to initiate activities without Commission acceptance. Neither the Commission nor Member States fund specific activities in their own interests outside of the plenary framework.

The consequences of a major reliance on funding from the Commission became a major point of debate at a meeting of the IMPEL plenary in Rome in November 2003. The Commission stated that the Financial Regulation (which came into force at the start of 2003) meant that it would no longer be able to co-finance projects through direct grants, as all distribution of funds greater than €50,000 required tendering. IMPEL members viewed this as 'very bureaucratic and time consuming' (the role of a possible DG Admin framework contract was considered at the 2004 Amsterdam plenary). At plenary the Commission also proposed two projects that would have absorbed most of the budget and members made the Commission withdraw the proposals[26].

The consequences of funding sources also raised the issue of the 'ownership' of IMPEL projects, ie that there was concern that the Commission was driving its agenda through its distribution of funds, rather than members owning IMPEL initiatives. We understand that there was some heated discussion at the meeting, with the minutes[27] stating 'several IMPEL members expressed their concerns and stressed that this might affect the smooth operation of the network and its consolidated procedures'.

With any collaborative initiative those contributors that provide the most funding are likely to increase their influence in terms of what is undertaken. While all projects are agreed at plenary meetings by all IMPEL members, those that provide funding have a strong interest in those projects and some would not proceed without that individual commitment. The same is the case for funding from the European Commission.

Funding from the Commission only becomes problematic if its interests are seen to diverge from that of the network. This is an important lesson for this study. If OMC-like activities are (partly) funded by the Commission (or other EU institution) then questions might arise as to how independent the OMC activity is. In its strict sense such contribution and influence does not overlap with the Community Method, given that the Community Method is a legal process. Thus the question arises as to the role of EU institutions in OMC initiatives and the effect that this might have on their character.

In the context of IMPEL we do not wish to question the value or otherwise of the Commission funding. This is for members themselves to determine (noting that the Commission itself is a member). Rather we wish to stress that funding is not merely an issue of obtaining sufficient resources to undertake initiatives and thus make an OMC activity viable, but the sources of the funding can also be important in affecting the character of those initiatives and potentially the 'policy' outcomes.

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[25] IMPEL Plenary Meeting Rome, 1-3 December 2004 Conclusions
[26] Martens, op cit.
[27] IMPEL Plenary Meeting Rome, 26-28 November 2003 Conclusions

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Contributing to the Community Method

In 2004 IMPEL published a report of its 'Better Legislation' project. IMPEL members have become increasingly critical of the quality of EU environmental legislation, such as problems of clarity and consistency. The report argues that there should be a greater role for IMPEL members in the early stages of legislative development. Thus members are not simply considering how better to implement EU law, but also how to make such law better in itself.

IMPEL states that it is appropriate for it to comment on issues of practicality and enforceability 'at an early stage in the development of new EU legislation'. However, once a proposal is made IMPEL should not have a role given the formal role of Member State governments at this stage. Exactly how this would operate is not yet clear.

This, therefore, presents an interesting example of an interaction between the OMC and Community Methods. Where both address common issues there is likely to be an interaction between the policies/initiatives of both. Thus where OMC is chosen as being of being of a better practical or political basis for action than the Community Method, this does not necessarily isolate it from the Community Method.

Conclusions

While not traditionally viewed as an example of OMC, IMPEL demonstrates a number of characteristics that are important for future OMC development. It is fully participatory of all Member States and focuses on how Member States can better implement environmental law as well as (to a lesser extent) how Community law can be improved. The inclusive nature has required a formal management system to be developed, which can be slow, but is based on a consensus approach. Resource issues can be a problem, both in terms of inputs from members for some of its work and the nature of funding from the Commission. The main factor for the success of IMPEL has been the perception by its members that there is a problem (or problems) that can only be addressed by working together to identify ways forward, either through the spread of best practice across the EU or debate on new practices to be developed. IMPEL's work has also resulted in interesting interactions with the Community Method, not always to the satisfaction of all of its members.

IMPEL has had a relatively long history, having been formed in the early 1990s. This provides some basis for assessment, although even now 'real' practical consequences of its work have been difficult to identify. It began as a bottom-up initiative of the Member States, although with support from the EU institutions. Its work was, therefore, largely driven by MS agendas. However, over the years the increasing role of the Commission (including via budgets) has focused IMPEL more on the implementation of EU law.

Unlike formal OMC, IMPEL is not established by an EU level mechanism. However, its existence has enabled it to be drawn into instruments such as the 6EAP. Even though it has agreed a set of objectives, etc, the lack of a formal 'establishment' means that it is only able to be examined by consensus of its members. This has not prevented the Commission undertaking a review, although there is no mechanism that means that the members will accept any or all of the review's conclusions.

The success of IMPEL can be considered to be due to this informal nature – it does not threaten the Member States. It produces conclusions, guidelines, etc, but these inform Member State activity, rather than require a response. Clearly, this can mean that it can have little impact, but the hesitancy of some Member States for anything 'stronger' means that a more formal structure might be counter-productive. Success has also been driven by the willingness of Member States to contribute significant resources to IMPEL's activities. As these come from the regulatory authorities, one might assume that such bodies do receive value from the work of IMPEL, otherwise they would divert such resources. On the reverse

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side of this equation, such informal consensus approaches mean that action can be slow and demands cannot be forced on the Member States.

There is interaction with the Community Method. Most obviously, most of IMPEL's work is to examine what laws adopted under CM actually mean in practice and, therefore, to assist implementation. This is, therefore, a significant synergistic tool alongside the CM. The transfer of guidance into the CM on the minimum criteria for inspections is also an interesting case of interaction, although it is unique within the whole range of IMPEL activity.

In terms of lessons for other types of OMC, the consensual approach of IMPEL is a important pre-requisite for long-term stability and success. Indeed, the consensus approach led to the formation of IMPEL, rather than it being imposed by an EU institution. However, getting 'buy-in' in a non-threatening way also suggests that an IMPEL model would not be useful for an OMC activity that needed results 'quickly' or results that would 'bite' on the Member States. IMPEL forms a good platform for learning – it brings the right experts together and provides the resources for detailed examinations of the issues. However, it then allows others to learn if they wish, there being no obligation on Member State authorities.

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

Case Study:
Water Framework Directive and the Common Implementation Strategy

1. Introduction

Upon the entry into force of the Water Framework Directive (WFD) in 2000[28] it became evident that the implementation of its numerous requirements would be equally challenging as the decision-making process leading up to the Directive. In order to address this challenge, a strategic document establishing a Common Implementation Strategy (CIS) was developed and agreed upon by the European Water Directors (i.e. the representatives of relevant Member State ministries) and the European Commission in 2001[29].

2. Nature of the challenges/ problem structure

The CIS process was conceived as an open platform to support the Member States in achieving the goals of the WFD, taking into account differing national situations while at the same time enhancing a harmonised approach towards WFD implementation.[30] The process comprises several indicative elements for OMCs, such as agreements on clear objectives and guidelines as well as mechanisms for translating these to the national and regional context. The strategic guidelines developed in the context of the project are furthermore designed as open documents, allowing for adjustments and updates in the course of the WFD-implementation process. This hints at the set-up of the CIS as a continuous learning process. The learning component of the CIS is also emphasised by the Pilot River Basin exercise, which is intended to test the guidance documents in an actual river basin setting. It furthermore strongly promotes partnership and networking of Member States as well as societal actors and therefore can be considered an OMC-type process. The mechanisms for learning in the CIS are mostly based on the overall consensus of all actors, peer review and the identification of best practices, which are then tested in the context of the Pilot River Basins.

The CIS as an OMC is mainly focused on supporting the implementation of the WFD and thus can be labelled as a sub-sector OMC. Other relevant issues not explicitly addressed by the WFD, but of relevance for river basin management, such as the issues of flood protection, wetlands management, the connection between water management and agriculture as well as drought prevention, are increasingly included in the implementation process thus considerably broadening the scope of the CIS.

Although the CIS is a 'non-legislative procedure embedded in the legislative framework of the WFD', it does not fully conform to all aspects of the OMC definition of the 2000 Lisbon Council. In particular, the elements referring to reporting on the Member States' progress in adopting and implementing the guidance documents developed in the context of the CIS has only been developed to a limited extent. Formal sanctions for are not foreseen. On the other hand Member States are obliged to comply with the WFD. While Member States enjoy certain leeway in interpreting the requirements of the WFD, strict reporting requirements on compliance will also reflect on the use of the CIS guidance documents for reporting purposes.

3. Why was OMC chosen as the route to take?

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[28]   European Parliament and Council Directive 2000/60/EC of 23 October 2000 establishing a framework for Community action in the field if water policy (OJ L 327, 22/12/2000, p.1) as amended by European Parliament and Council Decision 2455/3001/EC (OJ L331, 15/12/2001, p.1).

[29]   Common Implementation Strategy for the WFD (200/60/EC) – Strategic Document as agreed by Water Director under Swedish Presidency, 2 May 2001.

[30]   Source: stakeholder interview: 23 June 2005

The process leading up to the WFD had been considerably contested, displaying the multitude of varying philosophies and approaches in the different Member States and the relevant actors involved. For this reason, the Water Directors and the Commission, specifically DG Environment[31], decided to continue the intensive work with the Member States during the implementation process of the Directive after its entry into force.

In this situation, the CIS process was initiated to maintain the momentum in the collaboration and commitment of the Member States without waiting for the official mechanisms of the Directive to start functioning. Thus, the CIS as open method of co-ordination serves as a complement to a community method through creating synergies among the Member States in meeting the requirements for WFD-implementation. In this sense, the CIS supports first the convergence of national policies, in this case water management policies, towards the commonly agreed objectives of the WFD. Secondly, the CIS also aims to the development of common approaches and instruments used by the Member States in the implementation process.

The Water Directors opted for a pro-active approach building on the experiences made during the legislative negotiations, and they considered the common implementation process crucial for fostering international co-operation among the Member States, which is explicitly required by the Directive for achieving integrated river basin management.
In keeping the process open for adjustments and adaptations in reaction to new challenges in the context of implementation and avoiding rigid formalisation or even legal codification, the Water Directors created more favourable conditions for a fast implementation of the ambitious goals of the Directive on the ground.

In doing this they drew on the lessons derived from previous experiences in the field of European water policy. In many cases in the past co-ordinating mechanisms were delayed until formal committees and legislative mechanisms had taken up their work. As a result, the implementation of measures was often delayed until policies had already been put in place, thus leading to conflicts between co-ordination efforts at the European level and the implementation measures taken in the national context. As a consequence, in the area of water management the implementation gap of European Union legislation was considerable leading to significant inefficiencies.

In order to overcome this implementation gap in EU water policy, the CIS process also explicitly aimed to allow for the participation of a large number of civil society actors. The involvement of stakeholders has evolved over the course of the CIS in the past years. In the beginning, it was reported that access to the process was a times difficult to obtain for civil society actors. At the current stage, these actors are considered as valuable element of the process and furthering their involvement is currently being discussed by the Water Directors.[32] While the WFD in general and the CIS process specifically was and still is received quite critically by some stakeholder groups, the process also significantly contributed to a more open way of communication between Water Directors, the Commission, Member States and civil society. In terms of representation of the different interest groups, environmental NGOs are one of the most active participating party[33]. Assessments of the involvement of civil society actors diverge considerably. While the Commission feels that NGOs have gained quite some leverage in the process, NGO representatives are under the impression that they are excluded from the most relevant decision-making processes. It should be noted that, while stakeholder representatives are allowed to be members of the working groups and attend the SCG meetings, their admission to the Water Directors' meeting has not been granted yet[34].

4. How is the CIS managed?

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[31]   source: stakeholder interview
[32]   Source: stakeholder interview: 23 June 2005
[33]   Source: stakeholder interview: 26 May 2005
[34]   Source: stakeholder interview: 4 July 2005

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While the structure of the CIS process is subject to constant review and adaptation to changing circumstances in the implementation process of the WFD, a clear three-level set-up can be observed. The Water Directors, i.e. the highest officials in water management from each Member State, form the steering level of the CIS process. The role of the Water Directors in the CIS process is based on a long tradition of collaboration and a culture of discussion at this level between the Member States for the past years. The Water Directors are key drivers of the process and also serve as a body of review and reference. The Water Directors' meeting is chaired by the Water Director from the country currently holding EU presidency and co-chaired by the Commission.

At the second working level, the strategic co-ordination group (SCG) is overseeing the technical co-ordination and convergence of the entire process. It is chaired by a representative from the Commission and comprises participants from all Member States as well as representatives from other EU organisations (e.g. JRCs) and from civil society groups. The SCG forms the linkage between the core elements of the CIS process, the different working groups and the Water Directors. It furthermore prepares the strategic decision to be taken by the Water Directors' meeting on changes in the process.[35] Due to this function, the SCG is often considered the most influential body of the CIS process. Decisions taken here will reflect on the other levels of the process as well.[36]

In contrast, the working groups address the more actual technical challenges of WFD-implementation as stipulated in the overall strategy for the CIS, which in turn reflects the initiative and interest of the Member States.[37] All Member States, other countries in the CIS, stakeholders and NGOs can nominate experts to these groups. Usually the groups comprise 30-40 members. The groups are led by experts from the Commission, other European bodies (e.g. JRCs) or national representatives; they are supported by co-leaders sharing the responsibility for the tasks to be completed.[38]
In the CIS process so far, the following distinction can be made as regards the main tasks of the working groups. Phase 1 (2001/2002) was concerned with the preparation of the main so-called guidance documents on a number of issues related to WFD implementation. This phase was completed in 2002 when the guidance documents were approved by the Water Directors during the Danish presidency in 2002.

In the ensuing phase (2003/2004), these guidance documents were tested in a number of Pilot River Basins, the process of which was accompanied by the individual working groups. The following phase saw a consolidation of the working groups on core working areas, which were identified after the adoption of the guidance documents. In terms of process organisation this lead to a reduction of the number of the working groups. For the period of 2005/2006 new working groups to deal specifically with the issues of groundwater management and priority substances have been established. A second round for testing some of the guidance documents created in the context of the CIS is also planned. This constant adjustment of the process to the requirements brought forward by the individual phases of WFD-implementation has been described as reflexive learning by Scott and Holder.[39]

The individual working groups are supported by a number of ancillary ad-hoc councils and committees, including steering teams (ST), drafting teams (DT) as well as expert networks and workshops. These ad-hoc structures reflect the open and self-organising character of the CIS OMC. At the same time, clear guidance exists on the set-up and status of the team to avoid overlap and duplication of the efforts of the working group.

[35]   Source: stakeholder interview: 23 June 2005
[36]   Source: stakeholder interview: 13 June 2005
[37]   Common Implementation Strategy for the WFD (200/60/EC) – Strategic Document as agreed by Water Director under Swedish Presidency, 2 May 2001.
[38]   Common implementation strategy for the WFD – Carrying forward the CIS for the WFD, Progress and Work Programme for 2003 and 2004, 17 June 2003.
[39]   Scott, J. and Jane Holder: Law and 'New' Environmental Governance in the European Union.

The following picture depicts the current set-up of the CIS process displaying the different fora and committees addressing various aspects of WFD-implementation as well as other relevant issues, such as flood protection, which are not explicitly addressed by the WFD, but still of importance in the context of sustainable water management.
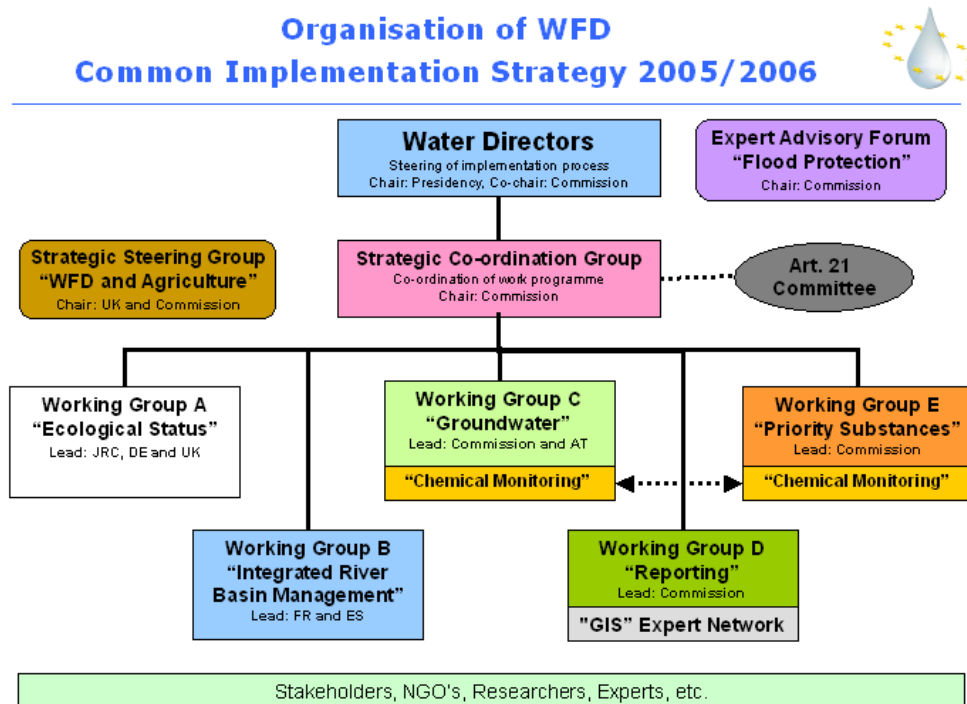
The management of the process is realised through strategic reviews, which are up-dated and adjusted to the current challenges in the process on a biannual basis. The results of the review process are strategic documents detailing the feedback on the past performance of the working groups as well as describing the future direction for their work. The review is prepared by the Commission. Working groups and individual experts are however involved in developing future strategies. The strategic documents are in general inspired by the basic principles of the CIS process, which relate to the creation of a common understanding and joint approaches, the elaboration of technical guidance documents and the testing of best practices, the sharing of experiences, information and resources in order to avoid the duplication of efforts and to limit the risk of a bad application[40]: The overall strategy is then specified through certain focus activities detailing the objectives guiding the CIS process. While these activities define the general direction of the work, a flexible mechanism allows for adjusting the work to the needs and suggestions of the individual Member States, the Commission or the expert groups. The set-up and structure of the working groups is therefore highly dependent on the consensus of all parties involved. The factors determining the structure of the working groups are directly derived from the actual requirements of the Directive.[41]

Apart from the biannual reviews of the strategic documents, the CIS process has so far been relatively weak on surveillance, monitoring and reporting on actual adoption of the guidance documents. While the process itself is constructed as an open platform for sharing information and experience as well as the creation of capacities, the review structure represents the dynamic and flexible nature of the process. Consequently, efforts to conduct an implementation analysis of the process in the individual Member States has been limited to a brief survey on the adoption and use of the guidance documents in 2003. This survey revealed an interesting picture, showing that particularly new Member States broadly adopted all the guidelines, while 'old' Member States more selective accepted those guidances which

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40   Common Implementation Strategy for the WFD (200/60/EC) – Strategic Document as agreed by Water Director under Swedish Presidency, 2 May 2001.

41   Source: stakeholder interview: 26 May 2005

best complemented already existing legislation and procedures[42]. This observation underlines the primary function and objectives of the CIS process referred to above. In a long-term perspective, a qualitative assessment on the attainment of the objectives of the CIS process is planned. This assessment is expected to coincide with reporting requirements of the Commission to be completed by the end of 2006.

Thus, while there is no direct reporting on the utilisation of the CIS guidances by the Member States, one needs to take into consideration that there are far-reaching reporting requirements on the objectives of the WFD itself. Member States are obliged to report at certain intervals on river basin management plans, including regular updates, interim reports and the programme of measures planned. In addition, reports are required on the fulfilment of the monitoring requirements and measures for public participation[43]. Although there is no obligation to use the CIS guidance documents for assessing progress made on WFD objectives, it is likely that performance reviews conducted by the Commission will rely on criteria developed in the framework of the CIS. It is expected that for upcoming reporting deadlines, the Commission will make use of the agreed procedures and targets, thus also contributing to process-transparency and allowing for cross-comparison of performance. In the case of the Netherlands and Germany for example, reporting to date revealed that the CIS guidelines have been applied in a similar way.[44]

5. OMC Elements and Processes

Main elements and processes as well as key actors and institutions have been described in the preceding section. The following table provides an overview of the main institutional factors and whether or not they contribute to the success of the OMC.

Institutional / OMC measures		
Institutional (requirement for) OMC measure	**In place or not** *(Yes (required); yes (optional though agreed); required/agreed but not used; not required/agreed)*	**Factor for success or failure**
Committee	Three different committees were set up to manage the CIS process	While the general set-up of the structures was viewed as positive, the integration of the different working groups and the expert advisory fora was considered unsatisfactory.
Regular Review	Activities in the CIS process are subject to a biannual review. The work programme for the CIS process is updated and adjusted in these intervals	The past reviews have lead to a reorganisation of the process and thus to a consideration of the most topical challenges in WFD implementation

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[42]   Source: stakeholder interview: 26 May 2005
[43]   Scott, J. and Jane Holder: Law and 'New' Environmental Governance in the European Union.
[44]   Source: stakeholder interview: 23 June 2005

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Targets Guidelines Indicators	It is the overarching goal of the CIS process to establish common targets, guidelines and indicators re WFD implementation for all Member States. The idea is to come up with shared targets for WFD implementation to enhance the transparency of the process. The target, guidances and indicators are intended to be used as best practice and eventually also for benchmarking among Member States.	Probably to early to asses at the moment. Information sharing is clearly a key component of the CIS process. The benchmarking component still needs further enhancement, but there also is some practice.
National Reports	Member States are required to report in the context of WFD implementation. However there is no obligation as to how far they have to follow CIS indicators and values in this reporting	
Commission Report (Eg Benchmarking Report)	Commission also reports on WFD implementation by the Member States and will likely refer to the targets and indicators developed in the CIS process for the benchmarking of performance.	First review of WFD implementation underway at the moment. Practice to be evaluated.
Decision-Making Procedure	Not formalised and therefore to be improved for the second phase	Deficit factor as different opinions existed regarding the nature of the guidance documents; the consensus-based approach of the directive lead to a delayed finalisation of the guidance documents
Legal Base	The CIS guidance is not explicitly mentioned in the text of the Directive. The governance structure of the CIS emerged out of the need for providing additional guidance on WFD implementation.	
Other Institutional Factors?	Institutional arrangements in the context of the CIS are considered provisional and subject to change in the light of experience. As a matter of fact, the structure of the process has already been reviewed twice.	Positive factor

The following list summarises the main factors that characterise an OMC and their importance in the WFD-CIS process.

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Input items potential in place or absent	In place, or notably absent	Impact / importance
Procedural legitimacy/"due process" - *are clear decision-making rules correctly applied?*	Decision-making rules exist, but they are not formalised	medium
Transparency	During the process it became clear that there was still a lack of transparency in decision-making	low
Mobilisation of civil society - *have NGOs, political parties etc. taken an interest?*	NGOs/civil society has taken interest in the process and were involved as well	Medium to high
Public debate - *has the public at large taken an interest, for example as reflected in mass media coverage of relevant issues?*	Due to the technical character of WFD implementation the broad public did not participate in the discussion	Low
Openness of decision-making/opportunities for participation of stakeholders etc.	The Commission/Member States promote an open and clear exchange of views and concerns between all parties with a stake in WFD implementation. NGOs and stakeholders may be invited and consulted by the Strategic Co-ordination Group. Stakeholders/NGOs are invited to send experts to the working group.	High importance to ensure acceptance
Responsiveness of process - *ie was the process not just listening, but also hearing, and indeed also responding to what was heard?)*	In general it is difficult at the current stage to evaluate the learning capacity of the CIS process. This, and equally the question of mobilisation of civil society will be best addressed through interviews with stakeholder actually	The opinions of stakeholders were respected in the process, at the same time, the degree to which that happened as well as the effect from the perspective of the stakeholders still have to be elicited.

	involved in the process.	

5. OMC results and factors of success

Results of the OMC

In terms of tangible results, the main products of the CIS process so far have been the guidance documents, which were approved by the Water Directors' meeting in 2002. Other results are the key deliverables specified in the further process. These include specific documents detailing main issues, such as for example the 'register of sites for intercalibration', the 'guidance on classification of ecological status', the 'harmonisation of typology' to provide some examples of a more extensive list from the most current strategy document.[45] The strategic documents prepared by the Commission and specifying the proceedings of the CIS process are updated in regular intervals and form the underlying foundation for all activities in the context of the CIS.

Apart from these tangible outputs and results, the CIS process has considerably contributed to creating a European knowledge base and reference point for WFD-implementation. Specifically the new Member States have reportedly benefited from the exchange of experiences and approaches towards dealing with the requirements of the WFD. In this sense, the CIS process allowed for the continuation of the culture of discussion of the Water Directors on current issues in water management at the European as well as the national level. Even more so, the network of discussion has been considerably enlarged, now including water management experts from all Member States. The CIS has lead to a common language among these experts and promoted the exchange of information and sharing of experience at a very early stage of the WFD-implementation process.

In which way can the use of OMC be regarded as a success?

The general feedback to the CIS has been very positive. On occasion of the last Water Directors meeting in Luxembourg on 21 June 2005, Member States declared that they were very content with the process and its products. In many countries the CIS has helped to initiate the discussion on certain issues related to WFD-implementation as for example in the case of the status report for the Netherlands.[46] Other positive achievements mentioned were the strong network of experts established in the course of the CIS, the exchange of knowledge and experiences on the key challenges of the WFD so far as well as the creation of a common mind-set and language of the most important issues.[47]

Taking into consideration the broad acceptance of the guidance documents issued in the course of the CIS process and the continued interest of the Member States in the work of the CIS working groups, the outcome of the CIS can generally be considered as positive and successful as seen from a legitimacy point of view. In fact, most guidance documents, would not exist if the CIS had not been initiated. Discussing the quality of the outcome of the CIS process, it can be stated that the results were produced through a concerted effort of all actors involved. As all decisions in the process are largely consensus-based, in some cases the results are probably not of the quality that could have been achieved through the involvement of external consultants, e.g. for drafting the guidance documents. However, experts stated that this disadvantage is largely outweighed by the high acceptance of the process results by all parties involved.

Another indicator for the success of the CIS process is its increased acceptance by NGO representatives over the past years. While the WFD and also the CIS had been received quite negatively at its inception,

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[45]   Common Implementation Strategy for the WFD (200/60/EC) – moving to the next stage in the CIS for the WFD, Progress and work programme for 2005 and 2006 as agreed by the Water Directors, 2/3 December 2004.

[46]   Source: stakeholder interview: 23 June 2005

[47]   Source: stakeholder interview: 13 June 2005

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NGOs have turned to a more active participation in the working groups and taken the opportunity to stay closely involved with the process and utilise it for their own capacity building activities. As an example, the European Environment Bureau and WWF have jointly published a handbook with tips and tricks on WFD-implementation, which serves as a resource for local NGOs in monitoring the progress of WFD-implementation at this level48.

While environmental NGOs have taken on an increasingly important role in the co-ordination process, it should be mentioned, that other actors from civil society have been considerably less active. Still, an increased involvement of representatives from agriculture and industry groups has been noted during the past two years. An example for the wide representation of stakeholders is the participants list of the first SCG meeting in 2005. The list comprises next to the representatives from Member States, Bulgaria, Norway and Romania a wide range of stakeholder groups, such as the above mentioned environmental NGOs, European lobby groups of land owners (ELO), power generation (EURELECTRIC), crop protection (ECPA), water suppliers (EWA, EUREAU) and others49). In this respect, the OMC has contributed to better opening-up the process for a broader actor base and a general mobilisation of civil society in the area of integrated water resource management. One could also observe the different roles civil society actors take in the various fora of the CIS. In the SCG they take a more political role, while in the working groups they more act as technical experts. At this level, NGOs are widely respected and also well integrated. However, at the strategic level, they currently strive for a stronger involvement in the Water Directors' meeting as well. Additionally, criticism is voiced with regard to the accessibility of the process for these groups and the at times quite dominating role of the Commission.

When looking at the public at large, the CIS process has not decisively contributed to increasing the interest for the issues at stake of this stakeholder group. This can partly be related to the very technical character of the WFD in general, which makes addressing the broad public a particular challenge, which is usually better tackled at the local than at the European level.
In terms of the weaknesses of the CIS process so far, two main shortcomings can be identified. First, there are currently problems with how the process is continued in the individual Member States. In some cases, simply the resources for utilizing the CIS guidance documents are lacking, in others the documents are ignored on the national level as there is no strong connection between what is happening on the EU and the national levels. Only in cases where national administrators were also strongly involved in drafting of the guidances, these were fully implemented at the national level as well (e.g. Scotland).

A further area for improvement is the Pilot River Basin exercise. Here, the results have been rather limited so far. Efforts undertaken were in many cases only relevant in a very specific local setting and seemed to be disconnected from the guidance documents. The original idea of the PRBs serving as laboratories for testing and refining the guidance documents was thus only partly realized50. For the second round of PRB exercises planned for 2006, a stronger linkage to the guidance documents and an improved exchange of experiences among the different river basins is intended.

What factors influenced the outcomes and which of these were of particular importance?

Main factors that have influenced the outcome of the CIS process so far include the following:

- the awareness among the Member States for their interdependencies with regard to the management of water resources and WFD-implementation,

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48   EU Water Policy: Making the Water Framework Directive work, The quality of national transposition and implementation of the Water Framework Directive at the end of 2004, A second "Snapshot" Report- Assessment of results from an environmental NGO questionnaire by the EEB and WWF February 2005.

49   EU Commission, Directorate B, ENV D.2, Draft Summary of the ,Meeting of the Strategic Co-ordination group fort he WFD Common Implementation Strategy, Brussels 18 February 2005.

50   Source: stakeholder interview: 13 June 2005

- the capacity of the process to balance the interests of the different parties involved, i.e. Water Directors, Commission, but also national administrators, civil society actors, scientists, water experts etc. and to provide access points for each of these groups.
- the adaptability of process management, which is closely related to the explicit emphasis on the learning character of the CIS.

These factors are discussed in more detail in the following sections.

The CIS process has partly contributed to, but was also influenced by the shared awareness among all Member States for the need to find common solutions and approaches in order to sustainably manage water resources across Europe. The process was partly inspired by the common understanding that similar problems should be addressed by similar and co-ordinated approaches.[51] Put differently, one could possibly also say that Member States felt the need to stay actively involved in the shaping of the WFD-implementation process so to keep control of the requirements brought forward and pre-empt any unfavourable measures.[52]

The balance of the process is directly influenced and determined by the power structure of the actors involved in the OMC. In the case of the CIS, the Commission as the administrator of the process has a better bargaining position than other actors involved. Reflecting this power structure, there has been criticism over the past years that in particular the Commission has been too dominant in the process. There was the concern that the Water Directors' meeting merely adopts the proposals developed by the SCG under Commission leadership. At the same time, there has been a continued interest of the Member States, as represented by the Water Directors as well as by the members of the working groups, to stay involved and maintain their control of the process development balancing out the strong involvement of the Commission quite successfully. As in many negotiation processes, there has been agreement, sometime also disagreement on certain issues; the Member States however have never 'left the stage' of the CIS.[53]

In addition, there has been a different distribution of power among the different Member States. In particular the 'old' Member States, such as France, the UK, Germany and Spain have often taken the leading role in running the working groups and have thus significantly shaped and influenced the CIS and consequently also the implementation process of the WFD. The perception of this situation varies considerably. One impression voiced in this context was that this engagement and active role of these Member States was broadly accepted and in some cases even expected. Smaller and new Member States have generally viewed this role positively as they often still lack the capacity to take on an equally active role in the process[54]. On the other hand it was reported that the dominant behaviour of the 'old, large Member States' is viewed much more critically, as the other Member States feel bound by the outcomes of the CIS process, in some cases even more than the 'old' Member States themselves. Another observation in this context was that the new Member States are generally more active on the level of the SCG and the working groups and less on the Water Directors' level.[55]

Still, the general acceptance of the process is still broad enough, as the positive aspects still prevail for all Member States. A wider inclusiveness of all Member States is now pursued at the Water Directors' level and intended to trickle down to the other levels of the process as well.[56]

Another important factor has been the capacity of the process to adapt to new situations and requirements in the implementation process of the WFD. This adaptability is for example reflected by the flexible structure of the working groups. The set-up of the working group structure is largely consensus-based and for the most parts follows the information needs as well as the resource

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[51]   Source: stakeholder interview: 23 June 2005
[52]   Source: stakeholder interview: 13 June 2005
[53]   Source: stakeholder interview: 23 June 2005
[54]   Source: stakeholder interview: 26 May 2005
[55]   Source: stakeholder interview: 23 June 2005.
[56]   Source: stakeholder interview: 23 June 2005.

commitment of the Member States. On the level of WFD implementation, the CIS furthermore needs to continually adapt to the proceeding institutionalisation of the WFD. While in the beginning of WFD-implementation, no formal structures existed and thus had to be 'replaced' by the informal CIS activities. Currently, the formal structures of WFD-implementation, such as reporting requirements as well as infringement mechanisms, are slowly being established and thus become more and more relevant. Consequently, the future success of the CIS will depend on the value-added it can offer to the Member States in tackling the requirements of WFD-implementation in addition to the official procedures and mechanisms[57]. The biannual reviews outlining the development of the CIS as well as future strategies for the following two years are key documents reflecting the requirements of WFD-implementation as well as the needs of the Member States.

The future development of the CIS is furthermore heavily dependent on the resources made available for the process. While resources, such as financial support and technical capacity and expertise, are at the current stage still considered sufficient for meeting the objectives and agreed targets, there is the general perception that the maximum level of workload related to the CIS process has been reached. In this respect, the CIS is not only adapting to the needs formulated in the context of WFD-implementation, but also the resources available with the various actors involved.[58]

In discussing the adaptability of the process, one also needs to address the perception of an increasing formalisation of the process, voiced by some of the actors involved. At the beginning the process was rather informal and guided by a common spirit towards making a change. In 2002, with the publication of the first guidance documents, the process became much more formal and institutionalised in how issues were discussed.[59] While some actors consider this increasing formulisation problematic, as it somehow limits the openness of the discussion and the interaction among the different parties involved and also underpins the dominance of the Commission, other assessments are more optimistic. Seen from a learning point of view, the increasing formalisation of procedures within the process, i.e. review mechanisms, internal reporting of the technical working groups to the SCG, approval of any changes to the programme by the Water Directors, contributes to the overall transparency and accountability of the process. Thus the increased formalisation of the CIS can be viewed as the result of an internal learning process and a constant reflection on the common targets as well as the effectiveness and the accountability of the CIS.

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[57]   Source: stakeholder interview: 26 May 2005.
[58]   Source: stakeholder interview: 23 June 2005.
[59]   Source: stakeholder interview: 13 June 2005

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Success factors

Cases	Inputs	Outputs	Outcomes	Impacts
Water Framework Directive (WFD) and the Common implementation strategy - the WFD covers a very broad range of aspects, but does not comprise concrete provisions on implementation. Member States therefore need to develop implementation strategies. Informal co-ordination of strategy development is taking place.	Common Implementation Strategy Three working levels: • Working groups • Strategic Co-ordination Group • Water directors Commission secretariat CIRCA information exchange platform +ve: good representation of Member States in Working Groups +ve: Involvement of (former)Candidate Countries in the CIS process +ve: establishment of an extensive network of experts +ve: stakeholder involvement +ve: increasing number of additional working groups and expert advisory fora -ve: integration of expert advisory fora in the working groups -ve: lacking transparency in decision-making processes	CIS guidance documents on the technical issues of the WFD Four additional reports Network of pilot river basins +ve: increasing subscription to CIRCA server -ve: handling of cross-cutting issues -ve: degree of detail in the guidance documents	• Clarification of WFD objectives • Preparation of national implementation activities of the WFD due to a better understanding of the required tasks • Enabling Commission to monitor progress in implementation. Exchange of best practice among experts in the Member States	• More efficient and consistent implementation of the WFD

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6. Lessons for other applications of OMCs

At its core, the CIS was designed as an open platform for knowledge transfer and discussion of experiences with WFD-implementation. As such it was clearly intended to serve as a complement to a community method. In this function, the early start of the OMC after the adoption of the Directive has been key in creating a value-added to all actors involved. Only through working with the actors from the beginning, potential conflicts could be pre-empted at this stage and a level playing field for all actors involved could be established.

Further lessons to be derived from this OMC relate to the efforts undertaken to ensure the most balanced representation of actors possible. This factor appeared to be of key relevance for enabling and open and flexible mechanism, which is capable of adapting to the changing requirement throughout the implementation process of the WFD. This learning capacity inherent to the CIS process could serve as a positive example for other OMCs. However, the example of the CIS also shows that a too strong dominance of one of the involved parties, in this case the Commission, needs to be avoided.

In terms of applying the CIS to the coordination of the Groundwater Daughter Directive (GWD), the general set-up of the CIS was endorsed as a practicable approach. In particular the capacity of the CIS to create commitment among the Member States for bringing forward the implementation of the requirements as well as a common language and a network among experts was viewed very positively. The discussions should however be less focused on the development of new guidance documents but rather on the exchange of experiences and best practice[60]. In addition, the CIS should focus on strengthening the cross-linkages to other areas of water resources management more actively.

7. Conclusion and Outlook

Compared other co-ordination methods, the WFD-CIS has produced an enormous amount of output and leveraged a high level of support and overall acceptance by those actors involved. This impressive result, while featuring some shortcomings, reflects the Member States' concern about delivering results in the WFD-implementation process. This not only includes the attainment of the quality goals established by the Directive, but also avoiding inefficiencies and lock-in situation as experienced in the case of the implementation of previous EU water legislation, where too much emphasis was put on infringement procedures rather than implementation assistance.

The CIS has helped to create a platform for learning and networking among water management experts from the Member States and other relevant actors. In the course of its development over the past years, the CIS has also become more institutionalised in the wake of an organisational learning process. At the current stage, the CIS still receives substantial support from Member States and also civil society actors. Nevertheless, in order for the CIS to provide added value to the Member States in implementing the WFD, some changes should occur within the coming phases.

The Pilot River Basins should be utilized more effectively as laboratories for experimenting and testing the guidances so to provide for the transfer of knowledge developed at the EU level to the Member State, regional and local level. This could be supported by further assistance to capacity-building in the Member States. It is also widely acknowledged that future CIS activities should less focus on the development of new guidance documents but rather on facilitating the exchange of experiences among the different Member States.

It is also expected that the CIS will become more political in addition to its quite technical focus so far. This will be partly necessitated by the integration of other policy areas with relevance for water management, in particular industry and agricultural policy as well as flood protection measures.

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[60]   Source: stakeholder interview: 23 June 2005.

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In terms of technical challenges, it needs to be considered that requirements stipulated in the WFD for the coming years, such as the programme of measures and the involvement of the public, are more demanding than the tasks that had to be fulfilled so far. These upcoming challenges even more underline the continued need for mutual support and co-ordination among the Member States, which also lead to the creation of the CIS in the first place.

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