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## The (In)Effectiveness of the European Employment Strategy

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### **Abstract**

*Qualitative studies of the European Employment Strategy produce conflicting accounts of its effectiveness within the Member States. Furthermore, such studies are limited in that they predominantly concern a small number of country case studies and one or two particular policy issues. Obtaining an accurate overview of the effectiveness of the OMC is therefore problematic. This article constructs a quantitative framework to analyse the effectiveness of the EES and applies it to ten EU Member States between 2005-2009. The analysis differentiates between shallow voluntary compliance, whereby member state responses to the EES represent activities which they themselves identify as a priority, and deep voluntary normative compliance, whereby member state activity is related to specific Council recommendations to improve policies in a particular area. The paper finds substantial evidence for both forms of compliance, however, an analysis of the formation of country specific recommendations, reveals the deeply politically negotiated nature of their formation and the limitations of our findings.*

## **Introduction**

Since its launching in 1997, the European Employment Strategy (EES) has been the cornerstone of the EU's employment policy. As numerous studies have discussed, the launching of the strategy was unique in that it applied a soft law mode of governance to the policy area within the EU, which subsequently became known as the Open Method of Coordination (OMC) under the Lisbon Strategy (see: European Council 2000: par. 37; Ashiagbor 2005: 109-190). In contrast to the traditional Community Method of decision-making, the OMC represents a more flexible and decentralised approach to policy-making in which member states develop their own policies in response to common European objectives (Ahonen 2001; De Búrca and Scott 2005: 3-5; Trubek and Trubek 2007; Falkner 2006). In short, the OMC involves the fixing of guidelines for the EU with qualitative and quantitative indicators, the translation of such guidelines into national and regional policies within the member states, and periodic monitoring, evaluation and peer review (European Council 2000: par. 37; Laffan and Shaw 2005: 11). The OMC guides the policy activism of the member states in two ways: cognitively by the monitoring and evaluation which includes the exchange of good practices and innovative approaches; and normatively by the guidelines and indicators to support the member states in achieving the objectives. The new governance mechanism of the OMC was initially greeted with optimism (Rhodes 2000), however, the non-legal binding nature of the OMC and the absence of judicial review have created scepticism regarding its effectiveness and ability to influence and converge the policies and legislation of the Member States (Trubek and Mosher 2003a; 2003b; Trubek, Cottrell and Nance 2005; Hatzopoulos 2008).

The EES has long been considered as an archetypal OMC process. During 2000-04 it was a source of inspiration for the similar mechanisms in related areas (Tholoniati 2010: 102). But how effective is the EES? We ask this question for two reasons. Firstly, existing studies of the EES produce conflicting accounts of its overall effectiveness. Current approaches to the topic include qualitative narratives of the potential effectiveness of the EES and its possible influence on the policy reforms of the member states (Ashiagbor 2004: 35-62). Empirical research is primarily dominated by national case studies, providing an insight into country specific developments (Zeitlin and Pochet with Magnussen 2005; Zeitlin and Heidenreich 2009). Although these approaches provide punctuated examinations of the EES, they face a number of limitations in providing an overall evaluation of its effectiveness of an EU of 27 member states. Furthermore, these approaches are limited as they focus on the cognitive effectiveness of the OMC, *i.e.* shifts in national policy orientations and thinking, rather than on its overall effect, *i.e.* actual changes in national policies and legislation. Secondly, the overall effectiveness of the EES, however, is of central importance to the broader debate concerning European integration and EU public policy. As the 'model' OMC the EES, with its formulation of country specific recommendations, has become a central governance mechanism in Europe 2020, the successor of the EU's Lisbon Agenda (European Commission 2010: 27-30). The effectiveness of the EES therefore has much broader consequences than employment policy *per se*.

In response we apply a new quantitative approach to analyse the effectiveness of member state responses to the EES. In the first section of the paper we present our framework which has three components: firstly the identification of member state policy activism in respect to a policy that is governed by the EES; secondly, the identification and categorisation of the type of policy activism (*i.e.* the legal instrument such as a green paper, collective agreement,

legislation); and thirdly, the classification of the magnitude of such activism upon the policy of the member state (i.e. acknowledgement of the importance of the subject, initiatives presenting ideas, parametric change in existing parameters, the adoption of brand new policy). The identification of such information is based on the National Reform Programmes (NRP) of the Member States. The NRPs report individual member state policy activism in response to the guidelines and the country specific recommendations issued by the Council (Ashiagbor 2005: 142-145; Trubek and Mosher 2003: 39). Within the framework we differentiate between member state responses which are a simple goodness-of-fit with their domestic policies (which we term as “shallow voluntary compliance”) and responses that appear to be genuinely inspired by the EES (which we term as “deep voluntary compliance”). Genuine EES inspired policy activism is policy activism undertaken by the member states in response to the country specific recommendations of the Council, which are intended to redirect member states priorities and encourage the undertaking of policy activism that does not necessarily fit their national setting (Authors: 2010).

The second section of the paper presents the first results of the coding process, as applied to ten EU member states between 2005-2009.<sup>1</sup> The selected member states are the Czech Republic, France, Germany, Italy, Latvia, the Netherlands, Poland, Slovenia, Sweden and the UK which represent the different welfare state traditions within the EU member states, as well as old versus new member states. The result of this assessment demonstrates that there have been significant policy changes within all of the Member States to the EES guidelines (shallow voluntary compliance) and the country specific recommendations (deep voluntary compliance).<sup>2</sup> In light of this finding and the apparent significance of the country specific recommendations in the EES, we analyse their formation to assess the extent to which they actually re-direct the national policies of the member states. The paper concludes with an overall analysis of the findings for the EES and the OMC more generally.

### **I: Assessing the effectiveness of the European Employment Strategy**

To measure the effectiveness of the EES, three issues need to be addressed: firstly, how and where to identify member state policy activism within the EES; secondly, how to identify and categorise the type of policy activism; and thirdly, how to assess the magnitude of such activism. An obvious way to address these three issues is to systematically analyse the NRPs of the member states against the adopted Employment Guidelines of the EES. In agreement with the member states, the Commission annually produces the Employment Guidelines for the EES. During the first few years these guidelines changed almost each year, however, since 2003 they are synchronised with the economic policy guidelines following a three year cycle (Bernard 2006; European Commission 2002; European Council 2003) and since 2005 they have remained unchanged.<sup>3</sup> Member states are encouraged to transpose specific policy objectives in the Employment Guidelines to national level programmes in ways which accord with their particular socio-economic circumstances (De La Porte and Pochet 2003a: 17). To illustrate their efforts, the member states are required to annually submit a NAP, called

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<sup>1</sup> At present a full data set to include all of the EU Member States from 1997 onwards is under construction. For more information please contact the authors.

<sup>2</sup> Although the method is limited in proving that the changes in the national settings are caused because of the EES (the EES is one of many other factors that influence policy activism within the member states (De la Porte and Pochet 2003: 59-61; Trubek, Cottrell and Nance 2006: 19-20; Zeitlin 2009: 215-216), it at least enables us to determine which policies have been undertaken in response to, among other factors, the EES.

<sup>3</sup> See also the subsequent Council decisions by which the guidelines are annually adopted: European Council (2005, 2006, 2007a, 2008a, 2009a).

National Reform Programmes in the EES, and the Commission and the Labour and Social Affairs Council in turn make an annual assessment of the progress of the individual member states (Adnett 2001: 253-64; De La Porte et al 2001: 291-307). Between 2005-2009 specific recommendations were made from 2007 onwards by the Council to the member states to guide their individual priorities in policy areas which were considered to be areas of weakness.

Analysing the NRPs of the member states against the Employment Guidelines provides a key method for discovering the effectiveness of the EES. Inevitably, one draw back of this approach is that it cannot take into account behaviour and activity that is not recorded in the NRPs. Furthermore, member states potentially have an incentive to overplay developments within a particular policy area, so as to appear as ‘good students’ and thereby avoid criticism by the Commission and the Council (De la Porte and Pochet 2003: 14). Despite these limitations the NRPs provide a good proxy of developments within the EES and there is no equivalent documentation of such developments available.

To assess the impact of the Employment Guidelines upon the member states codes are assigned to the guidelines. The first of the eight guidelines, integrated guideline 17, is general and outlines the overall priorities of the EES. We have therefore omitted this guideline from the analysis and focus on the remaining seven. Each of the seven guidelines is broadly defined and sub-divides into further specific guidelines (see appendix 1). To analyse member state policy activism within the EES the constructed framework consists of three variables: firstly, member state identification of a policy of the EES; secondly, the type of instrument used to operationalised the aforementioned national policies; and thirdly, the magnitude of such activism. The first variable simply captures whether member states actually acknowledge the guidelines, whether it be explicitly via the mentioning of a guideline or implicitly via a discussion of policy which relates to a guideline. This not only identifies where member states are active, but importantly, where they are inactive within the EES.

Five legal instruments capture the type of instrument used to operationalise the policy activism: non-identification; preparatory instruments; soft law; collective agreements; and act / legislation. As this paper is concerned with the effectiveness of the EES, defined as changes in national legal orders, such a change can only be constituted by legal instruments. These included legally binding measures (act, budget law and collective agreements given effect *erga omnes*), legally non-binding measures that nonetheless have normative effect (soft law, codes of conduct, protocols and frameworks) and preparatory documents (policy documents, reports, discussion/ working papers, green and white papers which represent a first step towards the aforementioned instruments). Where there was evidence of member state activity, but it was not clear what type of legal instrument was used, the policy activism was categorised as ‘non-identification’. For example, in the Dutch NRP of 2006 (p.44), a life course savings scheme is introduced.<sup>4</sup> Although it is clear that the scheme is not a preparatory instrument, it is unclear as what else it could be *i.e.* act or programme. Therefore it has been categorised as a ‘non-identifiable instrument’.

**Table 1:** Classification of legal instruments used to operationalise the OMC in the Member States.

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<sup>4</sup> All NRPs referred to in this paper and used in the data set are available at: <http://ec.europa.eu/social/main.jsp?catId=101&langId=en>.

<b>Legal Instrument</b>	<b>Explanation</b>
Preparatory Instrument	Activities which include programmes and white and green papers
Soft Law	Such as codes of conduct, protocols, soft institutions and policy rules
Collective Agreement	Agreements between the social partners
Act / Legislation	Any act or legislation passed by Parliament including budget law and the creation of institutions.

**Table 2:** Classification of the magnitude of reform created by the legal instrument

<b>Magnitude of Activism</b>	<b>Explanation</b>
Lip Service	Acknowledgement that an objective is important, but not accompanied by an activity.
Preparatory Activities	Initiatives such as ideas, objectives, programmes, discussions and public opinions for policies, but also a bill that is sent to parliament or the establishment of a working group, task force or commission.
Parametric Reform	Refers to a change in the existing parameters, instruments or institutions, such as benefit levels or the change of an article of an act or a change in the tasks of an institution.
Instrumental Reform	Refers to the adoption of an entirely new policy, a policy that replaces an existing one or that abolishes an existing policy.

To judge the magnitude of the legal instrument and the scale of the normative effect of the OMC a separate typology has been developed for classifying the magnitude of the policy activism. An assumption underlying this typology is the belief that it is important not to conflate the type of legal instrument with its overall impact on the national legal order: while some relationship between the two variables is expected, member states may introduce an instrument, such as an act, which can either change the parameters of an existing policy or create brand new policy – either way, the scale of such a change is significant.

The scale of the magnitude is categorised as follows. Firstly, ‘none’ for where there has been no identification of a policy objective. Secondly, ‘lip service’ for the acknowledgement of an objective, but which is not accompanied by policy activism – therefore suggesting only minor shifts in cognitive processes. Thirdly, ‘preparatory activities’, such as initiatives, ideas, objectives, programmes, discussions public opinions, working groups, task forces and bills sent to parliament which represent more substantive shifts within cognitive behaviour. Fourthly, parametric reform which refers to a change in an existing policy parameter, instruments or institutions, such as benefit levels, the change of an article of an act, a change in a level of funding, or the change in task on an institution. Fifthly, ‘instrumental reform’

which refers to the adoption of a brand new policy, a policy that replaces an existing one or a new institution.

NRPs for each year between 2005-2009 for the ten member states are analysed in accordance with the constructed framework. The result is a dataset which captures the policy directions of the member states - shallow voluntary effectiveness. To assess whether the EES creates deep voluntary effectiveness, the second stage of the analysis focuses on the country specific recommendations made by the Council, on proposal of the Commission, to the member states. From 2005-2009 such recommendations began from 2007 (European Council 2007b, 2008b, 2009b,) and are targeted at areas of weakness or challenges within a member state owing to a lack of activity or under-activity. Alongside such recommendations, focus areas are identified. Therefore, both the recommendations and focus areas are included in the analysis since they both aim to steer the national priorities and as such, require the member states to develop policy activism in these areas. The recommendations and focus areas are subsequently coded in accordance with appendix 1.

Any evaluation of the NRPs will be subjective. A further problem is that the NRPs do not just represent explanations of specific policy activations within the specified year. As De la Porte and Pochet (2003: 14) note, member states tend to recycle their national programmes in view of European policies; emphasise what is in concordance with European priorities; and minimise or to camouflage the differences.<sup>5</sup> Extracting the exact policy developments of a particular year can therefore be tricky. To minimise these issues we adopted a number of strategies. Firstly, the analytical framework was designed to differentiate between where member states were simply referring to a guideline without giving any substantive policy content, versus actual substantive policy developments. Secondly, within the analysis, we were cautious when assigning policy activities to a particular typology and assumed that member states overemphasised their developments. Thirdly, to avoid a double-counting of policy and thereby construct an accurate dataset of policy developments, only policies and activities which were agreed, passed in parliament or initiated in that particular year in question were analysed. For example, all of the 2006 NRPs contain some discussion of policy developments in 2005, but these should have been analysed in 2005. Including them again in the dataset of 2006 would in effect 'double-count' them and create a false impression of the actual developments of the member states. There are some exceptions to this rule as NRPs are required to be written and submitted in September / October, member states can report policy activity of a previous year, particularly for the final quarter. Thus, although the NRPs appear to concern calendar years, they do not, as they actually run from September/October to the following September/October. The analysis of the NRPs was therefore respectful of this issue. If specific policy was found in a NRP relating to a previous year that had not been mentioned in the NRP of that year, it was added to the dataset of the previous year.

Fourthly, in the years of 2005 and 2008 member states were asked to report not only the activities they had undertaken, but also the activities they intended to adopt. We regard such discussions as lists of intentions, rather than actual concrete policy adoption. Although they are included in the datasets of the respective years, they can at the most only be considered as preparatory instruments in the legal instruments category (therefore assigned a value of 0, if only vague intentions were presented, and a value of 1 when more concrete intentions are presented), and as a magnitude of either lip service (value 1) or preparatory instruments (value 2). Finally, to reduce the level of subjectivity in the dataset and increase the

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<sup>5</sup> An exemption to this is Poland which follows its own national priorities and strategy in its NRPs.

consistency of the results, both authors were involved in classifying the NRPs. We classified one country case study together to ensure that as far as possible we were using the typologies in the same way. There after we each took the lead on specific cases, consulted each other on policy activisms that were difficult to classify and cross checked the completed datasets.

### *Selection of Case Studies*

The framework is applied to the NRPs of ten member states over a five year period (between 2005-2009). This period was chosen for three reasons: firstly, unlike previous years the Employment Guidelines remained unchanged for this period enabling the analysis to capture the dynamics of the EES more consistently over time; secondly, the specified time period is more representative of the current EU in that it enables the analysis to include the new member states; and thirdly, this particular period from 2007 includes the setting of national priorities by the Council and is therefore able to capture deep voluntary compliance.

The selected member states are: Czech Republic, France, Germany, Italy, Latvia, the Netherlands, Poland, Slovenia, Sweden, the UK. There are two underlying reasons for the selection of these member states. Firstly, they represent a mixture of old and new member states. This distinction is significant because new member states are often considered to be laggards within EU soft law (Wógcicka and Grabowski 2007; Potůček 2007; De la Rosa 2005). Secondly, the selected member states represent a mixture of the different clusters of welfare states within the EU: Latvia and the UK represent the neoliberal cluster (Esping-Andersen 1990; Keune 2006); France, Germany and Italy the conservatist-corporatist cluster (Esping-Andersen 1990; Goodwin 1999); the Czech Republic and Poland represent a mixture of the neoliberal and conservatist-corporatist welfare states (Keune 2006); and the Netherlands, Slovenia and Sweden represent the social democratic cluster (Esping-Andersen 1990; Goodwin et al 1999; Keune 2006).

## **II: Findings**

In order to address our overall research question we organized our data analysis around two sub-questions:

- 1) Does the EES create shallow voluntary compliance within the member states?
- 2) Does the EES create deep voluntary compliance beyond the national priorities of the member states?

### *Does the EES create shallow voluntary compliance within the member states?*

Tables 3 and 4 illustrate that there is considerable policy activism within the member states for the EES with a total number of 1051 activities having been undertaken between 2005-2009 of which 886 resulted in the initiation or adoption of a legal instrument. The figure in table 4 is higher than the total number of policy activisms in table 3 because the framework also captures member state activity which is pure lip-service, i.e. where member states simply make reference to a policy guideline which is not accompanied by a legal activity. Between 2005 and 2009 there were a total of 165 lip-service references and a total number of 886 instruments of which 370 were preparatory instruments and 516 were legal in nature. Of the 516 legal instruments adopted by the 10 member states, 156 are soft law, 17 are collective agreements, 264 are hard law and 79 are undefined instruments. In terms of magnitude of the 516 legal instruments, 207 have created parametric reform in the member states and 309 have created instrumental change.

From the two tables it is clear that there is a considerable amount of activity in the member states with respect to the EES. However, as this paper is concerned with the policy change effect on of the EES in the member states, it is only concerned with certain aspects of the data. Real policy change is generated in a member state via instruments that create policy reform within the national policy mixes (soft law instruments, collective agreements, hard law instruments and the non-definable instruments). The further presentation of the dataset is therefore confined to the data on these instruments.

**Table 3:** Typology of legal instruments adopted by the ten Member States for the European Employment Strategy between 2005-2009.

Sort of instrument	2005	2006	2007	2008	2009	2005-2009
1. preparatory instrument	70	86	73	73	68	370
2. Soft law	22	48	32	19	35	156
3. Collective agreement	4	5	2	3	3	17
4. Hard law	40	52	60	56	56	264
n.a. undefined instrument	7	29	13	11	19	79
<b>Total</b>	<b>143</b>	<b>220</b>	<b>180</b>	<b>162</b>	<b>181</b>	<b>886</b>

**Table 4** The magnitude of the legal instruments adopted by the ten Member States for the European Employment Strategy between 2005-2009.

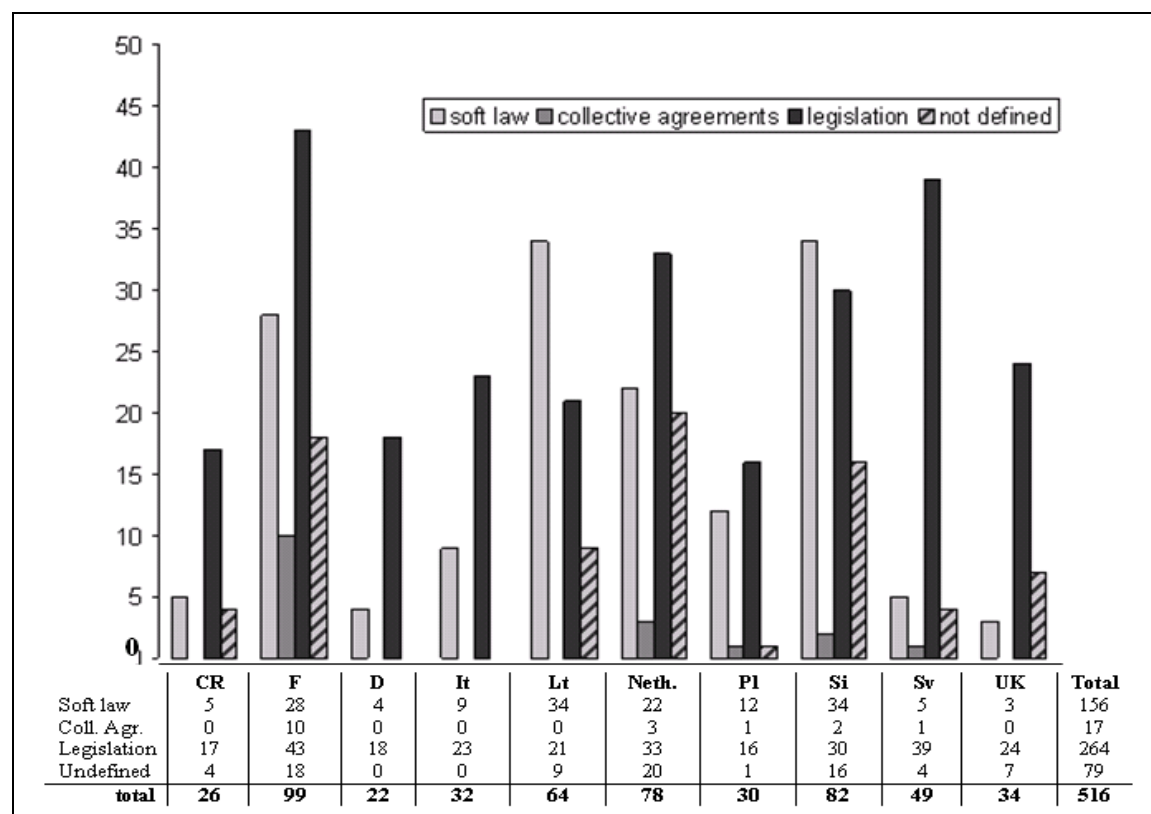
Magnitude activism	2005	2006	2007	2008	2009	2005-2009
1. Lip-service	45	33	28	38	21	165
2. Preparatory	70	86	73	73	68	370
3. Parametric reform	26	39	55	39	48	207
4. Instrumental change	47	95	52	50	65	309
<b>Total</b>	<b>188</b>	<b>253</b>	<b>208</b>	<b>200</b>	<b>202</b>	<b>1051</b>

Figure 1 indicates the number of instruments adopted per member state sub-divided by the type of legislative activities for the period 2005-2009. Given that member states have different traditions in regulating employment policies, the data confirms the difference in legislative activism between the member states. With 99 legislative instruments most of the 516 “ripples” are created in France, followed by Slovenia (82), the Netherlands (78), Latvia (64), Sweden (49), the UK (34), Italy (32), Poland (30), the Czech Republic (26), and



Germany (22). The use of collective agreements is only reported by five of the member states and is the least used instrument. In comparison, soft law instruments are used by all of the member states and they are most commonly used by Latvia and Slovenia. With the exception of Latvia and Slovenia, all member states mostly use hard law instruments to comply with the requirements of the EES. This illustrates that when member states demonstrate shallow voluntary compliance, they do not shy away from the use of hard law instruments that have a strong impact on their domestic policies (impacts that either reform existing parameters or cause instrumental changes).

Figure 1: Legal instruments adopted by the ten member states between 2005-2009



The general data strongly indicate that there is shallow voluntary compliance within the member states. However, within the EES member states start from different policy mixes and are therefore able to initiate policy reform in areas where they do not meet the agreed objectives. Furthermore, they will be less active in policy areas where the objectives have already been achieved. One of the consequences is that policy activism can vary significantly between the member states. Further segregation of the data is therefore needed and table 5 illustrates the policy activism per guideline for the member states between 2005-2009.

The most striking observation from table 5 is the wide variety of activism between the member states. Giving explanations for this variety would lead us into speculation only. At the most it can be a slight indication of the importance member states attach to employment policies. A significant finding of these results is that, based on the general policy activism of the member states over the course of time, the member states do not really show trends with respect to their clusters of welfare states. For example, France and Germany which both Esping-Andersen (1990) and Goodwin et al (1999) categorise as being part of the

conservative-corporatist welfare cluster, represent the two extremes of the overall findings. Latvia and Slovenia, which are two new member states, but represent the two polar welfare states (neo-corporatist versus neoliberal) that can be found in Central and Eastern Europe are the second and fourth most active member states within the EES. The only exception to this is the Netherlands Slovenia and Sweden, the three social democratic welfare states, which demonstrate some consistency with each other. Another significant finding of the results, as presented in table 5, is that there is no difference in policy activism between the old and the new member states with respect to ripples, as both groups are at the top and bottom of the total number of policy activists.

**Table 5** Number of activities of the ten Member States per coded guideline in the period 2005-2009

<b>Guideline</b>	<b>Sub-gl</b>	<b>CR</b>	<b>F</b>	<b>D</b>	<b>It</b>	<b>Lt</b>	<b>Nl</b>	<b>Pl</b>	<b>Si</b>	<b>Sv</b>	<b>UK</b>	<b>total</b>
<b>18</b>		<b>4</b>	<b>30</b>	<b>7</b>	<b>11</b>	<b>12</b>	<b>30</b>	<b>8</b>	<b>21</b>	<b>15</b>	<b>5</b>	<b>143</b>
	A	0	10	0	3	4	6	2	3	3	1	
	B	1	3	3	2	1	8	2	5	2	0	
	C	3	4	1	3	3	7	2	6	2	2	
	D	0	11	3	0	1	4	2	4	0	2	
	E	0	2	0	3	3	5	0	3	8	0	
<b>19</b>		<b>6</b>	<b>27</b>	<b>2</b>	<b>1</b>	<b>10</b>	<b>15</b>	<b>11</b>	<b>18</b>	<b>8</b>	<b>10</b>	<b>108</b>
	A	0	13	2	0	6	6	9	15	2	5	
	B	6	11	0	1	0	9	2	3	5	4	
	C	0	3	0	0	4	0	0	0	1	1	
<b>20</b>		<b>5</b>	<b>7</b>	<b>0</b>	<b>4</b>	<b>3</b>	<b>3</b>	<b>6</b>	<b>6</b>	<b>7</b>	<b>1</b>	<b>42</b>
	A	2	4	0	4	1	0	6	1	4	1	
	B	0	1	0	0	0	2	0	2	1	0	
	C	0	0	0	0	1	0	0	0	2	0	
	D	3	2	0	0	1	1	0	3	0	0	
<b>21</b>		<b>1</b>	<b>10</b>	<b>4</b>	<b>7</b>	<b>21</b>	<b>10</b>	<b>0</b>	<b>10</b>	<b>2</b>	<b>1</b>	<b>66</b>
	A	1	5	1	2	4	4	0	2	1	1	
	B	0	0	0	5	6	0	0	4	1	0	
	C	0	2	0	0	2	1	0	0	0	0	
	D	0	2	1	0	6	3	0	2	0	0	
	E	0	1	2	0	3	2	0	2	0	0	
<b>22</b>		<b>1</b>	<b>7</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>3</b>	<b>2</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>19</b>
	A	0	4	0	2	0	3	0	1	0	0	
	B	1	3	0	0	0	0	2	3	0	0	
<b>23</b>		<b>3</b>	<b>11</b>	<b>8</b>	<b>3</b>	<b>8</b>	<b>8</b>	<b>1</b>	<b>11</b>	<b>6</b>	<b>13</b>	<b>72</b>
	A	0	3	7	2	4	1	1	7	4	5	
	B	0	7	0	1	0	4	0	1	0	1	
	C	3	1	1	0	4	3	0	3	2	7	
<b>24</b>		<b>6</b>	<b>7</b>	<b>1</b>	<b>4</b>	<b>10</b>	<b>9</b>	<b>2</b>	<b>12</b>	<b>11</b>	<b>4</b>	<b>66</b>
	A	5	3	1	3	6	6	2	5	8	2	
	B	0	0	0	0	1	0	0	1	0	1	
	C	1	4	0	1	3	3	0	6	3	1	
<b>total</b>		<b>26</b>	<b>99</b>	<b>22</b>	<b>32</b>	<b>64</b>	<b>78</b>	<b>30</b>	<b>82</b>	<b>49</b>	<b>34</b>	<b>516</b>

Table 5 reveals, with a few exceptions, there to have been policy changes in the member states in all of the guidelines. However, Poland has no activities in guideline 21 which is mainly concerned with the issue of flexicurity. During the period of analysis there was little

impetus for such activity in Poland as reforms were introduced in 2002-2004 which the NRP states: ‘have enabled a more flexible approach to work time and diversified forms of employment’ and that the subject is “less popular in Poland than elsewhere in the world”.<sup>6</sup> As a result, there is little impetus for Poland to continue with policy activism in this area. A similar situation can also be found in Germany with respect to guideline 20, since it reformed and modernised its public employment services prior to 2005 with the Hartz II and III reforms, our dataset does not capture such activity.<sup>7</sup>

Table five illustrates where member states are the most active, which is guideline 18 concerning the promotion of a life-cycle approach to work and aims to reduce youth unemployment (18a), to increase female participation (18b), a better reconciliation between work and family life (18c), support active ageing (18d) and modernise social protection systems (18e). Given the high number of voluntary compliance with this guideline, it would appear that there is a general goodness-of-fit with this guideline and the member states. Confirmation of this presumption can be found in the NRPs where member states also write about their national priorities. In the French NRP of 2007 (p. 47), for instance, it is noted that “the integration of the youth in society is an on-going preoccupation”, indicating that it is a policy that requires constant attention.

Guideline 19, which promotes labour market policies (19a and b) and the creation of new jobs (19c), also demonstrates a high level of compliance - a subject that is apparently high on the domestic agenda’s of some old member states (France with 27 activities and the Netherlands with 15) as well as some of the new member states (Slovenia with 18 activities and Poland with 11). However, it has also low priority within the old (Germany with 2 activities and Italy merely 1) as well as the new members (the Czech Republic with 6 activities). Guideline 20 is given a medium level of priority which aims to improve the matching of the labour market needs through the modernisation and strengthening of labour market institutions (20a), improve the mobility for workers across Europe (20b), the better anticipation of skill needs, the tackling of labour market shortages and bottlenecks (20c) and appropriate management of economic migration. In particular, the modernisation of employment services (France, Italy, Poland, and Sweden show a relatively high level of activity) and the management of economic migration (the Czech Republic and Slovenia show relatively high activity) seem to be part of the national priorities.

Almost one third of the activity in guideline 21 stems from Latvia (21 of the 66). One of the issues covered by this guideline is undeclared work, which is high in Latvia. The reduction of this is therefore a national priority that is on the agenda for the whole period of the case study.<sup>8</sup> Again this a perfect example of shallow voluntary compliance based on the goodness-of-fit of the subject. This also seems to be the case for Italy, with no less than five activities aimed at reducing undeclared work. Furthermore, France, the Netherlands and Slovenia also give considerable attention to this guideline with 10 normative ripples each. The number of activities is again more equally divided among the member states in respect of guideline 23. There is a high number of activity for the UK, more than one-third of its total of activities: 13 of the 34. Even more striking is the fact that the majority of these instruments were adopted in 2009 (improving skills), indicating that they were a response to the economic downturn. On the other hand, France and the Netherlands focus on the reduction of early school leavers

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<sup>6</sup> National Reform Programme for 2005-2008 of the Republic of Poland, p. 30.

<sup>7</sup> These reforms took place in 2002 and 2004 respectively. Cf Vogler-Ludwig 2005.

<sup>8</sup> Cf. The Latvian NRPs 2005, p. 33; 2006, p. 32; 2007, p. 30; 2008, p. 49; and 2009, p. 38.

(7 and 4 acts respectively) which are further examples as the subjects fit their national priorities.

With respect to guideline 24 the member states demonstrate a medium level of activity with a common focus on the improvement of the quality of education and vocational training (24a). Little activity is undertaken with respect to coded guideline 24b, which is concerned with easing and diversifying access for all to education and training. Although the inactivity stands out, it is not unexpected, since the policies that should be developed to meet this guideline are also part of other guidelines, among which 19a, 20a, 21a, 21e, 23c and 24a. It could be that the policy activism associated with this guideline are already reported in the context of another guideline

As far as shallow voluntary effectiveness is concerned, the data provides compelling evidence that this is the case. Firstly, in the period 2005-2009 member states have undertaken considerable policy reforms at the domestic level under the guidance of the EES. Secondly, the results also demonstrate that with few exceptions, member states have complied with all the guidelines (Poland has not acted in guideline 21; and Germany, Latvia, Sweden and the UK have not acted in guideline 22). However, where member states have acted, evidence is found that this is based on a goodness-of-fit, *i.e.* member state activism within the guidelines corresponds to the national priorities, as identified by their NRPs. The second stage of the analysis therefore assesses whether member states also comply with the EES where there is no obvious goodness-of-fit with the national priorities.

*Does the EES create deep voluntary compliance beyond the national priorities of the member states?*

To assess whether the EES creates deep voluntary compliance, specific attention is given to the recommendations made by the Council, on proposal by the Commission, to the member states. The recommendations are connected to the coded guidelines and issued once a year from 2007- the results of the analysis are shown in table 6. The second column of table 6 represents the total number of recommendations for the member states, while the third column represents the number of guidelines for which there are recommendations between 2007-2009. For example, Italy is recommended to improve the operation of the employment services on three occasions (in 2007, 2008 and 2009), a subject that is promoted by coded guideline 20a. The number of recommendations is therefore higher than the number of guidelines the member state should prioritise. As such, the table captures both the number of recommendations over time and the number of policy areas the member states need to focus on (see also Appendix 2).

Column four represents the total number of activities per member state with respect to the recommendations. This can be higher than the number of recommendations in column three because member states may introduce more than one policy reform to address a specific recommendation. For example, to meet the recommendation on improving the operation of the employment services, Italy has adopted a total of four policy activations -one soft law instrument in 2007, one hard law instrument in 2008 and two hard law instruments in 2009. The fifth column therefore provides the total number of coded guidelines for which there has been at least one normative ripple within the national legal order. The final column expresses, as a percentage, the number of guidelines in which there has been at least one normative ripple over the number of guidelines with at least one recommendation (columns five and three).

**Table 6** Ripples created in response to the recommendations

Country	Number of recomm	Number of guidelines with recomm	Number of Normative ripples	Compliance with guidelines	Percentage of compliance
Czech Re.	20	9	3	3	34
France	11	6	8	4	67
Germany	12	6	1	1	16
Italy	16	7	14	4	57
Latvia	14	8	8	4	50
Netherlands	10	4	15	3	75
Poland	12	6	10	4	67
Slovenia	12	7	7	5	70
Sweden	12	5	9	4	80
UK	7	3	7	3	100
<b>total</b>	<b>126</b>	<b>61</b>	<b>82</b>	<b>35</b>	<b>57</b>

The result of this analysis illustrates that all member states have undertaken some policy activism with respect to the recommendations. However, the level of such activism varies. With the exception of the UK, not all member states act upon the recommended guidelines, they appear to pick and choose the subjects that possibly fit their national settings. For instance, in 2007, 2008 and 2009, the Czech Republic is recommended to prioritise incentives to invest in training for older and low skilled workers, but repeatedly fails to act up on this recommendation. With six guideline recommendations, but only policy reform response, Germany (16 %) is the least complaint member state, followed by the Czech Republic (34 %) and Latvia (50%). The most complaint member state is the UK (100%), followed by Sweden (80%), the Netherlands (75%), Slovenia (70%), France (67%), Poland (67%) and Italy (57%). Combined the member states are complaint in 57 per cent of the guideline recommendations. Finally, it is worth noting the difference between the old and new member states, as well as the different welfare clusters. Firstly, with respect to deep voluntary compliance, again, there is a spread of performance between old and new member states. Some new member states are less receptive than others (Slovenia vs. the Czech Republic). Secondly, the only significant trend within the welfare state clusters is that the Social Democratic cluster states (the Netherlands, Slovenia and Sweden) are the second, third and fourth best performing member states. Member states of other clusters are not grouped together, as performance varies within particular clusters (the UK vs. Latvia or France vs. Germany).

The results demonstrate that member states can and do respond to country specific recommendations, however, two issues arise from the analysis of the recommendations. Firstly, although the results demonstrate broadly positive member state responses to the recommendations, the two least active member states in the EES, the Czech Republic and Germany, are also the two member states that have responded the least to the recommendations. In this respect, the EES is limited, as it is unable to stimulate policy activism in member states that are unwilling to comply. Nevertheless, the remaining member states demonstrate positive responses to country specific recommendations. Secondly, the most striking feature of the recommendation process is the similar number of recommendations issued to both good and poorly performing member states. While the Czech Republic may be an outlier to this trend, between 2007-2009, the two best performing member states, France and the Netherlands received 11 and 10 recommendations; while the second and third worst performing member states, Germany and Poland, each received 12 recommendations.

The recommendation process of the EES is the least understood aspect of the OMC. Methodologically, it is simple: member states submit their NRPs to the Commission which assesses the overall progress of each individual member state and identifies areas of weakness; member states are then issued with country specific recommendations to target such weaknesses under Articles 99(2) and 128(4) of the Treaty. In this respect, the recommendation process appears as a powerful tool to initiate EES inspired reform within the member states where they would otherwise fail to act. The Commission takes the role of an assessor of the member states against the overall objectives of the EES, and provides feedback (recommendations) outlining the individual areas of weakness. Such areas of weakness are monitored in subsequent years.

The formation of country specific recommendations is, however, a politically negotiated process both within the Commission, and between the Commission and the member states.<sup>9</sup> The first stage of the recommendation procedure involves the evaluation of the NRPs by country desk officers in DG EMPL, who initially draft the country specific recommendations (interview 1). Subsequently, the recommendations are internally screened to ensure a harmonization between the member states, both in terms of the actual wording (in which standardized words are used and care is taken not to describe the seriousness of a problem) and the number of recommendations given to each member state. Therefore despite differences in performance of the member states, the Commission ensures that the number of recommendations between them is relatively similar (interview 3). This minimizes political fallout between the Commission and the member states which could delay or block the adoption of the recommendations in the Council (interview 3). As one representative noted: ‘we are restricted in what we can do and say and the amount and wording of the recommendations is clearly disproportionate with the worst performing member states receiving only one or two more recommendations per year than the best performers’ (interview 2). The recommendations are subsequently communicated to the Secretariat-General in the Commission which, after its own screening process, communicates them to the Employment Committee in the Council (EMCO). Following their communication, the Sec-Gen opens up informal bilateral negotiations where each member state is provided with the opportunity to discuss any problems they have with their own recommendations. This involves the member states negotiating with the Commission on the number of recommendations and / or their exact wording. Member states can request as many bilateral negotiations as they deem necessary (interview 2).

During the whole process, member states aim for recommendations that are few in number, simple to understand and suit their domestic policies. There are occasions when member states will use the recommendations to support a domestic reform agenda, but only if it corresponds to national priorities (interview 2). Outside of the informal bilaterals, member states, via their permanent representations in Brussels, are involved in intense lobby of the Sec-Gen to further influence the recommendations (interview 4). Once the member states are satisfied with their particular set of recommendations, EMCO forms a common position. In reality, every member state has to be satisfied with their recommendations; they form a single policy document in which all of the recommendations for all member states are compiled and agreed under a single vote. The Treaty makes no reference to the voting procedure of the recommendations, but in general the issue of employment is subject to qualified majority

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<sup>9</sup> Owing to the absence of any account of the forging of country specific recommendations, both in the current academic literature and official EU documents, we conducted four anonymous interviews with EU officials involved in the EES in both the Commission and the Council during Nov / Dec 2010.

voting (QMV) under articles 148 and 149. In practice, formal QMV is rarely used and informally the Council will agree on the final document by consensus (interview 1). This further strengthens the influence of the member states over their own recommendations, as they each hold an informal veto over the approval of all country specific recommendations. Following the common position, the recommendations are approved by COREPER II and the Council of Ministers as a matter of formality.

Therefore, despite the potential influence of the recommendations on the policies of the member states, their significance should not be overstated. As one representative noted: ‘the final agreed set of country specific recommendations was always very different compared to their initial drafting by DG EMPL’ (interview 2). Recommendations are therefore quasi-extensions of the member states acting in areas which they themselves identify as a priority and are a ‘goodness-of-fit’ with their domestic situations. In this respect, they act as a tool to further identify priorities of the member states.

### **III: Conclusion**

The aim of this paper has been to assess the effectiveness of the EES. As an archetypal OMC within the EU, the EES is of central importance to assess the effectiveness of the EU’s soft law mode of governance. In response to the limitations of existing qualitative approaches to the topic, which provide only punctuated examinations of the effectiveness of the EES / OMC in an EU of 27 Member States, we applied our new framework to analyse the effectiveness of the EES in ten Member States between 2005-2009. The ten Member States chosen represent a mixture of both old and new member states, as well as the different welfare traditions in the EU. Although this only partially responds to the criticisms of the existing approaches, it represents a first attempt to assess the effectiveness of the EES for a large number of case studies over a five year period. The strength of the approach is that it can be expanded to include all EU member states, for all years in which the EES has been in operation.

The assessment of the effectiveness of the EES for the ten Member States involved analysing their NRPs against the guidelines agreed by the Member States and applying our framework. From the resultant dataset, we found considerable evidence of Member State activity in the EES, indicating substantial shallow voluntary compliance. However, where the Member States have acted, evidence was found that this was based on a goodness-of-fit, *i.e.* activism which corresponds to national priorities. There is little evidence to support the argument that old Member States are more active in the EES than new Member States – both groups of Member States can be found within the worst and best performers. Furthermore, clusters of welfare states demonstrated little similarity, with one possible exception being the Social Democratic Member States (the Netherlands, Slovenia and Sweden) which were in the top five most active. The trend of the Social Democratic Member States is possibly a result of the EES being inspired by the welfare policies of such countries.

We also found considerable evidence that the Member States responded well to the country specific recommendations, indicating substantial deep voluntary compliance. As with shallow voluntary compliance, there was no difference in performance between old and new Member States and, with the exception of the Social Democratic Member States, trends within specific welfare clusters. One important finding is that the Member States who were the least active with respect to shallow voluntary compliance, the Czech Republic and Germany, were also the Member States that responded the least to the country specific recommendations. In this sense, the EES is limited, as it is unable to stimulate policy activism of the Member States

that are unwilling to comply. The most striking feature of the dataset concerning deep voluntary compliance is the similar number of country specific recommendations given to both good and poorly performing Member States. We therefore analysed the formation of the country specific recommendations to contextualise the significance of our findings.

Our analysis reveals that the formation of country specific recommendations is a politically negotiated process with the Member States ultimately being in the driving seat. Although recommendations are initially drafted by the Commission, bi-lateral negotiations between the Commission and the Member States, give the Member States a considerable influence over the number of recommendations issued and / or their exact wording. Furthermore, the compilation of all country specific recommendations into a single document, which is agreed upon in Council, further strengthens the influence of the Member States, as they each hold an informal, yet powerful, veto over the whole process. The result is that country specific recommendations are little more than an extension of shallow voluntary compliance in the Member States.

The OMC was launched in policy areas in which the EU has relatively little or no legal competence and therefore serves to promote coordination and integration in sensitive policy areas. Within the EES we have demonstrated that there has been considerable policy activism, but that the Member States are ultimately in control of the process; the role of the Commission is marginal. The findings of this paper point to the conclusion that within the EES and more broadly the OMC, it is difficult to get the Member States to move beyond policy activism which they themselves identify as a priority or are a goodness-of-fit with the domestic situation. Thus, despite considerable policy activism with respect to both shallow and deep voluntary compliance, the EES, and the OMC in general, is an intergovernmental process in which sovereignty has yet to be pooled and Member States remain in the driving seat.

Whether such findings demonstrate the effectiveness of the EES remains open to interpretation. That the Member States remain in control of the governance process does not necessarily signify ineffectiveness. The OMC was designed to respect the divergence of policies and institutions found within the Member States, rather than to create convergence and harmonization which would require a stronger legal basis and the surrendering of some sovereignty in the necessary policy field. In short, the OMC was designed to enable the Member States to find their own pathways to modernizing their domestic policies and therefore requires their input. From this perspective there have been significant achievements within the EES. However, alternatively, that it remains difficult to stimulate policy activism within the Member States beyond simple goodness-of-fit, points to a significant ineffectiveness of the OMC. The Member States can simply avoid contentious reform. Furthermore, the Member States who are the least active also respond the least to country specific recommendations. This provides the Member States with the opportunity to ‘foot-drag’ should the domestic political constellations provide little incentive for policy activism within a policy area. Unlike traditional hard law there are no immediate penalties for the Member States in the OMC, as even the country specific recommendations can be considered relatively toothless.

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