

## CHAPTER 8

### TACKLING SOCIAL EXCLUSION THROUGH OMC: RESHAPING THE BOUNDARIES OF EU GOVERNANCE

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#### **Abstract**

*This chapter explores the application of the ‘open method of co-ordination’ (OMC) to the fight against poverty and social exclusion. Whereas other contributions to this volume examine OMC from the perspective of its problem-solving potential, the aim of this chapter is to analyse the institutional aspects of the process by considering three levels of analysis: the systemic level of discourses, norms and values; the organisational, procedural and substantive levels of policy development; and, the level of action interpreted in terms of the mobilisation of civil society actors. The OMC process in this field is a prime example of the development of a ‘new mode of governance’ in the EU repertoire which reshapes the boundaries of EU governance. It cuts across the law/politics boundary in the sense that, although ‘hard law’ solutions of EU legislative action are excluded, nonetheless, OMC may itself stimulate domestic legal changes or be used as a means of giving effect to even fundamental legal norms. It cuts across the boundaries of national/EU governance by engaging both levels in a process of knowledge generation, policy innovation and mutual learning. And if successful, the process could make a significant contribution to the reshaping of the most important boundary: that between those socially, politically and economic included in the benefits of European integration, and those excluded.*

#### **Introduction**

That the European Council meeting at Lisbon in March 2000 set the European Union the strategic goal of becoming, ‘the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion’ is well known and fast becoming something of a mantra of European Studies post-Lisbon. That the Council Conclusions also specified that this goal would be taken forward by a new mode of governance baptised as the ‘open method of co-ordination’ (OMC) is equally well-known and has spawned something of a new academic industry in OMC

studies (see also the contributions of Scharpf and Héretier to this volume). But perhaps less well recognised is that the European Council noted that:

“The number of people living below the poverty line and in social exclusion in the Union is unacceptable. Steps must be taken to make a decisive impact on the eradication of poverty ...”

This challenge was later taken up by the Nice European Summit meeting in December 2000, which endorsed the application of an OMC process to the fight against social exclusion in the terms agreed by the Employment and Social Affairs Council in October 2000. The Member States committed themselves to submitting biennial National Action Plans (dubbed ‘NAPincls’) developed within the framework of common EU Objectives.

In this chapter, the application of OMC to the fight against poverty and social exclusion (hereinafter ‘OMCinclusion’) is examined. The chapter is divided into four parts: Parts 2,3 and 4 correspond to the editors’ request that we consider three levels of institutional interaction: the institutional level of systemic discourses, rules and norms; the organisational, procedural and substantive level; and the level of action (individual or group interaction with the other two levels). Part 2 analyses the systemic discourses, rules and norms of social policy and social inclusion policy within the EU. Part 3 explores the structures and processes of OMCinclusion. Part 4 focuses more specifically on the mobilisation of civil society actors around the OMCinclusion process.

The application of OMC to the fight against social exclusion is an example of a ‘new mode of governance’ in the terminology of Scott and Trubek (2002). They identify certain features of new modes of governance (defined both as modifications of the classic Community method and alternatives to the Community Method):

- i. Participation and Power Sharing: civil society and stakeholder involvement in governance processes.*

- ii. *Multi-level interaction: both vertical and horizontal engagement of actors.*
- iii. *Diversity and decentralisation: the support and co-ordination of Member States policies rather than attempts to impose an 'EU' solution.*
- iv. *Deliberation: problem-solving through debate and dialogue about problems and potential solutions.*
- v. *Flexibility and revisability: preference for 'soft law' solutions that can be applied flexibly and revised in light of experience.*
- vi. *Experimentation and knowledge-creation: the governance process as productive of knowledge and self-consciously experimental.*

These features are very evident in the OMCinclusion process: Part 4 focuses specifically on the issue of participation and power-sharing (but also from a multi-level perspective) while the other features come to light in Part 3.

Before turning to the institutional analysis of OMCinclusion, it is necessary to reflect for a moment on the extent to which OMC itself troubles an interpretation of 'institutionalisation' premised upon a central conceptual role for EU law and 'supranational' governance.

### **1. OMC and Integration Theory**

My purpose here is neither to offer a theory of OMC nor a fleshed out view of where OMC fits into integration theory. Rather, my concern is to respond to the theoretical challenge set by the editors. Readers of this volume will be well aware of the debates about where law fits within dominant theoretical traditions such as (neo)functionalism, intergovernmentalism and new institutionalism (for an overview see Armstrong 1998a, 1998b; Wincott, 1995). We have ended up in a situation in which all are agreed that law constitutes a highly significant phenomenon of the governance of the EU, albeit that there are different conceptualisations of

how then to theorise this phenomenon. What we have not yet contemplated sufficiently clearly – and something which the development of new modes of governance like OMC provokes us to consider – is what happens when law is decentred either because the mode of governance does not rest on the instrumental usage of instruments of EU law to achieve its goals but instead adopts ‘softer’ modes of policy co-ordination, or because law-production is being triggered at national rather than EU level under the indirect influence of an EU process of policy co-ordination.

In terms of institutionalist approaches to law and governance, my point of departure from the perspective set out by the editors is the idea that ‘institutionalisation’ is somehow a phenomenon restricted to, or primarily to be associated with the development of ‘supranational’ rules, or indeed that its central characteristic is ‘legalisation’ or ‘juridification’. The difficulty, perhaps, is that institutionalist approaches emerged as a way of making sense of EU governance under conditions of quite intense law-making activity whether in the form of the legislative activities associated with completing the Single Market (Armstrong and Bulmer, 1998) or in terms of the adjudicative activities of EU and national courts. This has created its own sort of path-dependency or bias in that we then associate institutionalisation with legal processes and with a transfer of regulatory competencies and activities to the EU.

It is clear that OMC processes do not conform to the classic Community methods of governance associated with ‘negative’ or ‘positive’ integration: that, indeed, may be their virtue. But it is clear that there *has* been a Europeanisation of policy and an institutional shift in the systemic structure of EU governance insofar as open co-ordination processes underlie important aspects of economic and social policy in the EU. That shift in structure is not well captured by a definition of institutionalisation in terms of ‘supranational’ governance or ‘legalisation’. To be sure, one can identify different degrees of institutionalisation (defined in

terms of formalisation/legalisation) across the different OMC processes (compare the Treaty provisions on economic policy co-ordination and on the European Employment Strategy (EES) with the lack of any Treaty specification of the process that applies to OMCinclusion). And, one could certainly talk of an institutionalisation of OMC through, for example, the setting-out of the OMC process in a future ‘Constitution for the EU’ (something which the Convention on the Future of Europe is discussing). But it would be wrong to reduce the changes which have already taken place as merely an ‘institutionalisation-in-waiting’.

Instead we ought to take a leaf out of the sociological institutionalist’s book and think about institutions in terms of normative and discursive practices, the shaping of meaning and altering actors’ behaviour and expectations (see e.g. Aspinwall and Schneider, 2001). In this sense, we can think about relatively uninstitutionalised OMC processes like the OMCinclusion process as, nonetheless, institutionalising new discourses (e.g. ‘social exclusion’), new practices and techniques of knowledge-generation and meaning-conferral (e.g. the use of European ‘social indicators’ to measure poverty and exclusion), new expectations (e.g. that a ‘decisive impact’ will be made on social exclusion) and new forums of actor-interaction (e.g. the objective of ‘mobilising all relevant actors’). Some sociological institutionalists also highlight different ‘cultural’ traditions or ways-of-doing things in different Member States (see Aspinwall and Schneider, 2001: 12-13). Thus, whatever institutionalisation emerges out of OMC processes, there is also a negotiation of the boundary between national institutional practices and the emerging Europeanised but open co-ordination processes. One of the crucial research questions that OMC poses lies in the extent to which OMC processes can be embedded or mainstreamed within domestic institutional contexts.

My point is simply that the development of OMC troubles the assumptions and presumptions of integration theory and we need to develop our theoretical tools accordingly.

## **2. Institutional Context and Change: Systemic Discourses, Rules and Norms**

The fight against poverty and social exclusion in the EU is framed by systemic discourses, rules and norms. In the sections that follow below, the systemic context of OMCinclusion policy is analysed focusing on: (1) the elaboration of Treaty provisions and legal bases for action; (2) the alternative route of a rights strategy; (3) the constraints on domestic policy choices and (4) the institutional dimension of national systems. The analysis seeks to conceptualise the institutional context in a multi-level way and in a way which shifts across the law/politics boundary. But before turning to these contexts, it is worth reflecting on the discourse of ‘social exclusion’ as itself forming part of the institutional context (and in that way reflect some of the orientation of a more sociological institutionalism approach).

As Ruth Lister notes, a shift from a discourse of ‘poverty’ to one of ‘social exclusion’ can be discursively and strategically useful in highlighting the multi-dimensionality of exclusion, including not only poverty, but also ‘embracing a variety of ways in which people may be denied full participation in society’(2000: 38). As she also notes, a social exclusion perspective can capture the interaction between different aspects of exclusion as well as the dynamic processes which produce exclusion. Nonetheless, the very malleability of the discourse has meant that in the context of the EU, the meaning of social exclusion and the sort of policy prescriptions which might flow from it have been moulded by developments within EU social policy more generally. It is to these developments, we now turn.

### **2.1 The Road From Paris to Nice (via Amsterdam and Lisbon)**

The inspiration for Community action in the sphere of social policy derived from the Paris Summit of 1972 which concluded that economic expansion was not an end in itself but should result in improvements to quality of life as well as standards of living. The Social

Action Programme that followed in 1974<sup>1</sup> proposed, ‘the implementation, in cooperation with Member States, of specific measures to combat poverty by drawing up pilot schemes’. While much of the Social Action Programme was to be taken forward through the European Social Fund (itself designed to promote inclusion within the labour market), more specific forms of action to tackle poverty were piloted through Council Decisions setting up multi-annual programmes to fund projects designed to tackle poverty and social exclusion (the three ‘Poverty Programmes’).<sup>2</sup> Although one can point to the adoption of measures in the field of social regulation as a means of taking forwards the vision of Social Europe (Cram, 1993), within the field of social exclusion, measures were limited to the development of the Poverty Programmes and ‘soft law’ measures. As regards the latter the Council adopted two recommendations in 1992 the first of which invited Member States to recognise ‘the basic right of a person to sufficient resources and social assistance’ while the second encouraged the convergence of social protection objectives and policies (see Ferrera, Matsaganis and Sacchi, 2002).<sup>3</sup> These initiatives highlighted the increasing concern in the 1990s with the need to modernise national social protection systems.

As regards the Poverty Programmes themselves, the legal basis within the EEC Treaty for these decisions was Article 235 EEC (now 308 EC) in recognition that although Article 2 EEC gave the Community the task *inter alia* of promoting an ‘accelerated raising of the standard of living’, the Treaty did not confer a specific legal competence for action in the sphere of poverty and social exclusion policy. The use of Article 235 EEC as a legal basis for action, with its requirement of unanimous voting in the Council, meant that when the Commission encountered Member State resistance to the development of a Fourth Poverty Programme, the Commission faced potential deadlock. As Bauer notes (2002), the Commission’s attempt to ‘stretch’ Community powers by seeking, nonetheless, to fund projects for which there was a line in the EU budget, was frustrated by a legal challenges

brought by the United Kingdom (supported by Germany) against the Commission under Article 173 EEC (now 230 EC). The ECJ held that with the exception of non-significant expenditure, a basic legal act had to be adopted for the implementation of budgetary expenditure in addition to the existence of a budget line.<sup>4</sup> While the Court preserved the legal effects of the contracts entered into, nonetheless, the decision highlighted the absence of a clear legal basis within the Treaty for action in the sphere of social exclusion policy.

However, by the time of the Court's judgment in 1998, new Treaty provisions had been agreed in the Amsterdam Treaty: Articles 136 and 137 EC Treaty. In its Amsterdam form, Article 136 EC provided that the Community and the Member States shall have as one of their objectives 'the combating of exclusion'. Nonetheless, the scope for Community action was somewhat ambiguous. On the one hand, and insofar as exclusion was constructed in terms of exclusion from the labour market, it was arguable that the first paragraph of Article 137(2) EC gave the Council power to adopt directives in the area setting out minimum requirements. On the other hand, the third paragraph was much more explicit about action to combat social exclusion. It provided that:

"The Council ... may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences in order to combat social exclusion."

This provision can be viewed as containing some of the elements of the OMCinclusion but without specifying an open co-ordination procedure like the one agreed at Amsterdam for the EES.

If there was ambiguity in the Amsterdam provisions as to the ability to resort to the Community method in order to adopt formal rules it was removed through the revisions made by the Nice Treaty. It made clear: (1) that 'combating social exclusion' is an objective of the

EU and Member States and (2) that resort to harmonisation of national laws in the field of social exclusion is not permitted. Measures to combat exclusion were, therefore, to be taken forward on the basis of Community action designed to encourage co-operation between Member States.

## **2.2 Alternative Routes**

It is important that we think not only about the road along which policy has developed, but also about the alternative routes which policy might follow. One such route is the development of a rights discourse that could extend to include rights to social inclusion or social protection. EU legal discourse has often emphasised the inclusion of EU citizens within the project of European integration through their possession of legal rights. That inclusion developed initially in the context of the economic law of the Treaty. More recently, individuals have been able to rely on their status as ‘citizens of the Union’ to seek to obtain access to social advantages in other Member States such as minimum subsistence,<sup>5</sup> or maternity benefits.<sup>6</sup> The provisions of the EC Treaty on citizenship, together with other Treaty provisions and secondary legislation on rights of non-discrimination (the Article 13 EC directives), gender equality and transparency have extended the social, civil and political inclusion of individuals within the project of European integration suggesting something more than a right to inclusion according to the particularistic national laws and traditions of ‘host states’ by providing a set (albeit limited) of minimum European rights.

Until recently, this EU rights discourse has not directly spoken the language of social inclusion as a right, or unpacked the multi-dimensional character of social exclusion into more specific sorts of rights which might assist inclusion: e.g. rights to minimum wages, rights to health, rights to housing etc. Outside the context of the European Union, but within the context of the European legal space in the form of the Council of Europe, the European

Social Charter agreed in 1961 at Turin did specify certain kinds of ‘social inclusion’ rights such as the rights to health protection, social security, social and medical assistance and social welfare systems. The revised Social Charter agreed at Strasbourg in 1996 goes further in specifying in Article 30 that:

“With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake ... to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance.”

This rights discourse has, however, begun to form part of EU legal discourse through the Charter of Fundamental Rights of the European Union. Article 34 of the Charter (covering ‘social security and social assistance’) provides in its third paragraph that:

“In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.”

The accompanying ‘explanatory notes’ prepared at the request of the Praesidium indicate that this provision ‘draws on’ the provisions of the Revised Social Charter and is respected by the Union in the context of Article 137(2) EC, thereby throwing us back onto the limited role for the Union in encouraging co-operation between Member States.

What I think is noteworthy is that we can see the development of a rights discourse around social inclusion policy and a reinforcement of the commitment to do something to combat poverty and social exclusion as a shared ‘European’ norm. What is innovative, however, is the suggestion that this norm is to be operationalised not through traditional legal

mechanisms of courts and adjudication but instead through a political process. In the context of the EU, this amounts to the use of OMC not only to enhance policy co-operation as a purely political phenomenon, but also the use of OMC as a means of taking forward fundamental legal norms (see Bernard, 2003).

While there is no necessary incompatibility, then, between a rights discourse and the use of OMC, we need to be clear that the commitment to a shared European norm might produce very different legal and policy responses at the national level. This highlights the tension between whether one is seeking to develop an inclusion model based on a common European experience (in which the universalism of rights ought to produce legal uniformity across states), or whether we recognise that those experiencing exclusion are socially situated in more specific locations with the need to produce different responses to people differently situated (albeit with a shared commitment to making a difference).

A different dimension to the rights discourse issue lies in the connection between the OMC inclusion process and the development of EU non-discrimination rights. Insofar as we see 'discrimination' as a facet of social exclusion then it is clear that notwithstanding the provisions of Article 137 EC, Article 13 EC provides a legal basis for Community legislative activities in the sphere of social exclusion. There is an institutional space for more traditional forms of Community action and for pursuing a strategy in which the universalism of rights is matched by a uniformity in law across the Member States (at least formally). Is there, then, a tension between the OMC process based on Article 137 EC and the anti-discrimination process of Article 13 EC? Given that social exclusion is recognised as a multi-dimensional phenomenon requiring different sorts of legal and political response, there is nothing incompatible with the EU's use of Article 13 directives to provide a basic set of civil rights necessary for inclusion, and its pursuit of policy co-operation designed to deal with other forms of social exclusion. That said, had Article 13 EC provided a legal basis for action

against inequalities on grounds of social or economic status, then not only would we have a legal basis for potentially far-reaching legislation, the normative focus on ‘equality’, individual rights and gap-closing would be in potential tension with an OMC process oriented more towards collective welfare and securing the bottom than closing gaps.

In short, a rights strategy to tackle social exclusion need not necessarily be viewed as an ‘alternative route’ and need not be assumed to be incompatible with OMC processes. Policy can proceed along both routes. What we do see, however, is a tension between an ideal of civil and political inclusion premised on equality guarantees and uniform EU entitlements, and a conception of social inclusion premised on pathways out of exclusion and policy diversity between states.

### **2.3 Road Ahead Closed: The Constraints on Policy Choice**

The discussion in the previous two sections focused on the possibilities and mechanisms for action to tackle social exclusion to be taken within the framework of the EU. But the issue is equally one of what constraints membership of the EU places on the ability of Member States to respond to the problems of poverty and social exclusion. Fritz Scharpf has argued that there are significant constraints imposed on Member States as a result of Monetary Union; of the extension of EU economic law to domains of domestic policy which serve social objectives; and, also from the effects of economic liberalisation and de-regulation (see his contribution to this volume and also Scharpf, 2002).

To be sure, the extension, for example, of internal market rules on the freedom to provide/receive services has important implications for social ‘services’ offered by Member States (see Hatzopoulos, 2002). But one should not get too carried away in overstating the extent to which domestic policy is constrained by EU law. Even in the most recent controversial cases on cross-border access to health services covered by social security

systems, the ECJ has recognised a balancing principle of solidarity and the need to ensure the integrity and coherence of social security systems (see Hatzopoulos, 2002: 720-6; Bernard, 2003). As with any aspect of internal market law, Member States can seek to pursue valued social goals providing their action is necessary and proportionate. Moreover, while one can see an intrusion of internal market law into the domain of domestic welfare regimes, this does not touch upon domestic policies on, for example, the introduction of a minimum wage, or measures to reduce teenage pregnancies or to reduce homelessness.

The effects of market liberalisation and de-regulation on domestic policies on social exclusion is harder to judge. To be sure, Scharpf is right to note the constraints on Member States from using demand-side employment policies to tackle unemployment as an incident of social exclusion. And market liberalisation may well produce the problem of in-work low income. But as regards policies towards life-long learning or to provide assistance to those most marginal from the labour market the effects of these structural changes are harder to judge.

More significant in constraining the policy choices of Member States in the field of poverty and social exclusion are the consequences of the co-ordination processes of economic and fiscal policies through the Broad Economic Policy Guidelines (BEPG) and the controls put in place by the Stability and Growth Pact (SGP). These constraints impact upon the sorts of domestic policies which Member States might seek to pursue within the framework of OMCinclusion. And insofar as one of the key policy levers of social exclusion policy is to use employment as a pathway out of exclusion, then again, the space which OMCinclusion occupies is constrained by the EES. Thus, the policy space which Member States occupy within the context of the OMCinclusion is more institutionally shaped by other OMC processes and the values they incorporate than by the direct pressures of directly effective EU

economic law: but, at least as regards the BEPG, the SGP and the EES, the Member States have some freedom to negotiate and adjust these constraints.

#### **2.4 The ‘Road Not Taken’**

We have focused thus far on issues that highlight the impact of European institutional contexts on the development of EU policy or the constraint of domestic policy. But it is always important to recognise that the national systems are themselves institutional contexts that shape the possibilities for EU action and shape the response of national systems to EU policy-development. As Scharpf notes, ‘Social Europe’ was the ‘Road not Taken’ (2002) in the sense that we do not find ourselves in the situation where the EU has been given the competence to elaborate a social welfare policy along the lines of the Community method. In the meantime, divergent social welfare systems have emerged in Member States. The attempt to elaborate a European Social Model – of which the fight against social exclusion is a part – must, therefore, recognise the institutional diversity of Member States. On the one hand, it is this diversity which makes resort to OMC so appealing as a means of combining both national and European responses to the problems faced by Europe. On the other hand, one significance of the differences in the structures and styles of national policy is, as Begg and Bergham note (2002): ‘that they affect the willingness of Member States to shift towards the more preventive and re-integrative approach of an activating welfare state, and conditions how they will react in trying to accommodate present-day challenges’. Some Member States will find the policy steer arising out of OMC processes easier to manage and incorporate than others. One of the big research questions (and one that won’t be answered here) is the extent to which domestic institutional resistances will inhibit policy learning and policy adaptation under OMC.

In short, while the diversity of national welfare systems offers an institutional explanation for the emergence of OMC, it equally conditions the process of domestic policy adaptation under OMC processes (see de la Porte and Pochet, 2002).

### **3. The Organisational, Procedural and Substantive Levels of Policy Development**

The OMCinclusion process has a number of important features that will be sketched below. Although perhaps less well known than other OMC processes, its features have been described elsewhere (e.g. Ferrera, Matsaganis, Sacchi, 2002) and the intention is neither to specifically compare it to other OMC processes nor dwell too long on elaborating the process. Rather, the desire is to make clear the multi-level nature of the process and to highlight key features of its development.

#### **3.1 Objectives**

The Nice European Council endorsed four objectives<sup>7</sup> in the fight against poverty and social exclusion:

1. Facilitate participation in employment, and access by all to resources, rights, goods and services.
2. Prevent the risk of exclusion.
3. Help the most vulnerable.
4. Mobilise all relevant bodies.

Although the objectives were endorsed at the European Council (itself significant as a high level political commitment to the inclusion strategy), the content of the objectives emerged out of the Social Protection Committee (SPC) and were finalised by the Employment and Social Affairs Council on 17 October 2000. The SPC was created in June 2000 and replaced

the High Level Working Group on Social Protection.<sup>8</sup> The SPC is in the social field the counterpart to the Employment Committee under the EES. It is composed of civil servants from the Member States and chaired by a person nominated by the Member States, with a Secretary appointed from within the Employment and Social Affairs directorate of the Commission. It is in the SPC that much of the consensus-building within the OMCinclusion process takes place. It acts as an interface between the Commission and the Council and its function is to act in an advisory capacity (though it is not an ‘Advisory Committee’ in the sense of the 1999 Comitology Decision). The importance of its role – not just in the area of social exclusion but indeed across a whole range of portfolios including the modernisation of social protection systems and pensions reform – has been recognised by its institutionalisation within the EC Treaty in an amendment made by the Nice Treaty to Article 144 EC.

The Nice Objectives are broad and aspirational, rather than detailed and prescriptive. Perhaps because of that, they have commanded support from Member States, the Commission and NGOs. The clear message that emerged during the Danish Presidency of the second half of 2002 was that the emphasis for the 2<sup>nd</sup> round of NAPincls (submitted no later than 31 July 2003) would be upon continuity and consolidation of the objectives without need for major change. However, at an informal meeting of the Employment and Social Affairs Ministers held in Kolding in July 2002, the SPC was asked to report to the Council on suggested revisions. In November 2002, the SPC duly reported that there was no need for major changes but that the Council should consider revisions to the Objectives to highlight: (1) the setting of national targets in the 2003 NAPincls; (2) the gender dimension; and (3) the particular risk of poverty and exclusion experienced by men and women as a result of immigration. The SPC suggested a revision to Nice Objective 3 to identify immigrants as a vulnerable group, while the aspects of target-setting and gender mainstreaming would be

reflected in the implementation provisions (including the Common Outline – see below). This approach was endorsed by the Council in its December meeting (the endorsement of the Copenhagen European Council was not sought because its agenda was preoccupied by the issue of enlargement). Compared to the economic and employment co-ordination processes, therefore, there is less iterative development of the common EU objectives on social inclusion (on this aspect of the EES see Trubek and Mosher, 2003).

### **3.2. Common Outline**

The space between the OMCinclusion Objectives and NAPincls is bridged somewhat by the development within the SPC of a ‘Common Outline’. This shapes the structure and content of the NAPincls and it is as much at this level as at the level of the Objectives that we see something of a process of seeking to adjust the NAPincls in light of experience. One of the criticisms of the 1<sup>st</sup> generation of NAPincls was that they tended to dwell on past and present activity rather than indicating how new policy initiatives might develop to emphasise the new commitment to tackling poverty and social exclusion. Thus, the Common Outline for the 2<sup>nd</sup> generation of NAPincls places much more emphasis upon how policies are being taken forward through modifications to existing policies and the development of new and additional programmes. It is also through the Common Outline that Member States have been encouraged in the 2<sup>nd</sup> generation NAPincls to set quantified targets for the reduction in the number of people at risk of poverty and exclusion (see below) and to deal more explicitly with the gender dimensions of poverty and exclusion. Thus, although the Common Outline is intended simply to provide a common structure for the presentation of the NAPincls (and hence to enhance comparability between states in the Joint Report– see below) it performs a function beyond this: it has an impact on the substantive content of NAPincls and provides a means of steering the substance of policy co-ordination.

### 3.3 Targets

The Lisbon Summit had already stated that the goal of making a decisive impact on poverty should be taken forward ‘by setting adequate targets to be agreed by the Council by the end of the year’ (paragraph 32 of the Conclusions). The Commission had previously suggested *European* targets of halving the number of children in poverty and of staged reductions in the number of people with less than 60% of median income (from 18% in 2005 to 10% by 2010).<sup>9</sup> However, the language of ‘targets’ was later dropped in favour of ‘objectives’ and thus the endorsement of Objectives at Nice became the means of meeting the Lisbon ambition with no European-level targets set for Member States to attain in their 1<sup>st</sup> NAPincls.

For the 2<sup>nd</sup> generation of NAPincls, there has been a movement towards the identification, not of agreed EU targets, but of adequate *national* targets designed to achieve the broad objectives endorsed at Nice. This movement follows from the agreement at the Barcelona European Council meeting to invite Member States “to set targets, in their National Action Plans, for significantly reducing the number of people at risk of poverty and social exclusion by 2010”. This is elaborated upon in more depth in the Common Outline for the 2<sup>nd</sup> generation NAPincls which gives the strongest possible encouragement to Member States to set ‘ambitious but achievable targets’ that are ‘relevant’, ‘intelligible’, ‘quantified and measurable’ and ‘time specific’. There is a suggestion that Member States consider selecting a small number of headline targets to make a political impact accompanied by more detailed targets through which progress might be monitored.

It is evident that this process of target-setting provides a greater opportunity for monitoring of the performance of states and therefore facilitates the process of joint review by the Commission and Council. At the same time there is a danger that the wrong targets will be set, or that Member States become fixated on certain targets and not others, or that the

stress on the multi-dimensional nature of exclusion may be lost by focusing attention on a group of targets rather than the whole picture.

What is noteworthy, however, is that target-setting is decentralised implying that the process is less about making progress towards a common EU average (which might mask wide discrepancies in performance across the Member States) and instead is about setting targets in response to the social situations of poverty and exclusion experienced by individuals within the Member States in which they live.

### **3.4 Indicators**

One of the key issues that OMCinclusion raises is how to define and measure the experiences of social exclusion. Social indicators serve as the knowledge basis for policy development while also circumscribing the knowledge field. The selection of an indicator presupposes the existence of data that can then support the indicator. The absence of data does not, of course, mean that a given phenomenon is not an aspect of social exclusion e.g. the incidence of homelessness amongst gay and lesbian teenagers may not be supported by available data but the phenomenon is clearly an aspect of social exclusion.

One of the claims that is made for OMC as a problem-solving technique is that it serves as a basis for the development of mutual learning. In order to assist mutual learning, there is an argument for having a common set of European indicators that allow for ease of comparison between states. In February 2001 – and following on from the work of Atkinson et al. prepared for the Belgian Presidency (Atkinson et al., 2002) – a sub-group on indicators within the SPC began to develop a common set of social indicators. The SPC formalised a set of ten primary and eight secondary social indicators in October 2001 which were accepted by the Employment and Social Affairs Council and endorsed by the European Council meeting in Laeken in December 2001. Statistical support at EU-level for these indicators comes from

the decade old European Community Household Panel (ECHP) which will begin to be replaced from 2003 by a new data source, EU-SILC (EU-Statistics on Income and Living Conditions), although this will not be fully up and running for some years.

It is anticipated that Member States will utilise the common indicators in preparing their next generations of NAPincls (including using these indicators as the basis for setting concrete targets and for benchmarking performance against other Member States) and that they can be used as the basis for joint review by the Commission and Council. However, the Common Outline for the 2<sup>nd</sup> generation NAPincls simply encourages Member States to make use of these common indicators. The 2<sup>nd</sup> generation NAPincls will utilise a mixture of domestic and EU indicators and domestic and EU data.

It is important to recognise that the agreement of common indicators does not itself mean that what is being measured is the experience of poverty and exclusion of an individual vis à vis the EU average. Rather, through the NAPincls, what is being measured and targeted is the experience of a given phenomenon within the Member State itself. Tony Atkinson has noted that the Commission could produce a report with values for the indicators calculated for the EU as whole (Atkinson, 2002). As he suggests, if we start from a perspective which views the individual as a European citizen with certain minimum rights, then it might make sense to situate that person's experience of poverty or exclusion against the average for the EU (Atkinson, 2002: 632). However, from the perspective of examining the experiences of those at risk of poverty or exclusion, average EU values might miss the specificity of the social and economic situation of that individual within the Member State.

What is important about the development of common indicators is their framing and circumscribing of the experience of poverty and social exclusion and their shaping of the discourse and policy objectives of domestic policies (especially when linked to targets,

benchmarks and review mechanisms). While not legal requirements, they serve as policy norms which structure the policy discourse and provide a basis for policy co-ordination.

### **3.5 NAPincls and the Joint Report**

The Nice objectives are to be pursued by the Member States within the framework of NAPincls covering a two year period with the 1<sup>st</sup> generation NAPincls submitted in June 2001 and the 2<sup>nd</sup> by the end of July 2003. The time period is, therefore, longer than that applying to the economic and employment policy co-ordination mechanisms. Although, in theory, the relevant actors had a whole two year period to develop their approach to the 2<sup>nd</sup> generation of NAPincls, in reality, the Common Outline for the 2<sup>nd</sup> generation was only agreed towards the end of 2002 leaving little more than seven months until submission of the 2<sup>nd</sup> NAPincls. This is only one month more than Member States had to submit their 1<sup>st</sup> generation of NAPincls following the Nice Summit (although Member States had the benefit of the experience of the 1<sup>st</sup> generation to prepare for the 2<sup>nd</sup>).

It is not possible here to detail the different policy strategies reflected in each Member States' NAPincl. Rather, the focus is on the mechanism of joint review by the Commission and the Council (as mediated through the work of the SPC). It is worth noting at the outset that unlike other processes, there is no mechanism by which the Commission and/or the Council can issue recommendations against individual states and, thus, what we have is a process of indirect steering and co-ordination of national policies.

As its contribution to the drafting of the Joint Report, the Commission adopted a Communication on 11 October 2001 (European Commission 2001a). The Communication encountered some criticism from Member States because of attempts by the Commission to categorise and group Member States. The Communication did contain a typology that grouped states into four categories: the first (Denmark, France and the Netherlands) were

complimented on their comprehensive, proactive and preventative approaches; the second (Portugal Finland, Sweden and the UK) were thought to be strong on diagnosis but only Finland and Sweden were highlighted as having ‘developed universal social protection systems’ (the further depiction of the UK as having a less developed welfare state on p. 14 of the Communication was said to have caused real offence); the third (Belgium, Germany, Spain, Italy and Ireland) were generally criticised for the lack of a coherent overall strategy integrating different levels of government (although Ireland was recognised as having already put in place a National Anti-Poverty Strategy, it had not updated or refocused the strategy in light of OMCinclusion); with the fourth group (Greece, Luxembourg and Austria) presenting only a snapshot of current activities. This typology did not reappear in the Joint Report agreed by the Commission and Council for submission to the Laeken summit. For the 2<sup>nd</sup> generation of NAPincls, the Member States – through the SPC – will have the opportunity to comment on the Commission’s Communication before it is adopted. The story highlights the difficulty that the Commission faces in seeking to use the review mechanism to place pressure on Member States. But it also highlights a broader difficulty with the process: Member States may well feel that in the review process their diverse national systems are judged by reference to standards or values ‘imported’ from other systems.

As well as commenting on the national situation as presented by each of the Member States, the Joint Report highlights some overarching issues. The first is that the NAPincls reflected very different social policy systems. The report noted that; “Member States with the most developed welfare systems and with high per capita social expenditure levels tend to be most successful in ensuring access to basic necessities and keeping the numbers at risk of poverty well below the EU average” (Joint Report, 2001: 8). If this might be thought of as tacit approval of models of social protection characterised by high social expenditure, nonetheless, the report also criticises Member States for not focusing sufficiently on the

public finance implication of their initiatives (these being constrained both by the BEPG and the SGP).

Second, the report also emphasises the relationship between the NAPincls and the EES. Clearly there is overlap between the two processes given the important emphasis placed on social inclusion through participation in the labour market. But what we see developing out of the Joint Report is an emphasis on Member States using the OMCinclusion process to indicate the measures they are taking in respect of individuals who are most distant from the labour market rather than merely repeating the content of the Employment NAPs.

Third, and recognising the short time period for the 1<sup>st</sup> generation, the Joint Report noted the tendency of the NAPincls to focus on current policies rather than to announce new initiatives or develop new strategies. Nor was there much by way of evaluation of the effectiveness of current policies with Member States volunteering domestic policies as examples of good practice but without explicit justification for the selection of these policies as either cost-effective or comparable for other Member States.

The 1<sup>st</sup> generation of NAPincls and the 2001 Joint Report need to be assessed more in process terms than in terms of the specific outcomes of either. A process of reporting and joint evaluation has been institutionalised which, with the increasing specificity of the Common Outline, may begin to shift the process from one of national reporting to one in which domestic policy is increasingly influenced and shaped by the OMCinclusion process.

### **3.6 Community Action Programme**

With the Amsterdam Treaty's creation of a new legal basis for action (Article 137(2) EC), and with the influence of a new decision-making process (co-decision involving the European Parliament and resort to majority voting) a Community Action Programme<sup>10</sup> with a budget of €75 million was agreed with funds to be allocated to activities under three strands:

- Strand 1: understanding and quantifying social exclusion;
- Strand 2: policy co-operation, exchange of information and best practice;
- Strand 3: promoting participation and dialogue.

The programme carries on some of the work that had been carried out under the Poverty Programmes but it is clearly now oriented towards supporting the OMCinclusion. Strand 1 supports activities designed to enhance knowledge about poverty and social exclusion: amongst other things this supports the development of European social indicators and improving the statistical capacity of the EU. Strand 2 supports, for example, the exchange of best practice through Member States' volunteering of projects to be evaluated by two or three other Member States. Strand 3 is a prime source of finance for European-level NGOs like the European Anti-Poverty Network (EAPN) and the European Federation of National Organisations Working with the Homeless (FEANTSA) who obtain core-funding, and thus contribute to the Nice Objective of 'Mobilising all relevant actors'.

#### **4. Mobilising Actors**

The development of OMC is noteworthy not only because of its problem-solving possibilities but also because of its potential engagement with a broad set of actors. In the economic and employment policy co-ordination processes, OMC initially struggled to develop as an inclusive mode of governance. However, within the EES, as a consequence of the Barcelona Summit and if the proposals in the Commission's Communication on *The Future of the European Employment Strategy* (European Commission, 2003) are taken seriously, more attention will be paid to the role of the social partners in the process both at national and European levels. However, the Commission has noted the general absence of civil society from the process and encouraged the active involvement of all stakeholders (European Commission, 2003: 18).

It is against this background that the unique nature of OMCinclusion is evident. Contained within the OMCinclusion process is the Objective 4 requirement to ‘mobilise all relevant actors’. This objective is also supported by Strand 3 of the Community Action Programme on social exclusion. The development of ‘efficient partnerships’ between social partners, NGOs, local authorities and social services in the fight against poverty and social exclusion is also specified in the *European Social Agenda* agreed at Nice,<sup>11</sup> and, together with social dialogue, reiterated in the December 2002 Resolution of the Council on *Social Inclusion – through Social Dialogue and Partnership*.<sup>12</sup>

In the sections below, the discussion concentrates on the role of civil society actors rather than on the role of the social partners or local/regional government. This omission is not because of their lack of importance (indeed sub-national government is frequently responsible for the implementation of national social inclusion strategies) but simply to give a clearer focus to the roles played by civil society and the levels at which European civil society operates (for a more general discussion of the ‘rediscovery of civil society’ in contemporary EU debates see Armstrong, 2002).

#### **4.1 The Role of Civil Society Actors**

We can identify four potential roles for civil society actors (organised both at national/sub-national and transnational levels) in the OMCinclusion process:

- Facilitating those experiencing exclusion to have their voices heard in policy dialogues;
- Acting as policy advocates in the attempt to influence the direction and content of policy;
- Monitoring and evaluating the OMCinclusion process;
- Participating in the implementation of policy initiatives.

While both national/sub-national and transnational groups may at different times perform all of these functions, it is likely that the intensity of activity will vary between the different

levels. Local and national organisations are more likely to perform the function of facilitating those experiencing exclusion to have their voices heard in domestic policy debates surrounding the preparation of the NAPincls. Similarly it is organisations at these levels that will be more closely involved in the implementation of NAPincls. As to policy advocacy, clearly national and local groups can seek to use the process of building the domestic NAPincl to lobby for domestic policy initiatives. Transnational groups will more likely concentrate their efforts on the overall shape of the OMCinclusion process (from the choice of Objectives, the content of the Common Outline, the choice of Indicators and the setting of Targets). Of course, these national and transnational processes cannot be compartmentalised: transnational groups will utilise their constituent national organisations to develop their policy positions while national organisations can utilise the experience of transnational organisations to help them mobilise around the NAPincls. Transnational groups – but again utilising the resource of national constituent organisations – are also in a better position to monitor and evaluate the OMCinclusion process as a whole, with national groups best placed to monitor and evaluate the implementation of the NAPincls.

An assessment of the mobilisation of actors at national level clearly requires empirical research and is beyond the scope of this paper. However, it is clear from the Joint Report that: (1) the objective of promoting the participation and self-expression of people suffering exclusion was ‘not clearly and systematically reflected in concrete measures’; (2) the Objective 4 requirements were insufficiently developed in the NAPincls; and (3) although civil society actors had to varying degrees been consulted – the Commission itself included NGOs in their bilateral meetings with Member States – there was concern among national NGOs that consultation did not necessarily mean participation in decision-making. This evaluation of the limited and patchy consultation of social NGOs and the lack of real

influence on shaping the NAPincls is also highlighted in the evaluation of the NAPincls carried out by the European Anti-Poverty Network (EAPN, 2002).

It is noteworthy that despite the limitations of consultation and participation in the 1<sup>st</sup> generation of NAPincls, there is generally optimism and support from the national NGOs for the OMCinclusion process. It is considered as a long-term process in which civil society actors have a voice and the OMCinclusion process, notwithstanding its 'voluntary' nature, can be viewed as placing the issue of social exclusion on the domestic agenda, thereby creating a space for the voice of domestic NGOs.

#### **4.2 Transnational Civil Society: Policy Advocacy and Evaluation**

In terms of transnational NGOs, groups like the European Anti-Poverty Network (EAPN) have played a key role in the development of EU social exclusion policy both in terms of keeping the issue on the EU agenda and more particularly in pushing for the use of an OMC mechanism as a means of giving effect to the Treaty provisions introduced by the Amsterdam Treaty. In 1999, EAPN called for the development of a European strategy to combat social exclusion modelled on the European Employment Strategy (EAPN, 1999).

As well as acting as an 'external' voice of anti-poverty NGOs, EAPN has always enjoyed close ties with the EU institutions. Its core funding comes from the EU (including funding under Strand 3 of the Community Action Programme) and it has close connections with the Employment and Social Affairs Directorate of the Commission. In his analysis of the Poverty Programmes, Bauer describes this relationship as including 'lobby sponsorship': a process in which an actor like the Commission 'starts creating his own constituencies with the clear intention of raising support for particular policy solutions and, thus, of influencing deliberations and indirectly setting political priorities' (2002: 389). There is certainly some evidence of this in respect of the OMC process. For example, at an informal meeting of Social Affairs ministers at Kolding in July 2002, the ministers called upon the SPC to

consider revisions to the Objectives of OMCinclusion. The SPC in turn gave a commitment that it would take into account the deliberations of the October 2002 Roundtable on Social Exclusion at Århus organised under the Danish Presidency and bringing together NGOs and governmental actors. The Chair of the SPC met with EAPN the day before the Roundtable commenced to discuss the draft Common Outline. EAPN, therefore, had the opportunity to make its views known. One official described the intention as being to assist in shoring up political commitments to changes to the Common Outline proposed by the Commission and then being discussed in the SPC. Together, then, the Commission and EAPN mobilised to pressure for some of the proposed changes to the Common Outline to be made or retained (including greater stress on the gender dimension, development of national targets and the need to integrate the OMCinclusion process within domestic budgetary processes).

A different role for civil society lies in its ‘monitoring and evaluation’ of the OMCinclusion process. Again, EAPN has played a key role in this respect through its publication of a ‘Synthesis Report’ evaluating the OMC process as a whole as well as the individual country NAPincls (EAPN, 2002). A similar analysis was carried out by FEANTSA addressing how well the NAPincls reflected on problems of housing and homelessness as dimensions of exclusion (FEANTSA, 2002). Both these groups, with the advantage of core EU-funding and with the benefit of the knowledge of their constituent Member States, are clearly in a strong position to carry out this sort of monitoring and evaluation role which in turn can feed into the design and structure of the OMC process.

While it is clear that the OMCinclusion process provides opportunities for the mobilisation of transnational NGOs directly operating in the areas covered by the process, it does raise difficulties for other transnational groups like the Platform of Social NGOs. Developing out of European social policy debates in the 1990s, the Platform was set up in 1995 and acts as an umbrella organisation for 37 transnational NGOs (including EAPN and

FEANTSA). Its campaigning activities include issues such as the development of a ‘civil dialogue’; creating an enforceable Charter of Rights; and building a socially inclusive Europe based on fundamental rights, non-discrimination and social justice. The Platform has developed a general orientation towards OMC in terms of its proposals to the Convention on the Future of Europe for the incorporation of OMC into the structure of the Treaties with explicit requirements to involve civil society and NGOs in the process (Platform Social NGOs, 2002a). Moreover, the Platform has joined with the European Trade Union Confederation (ETUC) and the European Environment Bureau (EEB), to develop a common analysis of the Lisbon Strategy incorporating social, economic and environmental concerns (Platform of Social NGOs, 2002b). However, the Platform has encountered funding problems for its role in the social inclusion policy domain. Not surprisingly EAPN leads on the issue of social exclusion, but insofar as social exclusion can be conceptualised as forming part of a fundamental rights and non-discrimination agenda, then the Platform clearly sees a role for itself. While EAPN has obtained multi-annual core-funding for its role in the social inclusion process under the Community Action Programme, whether or not the Platform would receive funding under this budget was less clear. Agreement was eventually reached with the relevant Programme Committees to fund the Platform for 2003 out of both the Community Action Programme on social exclusion and the anti-discrimination Programme. This indicates that at the level of compartmentalised EU funding streams, the relationship between social exclusion as a fundamental rights issue and social exclusion as part of an OMC process creates certain problems.

### **4.3 The Limits of Civil Society**

It is easy to extend the language of inclusion to mean the political inclusion of civil society actors in the fight against poverty and social exclusion. But we can think of two different dimensions of 'limits' to civil society: (1) the actual impact of civil society on policy outcomes and (2) the normative limits.

Whether or not a decisive impact on poverty and exclusion is made is ultimately a matter of political discretion. To reiterate what has been said before, the discretion which Member States possess in this field is affected both by the limited extension of EU economic law into the sphere of national social provision and more pervasively by the self-imposed constraints of economic policy co-ordination processes and the SGP. The extent to which the OMC inclusion process matters (and with it the mobilisation of actors) is dependent upon the extent to which the social policy side of the Lisbon triangle is taken seriously as a 'a productive factor', with economic growth and social cohesion as 'mutually reinforcing'.<sup>13</sup> There is, then, a fear that no amount of civil society mobilisation can make up for the loss of domestic controls on social policy.

The involvement of civil society actors at national level in the preparation of NAPincls, in the evaluation of their effectiveness and in facilitating their implementation is also dependent on political will at all levels of government. Routineised consultation without any obvious influence on policy outcome adds nothing either to the effectiveness of policy nor its legitimation. But it must also be recognised that the impact of domestic civil society actors on domestic policy is also a function of the capacity of civil society actors to mobilise and effectively engage in the NAPincl process. No doubt these capacities will differ across states.

In terms of the normative contribution of civil society to the socialisation of OMC processes, it is evident that for an institution like the European Parliament, the development of OMC and the emphasis on the participation of civil society represents something of a

threat to its institutional position as a source of legitimacy for EU governance. The EP, in the context of its resolution on the Commission's White Paper on Governance has stated that:

“consultation of interested parties ... can only ever supplement and never replace the procedures and decisions of legislative bodies which possess democratic legitimacy ...”.<sup>14</sup>

The Commission itself has endorsed this view in the context of its Communication, *Towards a Reinforced Culture of Consultation and Dialogue* (European Commission, 2002). Yet in the context of OMC, the EP has no direct role in the process (a problem it has already encountered in respect of those other ‘new’ modes of governance like comitology and social dialogue – see Armstrong, 2000). One cannot account for or contain the role of civil society in socialising the OMC process having in mind a model of governance – the Community method – which OMC displaces. To be sure, at national level, in terms of the formulation and implementation of NAPincls one can give an account of civil society's role more in terms of its support for structures of representative democracy (but even here this underestimates the extent to which government has become autonomised from such structures). If, however, we are to give civil society a significant role as a new front in the democratic legitimation of EU governance we need to develop a more sophisticated analysis than that offered by the idea of a participatory democracy subservient to a standard model of representative democracy. But at the same time, we might also need to recognise the limits of civil society as a means of socialising governance processes. The nature of the OMCinclusion process creates certain fluid boundaries between governmental and non-governmental actors. There is a danger that NGOs, in their engagement with EU processes, will become increasingly ‘governmentalised’ and in doing so compromise their own communicative and deliberative potential.

## **Conclusions**

It is always dangerous to apply the adjective ‘new’: there is always something old about the new. So what is new about the post-Lisbon strategy to tackle social exclusion? Certainly in the history of EU social policy, there has been frequent resort to ‘soft law’ mechanisms as techniques to encourage Member States to act in a particular way, especially when linked to the development of the research or knowledge base of future policy development (see Cram, 1993: 144). And in that sense, the application of OMC to social exclusion is not new. What is new, however, is the institutionalisation of OMC as a generalisable technique of governance with the features identified by Scott and Trubek (2002) in the Introduction. This institutionalisation has taken place both in advance of the application of formal procedures laid down in the Treaty (see the development of the EES even prior to the entry into force of the Amsterdam Treaty) and in the absence of formal Treaty procedures (OMCinclusion). The development of OMC also creates the possibility for recasting the relationship of law and politics in the EU: neither need be seen as conceptually subservient to the other and OMC processes might even be used to advance fundamental legal norms (whether or not the Charter of Fundamental Rights is made legally binding).

If we are to explain change we need to think in two dimensions: (1) why the shift to OMC, and (2) what explains change within OMC? In terms of the development of OMCinclusion we can point to three key sources of explanation: (1) the persistence of institutional diversity between states in their social welfare systems; (2) the institutional constraints on the use of the Community method in social exclusion policy; and (3) the converge of actors expectations (national governments, the Commission and NGOs) around the use of OMC (particularly in light of the model provided by the EES). As to changes within OMC we can identify the significance of the SPC as an organisational structure mediating between the Commission and Member States and driving the process forward

through the search for consensus. The institutional structures of the Member States also condition the extent to which domestic policy will adapt under the pressure of OMC.

Finally, if we reflect on how we might study the changing relationship between law, politics and society within the EU, it is clear that ‘new’ modes of governance like OMC pose challenges for integration theorists who had assumed that law and courts would be central to an understanding of EU governance. Theory must adapt to these new circumstances. Moreover, OMC poses a challenge to how we have conceptualised the constitutionalisation of governance. It would be easy to focus simply on the effectiveness or otherwise as OMC as a problem-solving technique while eschewing questions of its legitimation. Nonetheless, that issue cannot be avoided by the Convention on the Future of Europe which will have to address how new modes of governance fit into the new constitutional architecture.

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<sup>1</sup> Council Resolution of 21 January 1974: *OJ C13* (12.2.74), pp. 1-4.

<sup>2</sup> Council Decisions 75/458/EEC; 85/8/EEC; 89/457/EEC.

#### **Endnotes**

<sup>3</sup> These authors also identify these recommendations as creating an embryonic form of OMC.

<sup>4</sup> Case C-106/96, *United Kingdom v. Commission (Social Exclusion)* [1998] ECR I-2729.

<sup>5</sup> Case C-184/99, *Rudy Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve* [2001] ECR I-6193.

<sup>6</sup> Case C-85/96, *Martinez Sala* [1998] ECR I-2681.

<sup>7</sup> Arguably the first objective is really two separate objectives with the first focusing on inclusion through employment and the second on the organisation of social protection systems and access to services (both public and private).

<sup>8</sup> Council Decision 2000/436/EC setting up a Social Protection Committee: *OJ L172* (12.7.2000), pp. 26-27.

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<sup>9</sup> These figures were suggested by the Commission when presenting its Communication on *Building an Inclusive Europe* (European Commission, 2000).

<sup>10</sup> Council and EP Decision 50/2002/EC: *OJ L10* (12.1.2002), pp. 1-7.

<sup>11</sup> Above, n. 2, p. 10 para. III (i).

<sup>12</sup> Council Resolution of 2/3 December 2002: *OJ C???* (xx.xx.xxxx).

<sup>13</sup> In the words of the *European Social Agenda*, ‘a society with more social cohesion and less exclusion betokens a more successful economy’: *OJ C157* (30.5.2001) pp. 4-12.

<sup>14</sup> EP Resolution on the Commission White Paper on European Governance, A5-0399/2001: *OJ C153E* (27.6.2002), pp 314-323, at p. 318.