

**VARIATIONS IN INSTITUTIONALISATION OF HYBRID SOCIAL PROTECTION
OMC'S: THE CHOICE FOR NON-CONSTITUTIONALISATION AND THE
EMERGENCE OF 'HARD SOFT LAW'**

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Prelude: games real actors play

During the Spring of 2001, the Belgian Minister for Social Affairs and Pensions, Frank Vandebroucke, preparing at that time "his" EU Presidency later that year (July-December 2001), received a special visitor in his cabinet. Odile Quintin, then Director General of DG Social Affairs of the European Commission, was invited to share her views on the priorities of the future Belgian Presidency ... and she altered them. Indeed, up to that point Frank Vandebroucke, advised by his Presidency Task Force, wanted to limit the agenda to, first, further developing EU co-operation with regard to social inclusion and, second, finding agreement on the modernisation of Regulation 1408/71. Obviously, Odile Quintin had made a correct judgement when she firmly insisted on speaking directly to the minister, and not to the Chief of Cabinet or the Task Force: 60 minutes of discussion later, the "Social Affairs" side of the future Belgian Presidency had a third priority, suggested by Odile Quintin : preparing the open method of co-ordination on pension.

Obviously, Frank Vandebroucke asked "something for something": he urged the Commission to publish the "blueprint" of the pensions OMC (through a Communication) two months before it had intended to do so. The reason was simple: Vandebroucke's ambition went beyond "preparing the pension ground" for the next Presidency, he wanted a final decision, i.e. launching the OMC in this field, during his own Presidency. On 11 June, during the Council for Employment and Social Policy, European Commissioner Anna Diamantopoulou officially announced that the Commission would indeed advance the publication of its Communication (previously announced for September 2001) to mid-June, in time for the first (Informal) "Social Affairs" Council under Belgian Presidency. Odile Quintin honoured Diamantopoulou's promise: the "Pensions" Communication was published 3 days before the Informal Council in July 2001. Frank Vandebroucke did his part of the job, and got the pensions OMC on tracks 6 months later. The actors had played their games.

(Interview with Frank Vandebroucke, 27 February 2006).

1. Policy co-ordination after Lisbon: old wine in new bottles?

In March 2000 the Heads of State and Government set "a new strategic goal" for the Union: to become, within a decade, "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" (European Council, 2000a: §5). The European Council meeting, which was held in Lisbon, envisaged implementing this strategy "by improving the existing processes, "introducing a new open method of coordination" (Ibid: §7). The Presidency Conclusions of this Lisbon Summit refer to the OMC as "the means of spreading best practice and achieving greater convergence towards the main EU goals". Still according to the same source, this involves: fixing *guidelines* (with specific timetables), establishing quantitative and qualitative *indicators* and *benchmarks* (against the best in the world), national and regional *targets* and periodic *monitoring*, evaluation and *peer review* organised as *mutual learning processes* (Ibid: §37).

Based on these features, Vandembroucke (2001a:2) summarised that open co-ordination "launched a mutual feedback process of planning, examination, comparison and adjustment of the social policies of Member States, and all of this on the basis of common objectives". Thus, in terms of governance, the open method of co-ordination is, like other forms of policy co-ordination, a form of European "soft law": there is no "hard" legislation involved, only "governance by persuasion" (Streeck, 1996: 80) or "governance by objectives". Wallace (2001: 28) therefore identifies "policy co-ordination and benchmarking" as one of the 5 variants of the EU policy process, the other being (1) the "community method" or "hard law" (e.g. common agricultural policy), (2) the "EU regulatory model" (e.g. internal market or competition legislation), (3) "multi-level governance" (e.g. structural funds) and (4) "intensive transgovernmentalism" (eg. Economic and Monetary Union).

The OMC provides a Europe-wide approach to, amongst others, social policy and is now being applied to social inclusion (winter 2000), pensions (winter 2001) and health care (autumn 2004). But that is only the beginning of the story: the Lisbon Council Conclusions stipulated the introduction of the OMC "at all levels" (European Council, 2000a: § 7), and, apart from social exclusion, explicitly referred to the use of the OMC with regard to information society/e-Europe (Ibid: § 8), innovation and research and development (Ibid: § 13). Furthermore, even though the term "OMC" was not explicitly used with regard to social protection (pensions more particularly), enterprise promotion, economic reform and education and training, the wording of the Lisbon Council Conclusions were such that they gave, *de facto*, authorisation to launch or strong political backup to continue open co-ordination in a host of policy areas. According to Rodrigues (2001) the OMC is now up and running in no less than 11 policy areas. Furthermore Zeitlin (2005a:20) points out that since the Lisbon European Council "OMC-type processes and approaches have also been proposed by the Commission and other European bodies as mechanisms for monitoring and supplementing EU legislative instruments and authority such as immigration and asylum [...], as well as in areas like youth policy where the Union has few if any legal powers".

Is the OMC as introduced by the Lisbon European Council then an entirely new mode of EU policy-making? At first sight certainly not: even though the concept of "open co-ordination" saw the daylight no more than 5 years ago, the actual practice of policy co-ordination at EU level was by no means introduced by the OMC. Conceptually the OMC

finds its roots in the Broad Economic Policy Guidelines which were introduced by the Treaty of Maastricht (1992) and which involved non-binding recommendations from the Council to Member States to monitor the consistency of national economic policies with those of the European Monetary Union (Caviedes, 2004: 295). Furthermore, the 1997 European Council of Luxembourg brought the Treaty chapter on employment (introduced in Amsterdam) to life through what is now referred to as the “Luxembourg process” and which uses a similar set of instruments for policy co-ordination. Thus, a number of pre-existing European policy co-ordination processes have retrospectively been interpreted as full or partial examples of OMC *avant la lettre* (i.e., before the Lisbon European Council labelled the policy instrument as such). Apart from the BEPG and the Luxembourg process, one could also mention the Cardiff Process for structural economic reforms, the Bologna Process for cooperation in European higher education, and the code of conduct against harmful tax competition (Zeitlin 2005a:20). Some have argued that policy processes such as that the OECD Economic Surveys¹, the Employment strategy undertaken by the Nordic Council² and the Article IV Consultations by the International Monetary Fund (IMF)³, all of which have been up and running for at least 2 decades, are OMC-types of cooperation between countries as well (Schäfer 2004; Nedergaard 2005).

The question still remains whether the OMC brought something new under the sun as compared to these ‘pre-existing’ soft law processes? Schäfer, for example, sees no substantial differences whatsoever between the longstanding OECD Jobs Strategy and the new European employment strategy: “these procedures are forms of multilateral surveillance that do not differ in kind” (Schäfer 2004:1). According to the same author “comparative analyses of the OMC refutes claims to its novelty” (Ibid).

By contrast, Borrás and Jacobsson see no less than “seven different points that make the OMC distinct from the “old soft law procedures and contents” (Borrás and Jacobsson 2004: 188). But it seems that questions can be raised with regard to the distinction made by these authors between “the OMC” and “the traditional soft law”. For example, Borrás and Jacobsson hardly provide any evidence for their claim that the European Court of Justice considered the ‘old soft law procedures and contents’ (a category which is not specified by the authors) as a source of law, thus giving it a strong supranational dimension which would contrast with the ‘intergovernmental approach’ of the new OMC’s. Similarly, the authors claim that one of the differences between the OMC and the ‘old’ soft law is the “high level of political participation” in the OMC, both in the policy formulation phase and the monitoring phases. It remains to be shown whether political participation is indeed so high in all, or even most, of the (new) OMC’s, especially since the revision of the Lisbon Strategy in 2005. Just as it remains to be shown that ‘previous soft law in the EU’ or the peer review process of the OECD are really only managed at the administrative (and not at the political) level. Finally, the claim that OMC aims at enhancing learning processes and traditional soft law does not, should be underpinned by empirical evidence, since there is no reason to assume, at face value, that older soft law procedures “such as collective

¹ To ensure that OECD Member States follow the code of conduct for sound economic policies laid down in the OECD Convention, the OECD produces, every 12 to 18 months, an Economic Survey for each country. Such a report results from a detailed surveillance procedure (Schäfer 2004: 5).

² The Nordic cooperation in the employment field involves Iceland, Finland, Norway, Sweden, Denmark, Greenland, the Faroe Islands and the Aaland Islands. Officials as well as experts meet on a regular basis within the “Nordic Committee of Senior Officials for Labour Market and Working Environment (or “EKA”) in order to discuss experiences with their national labour market policies (Nedergaard, 2005: 19).

³ The “Article IV Consultations” consist of an annual multilateral surveillance procedure, used with a view to “firm surveillance” of the exchange rates of the IMF members (Schäfer 2004: 7).

recommendation, review and monitoring, and benchmarking" (Ibid:188) were not aimed (explicitly or in practice) at enhancing learning.

It seems that the other "differences" between OMC and old soft law identified by Borrás and Jacobsson are more significant. Thus, "clear procedures and iterative process", "systematic linking across policy areas", "interlinking EU and national public action" and "seeking the participation of actors" could be seen as features of the (new) OMCs. These can be contrasted, to some extent at least, to "weak and ad-hoc procedures", "no explicit linking of policy areas", "no explicit linking of EU/national levels" and "no explicit mobilization of a wide range of actors", all of which could be considered as characteristic for pre-existing soft law.

The crucial question then is, however, whether these remaining "differences" between OMC and old soft law, even if they can be empirically confirmed, suffice to substantiate the claim that the OMC's launched by the Lisbon European Council or thereafter actually represent a substantially "new" pattern of EU governance as compared to the policy co-ordination processes which existed before (in the EU as well as on the international scene). Similarly, the question is how one should discriminate amongst the (new) OMC's: is open co-ordination some kind of "fixed recipe" that is being applied to every one of these new OMC's? Or are there substantial differences between them?

In sum, it seems that what is needed is a more theoretical approach that would allow us to identify and operationalise criteria which allow us to discriminate between substantially different institutions among the soft law procedures, 'old' or 'new'. But before undertaking that challenge, I will, in the second part of this paper look into some more detail at the institutional development and outcome of 2 social protection OMC's which have developed since Lisbon: the social inclusions and pensions OMC's. The question whether these processes can be considered at different institutional architectures will be considered in the third part of this paper, in which I will propose and apply a theoretical framework for that purpose.

2. A "Concerted Strategy" on Social Protection: Social Inclusion and Pensions

In July 1999 the European Commission published a Communication in which it proposed a "Concerted Strategy for Modernising Social Protection" (European Commission, 1999a). The strategy would aim at deepening the co-operation between the Member States and the EU, based on common objectives, mechanisms for exchanging experience and monitoring of ongoing political developments in order to identify best practices (European Commission, 1999a:12). Work would be organised around 4 key objectives, which are key issues of concern to all Member States:

- "to make work pay and to provide secure income;
- to make pensions safe and pension systems sustainable;
- to promote social inclusion and;
- to ensure high quality and sustainable health care" (Ibid: 12-14).

4 Months after the publication of the Commission Communication, "The Council of Ministers of Labour and Social Affairs approved this proposal on 29 November 1999, but not without discussion: although this process clearly does not violate the current distribution of competences, some Member States were suspicious" (Vandenbroucke,

1999:15). After the decision by the Council, under Finnish Presidency⁴, to get the “Concerted Strategy” on social protection on the tracks, things moved very quickly. In fact, this should not be a surprise since the aforementioned Council Conclusions not only supported the Commission’s suggestion to establish a group of high-level officials, but stressed “the necessity to create this group as soon as possible, and in the meantime asks the Member States and the Commission to designate, as soon as possible, for an interim period, high level officials to launch the above-mentioned debate”. To underline the urgency of such initiatives, the Council added that “Work should begin immediately and a progress report should be prepared in the context of the European Council in June 2000” (Council of the EU, 1999a:§12, underlining BV).

The Finnish Presidency acted accordingly. On December 13 1999, i.e. within 2 weeks after the decisive Labour and Social Affairs Council (and even a few days *before* its Conclusions were formally adopted, by another Council formation, on December 17 1999⁵), the acting President of the Council⁶, requested her colleagues to appoint 2 high level civil servants: one member and one deputy member. In the letter she wrote, the President of the Council urged Member States to appoint these officials within a months time: thus, it was argued, the interim High Level Group would be able to meet for the first time during the last week of February 2000, i.e. at the very beginning of the Portuguese Presidency (Council of the EU, 1999b). The first meeting of the Interim High-Level Working Party on Social Protection indeed took place on January 26 2000, i.e. less than one month after the formal adoption (on 17 December 1999) of the “Concerted Strategy”.

Two months after that first meeting of the High-Level Working Party, the Lisbon European Council considered that “modernising the European social model, investing in people and combating social exclusion” was part of the overall strategy that was needed to reach the aforementioned new “strategic goal for the next decade (European Council, 2000a: §5).” The social protection train was on (fast) tracks, and recognized at the highest political level. In the remainder of this section I will consider how its journey continued for 2 issue areas: social inclusions and pensions.

a. Social inclusion: a sense of urgency, leading to a full-blown OMC

i. From a blueprint to a detailed architecture for the social inclusion OMC (2000)

The Lisbon European Council stated 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” (European Council 2000a:§31). In order to achieve this goals the Heads of State and Government stated that “Policies for combating social exclusion should be based on an open method of coordination” (Ibid: §32).

Following the political guidelines laid down by the European Council meetings in Lisbon and Feira, the Council of Employment and Social Affairs reached agreement (at its 17

⁴ Finnish Presidency of the EU: July - December 1999.

⁵Following linguistic corrections, the “Fisheries” Council formation of 16/17 December 1999 adopted the Council Conclusions on the strengthening of cooperation for modernising and improving social protection, without debate (Council of the EU, 1999c: 3).

⁶ The Finnish Minister for Social Affairs, Maija Perho.

October 2000 meeting) on the implementation of the OMC on social inclusion, through the final adoption of (1) "Objectives" in the fight against poverty and social exclusion and (2) practical arrangements to pursue these objectives (Council of the EU, 2000b).

The objectives are as follows (Council of the EU, 2000b:5):

- to facilitate participation in employment and access by all to the resources, rights, goods and services;
- to prevent the risks of exclusion;
- to help the most vulnerable; and
- to mobilise all relevant bodies.

Each of the objectives is then further detailed (see Annex 2). The Member States should also ensure that "gender equality is mainstreamed in all actions to be taken to achieve the stated objectives" (ibid:4). The 4 common objectives (including their detailed elaboration) reflect the Council's wish, *first*, to adopt a "multi-dimensional" approach towards social inclusion "which require the mobilisation of a wide range of policies", *second*, "to mainstream the objective of fighting poverty and social exclusion into relevant strands of policy" (Ibid:3) and, *third*, to involve "the full range of the bodies concerned, in particular the social partners and NGOs" (Ibid:5).

As regards the implementation measures, the Council proposes the following detailed architecture of the OMC in this area (Ibid:5-6):

1. Member States are invited to develop their social inclusion priorities within the framework of the common objectives and are to present a national action plan (covering a period of two years), explaining progress in regard to each of the objectives, by June 2001. The Social Protection Committee will play a key role in following up this initiative, working closely with the Employment Committee on relevant matters
2. In order to make it possible to monitor such progress Member States are invited to develop, at national level, indicators and monitoring mechanisms. The Commission and the Member States should also seek to develop "common approaches and compatibility in regard to indicators".
3. The Commission, with a view to a joint report, is invited to present, on the basis of the national action plans to be prepared by the Member States, a summary report identifying good practice and innovative approaches of common interest to the Member States.
4. The open method of co-ordination will be supported by a Community Action Programme.

The Nice European Council, which took place in December 2000, "approves the objectives of combating social exclusion adopted by the Council" and confirms the request to submit national action plans (covering a two-year period) by June 2001, as well as the need and to define indicators and monitoring mechanisms (European Council, 2000c:§18). On the latter issue the "European Social Agenda", which was also endorsed by (and annexed to) the Nice European Council, requested "progress, as from 2001 [...] towards achieving compatibility as regards [...] indicators and the defining of commonly agreed indicators" European Council (2000d: 16).

ii. Operationalisation of the social inclusion OMC (2001)

This (open-ended) mandate with regard to indicators was detailed by the Stockholm Spring European Council in March 2001, which “asks the Council to improve monitoring of action in this field by agreeing on indicators for combating social exclusion by the end of the year” (European Council, 2001a: §29, underlining BV). The Stockholm meeting also invited the Council and the European Parliament “to agree in the course of 2001 on the proposal for a social inclusion programme” (Ibid), and, more generally, “highlighted” the open method of co-ordination “as an important tool for progress” (Ibid:§2).

Following the request by the Nice European Council, Member States submitted their first National Action Plans during June 2001, presenting their priorities and efforts in promoting social inclusion and combating poverty and social exclusion. According to Pochet (2005:58) these were “NAPs/incl with wide diversity both in form and in their degree of compliance with European priorities”.

At the Informal meeting of the minister for Employment and Social Affairs in Liege (July 2001), the Belgian Presidency made it clear that it wanted to adopt “at the Laeken Summit, a set of commonly agreed and defined key indicators on social inclusion” (Council of the EU, 2001a:6, underlining BV). Note that the aforementioned (European) Council Conclusion were much less specific when referring to “commonly agreed indicators” (European Council 2000a:§32) and “common approaches and compatibility” with regard to indicators (Council of the EU, 2000b:5). Indeed, these Conclusions left doubts about *what aspect* of the work on indicators would be “common” (i.e., “commonly agreed indicators” can be interpreted as a “common” understanding about which “national” indicators and definitions are acceptable). Note that the President of the same informal Council meeting in Liege also announced that “[...] the Commission will [...] draft a **Joint report**, which I do hope we will be able to adopt in our Council meeting of 3 December” (Council of the EU, 2001a:2).

By referring to commonly agreed and defined indicators, the Belgian Presidency clarified any remaining doubts: the objective was to establish a “harmonised statistical tool” (Belgian Presidency of the EU, 2001a: 28). The work on indicators during the second half of 2001 was built around 3 strands (SPC, 2001a:8):

- the work carried out by the SPC Indicators Sub-Group (which started meeting in February 2001). At the aforementioned Informal Council in Liege the President of the Council expressed his expectation that “Ministers are following the work undertaken in the Sub-Group through their representatives, which undoubtedly will facilitate our political decision-making” (Council of the EU, 2001a:6).
- the structural indicators suggested by the Commission in its 2001 *Spring report* European Commission (2001a) and the Draft Joint Report which the Commission prepared on the basis of the 15 national Action Plans submitted in June (European Commission, 2001b);
- the report on “Indicators for Social Inclusion in the European Union” drafted for the Belgian Presidency under the co-ordination of Sir Tony Atkinson⁷, and the outcome of a high-level scientific conference on “Indicators for Social Inclusion: Making

⁷ Sir Tony Atkinson, Warden of Nuffield College (Oxford, UK).

Common EU Objectives Work", which was held in Antwerp on 14-15 September 2001.

As can be read in the first Report of the Chairman⁸ of the Indicators Sub-group of the Social Protection Committee, these different strands worked, effectively, closely together:

"We [the SPC-Sub-Group, BV] have been well informed of the work being done on indicators in preparation for the Belgian Presidency of the EU. The report on "Indicators for Social Inclusion in the European Union", drafted for the Presidency under the co-ordination of Professor Sir Tony Atkinson, has been submitted for comments to all the members of the Indicators Subgroup. I have had informal discussions with Professor Sir Tony Atkinson and his colleagues and we were given a presentation of this work by Brian Nolan and Bea Cantillon at our meeting on July 2nd. Members of the Indicators Subgroup also attended the Presidency September Conference on "Indicators for Social Inclusion: Making Common EU Objectives Work". Some of the recommendations report reflected the Indicators Subgroup's own thinking and there is therefore useful independent support for our work (SPC, 2001a:8).

Thus, 8 months after the Indicators Sub-group started meeting, the Chairman of the Subgroup, presented his Report to the SPC, which included an agreement on precise definitions of 18 indicators in the field of poverty and social inclusion, i.e. 10 "primary indicators" and 8 "secondary indicators" (SPC, 2001a: 11-12) . This initial set of indicators covers four aspects of social exclusion: financial poverty, employment, health and education, thus reflecting the multidimensional approach taken. As far as "the key dimension of housing" is concerned, the Subgroup was not yet able to put forward a proposal for a harmonised indicator, but, its members agreed on a common approach of the issue in the National Action Plans (Ibid:20-21)⁹. It should be stressed that these 18 indicators are all "commonly agreed and defined", i.e. harmonised at EU level, and based on 9 formalised "methodological principles"¹⁰ for the construction of social indicators (SPC, 2001a:11). The indicators are deliberately focussed on policy "outcomes rather than policy effort" (Ibid).

A few days after the Sub-Group's agreement on the first set of indicators, the European Commission published (on 10 October 2001) its first "Draft Joint report on Social Inclusion", which analyses the national action plans on social inclusion (NAPs/incl) submitted in June and is structured around the abovementioned Nice common objectives (European Commission, 2001b). Importantly, the report states that is "does not evaluate the effectiveness of the systems already in place in different Member States. Rather it [...] examines Member States' NAPs/incl focussing on the quality of analysis, the clarity of objectives, goals and targets and the extent to which there is a strategic and integrated approach" (Ibid:4). On this topic the Commission is rather straightforward: "Only a few [Member States] have moved beyond general aspirations and set specific and quantified targets which provide a basis for monitoring progress" (Ibid: 7).

⁸ David Stanton, Department for Work and Pensions (DWP), United Kingdom. David Stanton has now retired from the DWP, but is still President of the Indicators Subgroup.

⁹ National Action Plans should contain quantitative information covering three issues: (1) decent housing, (2) housing costs, and (3) homelessness and other precarious housing conditions (SPC, 2001a:20-21).

¹⁰ Six of these "methodological principles" refer to **individual indicators** (e.g. "an indicator should capture the essence of the problem and have a clear and accepted normative interpretation"); the three remaining methodological principles refer to the **portfolio of indicators** (e.g. "the portfolio of indicators should be balanced across different dimensions") (SPC, 2001a:11).

Insisting on this point, the Commission also established, in this first version of the Draft Joint Report, a “typology [...] in order to highlight how NAPs/incl develop a strategic and integrated approach to tackling poverty and social exclusion, without analysing the performance of every country”. Thus, the Commission judged that (European Commission, 2001b: 22, underlining BV):

- The NAPs/incl of **Denmark, France and Netherlands** provide a comprehensive analysis of important structural trends [...]. The overriding response in these NAPs/incl is proactive, set in a framework that includes time horizons, objectives and quantitative targets extending beyond 2003 [...].
- The NAPs/incl of **Portugal, Finland, Sweden and the UK** are solidly underpinned by diagnoses of key challenges and risks and set out reasonably coherent and strategic approaches [...].
- The NAPs/incl of **Belgium, Germany, Spain, Italy and Ireland** contain elements of a national strategy that is being improved in order to reflect new realities or made more coherent. [...] None of these NAPs/incl have either set overall targets or developed a comprehensive set of regional or local targets [...].
- The NAPs/incl of **Greece, Luxemburg and Austria** basically provide a snapshot analyses of the situation on poverty and social exclusion [...]. The analysis of longer term structural trends [...] is less developed and as a result these plans do not present long-term quantified targets [...].

According to many Member States, the European Commission crossed a line by proposing this typology: This feeling was further strengthened by the fact that the Commission also referred, in the same Draft Joint report, to (European Commission, 2001b: 13-14):

“Member States with the most developed welfare systems [...] such as Luxembourg, Denmark, Netherlands, Sweden and Germany”, which stand in “contrast” with “Member States with less developed welfare systems”, among which the Commission counted Portugal, the UK and Greece”.

The combination of the proposed “typology” and the identification of “most/less developed Member States” led to a highly tensed meeting of the Social Protection Committee on 18 October 2001, in which some Member States accused the Commission of a “naming and shaming exercise”. It seems relevant to summarise the most salient interventions of this SPC meeting:

Germany refers to the typology as a “ranking” and has “serious problems with it; the UK finds the typology “difficult to deal with” and classifies the label “less developed welfare state” as “unacceptable” (“*we do not have a less developed welfare state*”); Finland refers to “a ranking, a classification, whatever you want to call it” and calls it “not wise” and “politically confusing”; Sweden states that a ranking is “not reasonable under OMC”; Italy believes that this is not what was agreed upon at Nice; Austria wonders about the added value of the typology and states that “we would better not give “school grades” to one another”; Greece would prefer “a holistic approach”; Ireland fears the negative consequences of a similar ranking and claims to have been “crucified” in the press because of the country’s low place in it (SPC, 2001e).

The Commission argued, at the end of the meeting, that removing the typology now might have perverse effects in the press. But, in the end, it would rewrite the most sensitive paragraphs:

- the “typology” was replaced by the identification of Member States that performed well (and not bad!) on one or more of the 3 main elements which determine (according to the European Commission) whether a national action plan is

strategic, coherent and adds value to the existing policy efforts: (1) a high a high quality analysis of the key risks and challenges, (2) the establishment of clear priorities and (3) an integrated and multi-dimensional approach to policy development. The Commission also adds that "All plans contain some or all of these three dimensions to a greater or lesser extent" (European Commission and Council of the EU, 2001:28).

- As to the "most/less developed Member States": "most developed Member States" simply became, in the redrafted proposal by the Commission, "Member States with high per capita social expenditure levels". Similarly, "less developed Member States" simply became "In some Member States there are lower levels of expenditure on social protection". Portugal and Greece are still mentioned in the latter category, but without quoting the relative poverty rates, as was the case in the first version of the text. The UK is no longer mentioned in this section (Ibid:17).

In spite of the tensions which arose in the Social Protection Committee in the context of the Draft Joint Inclusion Report, the Committee reached agreement, during that same meeting on 18 October 2001, on the aforementioned 18 indicators of poverty and social exclusion (including their precise definition and the underlying methodological principles), as well as on an agenda for further work on social inclusion indicators (SPC, 2001b: 3-4). The Social Protection Committee also called for the further development of the EU and national statistical capacity, and "recognises the importance of increasing the involvement of excluded people in the development of indicators" (SPC, 2001b:5). Finally, the SPC agreed with its Sub-Group that the indicators should be "used [...] in the next round of National Action Plans on Social Inclusion and [...] in the Joint Report on Social Inclusion" (Ibid: 3).

After the redrafting by the European Commission, the Draft Joint Report, too, was adopted by the SPC (November 2001). According to some, an important part of this achievement was played by Frank Vandenbroucke (acting President of the Council for Social Affairs and Employment), in that he helped to restore confidence in the OMC amongst some of the most critical Member States in the aftermath of the stir around the Draft Joint Inclusion report. As an illustration of the significance of the "stir" hat was caused at the time, note that the "league table", which presented Germany as a rather bad performer (cf. supra), "caused significant internal upheaval in the Federal government and even Chancellor Schröder learnt about this issue" (Büchs and Friedrich, 2005:273). That is why Vandenbroucke called a meeting in Berlin, on 9 November 2001 (where he was giving a speech¹¹) with high level civil servants from Germany, the UK and the Netherlands, and assured them that he "would never accept that the OMC would become a naming and shaming exercise". As we will see below, this Berlin meeting was also crucial in gathering the necessary support for the launch of the OMC on pensions.

Following adoption by the SPC, the December 2001 Council meeting of Ministers for Employment and Social Policy "adopted a series of indicators and approved the Commission and Council Joint Report" (Council of the EU, 2001b:16). The same session of the Council also welcomed the final agreement that was reached, in conciliation with the European Parliament, on the aforementioned Community Action Programme that would support the OMC on social inclusion (European Parliament and

¹¹ Vandenbroucke was invited by his German colleague Walter Riester to address the International Conference on Open Co-ordination and Retirement Provision (Vandenbroucke, 2001c).

Council of the EU, 2002)¹². The programme allows for the following actions, as from January 2002, in a transnational framework:

- analysis of characteristics, causes, processes and trends in social exclusion, [...], the study of quantitative and qualitative indicators, the development of common methodologies and thematic studies;
- exchange of information and best practices encouraging the development of quantitative and qualitative indicators, [...] assessment criteria and benchmarks and monitoring, evaluation and peer review;
- promotion of dialogue involving the various actors and support for relevant networking at European level between organisations active in the fight against poverty and social exclusion, in particular non-governmental organisations.

Still in December 2001, the set of indicators and the Joint Report were endorsed at the highest political level, by the Laeken European Council (European Council, 2001c). In 2 years time the OMC social inclusion was fully operational, using nearly all instruments available to it.

iii. Further strengthening of the Social Inclusion OMC (2002-2003)

“Nearly” all instruments, indeed, because what was not required yet in the social inclusion OMC, was the use of targets. The European Commission tried to change this in 2002, and partly succeeded. Indeed, in its Spring Report to the Barcelona European Council, the Commission tried to convince the Heads of State and Government to adopt an EU-wide poverty target:

“The **European Council** should:

- set a target for 2010 of halving the number of people at risk of poverty across the European Union. Member States should indicate in their two year National Action Plans against poverty and social exclusion how they will contribute to its achievement. Work should build on the social inclusion indicators endorsed by the European Council in Laeken” (European Commission, 2002a:16).

The Heads of State and Government gathered in Barcelona did not accept the Commission’s proposal to set an EU-wide target, but they did agree to introduce the requirement to set national targets:

“The European Council stresses the importance of the fight against poverty and social exclusion. Member States are invited to set targets, in their National Action Plans, for significantly reducing the number of people at risk of poverty and social exclusion by 2010” (European Council, 2002: 9).

Note that the European Council was clearly more ambitious than the Council of Labour and Social Policy, which had, in its contribution to the Spring European Council 2002, urged, in a vague wordings, “the Employment and Social Protection Committees to

¹² The Commission’s proposal for a Decision establishing a Community Action Programme to combat social exclusion was published in June 2000 (European Commission, 2000a). A long codecision procedure, and disagreement between the Council and the parliament notably with regard to the budget of the programme and the level of cofinancing of NGO’s, ultimately led to an agreement, in the Conciliation Committee, on 18 September 2001. The Programme covers the period 1 January 2002 - 31 December 2006 and “shall be part of an open method of coordination between Member States to give a decisive impetus to the elimination of social exclusion and poverty” (European Parliament and Council of the EU, 2002:3).

continue working towards the adoption of specific objectives to reduce social exclusion" (European Council, 2002: 46).

As from June 2002, and with a view to "maintain momentum", the European Commission started a reflection (through an "introductory discussion paper") on how to take the social inclusion OMC forward (1) with regard to the preparation of the 2nd Round of NAPs/incl, and more particularly the "common outline" the Member States would use as a guide for writing their plans, and (2) regarding possible adjustments to the Nice common objectives (SPC, 2002a:1).

With regard to the Nice objectives, the Commissions judged, in the aforementioned June 2001 "introductory discussion paper", that only "two issues should be given a higher degree of political impetus through amendments" (SPC, 2002a:2). First, the common objectives should reflect the Conclusions of the Barcelona European Council, i.e. Member States must ensure that the second round of NAPs/Incl are "more strategic and concrete by setting clear and specific targets based on careful analyses of trends and causes". Secondly, Member States should address the gender dimension of poverty and social exclusion more fully (Ibid:4).

Thus, the implementation arrangements now stipulate that (changes compared to Nice Common Objectives are underlined):

"The Member States,

will continue to pursue the objectives of fighting social exclusion and poverty; will underline the importance of mainstreaming equality between men and women in all actions aimed at achieving those objectives by taking into account the gender perspective in the identification of challenges, the design, implementation and assessment of policies and measures, the selection of indicators and targets and the involvement of stakeholders; [...];

are invited to set targets in their National Action Plans for significantly reducing the number of people at risk of poverty and social exclusion by 2010 and in doing this to draw, as appropriate, on the commonly agreed indicators endorsed at the Laeken European Council; [...]" (Council of the EU, 2002b: 8-9).

Logically, the Member States and the Commission are, still in the revised implementation arrangements, invited (changes compared to Nice Common Objectives are underlined):

[...] "to continue to cooperate at European level in order to bring about a better understanding of the problem of exclusion, to promote exchanges of good practice, including on targets and indicators, and to seek to further develop common approaches and compatibility in regard to these issues." (Council of the EU, 2002b: 9).

Using these (revised) common objectives and the common outline agreed upon in the SPC as a framework, the then 15 Member States submitted their second National Action Plans for Social Inclusion in July 2003, explaining their priorities and actions for the period mid-2003 until mid-2005. According to the European Commission, the second round of NAPs/inclusion represented a significant step forward. They were better focussed and more strategic (e.g. clear effort to set quantitative targets) and most adopted a more multidimensional approach. There was also more involvement of "key stakeholders of civil society" (especially NGOs), and Member States have "significantly strengthened their institutional arrangements for mainstreaming poverty and social inclusion into national policymaking" (European Commission, 2003b: 6). The

European Commission's analyses of the NAPs/incl was published (in December 2003) in the 2nd *Draft Joint Inclusion report* (European Commission, 2003b)

Both the Member States (while preparing their NAPs/incl) and the European Commission (while drafting the Draft Joint report) were able to use a revised set of common indicators, which was adopted by the Sub-Group on Indicators at the very beginning of June 2003 (SPC, 2003a), and approved by the SPC a month later (SPC, 2003b). The revised set (now 19 indicators) consisted in fact of a refining and widening of the Laeken indicators, the definition of which posed a number of difficulties, e.g. with regard to self-perceived health, jobless households, working poor and literacy (SPC, 2003a:4-7). The Sub-Group was not able yet to draw common guidelines for reporting on the non-monetary dimension of poverty, let alone to agree on common indicators (Ibid:8). The Sub-Group also agreed "that it is important to give children a special focus within indicators to be used in the fight against poverty and social exclusion. We therefore agreed to a standard breakdown by age of all the Laeken indicators, where relevant and meaningful" (Ibid:8-9).

On 18 December 2003 European Commissioner Anna Diamantopoulou and the Social Affairs Ministers of the acceding countries formally signed 10 Joint Memoranda on Social Inclusion (JIM), one for each of the countries joining the Union in 2004. The purpose of these Joint Inclusion Memoranda was to prepare the country for full participation in the open method of co-ordination on social inclusion upon accession. The JIM outlines the principal challenges in relation to tackling poverty and social exclusion, presents the major policy measures taken in the light of the agreement to start translating the European Union's common objectives into national policies and identifies the key policy issues for monitoring and further review.

iv. "Extension" of the Social Inclusion OMC to 10 New Member States - preparing for streamlining (2004-2005)

The 2nd Commission and Council Joint Report on Social Inclusion was adopted in time for the 2004 Spring European Council, by the Council of Employment and Social Policy (European Commission and Council of the EU, 2004).

Shortly after the 2004 Spring European Council, the European Commission published its synthesis of the abovementioned Joint Memoranda on Social Inclusion (European Commission, 2004). The publication of this report was almost immediately followed, in July 2004, by the submission by the ten new Member States of their first National Action Plans against poverty and social exclusion, covering the two year period from mid-2004 to mid-2006.

The lessons drawn from this evaluation of the NAPs/incl of the new Member States, served as an important input into the first annual "Joint Social Protection/Social Inclusion report" which was published, in January 2005 and which replaces, in preparation of the new streamlined policy co-ordination in this area, the bi-annual Joint reports on Social Inclusion (cf. *infra*) (European Commission, 2005c). The Council of Employment and Social Policy adopted the Joint Social Protection/Social Inclusion report at its 3 March 2005 session (Council of the EU, 2005:9) and submitted it to the Spring European Council (Council of the EU, 2005:9). As in 2004, no explicit reference was made to the Report, but the European Council affirmed that "Social inclusion policy should be pursued by the Union and the Member States, with its multifaceted

approach, focussing on target groups such as children in poverty" (European Council, 2005: §36).

The final step taken, so far in the Social Inclusion OMC is that the 15 "old" Member States who submitted their National Action Plans 2003-2005 (in July 2003, *cf. supra*) have submitted, in the summer of 2005, reports on the implementation and impact of these plans together with an update on action proposed for the period 2005-2006. Also, some of the new Member State, who submitted their first National Action Plans in mid-2004 (*cf. supra*), accepted the invitation to submit updates reporting on new initiatives since submission of their National Action Plans.

b. Pensions: a more prudent approach, leading to a "partial" OMC

In this section we will look at the rather distinct development of the OMC on pensions, between November 2000 and October 2005.

i. A "progress report" and a Commission Communication (2000)

As explained above, the historical roots of the European co-operation on pensions in the context of the open method of co-ordination can be traced back to the political agreement in the Council of Ministers of Labour and Social Affairs on 29 November 1999 to adopt a "Concerted Strategy on social protection. And to organise work around 4 key concerns of the Member States, the 2nd of which being "to make pensions safe and pensions systems sustainable" (Council of the EU, 1999a:7).

Following suit, the Lisbon European Council, rather than immediately requiring the development of common objectives or targets (as was the case with social inclusion, *cf. supra*), gave a mandate to the High-Level Working Party on Social Protection to prepare, "a study on the future evolution of social protection from a long-term point of view, giving particular attention to the sustainability of pension systems [...]. A progress report should be available by December 2000." (European Council 2000a:§31, undermining BV). Importantly, this progress report, which the High-Level Working Party needed to deal with "as its first priority", needed to be prepared "on the basis of a Commission Communication" and "taking into consideration the work being done by the Economic Policy Committee" (*ibid*). Also note that the Lisbon European Council did not explicitly refer to the OMC when considering pensions. Similarly, the Santa Maria Da Feira European Council of June 2000 did not refer to pensions when it enumerated a number of policy fields (amongst which social inclusion) where the OMC should be developed and improved (European Council, 2000b: §38).

As requested by the Heads of State and Government at Lisbon, the European Commission published its Communication on "Safe and Sustainable Pensions" in October 2000 (European Commission, 2000b).

The High-Level Working party did deliver its progress report to the Nice European Council (HLWP, 2000b), which "takes note" of the report (European Council, 2000c:§20) and "approves the Council's approach, which involves a comprehensive examination of the sustainability and quality of retirement pension systems". As a follow up, The Nice European Council request a preliminary overall study on the long-term viability of pensions, which should be based on a presentation by the Member States of their "national strategies in this area". The new study "should be available in

time for the European Council meeting in Stockholm" (Ibid: §21). The Social Agenda, which was equally adopted by the Nice European Council, confirmed the need to "Continue cooperation and exchanges" (as before, no explicit reference is made to the OMC) on pensions and already mentions "a study on this subject to be sent by the Employment and Social Policy Council to the European Council in Göteborg (June 2001), which will determine the subsequent stages" (European Council, 2000d:17).

ii. 3 new reports, another Communication and a detailed architecture for the pension OMC (2001)

We are not in Gothenburg yet, though. First, in preparation of the Stockholm European Council, the European Commission, in its February 2001 "Spring report", announced that it "will adopt in September 2001 a Communication promoting co-operation at European level on the issue of pensions" (European Commission, 2001a). Two weeks later the SPC adopted the requested "preliminary study" on pensions, in which it asked the Commission to give a detailed description, in its announced Communication on pensions, of the possibilities for further co-operation in this field (SPC, 2001c: 11).

At their first "regular" Spring European Council meeting in Stockholm (March 2001) the Heads of State and government for the first time made explicit reference to the open method of co-ordination in the field of pensions. In fact, the Council Conclusions stated that in the field of pensions "the potential of the open method of coordination should be used to the full" (European Council, 2001a:32, underlining BV). Furthermore, whereas the European Council did not make any reference to the SPC's "preliminary study", it did ask the SPC to present "the study [...] that takes into account the work being done by the Economic Policy Committee on the sustainability of pension systems in time for the Göteborg European Council" (Ibid:§33, underlining BV), thereby confirming what had been asked in the European Social Agenda (cf. supra).

The requested SPC's follow-up to the preliminary study was adopted in May 2001 (SPC, 2001d). The document was discussed at the Council for Employment and Social Policy on 11 June and was "generally considered as a good point of departure for future work in the sector of social protection" (Council of the EU, 2001c:8). Crucially, the Commission announced, during the same Council meeting, that it would advance the publication of its Communication (announced for September, cf. supra), the planning being "to adopt the communication in mid-June in time for the ministerial meeting in July" (Ibid). A strategic decision, as I will try to show below.

The SPC's first "full-blown" pensions study was then submitted to the Göteborg European Council in June 2001, which endorsed the 3 broad principles (the "triple challenge") for securing the long-term sustainability of pension systems, and which relate to meeting social objectives, maintaining financial sustainability and meeting changing societal needs (European Council, 2001b: §43). As announced in the European Social Agenda (cf. supra), this European Council meeting also determined the "subsequent stages" of the work on pensions: the Social Protection Committee and the Economic Policy Committee were requested to prepare, "in conformity with the open method of coordination", a joint "progress report for the Laeken European Council, on the basis of a Commission communication setting out the objectives and working methods in the area of pensions, in preparation for the Spring 2002 European

Council" (Ibid, underlining BV). Note that for the previous reports the SPC was only asked, by the Lisbon and Stockholm European Councils, to take into account the work being done by the Economic Policy Committee (European Council, 2000a:§31; European Council, 2001a:§33), whereas now the requirement is to prepare a joint report with the SPC. Importantly, the Göteborg European Council also concluded that "The results of the work will be integrated into the Broad Economic Policy Guidelines" (Ibid).

The European Commission published its Communication on 3 July 2001, (just) in time, as announced, for the informal Council meeting in Liege on 6-7 July (European Commission 2001c). The core of the Communication is a detailed proposal of 10 common objectives for future pension provision, 2 of which under the heading "Adequacy", 5 under the heading "financial sustainability", and 3 under the heading "modernisation of pensions". The Communication also stressed that it would be necessary to measure progress towards these objectives using a large variety of (commonly agreed and defined) indicators, a first list of which should be submitted to the Barcelona European Council (Ibid:8-9).

Finally, the Commission invites the Council to endorse the objectives and working methods and concludes that "In accordance with the conclusions of the Göteborg European Council, a progress report setting out the objectives and working methods in the area of pensions, should be presented to the European Council at its meeting in Laeken in December 2001". National strategy reports should be updated "as appropriate" in subsequent years, and in 2005 "a major review should be carried out" (Ibid:11). Note the open-endedness of the working methods proposed by the European Commission: it is not clear at all what happens after the publication of the first Joint Report or the "major review". Some exploited this open-endedness later to argue that the OMC pensions was never meant as a cyclical process, but as a "one-shot" exercise which should then be integrated in existing processes such as the BEPG and the Employment Strategy (*cf. infra*).

In spite of the reservations of a majority of the Member States (i.e. Spain, Portugal, UK, Sweden, Ireland, France, Italy and Austria) with regard to the ambitious the schedule of the Belgian Presidency (Belgian presidency of the EU, 2001b:2-5) the SPC and the EPC got to work immediately, and were able to present an agreement on "objectives and working methods" in the field of pensions to the Council of Employment and Social Policy of 3 December 2001.

This implies that the Member States accepted the interpretation of the Belgian Presidency and the European Commission that the "progress report" for the Laeken European Council would contain a political agreement on the objectives and working methods in the area of pensions, and thus be more than a mere "progress report". The Göteborg European Council Conclusions did leave some doubt about which document should be "setting out the objectives and working methods in the area of pensions": the progress report for the Laeken European Council, the Commission communication, or both (European Council, 2001b: §43).

In spite of the progress made by the SPC and the EPC with regard to the common objectives by the fall of 2001, an important hurdle needed to be taken in order to reach an agreement. Indeed, as discussed before, the publication of the first draft Joint Inclusion Report on 10 October 2001 (European Commission, 2001b) caused a big stir in the meeting of the SPC of 18 October 2001: some Member States accused the

Commission of "ranking" Member States performance (cf. supra). Since pension policies are a politically even more sensitive issue than social inclusion policies, it will be no surprise that many questions were raised about what would happen if the OMC on pensions was actually adopted: would the Commission, again, come up with a ranking of performance? As mentioned above, it seems that Vandembroucke played an important role in restoring confidence among some of the most critical Member States in continuing work on the OMC on pensions, i.e. during the aforementioned meeting in Berlin, on 9 November 2001 with high level civil servants from Germany, the UK and the Netherlands. Vandembroucke assured the participants of the meeting that he "would never accept that the OMC would become a naming and shaming exercise".

The Social Protection Committee and the Economic Policy Committee presented their Joint Report on Objectives and Working Methods in the area of pensions to the December 2001 Council meeting of Employment and Social Policy, which was invited to endorse it (SPC and EPC, 2001). The core of the Joint Report is obviously the set of 11 broad common objectives, which relate to (Ibid:6-7; the full list of common objectives can be found in Annex 3):

- Adequacy of pensions (3 objectives): Member States should safeguard the capacity of pension systems to meet their social objectives.
- Financial sustainability of pension systems (5 objectives): Member States should follow a multi-faceted strategy to place pension systems on a sound financial footing.
- Modernisation of pension systems in response to changing needs of the economy, society and individuals (3 objectives).

These common objectives were, as was the case with the Nice Common Objectives on social inclusion, accompanied by a proposal to the European Council for "working methods", which constitute the detailed (and rather complicated) architecture of the pensions OMC (SPC and EPC, 2001:8-9):

- Member States are invited to develop their policies and priorities for reform of pension in the light of the common objectives just described and are to present a first national strategy report by September 2002 (and not July 2002 as the Commission proposed in its July 2001 Communication). This report should contain a diagnosis of major challenges and information on (the medium and long-term impact of) relevant reforms carried out recently or which are in preparation. Member States are invited to report annually on significant policy changes in the area of pensions, if necessary;
- Member States should ensure that these national strategy reports are prepared in an integrated way, that their preparation will benefit from the consultation of all relevant actors, in particular the social partners. At EU level, the European Parliament should be kept "informed";
- Member States are invited to develop, at national level, appropriate monitoring mechanisms. At the same time the Council and the Commission are invited to develop "common approaches and compatibility in regard to indicators" (e.g. simulations and projections);
- with a view to a joint Council/Commission report (the first one in 2003, as proposed by the Commission in its July Communication), the Commission is invited to analyse the national strategy reports in the light of the common objectives, and to identify good practice and innovative approaches. Importantly, the Commission is also invited to take the national strategy reports

and its future updates into account when drawing up relevant policy reports, especially, the Implementation report of the BEPG, the recommendation for the Broad Economic Policy Guidelines, the draft Employment Guidelines, the Employment Recommendations and the annual Synthesis report;

- the Social Protection Committee and the Economic Policy Committee will have particular responsibility for promoting effective integration of the distinct contributions of various branches of government (at national level) and relevant policy Committees and Council formations (at EU level).

It is important to note that the open-endedness of working methods proposed in the July 2001 Commission Communication (*cf. supra*) is also reflected in the SPC-EPC agreement. Indeed, the working methods agreed by the 2 Committees stipulate that "The Council and the Commission will assess before the end of 2004 the objectives and working methods established here and will decide on the objectives, methods and timetable for the continuation of this coordination". Again, some claimed that by referring to "this coordination" and not to "the OMC", these working methods were inconclusive with regard to the question whether the OMC was "there to stay" (i.e., a cyclical process), rather than a one-shot exercise which should be integrated later in existing co-ordination processes like the BEPG.

The Council for Social Affairs and Employment of 3 December 2001 approved the first Joint report on Pensions and "held an exchange of views in which those Member States which spoke supported the method followed but also urged vigilance in view of the sensitivity of the subject" (Council of the EU, 2001b:18). The Council then submitted the report to the Laeken European Council, not for adoption but, note the nuance, "with a view to preparation for the Barcelona European Council in spring 2002" (Ibid).

What happened, then, at Laeken? The European Council did not "endorse" the progress report, but simply "noted the Joint report on pensions drawn up by the Social protection Committee and the Economic Policy Committee" (European Council 2001c: §30).

iii. Operationalisation of the pensions OMC (2002-2003)

At the Spring 2002 European Council meeting it became clear why the "operational part" was left out of the Laeken Conclusions with regard to the pensions OMC: the Barcelona European Council "stresses the importance of the joint Commission and Council Report on Pensions to the Spring 2003 European Council", and calls for the preparation of "National Strategy Reports due in September 2002" (European Council 2002:25), thus confirming the "launch" the OMC on pensions *at the highest political level* under Spanish Presidency. As President Aznar had wished it.

After the Barcelona Spring European Council the Member States started to prepare their first national strategic reports, based on a common SPC-EPC outline. Even though the Social Policy Agenda adopted at Nice (December 2000) already asked for the development of "appropriate indicators" in the field of social protection, a mandate which was confirmed, with regard to the 3 broad strands of the OMC on pensions (adequacy, financial sustainability and modernisation of pension systems), by the 2003 Spring European Council, it is clear that after 2.5 years of work in the SPC (and especially its Subgroup on indicators) agreement has only been reached on a very limited number of indicators (compare this to the 18 "Laeken" indicators on social

exclusion, which were agreed upon within a period of 6 months). So, even though work on indicators continued, progress has been very slow and revealed to be “particularly difficult in the context of pensions” (SPC, 2002c:2), leading the SPC to acknowledge that “indicators developed to date represent second-best measures of the success of current and future pension systems [...]” (Ibid:3).

The National Strategic reports were submitted in September 2002 and followed by the adoption of a Draft Joint Report on pensions in December (European Commission, 2003c). Note that the European Commission, before adopting its Draft Joint Report on Pensions allowed the SPC, first, to discuss an “outline” of the Report, then a “first draft”, and finally took the effort of engaging in bilateral discussions with all the Member States on the “pre-final draft”. The first Joint Commission/Council Report on Pensions was endorsed both by the Council on Employment and Social Policy and by the Council on Economic and Financial Affairs on 6 and 7 March 2003 respectively (European Commission and Council of the EU, 2003).

The European Council in March 2003 welcomed the joint report and “calls for the continued application of the open method of coordination in the field of pensions and a review of the progress achieved in 2006” (European Council, 2003:§49). Thus, it is the European Council itself, under Greek presidency, that confirms that the OMC is “there to stay”, and not a one-shot exercise.

iv. “Extension” of the pensions OMC to 10 New Member States – preparing for streamlining (2004-2005)

After completion of the first “cycle” of the OMC on pensions, and the strong confirmation of its continuation by the Heads of State and Government, a number of initiatives were taken, at the request of the same 2003 Brussels Spring European Council, to “maintain the momentum for cooperation by delivering special studies focussing on common challenges for pension systems” (European Council, 2003: 49). Thus, studies were adopted on “promoting longer working lives” (SPC, 2004) and on “Privately managed Pension Provision (SPC, 2005).

The new Member States submitted their first National Strategic Report on Pensions, and the “old” Member States their second one, in July 2005, based on a “Guidance Note” endorsed by the SPC and the EPC (SPC and EPC, 2005), and 11 Common Objectives which were not changed since the first Round (SPC and EPC, 2001). The analyses undertaken by the European Commission primarily served as input in the 2005 “Social Protection and Social Inclusion report” (the “Joint Pension Report” was abandoned under the new “streamlined” process, *cf. infra*). On September 14 and 15 the 2nd Round of peer reviews on the national Strategy Reports took place, completing the 2nd “cycle” of the pensions OMC.

c. The social inclusion and pensions OMC’: both common and distinct developments

Clearly, the development of these OMCs has a number of features in common. For example: the high level of “robustness” of the common objectives so far. Or the important part played by political engineering by 4 consecutive Presidencies in 2000 and 2001: Portugal, France, (to a lesser extent) Sweden and Belgium. Thus:

- Acting and incoming Presidencies agreed upon the wording of necessary mandates
 - E.g. the incoming Belgian Presidency sought and obtained the necessary mandates in the Stockholm European Council Conclusions (“agreement about indicators by the end of the year”) and Göteborg European Council Conclusions (“joint progress report on pensions to the Laeken European Council);
- Presidencies of the key advisory bodies were hand-picked so as to underpin the Presidencies political goals
 - E.g. the Portuguese Secretary of State Viera da Silva was himself president of the interim High-Level Working party on Social Protection in 2000; Raoul Briet was successfully pushed into the Presidency of the SPC in 2000 by the French government.
- Scientific reports (and academic prestige) were used to underpin the development of the OMCs
 - E.g. the aforementioned “Atkinson report” on indicators, and the Conference on indicators in Antwerp in 2001.

But it has also become clear, for a number of reasons these 2 social protection OMC’s developed according to quite distinct paths. We will try to highlight them in a structured way, by integrating them, as far as possible, in a theoretical framework which will be explained in the next section.

3. Making sense of differences and similarities in soft law modalities and procedures: the concept of legalization

In a similar fashion as Radulova (2006) has done with regard to the Employment Strategy (EES) and the Research OMC, I will employ the concept of legalization as developed by Abbott *et al.* (2000) in order to make sense of the differences between the coordination procedures that have proliferated since the Lisbon European Council.

The concept of legalization is understood by Abbott and colleagues as a particular form of institutionalization (Ibid:401) characterized by three components: obligation, precision and delegation. Any institution can, according to the authors, be described in terms of these three dimensions of legalization.

How are these dimensions defined then? *Obligation, first of all*, refers to the degree in which states or other actors are bound by a rule or commitment or by a set of rules or commitments (Ibid: 401). Given that we are discussing international public law, in practical terms this category demands a measure for the *subjective acceptance* by states of a particular rule as a legal rule or not, i.e. as binding or non-binding as a matter of international law (Radulova, 2006: 12). The “subjective” acceptance refers to the fact that compliance with rules occurs for many reasons other than their legal status: concern about reciprocity, reputation, and damage to valuable state institutions, as well as other normative and material considerations, all play a role (Abbott *et al.*: 419).

Precision is the extent to which rules unambiguously define the conduct they require, authorize, or proscribe (Abbott *et al.*, 2000: 401). A precise rule specifies clearly and unambiguously what is expected of a state or other actor (in terms of both the intended objective and the means of achieving it) in a particular set of circumstances. And precision implies that the rules are related to one another in a noncontradictory

way, creating a framework within which case-by-case interpretation can be coherently carried out. In other words: precision narrows the scope for reasonable interpretation (Ibid: 412-413).

Delegation, the third dimension of legalization, is the degree to which states and other actors delegate authority to designated third parties—including courts, arbitrators, and administrative organizations—to implement agreements, to interpret, and apply the rules to particular facts; to resolve disputes; and (possibly) to make further rules” (Ibid:401; 415). Following Abbott and Snidal¹³, I will make a distinction between ‘managerial’ delegation i.e. the power to apply and elaborate agreed rules, and ‘enforcement’ delegation i.e. the power to evaluate, judge and sanction performance (Abbott and Snidal, 2000: 430). An important variable with regard to this dimension is the extent to which individuals and private groups can initiate a legal proceeding, which may happen even in settings where access is limited to states. (Ibid:416)

Importantly, each of these dimensions of legalisation is a matter of degree and gradation, not a rigid dichotomy, and each can vary independently (Ibid:401), as can be seen in Figure 1. Thus, the subjective commitments of Member States can vary widely along the continuum of *obligation*, ranging from unconditional obligation to a binding rule to commitments to instruments which explicitly negate any intent to create legal obligations (Ibid: 410), such as recommendations and guidelines in the framework of the OECD or the OMC. With regard to *precision* institutions vary between, on the one hand, precise and highly elaborate, determinate rules and, on the other, vague and general provisions which are so imprecise that one cannot meaningfully assess compliance, casting doubt on their legal force. Delegation, finally, varies between binding third-party decisions and binding regulations on the one hand and pure political bargaining on the other (see Figure 1), with the issuing recommendations and monitoring (gathering and disseminating information) by third parties taking a position in between those extremes.

Consequently, the concept of legalization encompasses a multidimensional continuum, ranging from the “ideal type” of legalization, where all three properties are maximized; to “hard” legalization, where all three (or at least obligation and delegation) are high (eg much of European Community law); through multiple forms of partial or “soft” legalization involving different combinations of attributes (eg the various OMCs); and finally to the complete absence of legalization (ie the absence of legal obligation, precision or delegation), which represents another ideal type (Ibid: 401-402).

Obligation	Expressly nonlegal norm	<----->	Binding rule
Precision	Vague principle	<----->	Precise, highly elaborate rule
Delegation	Diplomacy	<----->	International court, organization domestic application

FIGURE 1. The dimensions of legalization. Abbott *et al.* (2000:404)

¹³ I would like to thank Elisavetta Radulova for pointing this out to me during an intense Summer School discussion in Florence in 2006.

In the remainder of this section, I will plot the particular arrangements of the social inclusion and social protection OMC's on the obligation, precision and delegation dimensions of the legalisation concept. This should allow to depict variations in the degree of legalization, and thus of institutionalization, between them. Where relevant I will indicate, within each of these OMC's, variations in the degree of institutionalization over time.

a. Obligation

The first question is: how to operationalise the concept of 'obligation' in a way that one can compare the 'scores' on this dimension between the social inclusion and pensions OMC?

A first way of measuring the degree in which states or other actors are bound by the commitments of these OMC's would be to differentiate "between coordination procedures that have been codified in the treaties, and to coordination procedures based on an European Council mandate. The rationale of distinction here is that if member states wished to demonstrate that they feel legally bound to coordinate their policies, they would have enshrined this in the primary law of the Union" (Radulova, 2006: 12). Since, in contrast to the European Employment Strategy, this is neither the case for the social inclusion OMC, nor for the pensions OMC (only the Social Protection Committee has a legal base in the Treaty), it would seem, at first sight that this dimension does not depict lots of variation between the 2 processes (both draw their legitimacy 'merely' from (European) Council Conclusions).

However, one should not disregard the fact that the Amsterdam treaty (which came into force on 1 May 1999), granted the Union explicit competencies with regard to combating social exclusion¹⁴. Apart from the fact that this Treaty base is in itself bound to increase Member States' subjective commitment to EU action in the field of social inclusion (including the OMC), this commitment was further increased by the formal adoption (through a European Parliament and Council Decision), based on these explicit Treaty competencies, of a Community Action Programme that was explicitly aimed at supporting the OMC on social inclusion. This Action Programme, which was decided upon in 2001, was consequently used to strengthen the technical infrastructure of the OMC inclusion, namely through the setting up of a new statistical tool to be named "EU-SILC". Importantly for our argument about "obligation", EU-SILC (A) retains the Laeken indicators on social inclusions (B) was accompanied by various informal and formal means of collaboration between Eurostat (European Commission) and the Subgroup on Indicators of the SPC and (C) was institutionalised in a very formal way, namely through a set of clear legal acts and implementation regulations (eg a Framework Regulation of the European Parliament and the Council). The latter commit all member States: launched as a pilot projects in seven member states in 2003, EU-SILC will culminate in entire operationalization in 2007 it (de la Porte, 2006:9). Thus, it can be argued that the Amsterdam Treaty and the Action Programme increased both the subjective and the legal commitment of the Member States to the social inclusion OMC. So far, there has been no similar financial foundation for the pensions OMC. Future research will be needed to establish whether the current shift with regard to the financial foundations of the OMC, namely the replacement of the Community Action Programme by the new PROGRES Programme

¹⁴ The Treaty of Amsterdam incorporated into the EC Treaty the Maastricht "Agreement on social policy" (see Chapter 1 of the new Title XI and new Articles 136 to 145). Under Article 137 the Council may adopt measures designed to encourage the combating of social exclusion.

(2007-2013), which will now also underpin the pensions OMC, will change the level of obligation within these OCMC's.

Are there other indicators of varying degrees of obligation between the 2 social protection OMC's? It seems there are: within the framework of the social inclusion OMC Member States are committed to writing *National Action Plans (NAPIncl)*, in which they are supposed to describe the policy measures they *will undertake* in order to meet the common objectives as well as the (national and European targets they set. By contrast, in the pensions OMC Member States merely write National Strategic Reports, which are much more backward-looking in the sense that they describe what *has been done and achieved* so far. It seems that the choice of the member States to differentiate between NAPIncl and NSR, which clearly have a different status, is a deliberate choice which, again, creates different kinds of subjective commitments (even though for both we have identified above a wide diversity both in form and in their degree of compliance with European priorities).

But there is more: the second part of this paper has made it clear that the social inclusion and pensions OMC's developed in a rather different time frame. Whereas the Lisbon Council conclusions referred to pensions as the "first priority" it took in practice many more intermediate steps to actually get to an OMC on pensions. As a result, it took 2 years to arrive at a formal agreement at the highest political level (in Barcelona) on a set of common objectives on pensions. Compare this to the social inclusion OMC, where an agreement on common objectives, was reached within 6 months. We also see this difference in development in the time needed to develop the architecture of each these OMC's: the whole architecture of the social inclusion OMC was brought about between November 1999 (launch of the concerted strategy) and March 2002 (requirement of setting national targets at the Barcelona European Council). The operationalisation of the pensions OMC took a year longer: from November 1999 until March 2003 (endorsement of the first Draft Joint Report by the Brussels European Council), and with some crucial elements (like common indicators or national targets) still missing. As a result, and also because the NAPIncl have to be written every 2 years and the NSR every 3 years, the social inclusion OMC went, so far, through 3 full cycles. The pensions OMC only went through 2 cycles so far. Clearly, this difference in "routinisation" of these OMC's creates a different kind of commitment from the side of the member states, but especially from the other actors involved (especially in the inclusion OMC, *cf supra*).

We have described above that the Member States are expected, in the OMC social inclusion, to set national targets in their National Action Plans. Since this commitment has been adopted by the Council of the EU (as part of the revised Common Objectives), and conformed by the Barcelona European Council, it seems fair to say that this political obligation further increases the subjective commitment of the Member States to the social inclusion OMC. There is no similar obligation in the pensions OMC.

And yet, it seems that there are at least two indications of increased obligation on the side of the pensions OMC. First of all, (almost) all of the pension reports described in section 2 were prepared, at the explicit and repeated request of the Council of the EU and the European Council, in collaboration between the Social Protection Committee and the Economic Policy Committee; similarly, the major documents adopted by the EU Council (Common Objectives, Joint Report etc.) were adopted by 2 Council formations: the "Social Affairs" Council on the one hand and ECOFIN on the other. In the social

inclusion OMC the SPC and the Social Affairs Council are totally independent from any other Committee or Council Formation (they only commit themselves). Secondly, and importantly, the European Council itself decided, and repeated, that the results of the OMC on pensions “will be integrated into the Broad Economic Policy Guidelines” (European Council, 2001), which is not the case for the social inclusion process. Both of these factors can be expected to increase, at least in theory, the commitment of the Member States in the pensions OMC.

b. Precision

Are there differences between the 2 OMC processes in the degree in which they narrow down the scope for reasonable interpretation, which is the main attribute of the ‘precision’ dimension of legalisation? There clearly are. Most importantly, we have shown above that the basic architecture of the social inclusion OMC was completed by the adoption of a set of 18 indicators which have been harmonised at EU level, and which were endorsed at the highest political level. In 2003, the indicators have been revised and completed with new indicators; and the Luxembourg Presidency in 2005 triggered the routinisation of the involvement of external academic experts in this OMC, by commissioning an expert report with the original team (led by Sir Tony Atkinson, see section 2) that developed the indicators in 2001, so as to continue feeding the further technical redefinition and widening of the scope of the Laeken indicators. By linking these indicators, which cover multiple aspects of social exclusion, to the common objectives, the member states are able to set precise targets, and the European Commission is able to assess in a rather precise way the progress that has been made towards reaching the common objectives. Compare this to the very slow progress with regard to the handful of pension indicators which remain, until this day, second-best measures of the success of current and future pension systems.

Somewhat more difficult to operationalise, but at least as important is the fact that the Common Objectives with regard to social inclusion seem to be significantly more precise than their pensions counterpart. The pensions objectives indeed remain very general, pointing only to long-term objectives, but not to the means to achieve them (eg “Ensure that older people are not placed at risk of poverty and can enjoy a decent standard of living”). By contrast, the social inclusion objectives tend to be more precise (eg “to make a decisive impact on the eradication of poverty”; “to move towards the elimination of social exclusion among children”), whereas the interpretation of the more general social inclusion objectives is being narrowed down by sub-objectives (according to the format “To do A, in particular by doing X, Y and Z”). Also, the social inclusion objectives prioritise certain means of achieving the general objectives, eg by singling out child - and dependent care as a means to developing policies to promote the reconciliation of work and family life (Common Objective 1.1 (a), first indent). Finally, it seems that the common objectives on pensions are sometimes related to each other in a contradictory way (eg between the adequacy and financial sustainability objectives), making it difficult to carry out a coherent assessment of the National Strategic Reports.

In sum, it seems that the social inclusion OMC combines somewhat more precise common objectives with very precise harmonised indicators, whereas more general pensions objectives are not underpinned by a similar battery of indicators, thus leaving much more scope for reasonable interpretation, and rendering a meaningful assessment of compliance even more difficult.

c. Delegation

With Radulova (2006:13) I will consider 'managerial' delegation of an OMC mechanism to be high if the member states have endowed the Commission to take care of the procedural routine of an OMC iteration i.e. to issue guidance notes, to monitor the process of implementation, to collect and summarise data about performance, in short to act as a mediator and operational interface of the OMC mechanisms. Conversely, if the principles (the member states) have not endowed an agent (like the Commission) with managerial powers but have retained them (e.g. empowering an intergovernmental body), the managerial delegation will be considered low (Ibid). It is clear that the European Commission does indeed play the role of mediator and operational interface in both the social inclusion and pensions OMC. And yet, one could argue that it does so to a varying degree because of the fact that the managerial delegation in the pensions OMC involves 2 Advisory bodies (SPC and EPC) as well as 2 DG's of the European Commission. Each of these DG's can (and does) invoke the possibility of the other DG/Advisory body not agreeing with elements of the operational tasks as an argument to agree or at least not to oppose. Consequently, it seems that the managerial delegation is larger within the pensions OMC.

The 'enforcement' delegation is another story: it will be deemed high in the case of an OMC mechanism when a third party (e.g. the Commission) has the power to propose recommendations to countries that under perform or are deemed to be on a wrong track toward the commonly desired outcome/ objective (Radulova, 2006:13). It seems that this aspect of delegation too allows to depict variations between the 2 social protection OMC's. Indeed, the fact that Member States submit different kinds of plans to the European Commission (more forward looking NAPIncl and more backward-looking NSR, *cf. supra*), which can be combined with indicators which are at a very different stage of development (*cf supra*), gives the Commission different tools for critical evaluation. To be more precise: the Commission has more leeway to issue 'soft recommendation' to the Member States in the social inclusion OMC than in the pensions OMC. The abovementioned 'typology' in the first Draft Joint Report on Social Inclusion is a case in point, even though it seems that the Member States have effectively drawn the line for the European Commission, which may have overstated (or simply tested?) the limits of the enforcement delegation at the time.

There is another reason why the enforcement delegation of the Commission is bound to be higher in the social inclusion OMC: the institutional features of this OMC (eg the Community Action programme, the National Action Plans, the Joint Report, the peer reviews etc), provide strong incentives for national and European NGO's as well as other actors, which are to a large extent absent from the pensions OMC, to associate to this process. For example, a significant part (around 20%) of the Community Action Programme has been used to finance non-governmental networks of actors (like EAPN, FEANTSA, Eurochild and RETIS); EAPN routinised its voluntarily-initiated evaluation of the NAPIncl, through which it influences the Joint Reports; a "peer review" programme was initiated through which the civil society actors lobby their specific thematic concern; an "independent" network of non-governmental experts in the field of social inclusion was set up by the European Commission to provide information and analysis enabling the Commission to assess the implementation of the NAPsincl; and the annual European Round Table on Poverty and Social Exclusion increases the visibility of the process and provides a forum national and European lobbying (de la Porte, 2006). Clearly, the involvement and investment of NGO's and other actors in all these

initiatives increases the expectations towards the social inclusion OMC, and thus adds pressure on the European Commission to use its enforcement delegation 'to the full'.

4. Conclusions

By the end of the 1990s the Member States of the European Union felt the combined effect on their welfare states of, amongst others, the internal market programme, the Single European Act, economic and monetary union, strong global competition and factors such as ageing populations and changing household and family structures. "Doing nothing" was no longer an option. However, in view of the large differences in economic development between the Member States, the different development of their welfare state institutions and policies and, most importantly, the differences in taken-for-granted normative assumptions about the functions of the welfare state vis-à-vis private provisions, the option of European harmonization of market-correcting social regulations was foreclosed (Scharpf, 2002: 650). Thus, at a time when the partisan composition of the European Council allowed it, the Member States launched, in response to these pressures, EU-wide cooperation on social protection through a new governing mode: the open method of co-ordination.

The OMCs on social protection was, contrary to its counterpart on Employment, not enshrined in the Treaty. Even the Draft constitution does not mention these OMC's explicitly. According to a number of authors, this lower degree of legalization would make the social protection OMC's even 'lighter' than the EES, which would represent a harder, or 'heavy' coordination procedure (Radulova, 2006:21).

Yet, a closer analyses of the development of the social inclusion and pensions OMC questions this kind of dichotomy between "treaty-based/heavy OMC" on the one hand and "not treaty-based/light OMC" on the other. Indeed, 6 years after their launch it seems that these OMC's have not only developed quite differently in terms of organisational features (to a certain extent, this was to be expected since there is no legal definition of the OMC, and thus "everything is possible"). More importantly, the above analyses has shown that these social protection OMCs significantly differ from each other, first in terms of the (subjective) obligations they create for Member States; second, with regard to the precision of the conduct they require; and third as to the degree of delegation of the management of the procedural routine as well as of the power to propose 'soft recommendations'.

More concretely, it seems that the concrete institutionalisation of the social inclusion OMC, has, in spite of the fact that it has not been 'constitutionalised', created a high level of (subjective and objective) 'obligation' for the member States, making it difficult to classify it as 'light', at least from a theoretical perspective. Thus, a 'soft', non-Treaty based institution like the social inclusion OMC, which was, like the pensions OMC, launched as a 'voluntary' cooperation between Member States, seems to have become, over time, much more binding ('growing teeth'), than could ever have been expected. Of course, further empirical research is needed to determine whether these observed institutional variations between soft law instruments have substantially different impacts at national level. More generally, this analyses raises questions with regard to the distinction that is often made between 'hard' and 'soft' law in the European Union, and underlines the need to develop theoretical tools which can help to grasp the hybrid nature of many of these instruments.

ANNEX 1. BIBLIOGRAPHY

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EU Objectives in the Fight Against Poverty and Social Exclusion

1. To facilitate participation in employment and access by all to resources, rights, goods and services

1.1. Facilitating participation in employment

In the context of the European employment strategy, and the implementation of the guidelines in particular:

(a) To promote access to stable and quality employment for all women and men who are capable of working, in particular:

- by putting in place, for those in the most vulnerable groups in society, pathways towards employment and by mobilising training policies to that end;

- by developing policies to promote the reconciliation of work and family life, including the issue of child - and dependent care;

- by using the opportunities for integration and employment provided by the social economy.

(b) To prevent the exclusion of people from the world of work by improving employability, through human resource management, organisation of work and life-long learning.

1.2. Facilitating access to resources, rights, goods and services for all

(a) To organise social protection systems in such a way that they help, in particular, to:

- guarantee that everyone has the resources necessary to live in accordance with human dignity;

- overcome obstacles to employment by ensuring that the take-up of employment results in increased income and by promoting employability.

(b) To implement policies which aim to provide access for all to decent and sanitary housing, as well as the basic services necessary to live normally having regard to local circumstances (electricity, water, heating etc.).

(c) To put in place policies which aim to provide access for all to healthcare appropriate to their situation, including situations of dependency.

(d) To develop, for the benefit of people at risk of exclusion, services and accompanying measures which will allow them effective access to education, justice and other public and private services, such as culture, sport and leisure.

2. To prevent the risks of exclusion

(a) To exploit fully the potential of the knowledge-based society and of new information and communication technologies and ensure that no-one is excluded, taking particular account of the needs of people with disabilities.

(b) To put in place policies which seek to prevent life crises which can lead to situations of social exclusion, such as indebtedness, exclusion from school and becoming homeless.

(c) To implement action to preserve family solidarity in all its forms.

3. To help the most vulnerable

(a) To promote the social integration of women and men at risk of facing persistent poverty, for example because they have a disability or belong to a group experiencing particular integration problems.

(b) To move towards the elimination of social exclusion among children and give them every opportunity for social integration.

(c) To develop comprehensive actions in favour of areas marked by exclusion.

These objectives may be pursued by incorporating them in all the other objectives and/or through specific policies or actions.

4. To mobilise all relevant bodies

(a) To promote, according to national practice, the participation and self-expression of people suffering exclusion, in particular in regard to their situation and the policies and measures affecting them.

(b) To mainstream the fight against exclusion into overall policy, in particular:

- by mobilising the public authorities at national, regional and local level, according to their respective areas of competence;

- by developing appropriate coordination procedures and structures;

- by adapting administrative and social services to the needs of people suffering exclusion and ensuring that front-line staff are sensitive to these needs.

(c) To promote dialogue and partnership between all relevant bodies, public and private, for example:

- by involving the social partners, NGOs and social service providers, according to their respective areas of competence, in the fight against the various forms of exclusion;

- by encouraging the social responsibility and active engagement of all citizens in the fight against social exclusion;

- by fostering the social responsibility of business.

Annex 3. Broad Common Objectives on Pensions - approved by the Council for Social Affairs and Employment of 3 December 2001

- **Adequacy of pensions**

Member States should safeguard the capacity of pension systems to meet their social objectives. To this end against the background of their specific national circumstances they should:

1. Ensure that older people are not placed at risk of poverty and can enjoy a decent standard of living; that they share in the economic well-being of their country and can accordingly participate actively in public, social and cultural life¹⁵;
2. Provide access for all individuals to appropriate pension arrangements, public and/or private, which allow them to earn pension entitlements enabling them to maintain, to a reasonable degree, their living standard after retirement; and
3. Promote solidarity within and between generations.

- **Financial sustainability of pension systems**

Member States should follow a multi-faceted strategy to place pension systems on a sound financial footing, including a suitable combination of policies to :

4. Achieve a high level of employment through, where necessary, comprehensive labour market reforms, as provided by the European Employment Strategy and in a way consistent with the BEPG;
5. Ensure that, alongside labour market and economic policies, all relevant branches of social protection, in particular pension systems, offer effective incentives for the participation of older workers; that workers are not encouraged to take up early retirement and are not penalised for staying in the labour market beyond the standard retirement age; and that pension systems facilitate the option of gradual retirement;
6. Reform pension systems in appropriate ways taking into account the overall objective of maintaining the sustainability of public finances. At the same time sustainability of pension systems needs to be accompanied by sound fiscal policies, including, where necessary, a reduction of debt¹⁶. Strategies adopted to meet this objective may also include setting up dedicated pension reserve funds;
7. Ensure that pension provisions and reforms maintain a fair balance between the active and the retired by not overburdening the former and by maintaining adequate pensions for the latter; and
8. Ensure, through appropriate regulatory frameworks and through sound management, that private and public funded pension schemes can provide pensions with the required efficiency, affordability, portability and security.

- **Modernisation of pension systems in response to changing needs of the economy, society and individuals**

9. Ensure that pension systems are compatible with the requirements of flexibility and security on the labour market; that, without prejudice to the coherence of Member States' tax systems, labour market mobility within Member States and across borders and non-standard employment forms do not penalise people's pension entitlements and that self-employment is not discouraged by pension systems;
10. Review pension provisions with a view to ensuring the principle of equal treatment between women and men, taking into account obligations under EU law; and
11. Make pension systems more transparent and adaptable to changing circumstances, so that citizens can continue to have confidence in them. Develop reliable and easy-to-understand information on the long-term perspectives of pension systems, notably with regard to the likely evolution of benefit levels and contribution rates. Promote the broadest possible consensus regarding pension policies and reforms. Improve the methodological basis for efficient monitoring of pension reforms and policies".

¹⁵ In this respect, benefits and tax advantages other than pensions should also be taken into account where appropriate.

¹⁶ Member States strategies to ensure sound and sustainable public finances are reported and assessed in the framework of the BEPG and the Stability and Growth Pact and should be in accordance with these.